

**DT 05-145**

**VERIZON NEW HAMPSHIRE**

**Modifications to Tariff 84  
SAC/IAC Collocation Charges**

**Order Approving in Part and Rejecting in Part Tariff Modifications to Tariff No. 84**

**ORDER NO. 24,543**

**November 7, 2005**

**APPEARANCES:** Victor Del Vecchio, Esq. for Verizon New Hampshire; Orr and Reno by Susan S. Geiger, Esq. for segTEL, Inc. and Freedom Ring Communications LLC d/b/a BayRing Communications; Frederick S. Samp, Esq. for Biddeford Internet Corporation d/b/a Great Works Internet; David Berndt, Esq. for CTC Communications/Lightship Telecom; F. Anne Ross, Esq. for the Office of Consumer Advocate; Lynn Fabrizio, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On September 8, 2005, Verizon New Hampshire (Verizon) filed with the New Hampshire Public Utilities Commission (Commission) proposed revisions to its NHPUC Tariff No. 84. Verizon's filing was made pursuant to RSA 378:6, IV, which requires Commission action to reject or approve the filing within 30 days, unless the Commission extends the time for its determination by up to 30 days. The filing proposed revisions to rates and rate structures concerning Service Access Charge (SAC) and Interconnection Access Charge (IAC) terminations. SAC terminations are used in physical collocation, secured collocation open physical environment (SCOPE), and cageless collocation open environment (CCOE). IAC terminations are used in virtual collocation arrangements. Such terminations are engineered, furnished and installed by Verizon at the request of competitive local exchange carriers (CLECs) and used by CLECs to access unbundled network elements (UNEs) and special access facilities.

IAC and SAC terminations are ordered when a CLEC makes an application for collocation space in a Verizon central office. When Verizon installs the collocation, it typically also installs a point of termination (POT) bay dedicated to the CLEC at which both Verizon and the CLEC terminate cables. When the POT bay is installed, Verizon places connector blocks and connects each potential connection from each connector block back to Verizon's frame. Under the current tariff, Verizon's cost for this equipment and its installation is recovered under TELRIC methodology through recurring charges applied when a connection on the connector block is put into use by the CLEC. Under the proposed tariff, Verizon's same costs would be recovered by nonrecurring charges at the time of installation and a reduced recurring charge would apply to all connections to the connector block, whether active or inactive.

In its filing, Verizon proposed to introduce new nonrecurring charges, to restructure certain previously approved recurring charges, and to allow CLECs to return any unused terminations in lieu of incurring the newly proposed nonrecurring and recurring charges.

Verizon's September 8, 2005 filing included a Stipulation signed by Verizon, Conversent Communications (Conversent), Covad Communications, and Otel Telekom. The Stipulation sets forth certain time parameters for application of the proposed tariff changes, waivers of certain charges, and an agreement to adopt in New Hampshire the current Massachusetts fees for application and engineering/administration for initial installation and subsequent changes to augment physical, virtual, SCOPE and CCOE collocation arrangements. The Stipulation conditions the terms of the proposed tariff revisions and the Stipulation itself on the Commission's acceptance of the filing as a whole.

The proposed tariff revisions and Stipulation reflect the results of a process which began October 27, 2004, in Docket No. DT 04-199 when Verizon initially filed tariff changes

proposing to revise the rates and overall rate structure of SAC and IAC terminations. Verizon withdrew its filing on November 24, 2004, citing timing issues. In its letter of withdrawal, Verizon noted its intention to refile at a later point. Subsequent to withdrawal of the original filing, Verizon participated in a number of discussions with Staff and interested CLEC parties regarding Verizon's proposed rate re-design for SAC/IAC collocation charges. No consensus was reached on the terms of the proposed rate revisions. The Stipulation filed in this docket, however, stemmed from those discussions.

On September 22, 2005, the Commission issued an Order of Notice which scheduled a Prehearing Conference and technical session for October 12, 2005, and stated that "in order to allow for public comment by affected parties, the effective date of the tariff shall be extended by 30 days pursuant to RSA 378:6, IV." The Order of Notice also required Verizon to file a cost study in support of its tariff filing prior to the technical session. The Office of Consumer Advocate (OCA) filed an intent to participate on October 3, 2005. Petitions for intervention were filed on behalf of Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) and segTEL, Inc. (segTEL) on October 3, 2005; on behalf of Biddeford Internet Corporation d/b/a Great Works Internet (GWI) on October 5, 2005; and on behalf of Conversent on October 7, 2005. CTC Communications and Lightship Telecom (CTC/Lightship) filed a petition for late intervention on October 27, 2005.

On October 4, 2005, Verizon filed cost studies in support of its filing. The cost study provides support for Verizon's claim that its proposed rates comply with the total long-run incremental cost (TELRIC) standard required for pricing services that Verizon must provide to CLECs pursuant to Section 251 of the Telecommunications Act of 1996.

The Commission granted all intervention requests. From the bench, the Commission requested that the Parties establish a procedural schedule that would allow resolution of the docket by November 7, 2005, and to respond in writing to three questions raised by Staff in a memorandum filed with the Commission on September 16, 2005. The procedural schedule agreed to by the Parties and Staff and accepted by the Commission by Secretarial Letter dated October 19, 2005 called for written testimony and a hearing on October 31, 2005. Testimony was duly filed by Verizon, BayRing, segTEL, and GWI. CTC/Lightship filed comments in lieu of testimony. The Hearing was held on October 31, 2005.

## **II. POSITIONS OF THE PARTIES AND STAFF**

Parties were asked by the Commission to comment on three issues raised by Staff in a memorandum filed on September 16, 2005. Parties included their comments in their pre-filed testimony and elaborated on them during the course of the hearing. The issues addressed included the following: 1) whether the proposed tariff changes constitute retroactive ratemaking; 2) whether the proposed changes constitute single-issue ratemaking; and 3) whether the proposed changes seek to recover Verizon's sunk costs in a manner inconsistent with TELRIC.

### **A. Verizon**

1. Verizon asserts that it has not proposed any new UNE rates and that SAC and IAC cross-connects are not UNEs but are necessary to provide access to UNEs. Verizon notes that retroactive ratemaking is defined as imposing a new obligation with respect to a past transaction. In this case, Verizon argues, no past transaction exists because none of the services to which the new rates will apply have been consumed in the past. Further, according to Verizon, whatever transaction may have existed is not complete because the services rendered

were never paid for. Payment would be made when the elements were used and, Verizon claims, those elements were never used in the gross majority of cases.

2. With respect to the issue of single-issue ratemaking, Verizon argues that TELRIC is not traditional rate of return regulation and that the concept of single-issue ratemaking is not a principle associated with the TELRIC methodology. The Commission is barred, Verizon asserts, from applying rate-case and revenue-requirement methodologies to TELRIC. Verizon goes on to explain that its proposed tariff revisions re-design the existing rate structure to better recover forward-looking expenses, and that the new rate design does not affect any other TELRIC rates and, therefore, does not constitute single-issue ratemaking.

3. Finally, speaking to the issue of recovery of sunk costs, Verizon argues that the Commission had already found that the costs underlying the proposed rate design were TELRIC compliant. Verizon claims that applying forward-looking recurring and nonrecurring TELRIC rates to network elements or facilities that Verizon had already engineered, furnished and installed complies with TELRIC cost methodology. TELRIC allows the recovery of preexisting equipment, says Verizon. The fact that the equipment already exists, therefore, does not deny Verizon the right to recover its costs. Finally, Verizon points out in its testimony that there are no virtual collocation arrangements in New Hampshire.

#### **B. BayRing Communications and segTEL, Inc.**

1. BayRing and segTEL, represented jointly by counsel, both argue that Verizon's revisions constitute retroactive ratemaking by imposing a new financial obligation with respect to past transactions because the installation of collocation facilities, including terminations, is complete when the collocation is accepted and thus qualifies as a completed transaction. BayRing and segTEL point out that terminations are a necessary part of collocation,

and assert that the tariff placed no limit on the number of terminations. Verizon cannot now look back, assert BayRing and segTEL, to correct a miscalculation it made when creating its rates and impose new nonrecurring charges on these past installations.

2. BayRing and segTEL further argue that the proposed changes constitute single-issue ratemaking because isolated rates are being changed without examination of the effect of such changes on other, related, rates or costs.

3. Finally, BayRing and segTEL argue that Verizon's revisions constitute a recovery of sunk costs in a manner inconsistent with TELRIC pricing, in that the non-recurring charges recover the cost of equipment installation in a single up-front recovery rather than through TELRIC-consistent monthly recurring charges.

