THE STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

BayRing Petition For Investigation Into Verizon New Hampshire's Practice Of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, On Calls Which Originate On BayRing's Network And Terminate On Wireless and Other Non-Verizon Carriers' Networks	Docket No.06-067

AT&T'S OPPOSITION TO VERIZON'S MOTION TO COMPEL

Introduction

On Jauary 10, 2006, Verizon filed a motion to compel certain parties to this case to respond to certain information requests. AT&T hereby opposes Verizon's motion to compel. The reasons supporting AT&T's opposition are set forth below.

Argument

I. STANDARD OF REVIEW

In Verizon's own motion to compel filed on January 10, 2007, in this docket, and in the other parties' oppositions, they have all quoted and cited to appropriate authority regarding the scope of permissible discovery in regulatory proceedings such as this one; with one exception, rather than repeating in detail the same references to multiple authority, AT&T here states the basic principle: discovery must seek information that is relevant or likely to lead to the discovery of admissible evidence on the issues to be decided by the Commission. A motion to compel seeking information that does not meet that standard will be denied. *See, e.g., Lower Bartlett Water Precinct*, Docket DW 99-166, Order No. 23,471 at 4-5 (May 9, 2000).

The exceptions, where repetition of authority is warranted, are One Communications' reliance on N.H. Code Admin R. Puc 203.23, which excludes, *inter alia*, irrelevant evidence and the meaning of "relevant evidence" to which One Communications cites. N.H. Rule of Evidence 401 states:

> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence.

AT&T stresses this standard for determing the relevance of the material that Verizon requests because much of the material does not relate to a "fact that is of consequence to the dtermination of [this phase of] the action" and, even where it does, the material sought by Verizon is equivocal and ambiguous at best, that is, the information sought tends to make neither more nor less probable the meaning of the tariff advanced byVerizon.

II. VERIZON'S DISCOVERY IS INTENDED TO OBFUSCATE BY CLUTTERING THE RECORD WITH INFORMATION IRRELEVANT TO INTERPRETATION OF THE TARIFF.

Based on the claim that the material it seeks bears on "industry practice" Verizon seeks discovery related not to tariff interpretation but rather to "reparations," an issue that has been reserved for the second phase of this case. Specifically, Verizon seeks (a) information regarding each companies' bills and call volumes subject to the disputed charge underlying billing disputes (*e.g.*, requests 1 through 3), (b) information regarding each companies' opportunities for alternative interconnection arrangments to establish (in Verizon's view) the lack of "competitive harm"and thus the lack of need for reparations (*e.g.*, requests 10-35), and (c) each companies' interconnection agreement with Verizon allegedly for determining whether the level of disputed charges may be less if the charges could be justified by the interconnection agreement (*e.g.*, requests 8 and 54).

Verizon's far reaching discovery was a patent violation of the Commission's November 29, 2006, Procedural Order that sought to exclude from its consideration of the tariff's meaning the type of voluminous and detailed information that the reparations phase will require. Such excessive discovery was, in fact, a cynical tactical ploy. It imposed upon the CLECs the hobbsian choice of providing material in response and thus allowing Verizon to circumvent the Commission order and obfuscate the meaning of the tariff, or of objecting and thus creating the opportunity for Verizon to obtain a delay in the proceeding all the while collecting the contested charges.[1] The Commission should not permit Verizon to rewrite its November 29, 2006, Procedural Order in this case. For this reason, and for the reasons specific to each information request below, the Commission should deny Verizon's motion to compel.

A. VERIZON INFORMATION REQUEST NO. 1

Verizon claims that the historical documents related to the billing disputes is relevant to "whether the Carriers followed the related provisions of NHPUC No. 85, Section 4.1.8, in informing Verizon NH of specifric information regarding an alleged misapplication of tariff provisions and disputed matters."[2] While such information may be relevant to whether a CLEC is entitled to reparations if it did not follow the appropriate dispute resolution process, it has nothing to do with what the tariff means. It would make no sense to find the tariff requires, or does not require, the application of the CCL to all carriers simply because one or another carrier did or did not follow the appropriate dispute resolution process.

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[1] In a January 12, 2007 reply (filed outside of the rules and without any apparent permission by the Commission or its staff) to the CLECs' response to Verizon's motion to suspend, Verizon suggested that its continuing imposition and collection of the contested charges should make no difference in the matter since the amounts will be awarded to the prevailing party in any event. . Belying its own words, however, Verizon makes no offer to reverse the burden pending resolution of the case by ceasing collection of the contested charges until the case concludes.

[2] Verizon Motion To Compel, at 7.

B. VERIZON INFORMATION REQUEST NOS. 2 AND 3.

In its information request no. 2, Verizon seeks call records where a carrier alleges TTS rates should apply, and in information request no. 3, seeks call records where the carrier alleges it has been billed TTS rates.

With respect to no. 2, AT&T objected because it does not allege that TTS rates should, or should not apply. It takes no position on that issue. In general, when Verizon applies its rates appropriately and bills AT&T therefor, AT&T responds by paying the bill. When Verizon applies its rates inappropriately and bills AT&T therefor, AT&T responds by disputing the bill. AT&T does not generally advise Verizon on which of its many rates it should apply.

With respect to no. 3, AT&T objected because it is predicated on the assumption that the responding carrier has alleged that is has been billed TTS rates in specific circumstances, where AT&T has made no such allegation. Verizon has not provided AT&T with call detail information sufficient to determine whether Verizon has applied TTS in call flow scenarios that are the subject of this proceeding.

C. VERIZON INFORMATION REQUEST NOS. 8 AND 54.

In information request nos. 8 and 54 Verizon seeks copies of each carriers' interconnection agreement with Verizon. In its motion to compel, Verizon argues that "the requested information is relevant to . . . whether the disputed call types have been properly billed, as the relevant Verizon services may also have been subject to terms and conditions governed by agreements as well as by tariff."

Verizon's stated reason, however, does not support its motion. Indeed, on the contrary, it supports AT&T's opposition here. Verizon here purports to be seeking to establish an *alternative* basis upon which it may charge certain calls flows. While such a contention, if

proved, may reduce Verizon's reparations, it has nothing to do with the meaning of the tariff and Verizon's obligation to follow that meaning when the tariff is applicable. In any event, it is patently clear that Verizon's stated reason is an after-the-fact, *ad hoc* rationalization for seeking this information. Verizon is in possession of the interconnection agreements it seeks here and Verizon already knows – or should know – whether the interconnection agreements provide a basis for seeking a reduction in its reparations.

D. VERIZON INFORMATION REQUEST NOS. 10 THROUGH 35.

In these information requests, Verizon seeks information regarding alternative interconnection and trunking arrangements. In its motion to compel, Verizon argues that such information has "a bearing on whether tariff-purchasing CLECs of Verizon access services are harmed by the recovery of CCL, given the availability of competitive alternatives."

Such information, while arguably relevant to reparations, has no bearing on the meaning of the tariff. A company that owns a bridge over the Mississippi River could not defend its interpretation of the manner in which it applies a toll charge on the ground that the truckers seeking to cross the bridge could build their own bridge, or take a boat, or drive 200 miles to use another bridge. Nor could Federal Express defend its interpretation of its carriage contract by pointing to the availability of a competing UPS service. There is no logical relationship between the meaning of the terms and conditions applicable to a service and whether there are alternatives, competitive or otherwise, for such service.

E. VERIZON INFORMATION REQUEST NOS. 45.

In this information request, Verizon seeks information as to whether AT&T was a party to New Hampshire Docket DE 90-002. Such information is irrelevant to the meaning of Tariff 85. Tariff 85 is a legally binding document of general application. It does not mean one thing to the parties to DE 90-002 and another thing to other carriers. The meaning of a

tariff must be found within its four corners, and construed in light of today's circumstances. In any event, the identify of the parties who participated in that proceeding is a matter of public record.

F. VERIZON INFORMATION REQUEST NOS. 46 THROUGH 49, AND 51.

In these information requests, Verizon asks for the dates when AT&T first began purchasing intrastate switched access service and when AT&Tfirst became an intrastate toll provider for a variety of different types of end users.

AT&T can see no possible relevance of the information sought by these broad requests to the issue of tariff interpretation, nor – frankly – does Verizon's purported explanation in its motion to compel shed any light on the issue. Verizon argues that such information will reveal "the time period, if any, during which the application of the tariff was never an issue of contention for the carrier." Verizon, however, fails to show why the existence of such a time period makes any difference in this case.

G. VERIZON INFORMATION REQUEST NOS. 52 AND 53.

In these information requests, Verizon seeks to know whether AT&T has been a party to any other state proceeding in which CCL charges were incorrectly applied or whether AT&T is aware of any such proceeding. In its motion to compel, Verizon states that "the requested information is relevant . . . as there may be proceedings in other states that have addressed the same or similar issue, and whose access tariffs have or had the same or similar language as NHPUC No. 85."

If Verizon had sought information regarding "proceedings in other states states that have addressed the same or similar issue, and whose access tariffs have or had the same or similar language as NHPUC No. 85," then arguably – subject to further objection below – Verizon's request might have had merit. However, this is not what Verizon requested in nos.

52 and 53. Verizon asked for information regarding other proceedings where a party claimed that the CCL was inappropriately applied without regard to the basis of such a claim. Proceedings involving disputed CCL charges based on tariff language wholly different from the one at issue are entirely irrelevant, as the Commission's decision in present case will turn on the words of Tariff 85.

Moreover, here Verizon is confusing the discovery of facts and contentions relevant to this case with legal research regarding how other state commissions may have ruled regarding tariff language similar to this one. If there are any such proceedings that produced commission decisions, they will be reported and available to anyone capable and willing to do the appropriate legal research. AT&T should not be required to do Verizon's legal research for it.

Conclusion

For the reasons stated above, the Commission should deny Verizon's motion to compel.

Respectfully submitted,

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