

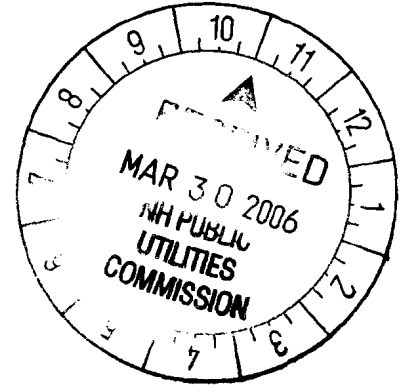


Conversent
Communications

Via Overnight Mail & Electronic Mail

March 29, 2006

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



Re: Verizon New Hampshire Wire Center Investigation, DT 05-083

Dear Ms. Howland:

A Motion for Rehearing and/or Reconsideration, on behalf of Conversent Communications of New Hampshire, LLC, CTC Communications Corp., and Broadview Networks, Inc., is enclosed for filing.

This motion is being served by electronic and first-class mail to the service list.

Thank you. Please contact CTC's David Berndt (603-314-2360, dberndt@ctcnet.com), Broadview's Charles Hunter (914-468-8214, chunter@broadviewnet.com) or Rebecca Sommi (215-293-8715, rsommi@broadviewnet.com) or myself (401-834-3326, gkennan@conversent.com), if you have any questions.

Very truly yours,

Gregory M. Kennan
Director, Regulatory Affairs and Counsel

Cc: Service List

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

**Verizon New Hampshire —
Wire Center Investigation**

DT 05-083

MOTION FOR REHEARING AND/OR RECONSIDERATION

Conversent Communications of New Hampshire, LLC, CTC Communications Corp., and Broadview Networks, Inc. move for rehearing and/or reconsideration of that part of the Order Classifying Wire Centers and Addressing Related Matters (Order No. 24,598, March 10, 2006) (“Wire Center Order”) holding that a stand-alone CATT arrangement is a “fiber-based collocation” for purposes of the FCC’s unbundling rules under the *Triennial Review Remand Order* (TRRO). Wire Center Order at 40-41. The Commission’s holding directly contravenes the requirement of federal law that a fiber-based collocater maintain a collocation arrangement with active electrical power supply. Since it is undisputed that a CATT arrangement lacks an active electrical power supply, a CATT cannot be a fiber-based collocation.¹ The holding also contradicts other findings and rulings in the Wire Center Order itself, rendering it legally arbitrary.

The Commission’s ruling will increase the number of non-impaired wire centers and concomitantly reduce the availability of high-capacity loop and transport UNEs in New Hampshire. Consumers and competition will suffer as a result.

¹ The moving parties do not dispute that part of the Order finding that a CLEC maintaining an actively-powered collocation in addition to a CATT in a given wire center is a fiber-based collocater (assuming all other elements of the definition are satisfied). Wire Center Order at 40.

The Commission's Ruling

The Commission determined that a carrier that maintained a CATT arrangement but did not also maintain an actively-powered collocation in the same wire center was a fiber-based collocator under the FCC definition. The Commission said:

Staff's Affidavit indicates that CLEC 3 in Portsmouth maintains only an unpowered CATT collocation in which CLEC 3 terminates a fiber optic cable that leaves the wire center. The collocation arrangement maintained by CLEC 3 includes the right to cross-connect to other CLEC collocations with active electrical power. Such cross-connection permits other CLECs, such as CLECs 4 and 6 in Portsmouth, to utilize UNEs in conjunction with services supported by access to CLEC 3's self-deployed facilities-based investment. We find that arrangements such as that of CLEC 3 in Portsmouth meet the requirements for a fiber-based collocator because the overall collocation arrangement maintained by the CLEC operating the fiber-optic cable includes access to active electrical power supply within the wire center to enable the provision of fiber-based services to other CLECs. To exclude stand-alone CATT collocations, that in and of themselves do not have an active power supply, but that facilitate cross-connections with other CLECs that use active power from within the wire center would be an unfairly restrictive interpretation of the rule in light of the passive technology specific to a CATT arrangement. Therefore, we will include CATT arrangements that have access to and make use of an active electrical power supply within a wire center in our qualification of fiber-based collocators under the FCC definition. Accordingly, CLEC 3 in Portsmouth is a fiber-based collocator.

Wire Center Order at 40-41.

Discussion

The Commission may grant rehearing if "good reason" exists to consider an order either unlawful or unreasonable. RSA 541:3, 541:4; *In re Investigation as to Whether Certain Calls Are Local*, DT 00-223, DT 00-054, Order Denying Verizon New Hampshire's Petition for Rehearing of Order Approving Agreements, Order No. 24,266, at 2 ((May 13, 2005); *In re Global NAPs — Petition for an Order Directing Verizon to Comply with Its Interconnection Agreement*, DT 01-127, Order Denying Motion for Reconsideration, Order No. 24,367, at 5

(Sept. 2, 2004). Good reason includes matters that were either “overlooked or mistakenly conceived.” *In re Verizon New Hampshire — Investigation of Verizon New Hampshire’s treatment of Yellow Pages Revenues*, DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385, at 14 (Oct. 19, 2004).

Respectfully, the Commission’s ruling regarding stand-alone CATTs is both unlawful and unreasonable. It is unlawful because it directly contravenes federal law — the FCC’s requirement that a collocation have active electrical power to be counted as a fiber-based collocation. The ruling also is unreasonable, because it directly contradicts other findings and determinations that the Commission made in the Wire Center Order.

At the outset, it is undisputed that a CATT lacks active electrical power. As the Commission found:

A CATT does not include an active power supply *per se* because one is not needed for the proper functioning of the CATT, which serves as a termination and splice case for the CLEC operating a fiber optic cable leaving the wire center. As Verizon notes in its comments, CATT collocation is an FCC-tariffed arrangement that “provides a shared, alternative splice point within a Telephone Company central office at which a third party competitive fiber provider (CFP) can terminate its facilities” and then cross connect to its own collocation facilities or to those of other CLECs.

Wire Center Order at 40.

A CATT, therefore, fails an essential element of the definition established by federal law, that the collocation itself have an active electrical power supply. The FCC’s definition is as follows:

Fiber-based collocater. A fiber-based collocater is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber

obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

47 C.F.R. § 51.5, *quoted in* Wire Center Order at 34-35.²

The Commission clearly understood that to satisfy the definition, the collocation arrangement must be actively powered. As the Commission explained, “The first part of the definition sets out a requirement that a fiber-based collocator maintain a collocation with active power” Wire Center Order at 35. The Commission’s ruling contradicts both the FCC definition and the Commission’s interpretation just quoted.

The Commission found that a CATT qualified as a fiber-based collocation because “the overall collocation arrangement maintained by the CLEC operating the fiber-optic cable includes access to active electrical power supply within the wire center.” Respectfully, this conclusion is “mistakenly conceived.” Mere “access” to active electrical power simply does not satisfy the FCC’s definition. Rather, as the Commission recognized (p. 35 of the Order), the definition plainly states that the collocation arrangement must have an active electrical power supply. The Commission’s ruling directly contravenes federal law. This is good reason for the Commission to reconsider its decision.

The Commission’s ruling, respectfully, also is unlawful and unreasonable because it makes the Wire Center Order internally contradictory. As noted above, the Commission found that federal law “sets out a requirement that a fiber-based collocator maintain a collocation with active power.” Wire Center Order at 35. The Commission again recognized the requirement of

² The quotation of the definition in the Wire Center Order contains a slight typographical error. In the second line, the quotation says “a collocation arrangement *with* an incumbent LEC wire center” instead of the correct “a collocation arrangement *in* an incumbent LEC wire center” (emphasis added in both cases). The Commission may wish to consider an administrative correction.

active electrical power on page 41. There, the Commission said, “Therefore, we will include CATT arrangements that have access to *and make use of* an active electrical power supply within a wire center in our qualification of fiber-based collocators under the FCC definition” (emphasis added).

The Commission is correct that a collocation arrangement that makes use of an active electrical power supply (and satisfies all other elements of the definition) is a fiber-based collocation. The difficulty is that, as the Commission expressly found, a CATT is a passive junction that does not make use of electrical power. “A CATT does not include an active power supply *per se* because one is not needed for the proper functioning of the CATT, which serves as a termination and splice case for the CLEC operating a fiber optic cable leaving the wire center.” Wire Center Order at 40.

Thus, the Commission correctly found that a fiber-based collocation must make use of an active electrical power supply and (on the basis of an undisputed record) that CATT arrangements do not make use of an active power supply. The Commission’s ruling regarding stand-alone CATT arrangements directly contradicts these findings. “Such contradictory findings on material issues, made on the basis of a given evidentiary record, are necessarily capricious and insufficient to support a judgment. Indeed, any judgment so grounded is unreasonable and must be vacated under RSA 541:3.” *In re Appeal of Lemire-Courville Associates*, 127 N.H. 21, 32, 499 A.2d 1328, 1336 (1985) (citations omitted).

The Commission’s expansion of the definition beyond what the FCC intended will allow wire centers to be classified, incorrectly, as non-impaired. This will reduce the availability of UNEs loops and/or transport in the affected wire centers. The immediate effect is improperly to

classify Portsmouth as a Tier 2 wire center,³ meaning that UNE DS3 and dark fiber transport between Portsmouth and another Tire 1 or 2 wire is no longer available. This will have an immediate detrimental effect on competition in Portsmouth. When the Commission's ruling is applied to other wire centers in the future, competition elsewhere in the state will suffer as well.

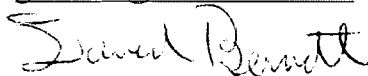
Conclusion

For the reasons stated above, the Commission should rehear and reconsider its ruling that a stand-alone CATT is a fiber-based collocation under the FCC's unbundling rules. Upon reconsideration, the Commission should rule that a collocator that maintains only a CATT in a given wire center is not a fiber-based collocator for purposes of the FCC unbundling rules.

March 29, 2006



Gregory M. Kennan
 Director, Regulatory Affairs and Counsel
 Conversent Communications of New
 Hampshire, LLC
 24 Albion Road, Suite 230
 Lincoln, RI 02865
 401-834-3326 Tel.
 401-834-3350 Fax
gkennan@conversent.com



David Berndt
 Assistant General Counsel
 CTC Communications Corp.
 One Executive Park Drive
 Bedford, NH 03110
 Telephone: (603) 314-2360
 Fax: (603) 314-0457
 Email: dberndt@ctcnet.com

Respectfully Submitted,



Charles C. Hunter
 Executive Vice President and General Counsel
 Broadview Networks, Inc.
 800 Westchester Avenue, Suite N-501
 Rye Brook, NY 10573
 914-922-7589 Tel.
 347-287-0223 Fax
chunter@broadviewnet.com



Rebecca H. Sommi
 Sr. VP. Operations Support
 Broadview Networks, Inc.
 400 Horsham Road
 Horsham, PA 19044
 215-293-8715
 FAX: 215-293-8750
rsommi@broadviewnet.com

³ The Commission found that CLECs 1 and 2 were fiber-based collocators in Portsmouth. Wire Center Order at 39. The incorrect addition of CLEC 3 leads to the improper classification of Portsmouth as Tier 2. *See id.* at 47.