

DT 02-110

VERIZON NEW HAMPSHIRE

Investigation into Cost of Capital

Order Clarifying Scope and Procedural Schedule
and Partially Granting Motion to Compel

O R D E R N O. 24,089

November 27, 2002

After a technical session held on October 30, 2002, pursuant to Order No. 24,053 (September 16, 2002), the Staff of the Commission (Staff) apprised the Commission of parties' concerns regarding the scope of this docket and the timing for filing testimony. By secretarial letter dated November 14, 2002, the Commission suspended the procedural schedule of this docket pending consideration of certain motions filed by Freedom Ring Communications, LLC (BayRing) and Conversent Communications of New Hampshire, LLC (Conversent). BayRing and Conversent filed a Motion to Compel Verizon's Response to Discovery and Suspend the Deadline for Filing Rebuttal Testimony on October 30, 2002, and a Motion for Clarification Concerning Procedural Schedule on November 7, 2002. Verizon filed memoranda opposing the motions on November 12 and 18, 2002. This order will address the scoping issue as well as the procedural and discovery concerns raised in the motions.

I. Scope

The purpose of this docket is to determine Verizon's cost of capital for retail ratemaking and UNE ratemaking. We understand that Verizon crafted the testimony it filed on August 30, 2002, based upon its understanding that the cost of capital determined here would be applied to UNE rates only. In view of Verizon's misunderstanding, we find it appropriate to establish a revised procedural schedule to receive supplemental testimony by Verizon's expert witness.

II. Procedural Schedule

We understand that Conversent and BayRing interpreted language in the relevant procedural schedule to mean that parties and Staff would separately provide direct and rebuttal testimony, the first, due November 15, 2002, to consist of an affirmative case regarding an appropriate cost of capital for Verizon and the second, due January 3, 2003, to consist of rebuttal to Verizon's own affirmative case that was filed on August 30, 2002.

After having a meaningful opportunity to investigate the company's affirmative case by at least one round of data requests and responses and usually two technical sessions, Staff and Intervenors in the first instance typically file testimony nominated initial or direct testimony that, as a practical matter, also responds to or rebuts a company's rate filing. This practice is followed in many but not all Commission proceedings.

For instance, rulemaking proceedings and other proceedings that we deem "legislative" utilize other procedures, as did the cases referenced by Conversent and BayRing in support of their position.

We have broad discretion within the bounds of due process to fashion a procedural schedule. Accordingly, we will set a revised procedural schedule here that includes dates for the filing of direct testimony by Intervenors and Staff that includes their affirmative cases as well as responses to Verizon's testimony. We will also include a date for all parties and Staff to reply to Staff's and the Intervenors' testimony. This provides both sufficient process in terms of notice and opportunity to be heard and a sufficient written record for proceeding with settlement discussions and a hearing.

III. Motion to Compel

Conversent and BayRing filed a motion to compel Verizon to respond to BR 1-17 and 1-20. In Verizon's Opposition to Bay Ring's and Conversent's Motion to Compel regarding BR 1-17, Verizon stated its witness did not rely on the information sought as a basis for his recommendation, nor was he in possession of the majority of the information. We will not require Verizon to produce information not in its possession and upon which it did not rely for its testimony. We will therefore deny the motion with regard to 1-17.

In reference to BR 1-20, we find that the information sought regarding forecasts for access line data is reasonably related to Verizon's witness's conclusions regarding the risk of stranded costs. Because confidentiality concerns drive Verizon's objections, we will require Verizon to provide the information under a suitable confidentiality agreement, as is our usual practice regarding relevant, confidential discovery materials. The confidentiality agreement may contain language guaranteeing that the information will be used solely for the purpose of litigating the issue in this docket. We direct Staff to work with Verizon and the parties to fashion a suitable protective arrangement.

Based upon the foregoing, it is hereby

ORDERED, that the cost of capital that is the subject of this docket pertains both to retail and wholesale rates; and it is

FURTHER ORDERED, that the procedural schedule for this docket shall be revised as follows:

Verizon Supplemental Direct Testimony	December 13, 2002
Data Requests to Verizon	December 20, 2002
Data Responses from Verizon	January 3, 2003
Staff & Intervenors Direct Testimony	January 27, 2003
Data Requests to Staff & Intervenors	February 7, 2003
Objections to Data Requests	February 11, 2003

Data Responses from Staff & Intervenors	February 18, 2003
Rely Testimony from all on Staff & Intervenors' filings	March 11, 2003
Settlement Discussions	March 18, 2003
Hearings	March 31 through April 3, 2003
Briefs	April 29, 2003;

and it is

FURTHER ORDERED, that Verizon shall respond to Data Request BR 1-20 in written form on or before December 13, 2002.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of November, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary