

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

In the Matter of)	
)	
FREEDOM RING COMMUNICATIONS, LLC)	DT 06-067
D/B/A BAYRING COMMUNICATIONS)	
)	
Complaint Against Verizon New Hampshire)	
Re: Access Charges)	

PETITION TO INTERVENE

XO Communications, Inc. (“XO Communications”) hereby petitions to intervene in the above-captioned proceeding pursuant to PUC 203.17 and RSA 541-A:32. XO Communications also requests that this petition be treated as a petition for reparations pursuant RSA 3 65:29. In Order No. 24,705 in this proceeding, the Commission stated: “For purposes of Phase II, we will treat petitions for intervention in this docket as petitions for reparation under RSA 3 65:29, upon request of the intervenor.” Order No. 24,705, at 6 (Nov. 29, 2006). XO Communications therefore further requests that this petition to intervene also be treated as a petition for reparation under RSA 3 65:29.

XO Communications offers competitive local exchange services, long distance service and broadband services in New Hampshire, and is interconnected with Verizon New Hampshire (“Verizon”) and its successor, FairPoint Communications – NNE (“FairPoint”). Similar to the other CLECs already participating in this proceeding, XO Communications also has been billed erroneously for several years for common common line (“CCL”) charges assessed by Verizon on calls that have not originated or terminated on local loops operated by Verizon. According to the Commission’s determination in Phase I of this proceeding this billing practice by Verizon is not

authorized and is contrary to law. *See* Order No. 24,837 (Mar. 21, 2008); Order No. 24,886 (Aug. 8, 2008).

By way of this petition to intervene and for reparations XO Communications seeks restitution for CCL charges that Verizon billed and recovered inappropriately from XO Communications. XO Communications submits this petition to intervene in Phase 2 of these proceedings under RSA 541-A:32, which is appropriate if “the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” and “the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” XO Communications satisfies both of these considerations warranting intervention at this time.

As regards impacts to XO’s rights and substantial interests by this proceeding, XO Communications indisputably has substantial interests that are affected by Phase 2 of this proceeding. In its Order No. 24,837, the Commission held that, in accordance with the plain language of Verizon’s Tariff 85 governing intrastate access services, “the CCL charge may be applied only when Verizon provides the use of its common line.” Order No. 24,837, at 31. As a result, the Commission concluded that Verizon has wrongfully imposed CCL charges on CLECs in New Hampshire, and that as a result of this wrongful practice that Verizon owes such carriers restitution. *Id.* at 32. The Commission did not determine the specific financial impact in its Phase 1 review but focused on liability. Because XO Communications has also been damaged by Verizon’s wrongful imposition of CCL charges, XO Communications clearly has substantial interests at stake in Phase 2.

Allowing XO Communications to intervene in this proceeding will also serve the interests of justice, will not prejudice the rights of any existing parties, and will not impair the orderly and

prompt conduct of this proceeding. On the contrary, great efficiency and consolidation of scarce Commission resources can be achieved by allowing XO Communications to intervene in Phase 2 so as to prevent an entirely separate proceeding related to XO Communications. The Commission had the benefit of many companies' presentations in the Phase 1 liability portion of the proceedings and XO Communication's interests were well represented by other companies in that phase. XO Commissions will abide by all rulings made in Phase 1 with regard to liability. However, no party can properly represent XO's interests in Phase 2, since this phase will concern "[t]he exact amount of refunds or reparations" as well as "the manner of such refunds or reparations." Only XO Communications can present the specifics of its billing records and history with Verizon for purposes of determining the exact amount of refunds or reparations necessary.

Finally, the Commission is just about to begin the proceedings for Phase 2 for all affected companies that have intervened, so that XO Communications entry should present no prejudice to any party and XO Communications can present its interests in refunds and reparations along the same time as the other affected companies. In short, the focus for Phase 2 will be assessment of damages, and XO Communications requests intervention at the beginning of this Phase 2 as a carrier that has been damaged by Verizon's wrongful assessment of CCL charges. XO Communications further recognizes that the Commission has directed parties intending to seek reparations to submit a calculation of the estimated financial impact of the disputed Verizon CCL charges. XO Communications is currently preparing that information and is prepared to submit it in this proceeding, along with the necessary explanatory materials and worksheets, in a format preferred by the Commission and the parties as determined by the conferences and schedule set for this Phase 2 proceeding.

For all of the foregoing reasons, given its substantial interests in this proceeding, the

beginning of procedural scheduling, and the absence of prejudice or delay to other parties, XO Communications respectfully requests that the Commission grant its Petition to Intervene in this proceeding and that its petition be treated as a petition for reparation under RSA 3 65:29. Finally, XO Communications requests that the following persons be added to the service list of this proceeding:

Alan M. Shoer
Adler Pollock and Sheehan, PC
One Citizen's Plaza, 8th Floor
Providence, Rhode Island 02903
Tel: 401-274-7200
ashoer@apslaw.com

Karen M. Potkul
XO Communications, Inc.
1601 Trapelo Road, Suite 397
Waltham, MA 02451
Tel: 781- 693-3919
karen.potkul@xo.com

Respectfully Submitted,



Alan M. Shoer
Counsel to XO Communications, Inc.

Dated: September 29, 2008

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