

**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	)	

**REPLY TO VERIZON'S RESPONSE TO PETITION TO INTERVENE**

Global Crossing Telecommunications, Inc. ("Global Crossing") hereby replies to "Verizon New Hampshire's Response to Global Crossing Telecommunications, Inc. and XO Communications, Inc.'s Petitions to Intervene" dated October 6, 2008.

In its Response, Verizon does not object to the grant of Global Crossing's Petition to Intervene. It says only that reparations to Global Crossing should be limited to two years prior the date of its September 25, 2008 Petition, i.e., to September 25, 2006. Verizon does not quote the relevant statute, RSA 365:29, or any other authority in support of this position. The statute does provide for a two-year limit, but not from the date of Global Crossing's Petition. RSA 365:29, in its entirety, says the following:

On its own initiative or whenever a petition or complaint has been filed with the commission covering any rate, fare, charge, or price demanded and collected by any public utility, and the commission has found, after hearing and investigation, that an illegal or unjustly discriminatory rate, fare, charge, or price has been collected for any service, the commission may order the public utility which has collected the same to make due reparation to the person who has paid the same, with interest from the date of the payment. Such order for reparation shall cover only payments made within 2 years before the earlier of the date of the commission's notice of hearing or the filing of the petition for reparation.

The statute clearly encompasses situations, such as this, where (1) the Commission conducts a proceeding that results in a determination that a particular rate is unjust, and then (2) an aggrieved rate payer, following on the Commission's determination, submits a petition for reparation to recover amounts that were unjustly collected. In this proceeding, BayRing filed a complaint regarding Verizon's carrier common line ("CCL") charge on April 28, 2006. A hearing proceeding ensued, for which the Commission issued an order of notice on June 23, 2006. *See* Order No. 24,837, at 2 (discussing the procedural history in this case). Based upon that hearing proceeding, the Commission determined that Verizon had unjustly assessed CCL charges and that affected carriers are owed restitution. *See id.* at 31-32. Subsequently, Global Crossing submitted a petition to intervene in the next phase of this proceeding for the purpose of obtaining restitution from Verizon for the CCL charges that were unjustly assessed.

RSA 365:29 clearly indicates that an aggrieved party, regardless of when it petitions for reparations, is entitled to restitution going back two years from the date of the order of notice. As quoted above, an order for reparation "shall cover only payments made within 2 years before the *earlier* of the *date of the commission's notice of hearing* or the filing of the petition for reparation." RSA 365:29 (emphasis added). Because the hearing in this case took place before Global Crossing filed its Petition, the statute requires that restitution be made going back two years from the date of the June 23, 2006 order of notice, i.e., to June 23, 2004.

Verizon's interpretation of RSA 365:29 is not only inconsistent with the plain language of the statute, it is also contrary to basic principles of fairness and to the public interest. Starting in April 2006 when BayRing filed its complaint, and certainly by June 2006 when the Commission issued its order of notice, Verizon was aware that its imposition of CCL charges in the circumstances covered here may be illegal. Yet Verizon continued to impose those charges

in that manner on Global Crossing and other parties, and apparently even expanded those charges beyond wireless traffic, *see* Order No. 24,837, at 9 (“BayRing theorized that its complaint had alerted Verizon that it was not billing CCL for CLEC-to-CLEC or CLEC-to-ITC calls and that, as a result, Verizon took the opportunity to impose the additional charges to generate additional revenues”), until after the Commission’s determination in 2008 that the charges were unjust. Verizon now seeks to be rewarded for this behavior by only having to make Global Crossing whole for improper CCL charges going back two years before Global Crossing’s Petition, as opposed to two years before the order of notice. If the language of RSA 365:29 supported such an interpretation, all utilities would be incited to continue charging potentially unjust rates for as long as possible on as many rate payers as possible with the knowledge that parties seeking restitution could only go back two years from the date of their petitions and not the start of hearing proceedings.

Fortunately for rate payers in New Hampshire, the statute does not provide for such a result. Utilities like Verizon that are on notice in a hearing proceeding that a particular rate may be unjust are required to make restitution to petitioning parties going back two years from the date the order of notice. Global Crossing therefore respectfully requests that in granting its Petition to Intervene in this proceeding the Commission make clear, in accordance with RSA

365:29, that Global Crossing is entitled to restitution for damages going back at least to June 23, 2004, which is two years prior to the Commission's order of notice.

Respectfully submitted,



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