ML 193205

ORDER NO. 87631

IN THE MATTER OF THE BILLING DISPUTE BETWEEN GATEWAY COMMUNICATION SERVICES, INC. AND VERIZON MARYLAND, LLC	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9381

Issued Date: June 24, 2016

In this Order, the Maryland Public Service Commission ("Commission") affirms the September 24, 2015 Public Utility Law Judge's ("Judge") Proposed Order[1] which granted Verizon Maryland, LLC's ("Verizon") request to modify the procedural schedule in the above captioned case and denied Gateway Communication Services, Inc.'s ("Gateway") Motion to Compel Discovery and For Other Relief ("Motion to Compel") as moot. For reasons discussed below, the Commission rejects Gateway's Memorandum of Appeal as unpersuasive and upholds the Judge's Proposed Order.

I. Procedural History and Background

On April 25, 2015, Gateway filed a Petition for Arbitration of Interconnection Terms and Conditions with Verizon ("Petition") pursuant to Section 252 (b) of the Telecommunications Act of 1996 ("U.S.C § 252(b)").[2] In its Petition, Gateway noted that Verizon issued 'a notice of default payment and threatened termination of its

[1] *Public Utility Law Judge's Propose Order on Verizon's Request to Modify The Procedural Schedule and Gateway's Motion to Compel* Case Order No. 9381 issued September 24, 2015 ("*PULJ Proposed Order*" or POPULJ")

[2] POPULJ at 1 citing Gateway's Petition, ML 167560.

wholesale services' claiming that Gateway owed over $60,000,[3] which Verizon alleges "paid nothing to Verizon for its services from December of 2011 to May of 2014, and underpaid sporadically from that time without covering current billings."[4] Gateway provided the background of its negotiations with Verizon claiming that Verizon had failed to substantiate Gateway's balances, provided invoices inconsistently and asserting that Gateway had continually made payments.[5] Gateway's Petition requested that "Verizon invoice Gateway separately for current reconciled services in order to pay only current charges and to move those lines to a separate invoice."[6] In response to the Petition, Verizon argued that U.S.C. § 252(b) was not applicable to Gateway's complaint; that Gateway did not state any valid disputes; and requested that Gateway be required to notify its customers that service would be terminated.[7] The Commission delegated Gateway's dispute to the Public Utility Law Judge Division to conduct the proceeding and directed Gateway "to provide financial assurance that it is capable of meeting its obligations to Verizon Maryland, LLC including any billing disputes."[8]

During a pre-hearing conference on June 18, 2015, Gateway stipulated that it would increase an existing letter of credit (LOC) to $20,000 payable to Verizon and file the LOC with the Commission on or before June 26, 2015.[9] Gateway failed to meet this deadline and subsequently requested an extension until July 24, 2015 after the evidentiary

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[3] *Id.*
[4] *Verizon's Reply to Gateway's Memorandum of Appeal* filed on November 5, 2015 ("Verizon's Reply").
[5] *Proposed Order* at 1-2.
[6] *Gateway Memorandum of Appeal by Gateway Communications Services, Inc. of the Proposed Order of the Public Utility Law Judge* filed October 16, 2015 ("Gateway Appeal") at 1.
[7] *Proposed Order* at 2.
[8] *Id*.
[9] *Id*. at 2-3.

hearings to submit the LOC.[10] Again, Gateway failed to provide the LOC, therefore on July 24, 2015, the Judge issued a "Financial Assurance Ruling" requiring "that Gateway establish a LOC or an escrow account in the amount of $66,432.69 on or before August 24, 2015."[11] Gateway disputed the amount claimed by Verizon and argued "that the amount actually owed was $832.59, not $66,432.69, and requested that the financial assurance requirement be deferred until after the proceedings concluded."[12] On September 20, 2015, Gateway filed the above noted Motion to Compel which requested that Verizon be required to provide invoices and documentation for certain accounts for May through September 2015.[13] The Motion to Compel also requested that the proceeding be extended to permit Gateway to review the documentation provided by Verizon and file a response."[14]

On September 24, 2015, after having reviewed the record and conducted an evidentiary hearing, the Judge in this case issued the Proposed Order which found that Gateway on two occasions - June 26, 2015 and August 24, 2015 - failed to provide the necessary financial assurance. The Judge's Proposed Order found that "[d]espite Gateway's repeated request, providing financial assurance after the evidentiary hearings is not an option in this case."[15] Further, the Proposed Order noted that "[t]o permit Gateway to avoid the financial assurance requirement by either providing it after the hearings, or in the amount offered by Gateway, would defeat the entire purpose of the financial assurance requirements, as well as override a Commission directive without any

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[10] *Id*.
[11] *Proposed Order* at 4.
[12] *Id*.
[13] ML 175026.
[14] *Proposed Order* at 6.
[15] *Id*. at 11.

justification."[16] Additionally, the Proposed Order questioned whether Gateway's Motion to Compel invoices and documentation supporting Verizon's claim was ripe for a decision and then found it to be moot.[17] The Proposed Order granted Verizon Maryland, LLC's request to have Staff notify Gateway customers of imminent disconnection of service and to disconnect such services thirty days after Staff's notice.[18]

On October 16, 2016, Gateway filed its Memorandum of Appeal to the Proposed Order. Separately on November 5, 2015, Verizon Maryland, LLC and Office of Staff Counsel filed Reply Memorandum of Appeal to Gateway.

II. Summary of Gateway's Appeal

In its Memorandum of Appeal, Gateway states "Verizon of Maryland has failed to invoice Gateway and Verizon has failed to substantiate balances claimed to be owed."[19] Gateway contends that the issue is not about its ability to pay but rather Verizon's claim of amount owed.[20] Gateway argues that the May 20, 2015 letter delegating this matter to the PULJ Division directed Verizon "to forbear from disconnecting Gateway Communications' Inc.'s customers until the billing dispute is resolved" as well as directed Gateway to provide financial assurance that it is capable of meeting its obligations to Verizon including any billing disputes.[21] Gateway argues that the proceedings were "biased towards Verizon in that Gateway attempted to follow the proceedings as requested while no proceedings were made for Verizon to resolve the

[16] *Id.* at 12.
[17] *Id.* at 13.
[18] *Id*.
[19] Gateway Appeal at 3.
[20] *Id*.
[21] *Id*.

billing disputes or produce invoices."[22] Gateway, thus, argued that the grounds of appeal involves Verizon's billing, however "the proceedings never order[ed] Verizon to produce invoices regarding amounts owed."[23] Gateway also indicated that Verizon has provided differing amounts owed during the proceeding.[24]

In support of its Appeal, Gateway argues that it "maintained a Letter of Credit which served as financial assurance that Gateway is capable of meeting its obligations with Verizon."[25] The Company further explained that the letter of credit was effective though March 19, 2016 and was originally granted for $50,000 and was further modified down to $9,000 in March of 2010.[26] Gateway acknowledged that during the June 18, 2015 pre-hearing conference in this proceeding, it had agreed to increase its existing Letter of Credit ("LOC") to $20,000 payable to Verizon and file a copy of the LOC with the Commission on or before June 26, 2015.[27] Gateway noted that Verizon agreed to not draw on the LOC until September 1, 2015[28] and it pointed out that "[t]he parties also stipulated that Verizon had previously attempted to collect on the existing Letter of Credit and by doing so would cause harm to Gateway's ability to increase its existing Letter of Credit."[29] Gateway also notes that Verizon drew on the existing Letter of Credit on July 21, 2015 and by doing so interfered with the Company's ability to obtain a Letter of Credit in the future.[30]

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[22] *Id*.
[23] *Id*.
[24] *Id*. at 4.
[25] *Id*. at 4.
[26] *Id*. at 4.
[27] *Id*. at 4.
[28] *Id*. at 4.
[29] *Id*. at 4.
[30] *Id*. at 5.

III. Summary of Verizon's and Office of Staff Counsel's Reply

On November 5, 2015, Verizon Maryland filed a Reply to Gateway's Memorandum of Appeal[31] with the Commission pursuant to COMAR 20.07.02.13. Verizon argues that "Gateway has openly violated the Commission's order"[32] that it "disobeyed two separate PULJ orders implementing the financial assurance directive."[33] Further Verizon contends that "[g]iven Gateway's long history of nonpayment, financial assurance is essential so that both Verizon and this Commission could be assured that Gateway would be able to pay if Verizon prevailed after incurring the time and expense of litigating this matter."[34]

Verizon asserts that the central issue that brings the case back before the Commission is the fact that Gateway has disregarded two PULJ orders requiring financial assurance without explanation or excuse.[35] Verizon argues that if Gateway's financial situation is so dire that it is incapable of demonstrating its ability to give financial assurance "then it is reasonable to question whether it is fit to operate as a telephone carrier in Maryland."[36] Moreover, Verizon argues that it should not be required to subsidize Gateway's business "by providing unpaid service[s] while Gateway litigates over a large past due balance that it cannot pay."[37] Verizon contends that it should be permitted to terminate its services if Gateway cannot pay. Also, Verizon pointed out that

[31] Verizon's Reply at 1.
[32] Verizon Reply at 6.
[33] Verizon Reply at 1.
[34] Verizon Reply at 6.
[35] *Id.*
[36] Verizon Reply at 7.
[37] Verizon Reply at 7.

"[t]he parties interconnection agreement requires Gateway to post financial assurance at Verizon's request and permits Verizon to terminate services if Gateway does not."[38]

Verizon rebuts Gateway's claim that Verizon had not provided invoices and documentation indicating in its Reply that the Company has "provided copies of bills and spreadsheets detailing the services rendered and the amounts billed."[39] Also in its Reply, Verizon provides a chart detailing the amount billed, credited and continuing balance owed by Gateway in both Maryland and DC from 2011 to the present.[40] As of November 15, 2015 at the time of the filing of its Reply, Gateway's outstanding balance to Verizon Maryland, LLC for telecommunication wholesale services provided in Maryland was $74,506.74.[41] Verizon notes that the Commission provided Gateway with an opportunity to litigate its arguments while continuing to use Verizon's services so long as adequate financial assurance is provided. Otherwise, Verizon contends that Judge correctly held that Gateway must either pay the full amount owed to Verizon or termination of services by Verizon should be permitted.[42]

IV. Summary of Staff's Reply

Staff notes that Gateway admitted that it was incapable of providing the financial assurance required by the Commission before hearing on the billing dispute could commence.[43] And given that admission, the Commission could appropriately find "(1) that Gateway is in jeopardy of discontinuing local telephone service based on the notices that Verizon has provided under COMAR 20.45.04.14 and (2) that Gateway's customers

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[38] Verizon Reply at 6. See also Verizon Reply at 8.
[39] Verizon Reply at 8-9.
[40] Verizon Reply at 9.
[41] Verizon Reply at 9.
[42] Verizon Reply at 10.
[43] *Reply Memorandum of Appeal of the Staff of the Maryland Public Service Commission* filed November 5, 2015 ("Staff Reply") at 3.

should be provided the required 30 day notice of imminent disconnection under COMAR 20.45.04.13C."[44] Further, Verizon stated that "Gateway's complaint that Verizon failed to produce invoices is unsubstantiated as well."[45] Gateway provided no evidence that it has asked Verizon for invoices and it had not sent any data requests seeking the same. Staff agrees with the Judge's findings that Gateway has employed "dilatory tactics throughout the case" and that Gateway's actions show an "intentional effort to avoid the Commission-imposed requirement to provide financial assurance until after the evidentiary hearings have concluded."[46] Therefore, Staff believes that the Proposed Order of the PULJ should be affirmed.

V. Commission Findings and Order

It is undisputed by all parties that on May 20, 2015 the Commission directed Gateway to "provide financial assurance that it is capable of meeting its obligations to Verizon Maryland LLC, including any billing disputes" and that the Judge to whom the Commission delegated this matter subsequently set two separate deadlines for Gateway to comply with the Commission's directive and its Financial Assurance Ruling.[47] Nonetheless, Gateway failed on both occasions to provide adequate financial assurance. Similarly at no time did Verizon terminate its wholesale services to Gateway, although contractually permissible under the Interconnection Agreement between Verizon Maryland and Gateway.[48] Verizon's Reply to Gateway's Memorandum of Appeal clearly lays out the amounts owed and payments submitted by Gateway to Verizon

[44] Staff Reply at 3-4.
[45] Staff Reply at 4.
[46] Staff Reply at 6.
[47] See *Proposed Order* at 3 noting the Judge's Notice of Modified Procedural Schedule and Ruling on Verizon's Request to Modify the Procedural Schedule, dated July 17, 2015.
[48] Verizon's Reply at 8.

Maryland for its wholesale services. That chart shows that Gateway's outstanding balance owed to Verizon Maryland as of November 5, 2015 was $74,506.74. According to the Proposed Order, Gateway claimed it only owed Verizon Maryland, LLC $832.59; however, Gateway failed to substantiate this claim. Verizon's Reply rightly acknowledged that "the Commission provided Gateway with an opportunity to litigate its arguments while continuing to use Verizon's wholesale services, so long as Gateway posted adequate financial assurance." The Proposed Order correctly held that "to permit Gateway to avoid the financial assurance requirement by either providing it after the hearings, or in the amount offered by Gateway, would defeat the entire purpose of the financial assurance requirement, as well as override a Commission directive without any justification whatsoever."[49] For the foregoing reasons, the Commission upholds the Proposed Order of the PULJ.

IT IS, THEREFORE, this 24th day of June, Two Thousand Sixteen, by the Public Service Commission of Maryland;

ORDERED: (1) That the Proposed Order in this matter is hereby affirmed, and Gateway Communication Services, Inc.'s Motion to Compel is denied.

(2) That Verizon Maryland, LLC's request to have Staff notify Gateway Communication Services, Inc.'s customers of imminent disconnection of service and to disconnect such services thirty days after Staff's notice is hereby granted, unless Gateway Communication Services, Inc. has paid all past due amounts prior to that date;

[49] Proposed Order at 12.

(3) That Staff is directed to provide notice to Gateway Communication Services, Inc.'s customers in accordance with COMAR 20.45.04.13 that service will be disconnected;

(4) That Staff shall provide the parties copies of each customer notice and shall file verification with the Commission that the notices have been sent, including a template of the notice that was sent.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Anne E. Hoskins

/s/ Jeannette M. Mills

/s/ Michael T. Richard
Commissioners