

**DT 04-203**

**VERIZON NEW HAMPSHIRE**

**Request to Alter Order and for Partial Relief Pursuant to RSA 365:28**

**Order Approving Settlement Agreement Concerning Certain Filing  
Requirements with Respect to Special Contracts**

**ORDER NO. 24,481**

**July 1, 2005**

**APPEARANCES:** Victor DelVecchio, Esq., on behalf of Verizon New Hampshire; David Berndt, Esq., on behalf of Lightship Telecom; Murtha Cullina LLP by Robert Munnely, Jr., Esq., on behalf of DSCI Corporation and InfoHighway Communications Corporation; F. Anne Ross, Esq. of the Office of the Consumer Advocate on behalf of New Hampshire residential ratepayers, and Lynn Fabrizio, on behalf of Commission Staff.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On November 1, 2004, Verizon New England Inc. d/b/a/ Verizon New Hampshire (Verizon) filed a request pursuant to RSA 365:28 to alter and obtain relief from certain filing requirements established in Commission Orders No. 23,357 issued in Docket No. DT 99-018 on December 22, 1999 (Special Contract Order) and No. 23,996 issued in Docket No. DT 02-079 on June 21, 2002 (Walpole Order).

Under RSA 378:18-b, incumbent local exchange carriers (ILECs) such as Verizon are required to file special contracts with the Commission and to show that such contracts meet a price floor test. The Special Contract and Walpole Orders required the filing of certain data and documents intended to facilitate Staff's analysis of Verizon's special contracts under the statute.

The Special Contract Order addressed the appropriate cost methodology that Verizon should use to demonstrate that the statutory price floor test is met in any particular special contract. The Commission decided in the Special Contract Order that the price floor should be based on the total element long-run incremental cost (TELRIC) when competitors

must purchase unbundled network elements (UNEs) from Verizon to offer a competing service, and that the price floor should be based on the long-run incremental cost when competitors do not have to purchase UNEs from Verizon to compete.

Under the Special Contract Order, Verizon was required to provide to the Commission an annual report on special contract re-price information showing the revenues Verizon would have received from special contract customers had service been provided under applicable tariffs, and the revenues Verizon, in fact, received under those special contracts. The Special Contract Order also required Verizon to file evidence that competition in the special contract customer's exchange actually existed in cases where Verizon alleged that the special circumstance warranting a special contract was competition. Such evidence could include either a customer affidavit attesting that the customer had competitive alternatives, or data showing market share loss in the special contract customer's exchange.

The Walpole Order established further filing requirements intended to facilitate Staff's analysis. Under that order, when a special contract is filed, Verizon is required to provide the Commission with retail and wholesale data (including the number of retail access lines, UNE-Platforms, UNE-Loops, lines resold to competitive local exchange carriers (CLECs), and the number of CLECs collocated in the exchange) for the exchange where the special contract is offered, a tariff re-price of each item offered in the contract, identification of the relevant competitor referred to in the affidavit, and more specific information regarding the price levels offered by the competitor (*i.e.*, whether the competitor's price was above or below Verizon's and by how much).

In its request for relief from specified requirements of the Special Contract and Walpole Orders, Verizon cited a changing legal, regulatory and market landscape. According to Verizon, the filings required, in certain respects, are burdensome, costly, and no longer warranted in today's competitive marketplace for business or large enterprise customers. Accordingly, Verizon sought relief from the filing requirements for 1) initial and annual re-pricing data, 2) customer affidavits, 3) wholesale and retail exchange data, and 4) identification of competitors.

On January 13, 2005, the Commission issued an Order of Notice in this docket. The Office of Consumer Advocate (OCA) notified the Commission on January 14, 2005, that it would be participating in the docket on behalf of residential ratepayers; on January 21, 2005, Lightship Telecom submitted a motion for leave to intervene; and on February 4, 2005, DSCI Corporation and InfoHighway Communications Corporation together filed a petition to intervene with a joint position statement.

A pre-hearing conference was held on February 8, 2005, at which all Parties and Staff made appearances and presented preliminary positions. Parties and Staff then held technical sessions on February 8 and 23, 2005, and subsequently reached agreement on the issues. A Stipulation was filed with the Commission on May 19, 2005. A hearing on the merits was held on June 8, 2005, at which Staff and Verizon presented evidence in support of the Stipulation.

## **II. STIPULATION**

The Stipulation relieves Verizon of certain filing requirements, maintains other requirements, and establishes new requirements.

Pursuant to Provisions 1, 2 and 3 of the Stipulation, Verizon will no longer be required to file the following:

- 1) a re-price report at the time of special contract filing comparing the revenue received under the special contract to the revenue that would have been received under Verizon's effective tariff;
- 2) an annual report summarizing the revenue difference between the tariffed rates and the prices under each special contract; and
- 3) customer affidavits identifying i) one or more competitors that can provide the same special contract service, and ii) the difference between Verizon's price and a competitor's price for the service.

Pursuant to Provisions 4 and 5, Verizon will continue to file the following information:

- 4) price floor test data submitted upon the filing of each Special Contract, as initially established in the Special Contract Order;
- 5) an annual report of retail and wholesale data for each Verizon NH exchange, including statistics on the number of retail residential and business lines, resold lines, UNE-Loops, UNE-Platform-like arrangements, and collocation sites.

In addition, pursuant to Provisions 6 and 7, Verizon must now file the following:

- 6) a summary report listing key information for each special contract, including, *inter alia*, the types of services offered, total monthly and annual revenue generated, and any growth component. This filing will be made annually and

will include information regarding all new contracts filed during the prior year.

- 7) the first of such reports shall be filed within 30 days of the Commission's approval of this Stipulation agreement and will include information on all special contracts in effect as of December 31, 2004.

Signatories to the Stipulation further agreed to certain conditions to the agreement itself. Thus, the Stipulation is limited in scope to Verizon's filing requirements regarding Special Contracts; the Stipulation is conditioned upon the Commission's acceptance of each and every provision as agreed upon among the parties; and, finally, OCA's signature on the Stipulation is only for purposes of modifying Verizon's reporting requirements regarding special contracts. OCA reserves its right to request data related to special contracts for purposes of the Commission's examination of Verizon's delivery of telecommunications services. Verizon reserves the right to oppose any such request.

### **III. COMMISSION ANALYSIS**

This docket requires us to assess the continued usefulness of certain reporting requirements established under Orders No. 23,357 and No. 23,996 in the context of an evolving industry market. The filing requirements established in the Special Contract Order and the Walpole Order were implemented to address Staff and Commission concerns about the effect of special contracts on competition and ratepayers. The statutory framework established under RSA 378:18-b itself suggests an underlying concern that special contracts not interfere with marketplace competition or the establishment of just and reasonable rates.

The Commission anticipated that the Special Contract Order re-pricing data could

be used during a rate case to analyze whether joint and common costs were being inappropriately shifted from special contract customers to captive ratepayers. In the three years since the Walpole Order was issued and five years since the Special Contract Order was issued, however, Verizon has not entered into a rate case.

Furthermore, as a result of Verizon's demonstration through customer affidavits that competition existed for each of the approved special contract customers, the Commission is persuaded that Verizon would not have been able to charge the tariffed price to special contract customers, and that those customers would have signed on with competitors, rather than Verizon, had Verizon offered only its tariff rates. Without those special contract customers and the revenue generated thereby, responsibility for recovery of certain joint and common costs would have fallen to the remaining ratepayers.

Customer affidavits have been used to identify competitors for proposed special contract service and the affidavits have enabled Staff to verify the existence of competitors at a time of lower competitive penetration in New Hampshire. We are persuaded by Staff's position that customer affidavits are no longer required inasmuch as, with the highest competitive penetration in today's market, other carriers can provide, at competitive rates, the services that Verizon offers larger business customers through its special contracts. Staff's conclusion is based in part on the many special contracts that it has analyzed over the past several years, which have all included affidavits identifying an existing competitor who could provide the contracted service at a competitive price.

Finally, according to Verizon, the re-pricing and summary reports are costly to produce. We concur with Staff's position that the cost of producing those reports outweighs the

potential benefit and, therefore, the requirement should be eliminated. We are satisfied that the filing requirements maintained and established in the Stipulation will ensure sufficient data for a thorough analysis of special contracts filed for Commission approval in the future.

We conclude that the Stipulation is fair, reasonable, and consistent with statutory requirements. Further, we find that the reporting requirements that Verizon will be relieved of are no longer necessary; the reporting requirements that Verizon will maintain are an important resource to Staff and OCA; and the Stipulation is in the public good. Accordingly, upon consideration of the information in the record before us, we will approve the Stipulation in this docket.

Based upon the foregoing, it is hereby

**ORDERED**, that the Stipulation is hereby APPROVED; and it is

**FURTHER ORDERED**, that Orders No. 23,357 and No. 23,996 are rescinded in part and confirmed in part; and it is

**FURTHER ORDERED**, that Verizon New Hampshire shall adhere to the filing requirements regarding special contracts as set forth in the Stipulation.

By order of the Public Utilities Commission of New Hampshire this first day of July, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary