

allows billing of all lines. *Id.*, pp. 66; 74. When compared in this way, the effective rate per land line under the current tariff and the proposed tariff is almost identical, supporting the overall reasonableness of the Verizon-WV proposed rates.

Completely resetting the Verizon-WV prices, rather than building upon historical rates as Kanawha Metro advocates, is appropriate for several reasons. First, the Verizon-WV rates have not been adjusted since 2001. Tr. Vol. II, p. 40. Second, Verizon-WV began providing DBMS to PSAPs within its service area, including Kanawha Metro, without adjusting rates to reflect the additional service. Tr. Vol. II, pp. 92; 212-213. Third, the Verizon-WV service area under the plan will be increased significantly and its costs will change. Tr. Vol. I, pp. 72; 169-170; 176; Tr. Vol. II, p. 116; Frontier Exh.1, p. 10. Fourth, Verizon-WV has not been assessing all of the charges that are provided in its current tariff. Tr. Vol. I, pp.70-71. Taken together, these factors favor completely revisiting the Verizon-WV rates. Using its cost methodology, Kanawha Metro would omit any correction of rates for the additional DBMS it has been receiving and continues to receive without charge and would omit any correction for tariff charges that Verizon-WV has not been assessing.

**3. *Whether approval of the Verizon-WV statewide averaged E911 tariff would unduly discriminate against Kanawha-Metro or any other PSAP?***

The Verizon-WV proposed tariff will charge PSAPs \$182/1000 access lines monthly for the provision of E911 service throughout the State by averaging all of its costs for E911 service across the entire State. Kanawha Metro already receives E911 DBMS from Verizon-WV. In fact, Kanawha County Commissioner Kent Carper diligently worked with the Verizon-WV predecessor, C & P Telephone Company, over twenty years ago to develop an E911 system for Kanawha County which was the first in the State and one of the first in the Eastern United States. Tr. Vol II, p. 322. At that time, the State of West Virginia did not assist in paying for E911 so the Kanawha County Commission and the City of Charleston subsidized the Kanawha County 911 system in the amount of \$500,000 and \$1 million per year, respectively. The amounts subsidized by the City and the County were in addition to the amount the citizens of Kanawha County contributed by supporting every requested increase necessary to build the system. Tr. Vol. II, pp. 320, 323-324.

Kanawha Metro has worked hard and spent dearly to develop E911 service for county citizens and maintains that it derives no additional benefit from the provision of E911 DBMS to the ten Frontier counties. Metro Exh. 1, p. 7. Kanawha County houses two major Verizon-WV switching centers and is opposed to subsidizing the more rural, less populated counties that are located at greater distances from the Verizon-WV switching centers. *Id.*

The Verizon-WV averaging of its costs across the State is a continuation of the current E911 tariff that has used statewide averaged rates since 1994. Tr. Vol. I, p. 59. This Commission has historically supported statewide and utility-wide rates for decades as a reasonable, non-discriminatory and equitable cost-based way to price service offerings:

The Commission is of the opinion that the Company's STP [single tariff pricing] proposal results in a just, reasonable, sufficient and non-discriminatory rate for all of the customers of WVWC [West Virginia Water Company]. Each customer will pay the same rate for a like and contemporaneous service made under the same or substantially similar circumstances and conditions. ... A STP methodology... does not result in undue discrimination or favoritism between persons and between locations for a like and contemporaneous ...service.

(Emphasis in original).

*West Virginia Water Company*, Case No. 81-126-W-42A, "Order Approving Single Tariff Pricing" (May 26, 1982); app. den. 70 ARPSCWV 480 (Sept. 21, 1982). See also, Pendleton County PSD, Case No. 94-1123-PWD-CN, Commission Order (Jan. 9, 1996).

Understandably, for the reasons set forth above, Kanawha Metro opposes the Verizon-WV proposed tariff. In today's computer and technology era, it is conceivable (but not practical) to price service individually. The question is whether that would be more equitable or efficient (or more accurate for that matter). It has long been the case that rates are averaged across a service area of a regulated carrier. All customers pay the same rate for the same class of telephone service from the same carrier, regardless of the cost to serve an individual customer. Tr. Vol. II, pp 160-161; 180; 337; Frontier Exh. 3, p. 5; Frontier Exh.1, p. 9. Just as the Verizon-WV rates for E911 services currently are averaged within its service area, it proposes that E911 rates be the same throughout a newly-certificated E911 service area. Tr. Vol. I, p. 201. See also Frontier Exhibit 1, p. 9.

The record does not support overturning this long-standing regulatory principle or overturning the Commission policy of averaging rates for E911 service that has existed since 911 rates were first established in *General Investigation into the Practices of and Rates Charged by Certain Local Exchange Carriers with Respect to Emergency Telephone Systems service*, Case No. 93-0764-T-GI, Commission Order (Dec. 21, 1993). Tr. Vol. II, pp. 357-358; Frontier Exh. 2, pp. 2-3.

While Chapter 24 of the *W. Va. Code* is replete with prohibitions against undue discrimination, none of the statutory provisions preclude any and all discrimination, *per se*. See *W. Va. Code* §§ 24-1-1(a)(4); 24-2-2(a); 24-2-3; 24-2-4b(b); and 24-2-7(a). The approval of statewide or averaged rates to assure equal accessibility to essential E911 DBMS rates by all West Virginia PSAPs will not create undue discrimination against those county PSAPs who currently receive E911 DBMS.

#### **4. Whether E911 rates should be bundled?**

The Verizon-WV E911 tariff rate in West Virginia has been bundled since 1994. This means that there is a single rate for the entire E911 service. PSAPs cannot purchase individual pieces of

the E911 service on an a la carte basis. Intrado objects to the lack of unbundled rate elements in the proposed tariff as being anti-competitive.

Although Verizon-WV stated that it could unbundle its rates, it has resisted doing so because the PSAPs had requested the bundled rate. Tr. Vol. I, p. 160. Verizon offers unbundled E911 tariffs in other states. In fact, Verizon-WV witness Christopher Coates said that he could not compare rates in West Virginia to other Verizon states because those states had *unbundled* rate elements. *Id.*, pp.101-102. At hearing, Staff testified to the rates from the Verizon E911 tariff in Maryland that offered a bundled rate, but also had unbundled rate elements for selective routing and ANI services. Tr. Vol. II, pp. 340-341.

Verizon-WV has offered to make the separate components of E911 services available in a timely manner. Proposed Order of Verizon-West Virginia, p.111, Verizon-WV Findings of Fact 27-28. Additionally, Verizon-WV has modified its original proposal to make clear that counties could opt out, in whole or in part, from E911 service with Verizon-WV. VZ Exh. R, p. 4; Tr. Vol. I, p. 215.

The Commission will approve the Verizon-WV bundled averaged E911 tariff. Contrary to the concerns of Intrado, the Verizon-WV proposed tariff allows for competitive entry by other providers of E911 services. Nothing in the plan makes Verizon-WV the exclusive provider of E911 services. Instead, the rates Verizon-WV developed are based on the assumption that all counties in West Virginia participate in the plan and that Verizon-WV provides service to all counties in the State. If either of those assumptions does not accurately reflect how the plan is implemented, rates could change. Tr. I, pp. 21; 83; 209-211.

The Commission will also require Verizon-WV to supplement its E911 tariff with unbundled rate elements for selective routing and ANI/ALI services. Supporting cost information should also be filed with the unbundled rate elements. This will provide a foundation for competitive E911 future offerings in the State and provide more purchasing options to PSAPs, either individually or collectively.

***5. Whether the Verizon-WV proposed offset of implementation costs with Market Transition Plan public benefit grant funds in order to phase in its rates would be anti-competitive?***

The Verizon-WV Commission-approved MTP is an alternative regulation plan that balances competing interests and viewpoints with a goal of benefitting the public interest by ensuring reasonable rates. See, e.g., Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia, Commission Order, Case No. 05-0040-T-PC, Attachment ¶¶ 11, 13 (May 4, 2005). Under Section 4 of the MTP, E911 services are classified as Category I services, the prices of which are normally set for the duration of the plan but were specifically

exempted because of the pendency of this proceeding. Verizon-WV agreed to phase in its proposed E911 rates over four steps if the rates were approved as part of the resolution of this proceeding. Verizon West Virginia, Inc., Case No. 06-1935-T-PC, Commission Order (March 26, 2007).

The MTP includes a public benefits expenditure provision. Under Section 15 of the MTP, Verizon-WV is required to make annual grants totaling \$1.7 million to the State, local agencies, or community-based non-profit groups for public benefits. However, Section 15 also states that if the phase in of E911 rates is approved, Verizon-WV can offset its annual public benefits' commitment by the amount of revenue forgone as a result of the phase in. *Id.*

The rate phase in would result in a monthly rate for E911 service of \$128 per thousand (\$128/1000) lines the first year; \$146 the second; \$164 the third; and \$182/1000 lines the fourth year. Tr. Vol. I, p. 87. Verizon-WV has not sought a flash cut to the existing rate; on the contrary, with the rate phase in, Verizon-WV will receive approximately \$900,000 less the first year than under full rates. Consequently, pursuant to the MTP, the Verizon-WV public benefits' commitment would be offset by \$900,000 the first year, and lesser amounts the next two years. Tr. Vol. I, p. 89.

Intrado claims that the phase in of the Verizon new E911 rate is anti-competitive since the rates during the phase in will be below the costs indicated by the Verizon cost study. Proposed Commission Order Prepared by Intrado Communications, Inc., pp. 16-19. Intrado complains that the final rate of \$182/1000 lines is too low, and therefore, anti-competitive. *Id.*, p. 3. Kanawha Metro complains that the proposed rate is too high and the rate increase of 65% or more is too large. Tr. Vol. II, pp. 285-286. Each of these concerns is defensible. A price set too low will stifle competition; a price set too high will impose unreasonable burdens on PSAPs and the public. The Commission is called to perform a balancing role in reconciling these two seemingly opposing interests. See W. Va. Code § 24-1-1(b).

The phase in of the new rate called for in the Verizon-WV MTP is an appropriate way for the Commission to strike this balance. PSAPs will see moderate predictable increases in the rate for E911 services over the next three years. At the same time, the rate will become increasingly higher with the passage of time, providing Intrado opportunities to make inroads with different county PSAPs, and ultimately the State as a whole. In this manner, rate impacts on customers can be mitigated, and market forces can be introduced into another area of telecommunications.

Parties to this proceeding have suggested that instead of phasing in the rate, that equivalent grants should be given to PSAPs so that they can make their own purchasing decisions or that the Commission should direct Verizon-WV to place the funds into a general fund administered by a third party. Intrado Exh. 1, p. 24. The Commission declines to do so. The MTP was a negotiated settlement in Case No. 06-1935-T-PC among the parties to that case. Changing the public benefit fund portion of the MTP affects other terms which likely would have been different had the parties known that public benefit funds would not be used to phase in E911 rates. Moreover, the MTP is

a Commission-approved plan that will use public benefit funds to facilitate the phase in of the Verizon-WV new E911 rates, and thereby provide a direct benefit to each and every PSAP in the State. The Commission finds that there is no sufficient basis for disturbing the MTP in this proceeding.

Staff argues that it would be unfair to the counties to eliminate the phase in of the Verizon E911 DBMS rates as long as there is no competition for the provision of E911 DBMS. See Initial Brief of Staff, Proposed Conclusion of Law 21, p. 35-36. Staff also argues that it would be anti-competitive for Verizon-WV to use its MTP technology grant funds to phase in its rates if there were a competitor in the market. See Initial Brief of Staff, Proposed Conclusion of Law 20, p. 35. The Commission notes that the Verizon-WV MTP governs its rates and services through 2010 only. See Verizon West Virginia, Inc., Case No. 06-1935-T-PC, Commission Order (Dec. 21, 2006).

As is obvious by the participation of Intrado in this case, other providers may offer competitive E911 services, and PSAPs are free to purchase E911 service from whichever provider best suits their needs. In fact, on March 28, 2007, Intrado was issued a certificate by the Commission to provide such statewide E911 services. See, Intrado Communications Inc., Case No. 06-1892-T-CN, Recommended Decision (March 8, 2007; final March 28, 2007). Intrado testified at hearing that it could offer a monthly rate of \$231/1000 lines for E911 service. Tr. Vol II, p. 219, but has not yet made an appropriate tariff filing with the Commission proposing the rates, standards, terms and conditions for the E911 services that Intrado intends to offer in West Virginia.

***Preliminary Matter (2):***

**Whether the Commission should grant the Verizon-WV motion for protective treatment?**

On May 31, 2007, Verizon-WV filed a motion seeking protective treatment of certain exhibits attached to its direct testimony and portions of testimony referencing information contained in those exhibits. The exhibits in question were: (1) Exhibit 2, which Verizon-WV identifies as “Highly Proprietary” and describes as a “Diagram of Current Network and Proposed Network”; (2) Exhibit 5, described as the Verizon-WV “Price Change Breakdown Overview” and identified as “Proprietary”; and (3) Exhibit 6, which Verizon-WV describes as its “Cost Study” and claims is “Highly Proprietary.” See VZ Exh. DP, Table of Exhibits. Portions of the Verizon-WV prepared direct testimony referencing information contained in these exhibits were also redacted. See VZ Exh. DP, pp. 14 (related to VZ Exh. 5); *Id.*, pp.19-25; 27 (related to VZ Exh. 2 and/or VZ Exh. 6).

Verizon-WV claims the information that was the subject of its motion for protective order is exempt from disclosure under the West Virginia Freedom of Information Act’s (“WVFOIA”) exemptions for “trade secrets” and/or Homeland Security-related information. See W. Va. Code §§ 29B-1-4(a)(1), (10), (13) and (15).

Frontier seeks to withhold certain information designated as “proprietary” in the prepared direct testimony of Randall Brockmann and in certain exhibits relating to the cost of the Frontier facilities used in the preparation of the Verizon-WV cost study. Frontier, however, did not file a motion for protective order regarding such information. Nor did Frontier make a motion for protective treatment during the hearing in this proceeding. Tr. Vol. I, pp. 35; 37.

As it is possible for the Commission to issue this Order without including any of the proprietary information, the Commission concludes that there is no need to rule upon the requests for protected treatment at this time as the Commission is addressing the protection of sensitive information dispositively in Case No. 07-0558-T-GI, *General Investigation into Procedures for the Protection of Confidential Information in Commission Proceedings*. The Commission shall direct its Executive Secretary to maintain the information separate and apart from the rest of the file. If there is a request filed with the Commission in the future to make such information public, the Commission shall require the entity seeking protective treatment to argue its request for protective treatment at that time.

### **FINDINGS OF FACT**

1. Enhanced 911 (E911) services allow the transmission of the name, telephone number and physical location of the person making an emergency call to a PSAP.
2. Verizon-West Virginia, Inc. (Verizon-WV) has offered E911 services in a bundled package containing all components of E911 services at uniform rates throughout its service territory since 1994. Tr. Vol. I, pp. 57-59.
3. Verizon-WV currently provides E911 service to 42 PSAPs operating in 45 West Virginia counties and Frontier provides E911 service to 10 PSAPs in the State’s remaining counties. The service territory of Frontier is predominantly rural and includes Hardy Mercer, Jefferson, Calhoun, Tucker, Grant, Hampshire, Pleasants, Wayne, and Webster Counties. Verizon’s Initial Brief at p. 112.
4. Initially, the Verizon-WV E911 monthly rate was \$85/1000 access lines. This rate was adopted by *Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia* (Frontier) in its West Virginia service territory. Tr. Vol. I, pp. 243-244, 247; Tr. Vol. II, pp. 24, 96; Tr. Vol. II, pp. 95-96.
5. In 2001, Verizon-WV increased its monthly E911 rate to \$110/1000 access lines to pay for the upgrade of facilities necessary to handle wireless calls. Frontier also adopted that Verizon-WV rate. Tr. Vol. II, pp. 24, 96; Tr. Vol. II, pp. 93, 123.

6. PSAPs in those counties served by Frontier have been paying the same higher rate as Verizon-WV, however they have not been receiving the same service. Tr. Vol. I, pp. 55, 61; Tr. Vol. II, p. 123.

7. With the exception of Mercer County, no Frontier county can identify the name, number or location of calls from wireless phones. The same is true for calls to PSAPs from customers of competitive local exchange carriers (CLECs) and calls from customers using Voice over Internet Protocol (VoIP).

8. PSAPs in the Frontier counties currently lack access to E911 DBMS and selective routing facilities that are necessary to provide full E911 service.

9. A Task Force established by the Commission and comprised of telecommunications carriers, PSAPs, and Staff, filed its Final Report into DBMS for E911 services, including a proposed Verizon-WV E911 Tariff on January 6, 2006.

10. The Task Force recommended that: (1) the Commission direct a full financial analysis of the proposed Verizon-WV E911 DBMS tariff rates and of the cost information supplied to Verizon-WV by the independent ILECs; (2) a public hearing be held no later than April 2006 for review of the audit results and to take comments of interested parties; (3) public notice of the hearing be provided to all ILECs, CLECs, West Virginia wireless carriers and county commissions; (4) Verizon-WV be granted the authority to serve outside its normal service area; and (5) the independent ILECs be required to modify their tariffs regarding the provision of E911 service.

11. On January 6, 2006, the Task Force filed its Final Report. The Final Report included a proposed Verizon tariff establishing a statewide monthly rate of \$198/1000 access lines to be charged by Verizon as the single E911 DBMS provider in West Virginia. See VZ. Exh. 1; Staff Exh. 1, pp. 4-8.

12. By Order entered on February 7, 2006, the Commission directed the Staff to review the financial analysis underlying the \$198/1000 monthly rate of access lines and the cost information provided to Verizon by the ILECs. See Case No. 04-0102-T-GI, Commission Order, p. 7.

13. Subsequently, Verizon filed a cost study supporting an increase from its current monthly rate of \$110/1000 access lines to a monthly rate of \$182/1000 access lines. Tr. Vol. I, p. 60.

14. Verizon filed a Total Service Long Run Incremental Cost (TSLRIC) model, which used different cost components than its prior analyses. This study generated an E911 DBMS

monthly cost of \$196.14/1000 access lines. However, Verizon continued to offer the service for the previously proposed \$182 per month per thousand access lines. Tr. Vol. I, pp. 92-93.

15. Telecommunications carriers routinely make filings without including *Rule 42 Exhibits*, pursuant to the Commission *Rules for the Construction and Filing of Tariffs*, 150 C.S.R. 2. *Id.*

16. Verizon-WV did not file the company financial data included in a *Tariff Rule 42 Exhibit* under the *Rules for the Construction and Filing of Tariffs*, 150 C.S.R. 2 as part of its proposed tariff. Tr. Vol. II, p. 286. Nor did Verizon-WV apply for or receive a waiver of such filing. Tr. Vol II, p. 375.

17. Verizon-WV has not had a general rate case in West Virginia since 1984. Tr. Vol. II, pp. 372-373; *C & P Telephone Co. of W. Va.*, Case No. 84-747-T-42T, Final Order (Sept. 6, 1985).

18. On December 15, 2006, Verizon-WV, CAD and Staff filed a joint petition for review and approval of a Market Transition Plan (“MTP”), an alternative rate plan governing the Verizon-WV services and rates through 2010, which the Commission approved on December 21, 2006. *Verizon West Virginia, Inc.*, Case No. 06-1935-T-PC, Commission Order (Dec. 21, 2006).

19. Under Paragraph 4(a)(I) of the MTP, the Commission allowed Verizon-WV to raise E911 rates to the level to be determined by the Commission in this proceeding. The same paragraph also provided for the four-step phase in of the Verizon-WV E911 rates. *Id.*

20. On page 2 of the December 21, 2007 Order approving the MTP Joint Stipulation, the Commission stated that any rate changes contemplated by the MTP would not become effective until after proper notice and future order of the Commission. Verizon-WV filed a copy of the required notice with the Commission on February 13, 2007. *Id.*

21. Following the publication of the required notice and review of the proposed rate changes, on March 26, 2007, the Commission entered an Order approving the rate changes proposed in the MTP. *Verizon West Virginia Inc.*, Case No. 06-1935-T-PC, Commission Order (Mar. 26, 2007).

22. For the past 20 years, the telecommunications industry has used forward-looking cost methodologies to develop prices for such services as 911, basic exchange service, vertical services, and data services. Tr. Vol. I, p. 94

23. Verizon-WV used a total service long-run incremental cost study, a forward-looking cost methodology, to develop proposed rates in this case. Tr. Vol. I, pp. 93-94.
24. Forward-looking cost study methodologies price a service based upon the total costs to provide a service, completely revising the entire pricing without reference to how those services previously were priced.
25. Kanawha Metro has never presented its position on what an appropriate rate should be.
26. Verizon-WV's proposed monthly rate for E911 service of \$182/1000 access lines averages approximately a 65% increase over the current rate of \$110/1000 access lines, although the actual increase varies by county.
27. The Verizon-WV current tariff can be applied to all access lines: ILEC, wireless, and CLEC, but Verizon-WV has only been billing for ILEC lines. Tr. Vol. I, p. 66.
28. If Verizon-WV applied the current tariff as written, the bills for certain PSAPs would more than double because there are now more wireless phones in West Virginia than land line phones. *Id.*
29. Verizon-WV has been providing DBMS to PSAPs within its service area, including Kanawha Metro, without adjusting rates to reflect the additional service. Tr. Vol. II, pp. 92; 212-213.
30. The Verizon-WV proposed E911 rate was developed by including wireless costs. As a result, bills to PSAPs will only be based on the number of land lines served by each PSAP. Tr. Vol. II, pp. 50-52.
31. The Verizon-WV proposed tariff sets forth the method by which PSAPs will be billed for E911 service each month. Verizon-WV Exh. 1, n. 4.
32. The Verizon-WV tariff will maintain the assumed equal ratio of land line and wireless calls for billing purposes. Tr. Vol. II, pp. 50-52. Billing under the proposed tariff will be based solely on the number of land lines, including CLEC lines, served by each PSAP. Tr. Vol. I, p. 69.
33. The Verizon-WV tariff proposes to charge PSAPs \$182/1000 access lines monthly for the provision of E911 by averaging all of its costs for E911 service across the entire State.

34. Verizon-WV's averaging of its costs across the State is a continuation of the current E911 tariff that has used statewide averaged rates since 1994. Tr. Vol. I, p. 59.

35. The Commission has historically supported statewide and utility-wide rates, which are common in the telecommunications industry. Tr. Vol. II, p.335, See also, West Virginia Water Company, Case No. 81-126-W-42A, "Order Approving Single Tariff Pricing" (May 26, 1982).

36. The Verizon-WV E911 tariff rate in West Virginia has been bundled since 1994 and there is a single rate for the entire E911 service. PSAPs cannot purchase individual pieces of the E911 service on an a la carte basis.

37. Verizon-WV can unbundle its rates but has resisted doing so because the PSAPs had requested the bundled rate. Tr. Vol. I, p. 160.

38. Verizon offers unbundled E911 tariffs in other states.

39. Verizon-WV has offered to make the separate components of E911 services available in a timely manner. Proposed Order of Verizon-West Virginia, p.111, Verizon-WV Findings of Fact 27-28.

40. Additionally, Verizon-WV has modified its original proposal to make clear that counties could opt out, in whole or in part, from E911 service with Verizon-WV. VZ Exh. R, p. 4; Tr. Vol. I, p. 215.

41. Nothing in its proposed tariff makes Verizon-WV the exclusive provider of E911 services. The rates Verizon-WV developed are based on the assumption that all counties in West Virginia participate in the plan and that Verizon-WV provides service to all counties in the State. If either of those assumptions does not accurately reflect how the plan is implemented, rates could change. Tr. I, pp. 21; 83; 209-211.

42. The Verizon-WV Commission-approved MTP is an alternative regulation plan that balances competing interests and viewpoints with a goal of benefitting the public interest by ensuring reasonable rates. See, e.g., Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia, Commission Order, Case No. 05-0040-T-PC, Attachment ¶¶ 11, 13 (May 4, 2005).

43. Under Section 4 of the MTP, E911 services are classified as Category I services, the prices of which are normally set for the duration of the plan, but were specifically exempted because

of the pendency of this proceeding. Verizon-WV agreed to phase in its proposed E911 rates over four steps if the rates were approved as part of the resolution of this proceeding. *Verizon West Virginia, Inc.*, Case No. 06-1935-T-PC, Commission Order (March 26, 2007).

44. The MTP includes a public benefits expenditure provision. Under Section 15 of the MTP, Verizon-WV is required to make annual grants totaling \$1.7 million to the State, local agencies, or community-based non-profit groups for public benefits. Section 15 also states that if the phase in of E911 rates is approved, Verizon-WV can offset its annual public benefits' commitment by the amount of revenue forgone as a result of the phase in. *Id.*

45. The rate phase in would result in a monthly rate for E911 service of \$128/1000 lines the first year; \$146 the second; \$164 the third; and \$182/1000 lines the fourth year. Tr. Vol. I, p. 87. Verizon-WV will receive approximately \$900,000 less the first year than under full rates and lesser amounts the next two years.

46. Pursuant to the MTP Verizon-WV's public benefits' commitment would be offset by \$900,000 the first year, and lesser amounts the next two years. Tr. Vol. I, p. 89.

47. On May 31, 2007, Verizon-WV filed a motion seeking protective treatment of certain exhibits attached to its direct testimony and portions of testimony referencing information contained in those exhibits.

48. The exhibits in question were: (1) Exhibit 2, which Verizon-WV identifies as "Highly Proprietary" and describes as a "Diagram of Current Network and Proposed Network"; (2) Exhibit 5, described as the Verizon-WV "Price Change Breakdown Overview" and identified as "Proprietary"; and (3) Exhibit 6, which Verizon-WV describes as its "Cost Study" and claims is "Highly Proprietary." See VZ Exh. DP, Table of Exhibits. Portions of the Verizon-WV prepared direct testimony referencing information contained in these exhibits were also redacted. See VZ Exh. DP, pp. 14 (related to VZ Exh. 5); *Id.*, pp.19-25; 27 (related to VZ Exh. 2 and/or VZ Exh. 6).

49. Verizon-WV claims that the information that is the subject of its Motion for Protective Order was exempt from disclosure under the West Virginia Freedom of Information Act's ("WVFOIA") exemptions for "trade secrets" and/or Homeland Security-related information. See W. Va. Code §§29B-1-4(a)(1), (10), (13) and (15).

50. Frontier seeks to withhold certain information designated as "proprietary" in the prepared direct testimony of Randall Brockmann and in certain exhibits relating to the cost of the Frontier facilities used in the preparation of the Verizon-WV cost study.

51. Frontier did not file a motion for protective order regarding such information, nor did Frontier-WV make a motion for protective treatment during the hearing in this proceeding. Tr. Vol. I, pp. 35; 37.

### CONCLUSIONS OF LAW

1. *W. Va. Code* § 24-6-3 requires the Commission to “develop, adopt and periodically review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems.” County E911 systems must be consistent with the Commission comprehensive plan. *W. Va. Code* § 24-6-4(a). In addition, the Commission general powers to approve tariffs and rates of under *W. Va. Code* § 24-2-3 extend to the tariffs and rates for E911 services provided by telecommunications carriers.

2. The Commission finds that it has not only the authority, but the duty to establish, review, and update the comprehensive enhanced 911 plan and to review all utility rates and charges. Further, in exercising its statutory authority, the Commission is not compelling county participation in a statewide E911 system, as Kanawha Metro maintains in its Motion to Dismiss and Proposed Findings of Fact and Conclusions of Law. The Commission instead is approving the rates, terms and conditions for a service offered by a public utility subject to the Commission jurisdiction. Therefore, it is reasonable to deny the Kanawha Metro Motion to Dismiss for Lack of Subject Matter Jurisdiction.

3. The Verizon-WV tariff proposal and proposed rates have been properly noticed to the public and submitted by Verizon-WV as required by the Commission in this proceeding. The review of the proposed tariff change for E911 service in this case is consistent with the MTP approved by the Commission on March 26, 2007. *Tariff Rule 42* of the *Commission Rules for the Construction and Filing of Tariffs*, 150 *W. Va. C.S.R. 2* does not create a procedural impediment preventing the Commission review of the Verizon-WV proposed rates for E911 service in this case.

4. *Rule 42* filing requirements are frequently waived by the Public Service Commission for good cause shown. See *Liberty Gap Wind Force, LLC* Case No. 05-1740-E-CS, June 22, 2007; *West Virginia-American Water Company and the Regional Development Authority of Charleston-Kanawha County*, Case No. 06-1858-W-CN-PC, March 15, 2007; *City of Cameron*, Case No. 06-1487-W-CN, January 23, 2007; *Cave Road Utilities, Inc.*, Case No. 06-1823-WS-ACN-PW, January 22, 2007; *Town of Farmington*, Case No. 06-1491-W-CN, January 10, 2007; *Monongahela Power Company and the Potomac Edison Company each doing business as Allegheny Power, Monongahela Power Company and the Potomac Edison Company each doing business as Allegheny Power*, consolidated Case Nos. 05-0402-E-CN and 05-0750-E-PC, April 7, 2006.

5. The Public Service Commission grants Verizon-WV a waiver of its *Rule 42* Exhibit requirements. This waiver is granted because; (1) the submitted cost model is sufficient to determine the reasonableness of the proposed rate, (2) Verizon-WV is no longer rate-base/rate-of-return regulated, (3) the preparation of a *Tariff Rule 42* Exhibit would prolong a final resolution of a threat which requires an expedient resolution, and (4) the expense of the preparation of a *Rule 42* Exhibit would unnecessarily and substantially increase the cost of E911 DBMS in West Virginia. This waiver is granted in accordance with the provisions of Rule 1.6 of the Commission *Rules for the Construction and Filing of Tariffs*, 150 W. Va. C.S.R. 2.

6. The cost model submitted by Verizon-WV is sufficient to justify the proposed rate.

7. Completely resetting the Verizon-WV prices, rather than building upon historical rates as Kanawha Metro advocates, is appropriate. Using its cost methodology, Kanawha Metro would omit any correction of rates for the additional DBMS it has been receiving and continues to receive without charge and would omit any correction for tariff charges that Verizon has not been assessing.

8. Verizon-WV should, within ten days, file a revised tariff offering the proposed rate of \$182/1000 access lines with the Commission. The revision should remove all references to the exclusive provision of E911 DBMS by Verizon and modify Footnote 4 of the proposed tariff, as agreed to by Verizon-WV in testimony at hearing, to maintain the assumed 50/50 ratio of land line and wireless calls for billing purposes until a subsequent new tariff is filed by Verizon-WV. See Footnote 4, Verizon's Miscellaneous Service Arrangements Tariff, P.S.C. W. Va. No. 211, Section 14, 2<sup>nd</sup> Revised Page 14, Canceling 1<sup>st</sup> Revised Page 14, marked at hearing as VZ Ex. 1.

9. This Commission has historically supported statewide and utility-wide rates for decades as a reasonable, non-discriminatory and equitable way to price service offerings on a cost-based methodology:

The Commission is of the opinion that the Company's STP [single tariff pricing] proposal results in a just, reasonable, sufficient and non-discriminatory rate for all of the customers of WVWC [West Virginia Water Company]. Each customer will pay the same rate for a like and contemporaneous service made under the same or substantially similar circumstances and conditions. ... A STP methodology ... does not result in undue discrimination or favoritism between persons and between locations for a like and contemporaneous ...service.

(Emphasis in original).

*West Virginia Water Company*, Case No. 81-126-W-42A, "Order Approving Single Tariff Pricing" (May 26, 1982); app. den. 70 ARPSCWV 480 (Sept. 21, 1982). See also, Pendleton County PSD, Case No. 94-1123-PWD-CN, Commission Order (Jan. 9, 1996).

10. The record does not support overturning this long-standing regulatory principle or overturning the Commission policy of averaging rates for E911 service that has existed since 911 rates were first established in *General Investigation into the Practices of and Rates Charged by Certain Local Exchange Carriers with Respect to Emergency Telephone Systems service*, Case No. 93-0764-T-GI, Commission Order (Dec. 21, 1993).

11. Although Chapter 24 of the *W. Va. Code* is replete with prohibitions against **undue** discrimination, none of the statutory provisions preclude any discrimination, *per se*. See *W. Va. Code* §§ 24-1-1(a)(4); 24-2-2(a); 24-2-3; 24-2-4b(b); and 24-2-7(a). The approval of statewide or postalized rates to assure equal accessibility to essential E911 DBMS rates by all West Virginia PSAPs will not create **undue** discrimination against those county PSAPs who currently receive E911 DBMS.

12. The Commission will approve the Verizon-WV bundled averaged E911 tariff. The Verizon-WV proposed tariff allows for competitive entry by other providers of E911 services. Nothing in the plan makes Verizon-WV the exclusive provider of E911 services. Instead, the rates Verizon-WV developed are based on the assumption that all counties in West Virginia participate in the plan and that Verizon-WV provides service to all counties in the State. If either of those assumptions does not accurately reflect how the plan is implemented, rates may change.

13. The Commission will also require Verizon-WV to supplement its E911 tariff. Verizon-WV supplement its E911 tariff by filing proposed unbundled rate elements the individual components of E911 DBMS. Supporting cost information should also be filed with the unbundled rate elements. This will provide a foundation for competitive E911 future offerings in the State and provide more purchasing options to PSAPs, either individually or collectively, and will promote new technological development.

14. The Commission is called to perform its role in reconciling two seemingly opposing interests regarding the reasonableness of E911 service and competition in the marketplace. See, *W. Va. Code* § 24-1-1(b). The phase in of the new rate called for in the Verizon-WV MTP is an appropriate way for the Commission to strike this balance. PSAPs will see moderate predictable increases in the rate for E911 services over the next three years. At the same time the rate will become increasingly higher with the passage of time, providing Intrado opportunities to make inroads with different county PSAPs, and ultimately the State as a whole. In this manner, rate impacts on customers can be mitigated, and market forces can be introduced into another area of telecommunications.

15. As it is possible for the Commission to issue this Order without including any of the proprietary information, the Commission concludes that there is no need to rule upon the requests for protected treatment at this time as the Commission is addressing the protection of sensitive information dispositively in Case No. 07-0558-T-GI, *General Investigation into Procedures for the Protection of Confidential Information in Commission Proceedings*.

### ORDER

IT IS THEREFORE ORDERED that the Kanawha Metro Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

IT IS FURTHER ORDERED that the Verizon-WV bundled averaged E911 tariff is approved, subject to the condition that within ten days Verizon-WV revise its E911 tariff filing to remove all references to the exclusive provision of E911 DBMS by Verizon-WV and to modify Footnote 4 of the proposed tariff, as agreed to by Verizon-WV in testimony at hearing, so that the assumed 50/50 ratio of land line and wireless calls for billing purposes is maintained until a subsequent new tariff is filed by Verizon-WV.

IT IS FURTHER ORDERED that the requirements to file a complete *Rule 42* are waived.

IT IS FURTHER ORDERED that Verizon-WV supplement its E911 tariff by filing proposed unbundled rate elements for selective routing and ANI/ALI services with supporting cost information within 120 days.

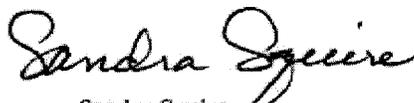
IT IS FURTHER ORDERED that Verizon-WV may use public benefit funds to facilitate the phase in of the Verizon-WV new E911 rates as set forth in the Verizon-WV Market Transition Plan.

IT IS FURTHER ORDERED that the Executive Secretary will continue to maintain the documents for which the parties requested protected treatment separate and apart from the remainder of the file and in a protected manner.

IT IS FURTHER ORDERED that upon entry of this order this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Tester:

  
Sandra Squire  
Executive Secretary

MEB/lm

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Docket No. 08-0550

Intrado Inc.  
Spence-Lenss Exhibit No. 1  
November 12, 2008  
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