

DT 01-157

**VERIZON NEW HAMPSHIRE**

**Special Contract with McLane, Graf, Raulerson & Middleton, PA**

**Order Regarding Special Contract**

**O R D E R    N O.    23,916**

**February 8, 2002**

Verizon New Hampshire (Verizon) submitted a letter to the New Hampshire Public Utilities Commission (Commission), on August 3, 2001, requesting approval of a Special Contract between it and McLane, Graf, Raulerson & Middleton (McLane) for Centrex Service. The letter stated that on May 7, 2001, the Company filed a special contract request offering Centrex service to McLane but the Commission rejected the contract by secretarial letter dated June 6, 2001. In its August 3, 2001, submission the Company provided billing details and a cost analysis of the offering suggesting that the rates under the contract were not less than the incremental cost of the service. Pursuant to RSA 378:18-b, II (a)(1), the special contract was effective by operation of law on September 2, 2001, thirty days after the refiling.

However, this docket cannot be closed without further examination of what transpired before the special contract was allowed to go into effect. The record shows,

through responses to data requests obtained in June 2001, Verizon was billing its customer rates that applied to the expired contract from May 30, 1999 through June, 2001. This raises the question of what, if any, action should be taken by the Commission to address the issue of Verizon charging rates to McLane that were not approved by the Commission.

#### **A. History of the McLane Special Contract**

A review of the history of Verizon's special contract relationship with McLane shows that as early as 1992 NYNEX (now Verizon) petitioned and received approval for a seven-year special contract to provide McLane with digital Centrex service. See Order No. 20,403, Docket No. DR 92-017, 77 NHPUC 113 (February 27, 1992). Before the expiration of the seven-year period, on December 22, 1998, Verizon filed for approval of a new special contract to provide McLane with Centrex line systems in Manchester and Nashua. The Commission denied the special contract request without prejudice on January 21, 1999, citing that it could not at this juncture determine the appropriate incremental cost under RSA 378:18-b. See Order No. 23,108, Docket No. DR 98-221, 84 NHPUC 31 (January 21, 1999). Based on the findings of that docket the Commission initiated a generic investigation, Docket No. DT 99-018, on the issue of which incremental cost methodology

should be used when applying RSA 378:18-b.

Concerned with the length of time such a proceeding could take, on February 26, 1999, Verizon filed a letter with the Commission once again requesting approval of the McLane special contract and asking that the Commission reconsider its treatment of the contract. As a result of the February 26 letter, the Commission assigned Docket No. DT 99-036 to the request. On March 25, 1999, in Order No. 23,173, the Commission again denied the special contract request, concluding that it did not appear the requirements of RSA 378:18-b were met when the rates under the contract were compared to the TELRIC prices that Verizon requested in the SGAT. The Commission further concluded that once docket DT 99-018 was resolved, Verizon could refile its McLane special contract request.

The Commission resolved docket DT 99-018 in December, 1999 with the issuance of Order No. 23,357. One requirement of the Order obligated Verizon (and any ILEC providing service through special contracts) to submit annual reports to the Commission on or before March 31 of each year describing revenues received under the special contract

compared with revenues it would have received under the applicable tariff. Additionally, the final ordering clause in Order No. 23,357 allowed Verizon to resubmit the contracts that gave rise to the docket, provided it could make the appropriate showing.

It was not until May 7, 2001 that Verizon filed a new four-year McLane special contract petition. As stated above, the Commission denied that request on June 6, 2001. During the time frame, however, between the expiration of the original contract in 1999 and September 2, 2001 when the new special contract became effective by operation of law, Verizon had no special contract arrangement with McLane. Yet, McLane received services from Verizon under the terms of a special contract rather than under a Commission-approved tariffed rate.

When asked about the difference in rates between the special contract rate and the rates charged had McLane subscribed to Verizon-NH's basic tariffed Centrex offering, the Company indicated to the Commission Staff that McLane's service would not be available under the basic Centrex tariff. Verizon asserts that McLane's Centrex configuration was provided at the early stages of ISDN deployment and based on Alternative Mark Inversion (AMI) technology. The Company

further states that the terminal equipment used by McLane is not compatible with tariffed Centrex service. In that circumstance, the Company claims it cannot provide a figure that represents the difference between the tariffed Centrex service and what was collected from McLane under the rates charged per the expired contract.

## **B. Discussion**

The issue before us concerns the rates charged by Verizon to McLane after the first contract expired in 1999 through September 2, 2001, when the new special contract between Verizon and McLane went into effect by operation of law. In responses to data requests from Staff, Verizon confirmed that after the contract expiration on May 29, 1999 it continued to charge McLane the non-tariff rates specified in the expired special contract. This amounts to the provision of utility service under terms that were not approved by the Commission, contrary to state law.

RSA 378:14 provides that no public utility "shall charge or receive a greater or lesser or different compensation for any service rendered to any person, firm or corporation than the compensation fixed for such service by the schedules on file with the commission and in effect at the

time such service is rendered." The facts in this case demonstrate that Verizon-NH has violated this statutory provision. Several responses to data requests which Verizon considers propriety demonstrate that McLane was billed a special contract rate through June, 2001. Verizon's responses also, however, indicate that McLane could not take service under the basic Centrex tariff given the type of service it requested and the terminal equipment it utilized.

While we accept the fact that McLane may not have been able to obtain the specific service it wanted under a general tariff, this does not justify the charging of unapproved rates. Moreover, RSA 378:10 provides that "no public utility shall give any undue or unreasonable preference or advantage to any person, ... or to any particular description of service." Consideration, therefore, must be given to the impact on Verizon-NH's revenues as a result of the Company's actions. Verizon indicates, in a data response, that had a new special contract been approved at the expiration of the original in May, 1999, higher rates would have been charged that would have generated approximately \$31,250.00 more in revenue for the Company. Thus, by Verizon's own admission, for the period where no special contract was in effect, Verizon lost contribution that it

otherwise should have obtained. We will, therefore, impute the revenue to Verizon to reflect the higher special contract rates. We believe the Verizon stockholders should make up any deficiency in the rates for the period where no special contract was in effect.

**Based upon the foregoing, it is hereby**

**ORDERED**, that in any future rate proceeding Verizon's ratepayers shall not be responsible for any revenue deficiency occasioned by the rates charged to McLane for the period where no special contract was in effect; and it is

**FURTHER ORDERED**, that the imputed revenue shall be reported above the line and Verizon shall submit to the Commission a report indicating the pro-forma adjustment to revenue.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary