

DT 06-072

VERIZON NEW HAMPSHIRE

**Verizon New Hampshire
Flexible Pricing Plan**

Procedural Order

ORDER NO. 24,640

June 30, 2006

APPEARANCES: Victor DelVecchio, Esq. for Verizon New Hampshire; Devine, Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. for the New Hampshire Telephone Association; Gregory M. Kennan, Esq. for Conversent Communications; Orr & Reno, P.A. by Susan S. Geiger, Esq. for BayRing Communications and segTel, Inc.; Alan Linder for New Hampshire Legal Assistance on behalf of Irene Schmitt and Cynthia Smith; Office of Consumer Advocate by F. Anne Ross, Esq., on behalf of residential ratepayers; and Lynn Fabrizio, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On May 4, 2006, Verizon New Hampshire (Verizon) filed for approval with the New Hampshire Public Utilities Commission (Commission) a Stipulation signed by Verizon and the Commission Staff (Staff) proposing a form of regulation for Verizon other than traditional rate-of-return regulation. The Stipulation proposes flexible pricing and outlines the regulations that would apply to Verizon in the future, if the Stipulation were approved. Verizon's filing included associated testimony of Robert J. Kenney on behalf of Verizon.

On May 17, 2006, the Commission issued an Order of Notice scheduling a Prehearing Conference for June 8, 2006, to be followed by a Technical Session, and requiring intervention requests to be filed by June 5, 2006. On June 5, 2006, the Office of the Consumer Advocate (OCA) notified the Commission that it would be participating in

this docket on behalf of residential ratepayers. Also on June 5, 2006, petitions to intervene were filed by the New Hampshire Telephone Association (NHTA); Conversent Communications of New Hampshire, LLC; Freedom Ring Communications LLC d/b/a BayRing Communications; segTEL, Inc.; and New Hampshire Legal Assistance (NHLA) on behalf of Verizon residential customers Irene Schmitt and Cynthia Smith. AT&T Communications of New England, Inc. (AT&T) filed a petition to intervene on June 6, 2006.

A prehearing conference and initial technical session were held as scheduled on June 8, 2006. All petitions for intervention were granted from the bench as consistent with the requirements of RSA 541-A:32, I. On June 16, 2006, Staff filed a report of the technical session which included a proposed procedural schedule and requested a Commission determination on the scope of the docket proceeding. The report also included notice that the OCA had reached an informal understanding with Kate Bailey, Director of the Commission's Telecommunications Division, that she would not be advising the Commissioners with respect to their determinations on the scope issue.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Verizon

Verizon asserts that the stipulation agreement as filed reflects negotiations conducted over the course of the past year in which several CLECs as well as the NHTA participated. The agreement, according to Verizon, provides significant consumer protections and would permit Verizon to operate more efficiently in today's competitive telecommunications market in New Hampshire. In response to comments made by the OCA, Verizon noted that it would not voluntarily agree to automatic penalties or fines for

failure to meet quality of service standards, and noted that quality of service is currently being addressed in Docket No. DT 04-019. Verizon further took the position that a rate case, also proposed by the OCA, is not warranted, as financial reports filed with the Commission clearly show that Verizon's regulated New Hampshire retail revenue is not meeting its approved revenue requirement and, furthermore, that a rate case would be merely empirical in nature. Finally, Verizon responded to concerns raised by Conversent, BayRing and segTEL regarding the scope of application of the agreement, noting that it will apply only to the retail services market, not to the wholesale market.

B. Conversent

Conversent noted that it is both a competitor of Verizon and a wholesale purchaser of services. Although noting that it did not necessarily object to the stipulation agreement, Conversent stated a desire to better understand the implications in a competitive market of the proposed form of regulation. In particular, Conversent pointed to the access rate proposal, noting that if Verizon lowers its access rates, CLECs may also be required to do so under the Commission rules.

C. BayRing and segTEL

BayRing and segTEL jointly echoed Conversent's comments with respect to competitor concerns regarding the effect of the agreement on the market, noting that they were not opposed *per se* to the agreement, but sought clarification that it does not apply to the wholesale market. The companies further noted specific questions raised by certain language and wording in the agreement.

D. New Hampshire Telephone Association

The NHTA took no position on the agreement, but supported Verizon's comments concerning the competitive nature of today's telecommunications market in New Hampshire.

E. Irene Schmitt and Cynthia Smith

Appearing on behalf of Verizon customers Irene Schmitt and Cynthia Smith, NHLA argued that rate protection for consumers is better under rate of return regulation than under alternative regulation. NHLA further noted that it had been quite some time since a study of Verizon's cost of service had been conducted and that there was no current comparison data to assess the better method of regulation. On behalf of its clients, NHLA opposed an expedited proceeding as requested by Verizon due to the need for more information.

F. Office of Consumer Advocate

OCA expressed concern about the potential effect of the proposed form of regulation on the end users of basic telephone service, arguing that low-income, elderly and rural market segments are not experiencing the competition or alternative choices to which Verizon cites. OCA believes that the Commission first should conduct a rate review, for at least some of Verizon's rates, contending that if the proposed change in regulation does not include an examination of Verizon's cost of service, price caps on basic service may be set too high and the new form of regulation will not protect consumers who do not have competitive options. OCA requested that the Commission consider quality-of-service issues in the context of this change in regulation, urging the Commission to consider an

automatic fine and credit system, such as is in place in Maine and Vermont, to ensure quality of service.

G. Staff

Staff asserted that the stipulation agreement represents a fair and reasonable approach that reflects today's changing telecommunications marketplace while balancing the interests of both ratepayers and the company. Staff noted that the agreement proposes a rate cap on residential basic service while maintaining a price floor requirement. Staff further noted that the agreement includes a reduction of intrastate access rates to interstate levels consistent with RSA 378:17-a, and that the UNE loop rate in all rural exchanges will be reduced as an incentive for competition and CLEC investment in more areas of the state. Finally, Staff pointed out that the agreement does not relieve Verizon of all regulatory oversight or of its obligations to customers under the Commission's rules. Staff reiterated Verizon's statement that the pricing flexibility agreement applies only to retail rates.

III. PROPOSED PROCEDURAL SCHEDULE

Following the June 8, 2006 prehearing conference, the parties and Staff conducted a technical session to discuss a procedural schedule for completing this docket. The following schedule was agreed upon and recommended to the Commission by letter from Staff dated June 16, 2006.

June 23, 2006	Data requests to Verizon
July 10, 2006	Data responses from Verizon
Aug. 4, 2006	Testimony from Staff and intervenors
Aug. 18, 2006	Data requests to Staff and Intervenors
Sept. 1, 2006	Data responses from Staff and Intervenors
Sept. 15, 2006	Reply testimony
Sept. 22, 2006	Data requests on reply testimony
Oct. 2, 2006	Data responses regarding Reply Testimony due
Oct. 10-12, 2006	Hearing

IV. COMMISSION ANALYSIS

We have reviewed the proposed procedural schedule and determined that it is administratively sufficient to address the issues raised in this docket. We therefore approve the procedural schedule as filed, noting that the June 23 date for discovery has passed, but that several parties have issued their requests according to that schedule.

In its report of June 16, 2006, Staff notes that the parties are requesting a determination on the scope of this proceeding. As noted in the initial order of notice of May 17, 2006, the general scope of this docket includes, *inter alia*, issues related to whether Verizon's retail rates should, in effect, be price-deregulated and whether the terms of the Stipulation are lawful, just and reasonable, as required by RSA 374:2. The OCA has requested that the Commission consider a full or streamlined rate review in this proceeding to ensure that Verizon's costs of service are fairly and reasonably reflected in the market-driven prices that will result under the proposed form of regulation. The OCA has further requested that the docket include consideration of an automatic fine and credit system to ensure Verizon's quality of service.

We understand that the stipulation agreement reached by Verizon and Staff proposes pricing flexibility for Verizon's retail services. Under the proposed agreement, retail prices will be governed, within certain agreed to bounds, by real market forces. In effect, the agreement proposes to deregulate retail prices. In *Kearsarge Telephone Company*, 87 NH PUC 110, 111-112 (2002), we conducted a full cost-of-service rate case to establish a benchmark for the possible application of an alternative regulation plan. By contrast, what Verizon seeks here is not alternative regulation but the deregulation of prices in certain circumstances, on the premise that competition is sufficiently robust to create

competitive price equilibrium without regulatory intervention. In these circumstances, the development of a cost-of-service benchmark is unnecessary for a decision on the merits of the Stipulation. We therefore determine that we will not include a review of the company's revenue requirement as a part of this proceeding.

To the extent quality of service is at issue, we note that the legality of an involuntary and automatic fine and credit system is a settled issue and need not be relitigated here. *See Verizon New Hampshire*, 87 NH PUC 172, 193-195 (2002) (concluding that Commission has authority to direct reparations, in the form of bill refunds, as the result of substandard service quality, but lacks authority to order additional payments by utility as a penalty except where the company has voluntarily agreed to such a plan). Verizon has clearly indicated in this proceeding that it will not consider such a system. We further note that the quality of Verizon's service is the subject of a separate, ongoing proceeding in Docket No. DT 04-019. However, to the extent that the OCA seeks to propose an automatic fine and credit system as a condition to approval of the Stipulation, the OCA is not precluded from making a proposal either through testimony or argument that some form of automatic fine and credit system be a condition for approval.

To the extent the parties have raised the issue of whether the agreement applies to wholesale as well as retail services, we note that both Verizon and Staff made it clear during the prehearing conference that the agreement pertains only to Verizon's retail services. We therefore confirm that the stipulation agreement filed by Verizon addresses only retail services.

Based upon the foregoing, it is hereby

ORDERED, that the Procedural Schedule as set forth above is APPROVED; and it is

FURTHER ORDERED, that the scope of this docket proceeding shall include neither a rate review with associated cost studies nor the consideration of a fine and credit system governing the quality of Verizon's service.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary