STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Complaint of Freedom Ring Communications, LLC d/b/a BayRing Communications Against Verizon New Hampshire re: Access Charges	)	Docket: DT 06-067

VERIZON NEW HAMPSHIRE'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL DISCOVERY REPLY TO THE EXTENT NECESSARY

In accordance with N.H. Admin. Rules, Puc 203.30 and 203.06, Verizon New England Inc., d/b/a Verizon New Hampshire ("Verizon NH"), moves to file as part of group Exhibit 17 (introduced into the record by AT&T on July 11, 2007) the Third Supplemental Reply to Staff 1-19 (the "Third Supplemental Reply")[1] in the above-referenced matter. A copy of the Third Supplemental Reply was filed with the Commission on July 25, 2007 for inclusion in Exhibit 17.[2] By letter dated August 2, 2007 (the "AT&T Letter"), AT&T opposed Verizon NH's request.

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[1] Specifically, Staff 1-19 sought copies of the oldest bills to BayRing or AT&T under certain scenarios (numbers 3 and 20) that Verizon NH could produce showing either (1) Verizon CCL charges billed to an interexchange carrier for toll calls routed through a Verizon tandem where another (non-Verizon) carrier's end office local switch was used to originate (or presumably to terminate) the call to a non-Verizon end-user, or (2) Verizon CCL charges billed to a competitive local exchange carrier for its toll calls routed through a Verizon tandem where another (non-Verizon) carrier's end office local switch was used to terminate the call to a non-Verizon end-user.

Verizon NH's First and Second Supplemental Replies to Staff 1-19, introduced into the record by AT&T as part of Exhibit 17, provided examples of billing information that related to a variety of disputed scenarios, including scenario numbers 3, 8, 9, 10, 16 and 20. The Third Supplemental Reply, in turn, also related to disputed scenario numbers 8, 9, 10 and 16 (addressed in the earlier supplements introduced into evidence) as well as disputed scenario numbers 14 and 15.

[2] Another copy of the Third Supplemental Reply, with cover letter, is attached hereto for the Commission's convenience.

It cannot reasonably be disputed that the Third Supplemental Reply has probative value and is consistent with the earlier supplemental replies to Staff 1-19 that AT&T introduced into evidence as part of Exhibit 17. In addition, no further hearing is necessary under the circumstances, as discussed below, to adequately protect the parties' rights. Consideration of the Third Supplemental Reply enhances the Commission's ability to resolve the matter in dispute, and, to the extent necessary, the motion meets the requirements of the Commission's rules and should be approved.

I. DISCUSSION

1. The Third Supplemental Reply provides billing information (bills and summary billing output) from Verizon NH's carrier access billing system from 2001 through 2004 and was served in response to Staff's discovery request 1-19. Verizon NH commenced a special study prior to the July 2007 hearings to determine whether additional billing information was available, consistent with its earlier supplemental replies to Staff 1-19. Until only very recently, Verizon NH was not aware that the additional, historical billing data might exist and could be extracted manually. Because of the complexity of the task, however, that study was only completed after the close of hearings.[3]

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[3] Obtaining copies of bills has been difficult because Verizon does not typically retain actual copies of printed bills in the normal course of business. Thirteen months of carrier access billing information is retained "live" (on-line) for use by Verizon carrier services personnel in billing inquiry and receivables matters.

Verizon NH determined, however, that six years of historical billing data are stored (off-line) in archives, so the oldest billing data might be available from 2001. For the time period of the oldest billing records requested, the data was compressed and stored on magnetic tapes. Verizon NH undertook the special project to search the compressed archived tapes, load them in a data center, decompress the files, locate examples of the requisite billing information, and provide them in a printed bill format. The results of this effort proved fruitful, but were not available in time for the hearing.

2. N.H. Admin. Rules, Puc 203.09(k), require that "[w]hen a party has provided a response to a data request, and prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement a response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response." Because Verizon NH's duty to supplement the request was ongoing until issuance of a final Commission Order, by letter dated July 25, 2007 Verizon NH updated its response to Staff 1-19 to reflect the recently available information and requested that the Commission include the Third Supplemental Reply as part of Exhibit 17.

3. N.H. Admin. Rules, Puc 203.30(a), in turn provide that the Commission "shall, on its own motion or at the request of a party, authorize filing of exhibits after the close of a hearing if the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute." The Third Supplemental Reply to Staff 1-19 falls squarely within the permissible scope of Puc 203.30(a).

4. The parties agreed at the hearings (see 7/11/07 Tr. at 55) that supplements to discovery requests introduced into evidence as part of the group Exhibit 17 should be included:

> MR. DEL VECCHIO: No, Mr. Chairman. I would just note, and I spoke to Mr. Gruber about this, and I think we're on the same page in that, since we're not going to be asking questions about individual requests, which sometimes is the case, I would simply ask that, to the extent that a request was revised or supplemented, that that be included in the documents provided to [the] Commission. And, I think we've agreed to that.
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> MR. GRUBER: And, that is my intention, your Honor.

CHAIRMAN GETZ: That's fine. Please proceed.

5. AT&T claims that the agreement applied only to discovery supplements that existed prior to the close of the hearings (AT&T Letter at 2). AT&T's purported limitation (which Verizon NH denies was its intent in having first raised the point) is nonetheless irrelevant to the question whether the Third Supplemental Reply, like the earlier supplements that AT&T offered into evidence, has probative value equivalent to its earlier supplements and should logically be included – a point that cannot reasonably be disputed at this point.

6. AT&T further suggests that Mr. Shepherd's testimony that the earlier supplements (among other discovery replies) were true and accurate is somehow undermined by the existence of the Third Supplemental Reply. AT&T is wrong. The Third Supplemental Reply is based on a special study that was not complete when Mr. Shepherd testified. Simply put, the witness did not know and could not have reasonably testified at the time of hearing whether the recovery of such billing records could be accomplished and, if so, whether the specific records would further evidence – as they do – that CCL was billed to CLECs or IXCs for switched access traffic terminating to wireless carriers during the relevant period. Moreover, the Third Supplemental Reply is entirely consistent with the earlier replies to Staff 1-19 and Mr. Shepherd's testimony (7/11/07 Tr. at 36-37):

> [N]ot all the billing was outsourced to a vendor. There was traffic that was billed on Verizon CABS that terminated to non-Verizon providers and non-Verizon end-users that used switched access to which the carrier common line would have been charged. This is evidenced by the financial analysis itself, if you go into the level of detail of the months that occurred during the year 2005, before the billing was taken back from the New York Access Billing Corporation or LLC. There are differences between the carrier

> common line minutes and the local switching minutes, which would show that there are common line minutes being billed that are not associated with a Verizon end office switch. That's a fact. That was probably and most likely would have been calls terminated to wireless carriers.
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> In trying to answer a data response to the Staff, and this has been a very troublesome one for me, I've been asked to produce bills or Verizon has been asked to produce bills that prove that this has been actually billed. It's been very difficult to find bills that go back into history that far in time. We have found several examples. We did provide them in response to a supplement to Staff's Data Request 2-19, and recently found a bill dated 2001, where AT&T would have been billed for calls terminating to a wireless carrier for the carrier common line charge.
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> Other evidence, I mean, producing bills would not be the only other evidence. I've asked our financial folks to see if they could find some old financial management reports that were used that might have been an output from the CABS billing system. I have been able to discover there are some reports that would show that, yes, we did historically bill carrier common line usage. And, it would have been carrier common line usage that did not terminate to a Verizon end office, because there's a difference between the carrier common line minutes and the local switching minutes. So, there is evidence that this was being billed, at least calls that terminated to a wireless carrier were being billed a carrier common line charge, whether it originated from a CLEC or whether it originated from an IXC.

7. AT&T further claims that allowing the Third Supplemental Reply to be included as part of Exhibit 17 would be inappropriate because the supplemental reply has "never been tested by discovery or cross examination" (AT&T Letter at 2). But the very purpose of the supplemental reply was to provide a further response to a discovery request (Staff 1-19), just as the earlier supplemental replies represented. And the contention that cross examination would not be available is equally unpersuasive, as AT&T (and, for that matter, all other parties) failed to ask Mr. Shepherd ***any*** questions about Verizon NH's supplemental replies to Staff 1-19 or his testimony above.

8. Finally, the petitioners – and not Verizon NH – bear the burden of proof in this proceeding. See N.H. Admin. Rules, Puc 203.25 ("Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence"). Despite their burden of proof, the petitioners failed to produce any information responsive to various discovery requests Verizon served on them regarding the very matter they seek to forestall the Commission from considering in the Third Supplemental Reply: namely, historical billing information relevant to this proceeding. After having failed to provide probative information in the course of discovery – which the evidence suggests they had and should have been able to produce – the petitioners should not now be permitted to block consideration of facts they inaccurately suggested in prefiled testimony did not exist.[4]

[4] *See, e.g.*, Rebuttal Testimony of Ola A. Oyefusi, Christopher Nurse and Penn Pfautz at 16 ("In fact, for at least ten years since the rate structure was effective (1996 to 2006), Verizon has admitted [footnote omitted] that it did not charge a CCL on calls that did not involve its end users."). AT&T's testimony, of course, was incorrect, as evidenced by the supplemental replies to Staff 1-19, including the Third Supplemental Reply.

II. CONCLUSION

For the reasons set forth above, Verizon NH respectfully requests that the Commission grant its motion for leave to file its Third Supplemental Reply to Staff 1-19 as part of Exhibit 17, to the extent necessary, and grant it such other relief as is just and appropriate.

Respectfully submitted,

VERIZON NEW ENGLAND D/B/A
VERIZON NEW HAMPSHIRE

By Its Attorney

Dated: August 9, 2007

By: Victor D. Del Vecchio

Victor D. Del Vecchio
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
(617) 743-2323