

DT 01-028

VERIZON-NEW HAMPSHIRE

Intrastate Switched Access Rates

**Order on Office of Consumer Advocate's Motion to Dismiss and
Prehearing Conference**

O R D E R N O. 23,727

June 14, 2001

APPEARANCES: Gregory M. Kennan, Esq., on behalf of Verizon New Hampshire; Devine Millimet & Branch, Frederick J. Coolbroth, Esq., representing Merrimack County Telephone Co.; Granite State Telephone Company, Inc.; Dunbarton Telephone Co. Inc., Northland Telephone Company of Maine, Inc.; Bretton Woods, Telephone Co., Inc.; and Dixville Telephone Co.; Robert J. Aurigema, Esq, on behalf of AT &T Communications of New Hampshire; Marcia A.B. Thunberg, Esq., on behalf of the Office of Consumer Advocate and representing the Staff of the Public Utilities Commission, Lynmarie Cusack, Esq.

I. INTRODUCTION AND BACKGROUND

On January 31, 2001, Verizon-New Hampshire (Verizon NH) filed a proposal to address RSA 378:17-a, III, Intrastate Switched Access Rates. The proposal recommended that the Commission not reduce Verizon NH's intrastate switched access rates at this time. The proposal suggested, however, that if the Commission decides to reduce the access rates then any reduction should be achieved on a revenue neutral basis.

In making the argument that no access rate reduction is warranted, Verizon NH contends that the Legislature did not require the Commission to reduce intrastate access rates to interstate levels. Verizon NH claims that bringing intrastate

access rates in line with interstate charges will have no effect on toll competition, that the rates are different because they are set to achieve different policy objectives and there is no operational reason why intrastate charges must mirror the interstate rates.

If the Commission were to exercise its discretion and mandate reduction of access rates to the interstate level, however, Verizon NH argues that the Commission should choose from one of the Company's suggested revenue neutral alternatives. The first alternative provides for an immediate reduction to the interstate level established by the CALLS¹ proposal and a corresponding increase to local residential exchange rates of \$2.85 per month. The second alternative provides for a reduction of the interstate levels specified by the CALLS proposal and an increase for residential dial tone and other services phased in over four annual increases of approximately \$0.75 each.

¹CALLS is an integrated interstate access reform and universal service proposal adopted by the FCC in Order #FCC 00-193. CALLS stands for the Coalition for Affordable Local and Long Distance Service and consisted of AT&T, Bell Atlantic, Bell South, GTE, SBC and Sprint. Those carriers presented the proposal to the FCC to bring a more rational interstate rate structure where implicit subsidies in access charges would be removed.

As a result of the proposal, the Commission opened Docket No. DT 01-028 and on March 1, 2001 issued an Order of Notice indicating that this docket would consider, among other things:

whether the Commission should reduce intrastate access rates at this time; if so, to what level; how a corresponding increase to basic rates should be designed, and whether price changes to toll rates that follow from access charge reductions should be offset by increased rates to other services.

On March 16, 2001 the Office of Consumer Advocate (OCA) filed a motion to dismiss the case arguing that before the Commission can go forward with this case the elements of RSA 378:17-a, III(b) must be triggered, i.e., that a carrier must have both a higher intrastate access charge than the state median intrastate access charge and a lower basic monthly service charge than the state median basic monthly service charge for exchanges with similar numbers of telephones within the local calling area.

Verizon NH, PUC Commission Staff (Staff), and AT&T filed written responses to the OCA motion prior to the prehearing conference. The motion was addressed during the prehearing conference held on March 28, 2001, and time was given for the filing of any additional comments. Further comments were filed by Sprint, Verizon NH, AT&T and Staff.

At the close of the prehearing conference the parties and Staff met in a technical session to discuss a procedural schedule for the case. The parties and Staff agreed to a proposed schedule notwithstanding the motion to dismiss. Staff submitted the proposed schedule to the Commission on March 28, 2001.

II. INTERVENTION REQUESTS

Prior to the prehearing conference the Commission received intervention requests by Sprint, WorldCom and AT&T. At the hearing the Independent Companies represented by Devine, Millimet & Branch requested limited intervenor status to monitor the proceedings since based on the pleadings the Independent Companies could not determine the extent to which their interests would be affected.

Having received no objections to the intervention requests the Commission granted the requests at the prehearing conference. See Transcript, dated March 28, 2001, p. 6.

III. MOTION TO DISMISS

A. OCA Position

The OCA argued that according to its calculations, submitted as an affidavit and accompanying documents of William P. Homeyer, the triggering elements of RSA 378:17-a, III(b) do not exist because the Verizon intrastate access

charge is 0.058464 and the median intrastate access charge is exactly the same. Mr. Homeyer's affidavit also posits that the basic monthly service charge for Verizon is also the same as the median basic monthly service charge. Accordingly, the OCA contends that the Commission has fulfilled its duty to review Verizon's access charges and no further action should be taken.

At the prehearing conference OCA asserted that the Commission could not pursue RSA 378:17-a, III(a) without considering III(b) first. It suggested that if Verizon's intrastate access rates were equalized with the interstate access charges and local rates were increased to offset the revenue lost, then local rates in the independent areas would also have to be increased. This, OCA posited, would be an increase the ratepayers could not absorb. Moreover, OCA claims that the legislative history supports the premise that independent telephone company customers be given special consideration, and if changes were made under RSA 378:17-a, III(a), then that necessitates changes under §III(b) so the Commission cannot proceed under §III(a) without regard to §III(b).

The OCA clarified that it was not arguing that the Commission had no authority to proceed under RSA 378:17-a,

III(a) but merely was encouraging the Commission to resolve §III(b) first, i.e., to consider monthly increases to basic service that independent telephone customers might have to absorb before it decides to proceed under III(a).

B. Verizon NH Response

In its response to the OCA dated March 26, 2001, Verizon NH indicates that it believes the two parts of RSA 378:17-a, III are separate and do not need to be read in conjunction with one another. Thus, the Company disagrees with OCA's contention that the Commission is statutorily prohibited from considering whether to lower its access rates; however, the Company agrees with the result that the OCA seeks to obtain. That is, Verizon believes that the Commission should not exercise its authority under RSA 378:17-a, III(a), at this time.

At the prehearing conference, Verizon NH reiterated its position that it believed the Commission had the discretion to consider a reduction to intrastate access rates without simultaneously looking at the effects the reduction has on independent companies. In the Further Response to OCA's motion, dated April 19, 2001, the Company pointed out that the OCA in reality is seeking a decision on the merits and therefore the Commission must develop a record on which to

"weigh the countervailing advantages and disadvantages of access rate reductions and basic exchange rate increases."

Verizon Further Response, dated April 19, 2001, p. 2.

C. AT&T Response

AT&T filed an opposition to the OCA motion arguing that the OCA has misread RSA 378:17-a, III. AT&T contends §III(a) gives the Commission discretion to reduce intrastate access rates to bring them in line with interstate access reductions. AT&T also claims §III(b) was intended to effect an equalization of in-state access charges between Verizon and the independent telephone companies. At the prehearing conference, AT&T noted that OCA's interpretation of the statute, i.e., that the mirroring of interstate and intrastate rates was impacted by the exercise in §III(b), was fallacious. AT&T pointed out that the OCA approach to calculating the median by exchange would lead to the Commission having no discretion to make any change because Verizon would always be the median, rendering §III(a) void.

In the follow-up opposition dated April 20, 2001, AT&T argued that there is no ambiguity about what the statutory provisions of RSA 378:17-a, III sought to achieve. AT&T

claims that the statute is clear in that §III(a) empowers the Commission to consider lowering intrastate access rates of a carrier to the interstate rate, even if the result is a rise in basic local exchange rates. Section III(b) looks to equalize intrastate rates to carriers.

D. Independent Companies' Position

The Independent Companies represented by Devine Millimet & Branch, at the prehearing conference, argued there was nothing in the statute that required the Commission to proceed under RSA 378:17-a, III(b) if it chose to proceed with an investigation under §III(a). The Companies reiterated that there was no linkage between the two subsection paragraphs. Moreover, the Companies maintained that the Commission had the jurisdiction to proceed with the focus on Verizon, as Verizon is the Company that had recent major changes to its interstate access rates.

E. Sprint Response

On April 19, 2001 Sprint submitted a response to the OCA's motion disagreeing with its interpretation of the statute. Sprint noted that it supported Staff's Objection and urged the Commission to deny the motion and proceed with the investigation into Verizon's proposal.

F. Staff Objection

Staff objected to the motion to dismiss in filings made on March 26, 2001 and April 20, 2001 and at the prehearing conference. Staff argued that the two subparagraphs of RSA 378:17-a, III do not have to be read conjunctively as they are independent of one another. Moreover, Staff argued that if the Commission believed the statute was ambiguous, then the legislative history would support a finding that the Commission had the discretion to proceed under §III(a) without simultaneously pursuing an investigation under §III(b).

IV. PRELIMINARY POSITIONS ON THE MERITS**A. Verizon NH**

Verizon NH reiterated its proposal at the prehearing conference indicating again that it did not believe the Commission should reduce access rates. Verizon NH pointed out that any decision to reduce access rates is discretionary with the Commission but should only be "made after a careful weighing of the costs, benefits and trade-offs to the various interests that are affected." Transcript, p. 36.

Verizon NH was clear to elaborate that its proposal was not one which mirrored the interstate rate structure. Verizon NH said that the proposal was not a permanent linkage

between interstate and intrastate access rates.

B. AT&T

AT&T argued that it believes there is a need to lower access rates. It posited that access rates act as a floor, below which toll rates cannot be reduced. So, according to AT&T, robust competition is not the driving force that lowers toll below the access floor. Setting rates at the cost of the CALLS rate will send proper signals to the market and exert pressure on toll prices so consumers will benefit in the long run. AT&T did not take a position with regard to Verizon's revenue neutral approach to access reduction but indicated that Verizon should be required to prove that its rate of return could not be maintained with a reduction of access rates.

C. OCA

OCA expressed concern that the two alternatives being proposed by Verizon for reduction of access and increase to basic only affected residential ratepayers. Thus, OCA would oppose any increase to exchange rates when they are only applied to that one class of customers.

D. Sprint

In a filing dated March 22, 2001, Sprint presented its

Statement of Position. Sprint argued that any access rate should be based on forward-looking costs and that lowering the price of access allows the Commission to establish a more efficient rate structure based on principles of cost causation. Sprint disagreed with Verizon NH's contention that bringing intrastate rates in line with interstate charges will not affect toll competition. Sprint, therefore, recommended an immediate reduction in intrastate access charges to cost-based levels.

E. Staff

Staff contended that access rates should be reduced and that any reduction should flow through to customers. Staff maintained that the policy objective of placing costs where they belong must be considered in this docket. Staff contends that the price for calling someone in New Hampshire via toll should be no different than the price for making an interstate call because the costs are no different.

Staff also indicated that until full discovery is completed it could not take a position on whether the outcome of this docket had to be revenue neutral for Verizon NH.

V. COMMISSION ANALYSIS

We start our analysis by addressing the OCA motion to dismiss. Considerable discussion has taken place on the motion. We have read the statute in question and the filings made by the various parties and Staff, and cannot agree with the OCA's position. First, we do not read the statute in the same manner as the OCA. We do not believe that we must first conduct an analysis under RSA 378:17-a, III(b) before we can undertake an investigation under §III(a).

The Legislature's words were clear and the two sections can stand separately. Subparagraph III(a) contemplates an investigation into decreasing intrastate access charges when there is a significant decrease of interstate access charges. The Commission has the discretion to carry out this statute in any manner it deems appropriate as long as it is not in clear conflict with the express language of the Legislature. *New Hampshire Retirement System v. Sununu*, 126 NH 104 (1985)(giving deference to agency charged with the administration of the statute). Our proceeding in the manner adopted by the Order of Notice in this case does not conflict with the statutory language of RSA 378:17-a, III.

In addition, we believe Mr. Homeyer has not performed the study that the Legislature envisioned for

determining the median intrastate access charge and the median basic monthly service charge. Mr. Homeyer lists 148 exchanges in his median access rate determination, Verizon comprises 118 of those exchanges. He then determines the median is the mid-point, the 74th exchange. This inaccurately weighted median calculation would always produce the same result given Verizon's size. We believe the more appropriate method of determining median would be to use the rate centers of each carrier. In doing so, a different result would be produced when calculating both the median intrastate access rate and the median monthly basic service charge.

We next discuss the scope of the case. We agree with AT&T that any decision to reduce access rates under RSA 378:17-a, III can be made only after an investigation where costs and benefits are weighed as provided in the statute. Any proposed offsetting increase to basic rates would have to be evaluated with the ultimate impact on Verizon's jurisdictional rate of return in mind. We stress, however, that a full-blown rate case would not be necessary.

Because the schedule adopted by the parties has been superseded by time, Staff and the Parties should meet to establish a new procedural schedule. We direct our Staff to

schedule a meeting with the Parties and submit a proposed schedule no later than June 30, 2001.

Based upon the foregoing, it is hereby

ORDERED, that the OCA Motion to Dismiss is DENIED;
and it is

FURTHER ORDERED, that Staff and Parties meet to propose a new procedural schedule with Staff submitting the proposal no later than June 30, 2001.

By order of the Public Utilities Commission of New
Hampshire this fourteenth day of June, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary