

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JOHN BREWSTER,)	
)	
Complainant,)	CASE NO. VZN-T-10-03
)	
vs.)	
)	
VERIZON NORTHWEST, INC.,)	
)	ORDER NO. 32046
Respondent.)	
)	

In December 2009, John Brewster filed an informal complaint with Commission Staff against Verizon Northwest Inc.¹ Mr. Brewster argued that Verizon's line extension policy of allowing only its approved contractor to install and splice new service cable was unreasonable. Attempts to resolve his informal complaint were unsuccessful and Mr. Brewster filed a "formal complaint" on February 3, 2010. On April 8, 2010, the Commission issued a summons and the Company filed its answer on April 29, 2010. The Company requested dismissal of the complaint for failure to state a claim and lack of jurisdiction. For reasons set out in greater detail below, the Commission grants Verizon's Motion to Dismiss.

MR. BREWSTER'S COMPLAINT

Mr. Brewster is seeking a line extension for telecommunications needs at his home outside of Harrison, Idaho. He and Verizon have agreed on a route and configuration for the line extension, which will extend more than 7,900 feet. Mr. Brewster hired a contractor to dig a trench and place conduit in the trench for the service line. The remaining work consists of placing 15 pedestal terminals, pulling copper wire through the newly installed conduit, and wire splicing. Under Verizon's tariffs (price lists), the Company is to perform these latter three services. The Company's most recent quote for completing the remaining work is approximately \$38,000. Mr. Brewster's contractor submitted a bid of \$14,387 to complete the same work. Due to the significant difference in cost, Mr. Brewster would like to utilize his contractor to complete the work.

¹ On July 1, 2010, while this complaint was still pending, Frontier Communications Corporation acquired control of Verizon's local and long-distance telephone operations in Idaho.

Mr. Brewster maintains that, because of the excessive length of his line extension, his situation fits within the Company's "unusual conditions" clause in its price list. The price list provides that "a departure from the rate and special conditions specified in this schedule may be made on behalf of the Company when a line extension involves unusual or disproportionately large construction expenditures as compared with the usual types of plant construction." Complaint, Attch. 1 at p. 5. Mr. Brewster argues that this language should permit him to use his own contractor. In the alternative, Mr. Brewster asks that the Commission Staff review the cost estimates of both parties and "help determine an equitable cost estimate" for completion of the line extension.

VERIZON'S RESPONSE

The Company acknowledges that, in order for Mr. Brewster to receive telecommunications services, a line extension of approximately 7,900 feet must be constructed. The Company admits that it allowed Mr. Brewster to hire his own contractor to trench and place conduit. However, the Company claims that the trenching and conduit were not placed as planned, "requiring Verizon to expend additional engineering and planning time to re-engineer the project." Answer at p. 3.

The Company refused to allow Mr. Brewster to complete the work with his own contractor because such treatment is not authorized by the Company's price list. The Company also asserts that "[a]fter a line extension is constructed, Verizon is responsible for the maintenance, repair and future reinforcement of the line extension . . . and must, therefore, ensure that Verizon's network integrity is maintained in order to protect service to other customers." *Id.* The Company denies that Mr. Brewster's circumstances fit within its "unusual conditions" provision because the cost of his project is driven by length, not "rock sawing, right-of-way issues or easement issues." *Id.* at p. 4.

The Company asserts that it is complying with the terms of its price list and remains ready, willing, and able to construct Mr. Brewster's line extension upon payment of the estimated costs. The Company, therefore, argues that Mr. Brewster has failed to state a claim and, as a result, the complaint should be dismissed. The Company further states that the Commission lacks jurisdiction to adjudicate this complaint, pursuant to *Idaho Code* § 62-605(5), because it relates to an economic matter.

DISCUSSION AND FINDINGS

1. Commission Jurisdiction. At the outset, it is important to note that, pursuant to *Idaho Code* §§ 62-610A and 62-616, the Commission has jurisdiction to resolve the complaint brought by Mr. Brewster against Verizon. *Idaho Code* § 62-616 states in pertinent part, “[t]he Commission shall have the authority to investigate and resolve complaints made by subscribers to telecommunication services which are subject to the provisions of this chapter which concern the quality and availability of local exchange service, *or whether price and conditions of service are in conformance with filed tariffs or price lists. . . .*” (Emphasis added). The Commission finds that a hearing is not required to decide the issues presented in Mr. Brewster’s complaint. Therefore, the Commission issues its decision based on the written record submitted including the materials submitted prior to this matter becoming a formal complaint. *See* IDAPA 31.01.01.021.

The facts are not in dispute. Mr. Brewster requires a line extension of approximately 7,900 feet in order to receive telecommunications services at his home in Harrison, Idaho. Mr. Brewster was permitted to use his own contractor for trenching and placing conduit. However, before he can receive service, Mr. Brewster must have pedestal terminals installed and copper wire run through the conduit. The Company’s most recent quote for completion of the project is approximately \$38,000.² Mr. Brewster’s private contractor submitted a bid of \$14,387 for the same work. The Company will not allow Mr. Brewster to use his contractor to complete the work.

2. Use of Private Contractor. Verizon’s line extension price list reads, in pertinent part:

All line extensions will be owned and maintained by the Company. The applicant may furnish and place the required supporting structure, for their entire service drop only, in lieu of applicable service drop charges. All supporting structures will be placed in accordance with construction specifications of the Company, however in all instances the ownership of the structures shall be entirely vested in the Company.

I.P.U.C. Price List No. 1, Section 4, Sheet 66 (Line Extension Charges, December 1, 2005). The actions and position of the Company are consistent with its price list. The Company permitted Mr. Brewster to place his own trench and conduit (although the Company noted that the work was not done properly), thereby mitigating some of the costs that might have otherwise been assessed

² The Commission makes no finding regarding the veracity of the latest bid by the Company, e.g., the bid does not appear to be offset by the \$3,000 customer allowance. Price List No. 1, Section 4, Sheet 68.

for the project. However, the price list does not allow a customer to place his own pedestal terminals, or to pull or splice the service wire. The Company's justification for its position is sound. If Verizon is responsible for maintenance, repair and future reinforcement of the line extension then it is reasonable for the Company to want to maintain control of how the wire is placed, spliced, connected, etc. While the Commission understands Mr. Brewster's desire to use his own contractor in an effort to avoid the more costly alternative, we cannot find that the Company's position is unreasonable.

3. Unusual Conditions. The Commission has addressed what amounts to an "unusual condition" in numerous prior cases. An unusual condition is a construction condition not normally encountered that imposes additional, project-specific, costs. IPC-E-08-18, Order No. 30682. Unusual conditions have also been found when a service location is so isolated or inaccessible that the costs of construction become unreasonably excessive. U-1000-100, Order No. 22027. The Commission has specifically declined to classify length as an unusual condition.³ Mr. Brewster's circumstances do not amount to unusual conditions because the project estimate is entirely the result of length of the line extension, not terrain or land features that would increase the costs of the extension. Therefore, the "unusual conditions" clause of Verizon's price list is inapplicable.

It is the Commission's understanding that Verizon utilizes a single-source contractor for its line extension projects. Utilizing a single-source contractor does not allow for competitive costs and charges. Such a policy may explain the large disparity between the Company's quote to finish Mr. Brewster's project and Mr. Brewster's contractor's bid. A competitive bidding process would better acknowledge fluctuating costs in our current, weakened economic climate, and still allow the Company to control the quality of the work performed. The Company could also qualify multiple contractors and maintain an approved contractors list so that customers may choose a contractor from a Company-approved list. See UWI-W-96-4, Order No. 26898. These alternatives would promote price competition and provide customers with a choice of contractors that the Company deems qualified to do the work. Therefore, the Commission encourages Verizon to explore the use of a competitive bidding process and/or an approved contractors list for its line extension projects and other similar work. The Commission finds these alternatives to be a

³ "We also reject both the Staff and the Company's alternative positions that line extensions in excess of a certain footage could be classified as unusual or special construction." U-1002-58, Order No. 20974.

more equitable solution for customers than the Company's current policy of utilizing a single-source contractor.

In summary, the Commission has jurisdiction to decide this complaint and that Verizon's price list provides that the Company shall pull and splice its own cable. In addition, "unusual conditions" does not apply to the facts of this case. Consequently, the Commission grants Verizon's Motion to Dismiss.

ORDER

IT IS HEREBY ORDERED that Verizon's Motion to Dismiss is granted. Consequently, John Brewster's complaint against Verizon is denied.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-619.

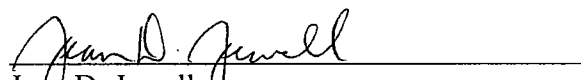
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th day of August 2010.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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