BayRing and segTEL encourage the Commission to reject the changes but, if the Commission finds the tariff revisions to be reasonable, such revisions should be approved on a prospective basis only.

### **C. Great Works Internet**

1. GWI argues that it is the total cost of collocation that matters to a CLEC and that the new fee structure proposed by Verizon creates a prohibitive cost structure for GWI in the New Hampshire market. The revisions, in effect, are forcing GWI, in its view, either to pay more for the collocation in which it has already invested or to abandon the value of what was paid for in the past.

2. GWI observes that the Commission should be concerned if a utility proposes a rate increase in a single tariff without any demonstration that it is legally entitled to increase its revenues.

3. Finally, GWI argues that Verizon may not claim that its historical costs are forward-looking simply because the existing cost recovery mechanism is not working as envisioned.

**D. CTC Communications and Lightship Telecom, LLC**

CTC/Lightship supported the position of BayRing, segTEL and GWI.

**E. Staff**

Staff noted that, although it is not unsympathetic to the issue of cost recovery Verizon has raised, it believes that there are enough questions about the reasonableness of the proposal that the Commission should reject the stipulation and proposed tariff at this time.

**III. COMMISSION ANALYSIS**

Verizon has proposed a new rate design for SAC/IAC collocation terminations that imposes different and, in many cases, higher charges on CLECs collocated in Verizon central offices. We have reviewed the testimony and comments filed by parties and made at the October 31, 2005 hearing in accordance with the reasonableness standard mandated under RSA 378:5 for a proposed schedule that states new and higher rates, fares, charges or prices.

Verizon has stated that its intent in proposing the rate revisions at issue is to recover the costs of installing certain equipment associated with CLEC collocation. Verizon argues that the rate design currently in place and approved by the Commission in 1997 has not permitted recovery of those costs. The current rate design includes a utilization factor intended to permit recovery under TELRIC pricing over the long-run. According to Verizon, however, experience has shown in the past eight years that the utilization factor grossly overestimates actual utilization by CLECs of the SAC/IAC collocation terminations. Verizon argues that, as a result, it cannot recover costs.

Certain CLECs have signed a Stipulation with Verizon in support of the new rate structure. Certain others, however, oppose the proposed changes, citing their reasonable reliance on the rate structure in effect at the time of their decision to invest in collocation, and the new and unanticipated financial burden imposed to the detriment of their business development plans, as well as the significant impact on their immediate cash flow.

Both Verizon and the CLECs opposed to Verizon's plan have in some respects stated defensible yet ultimately conflicting positions in this proceeding. On the one hand, the facts support a preliminary finding that the current rate design for SAC collocation charges does not allow for cost recovery by Verizon. On the other hand, the CLEC's opposing the rate re-design have provided facts that support a preliminary finding that they acted in conformity with the existing tariff and that in placing orders for certain numbers of terminations they reasonably relied on the absence of an upfront nonrecurring charge when submitting those orders.

While we conclude as a general matter that it would be reasonable to re-design the SAC collocation charge in order to place Verizon in a position that gives it a fair opportunity to recover its costs, the current record does not support a finding that the specific approach proffered in this docket is just and reasonable. It is our opinion that there is likely a rate re-design alternative that successfully accommodates the goals of both Verizon and the CLECs opposed to Verizon's plan. Although Verizon has been working with Parties and Staff to develop a proposed rate re-design since October 2004, the Commission only recently received Verizon's proposal and the 60-day statutory timeframe allowed under RSA 378:6, IV does not permit us sufficient opportunity to explore a suitable remedy. Because Verizon has not presented a tariff that can be considered just and reasonable for all classes of customers, we must

reject the filing as it pertains to physical, SCOPE and CCOE collocation. We instruct our staff to meet with Verizon and any interested parties to explore a suitable alternative.

We note that Verizon's statement that there are no virtual collocation arrangements in New Hampshire stands unchallenged on the record. Because no current CLEC collocators will be affected, and the Parties and Staff generally agree that Verizon's proposal is reasonable on a going-forward basis, we find that the proposed revisions with respect to virtual collocation are TELRIC compliant. Therefore, to the extent Verizon wishes to implement the proposed rate design with respect to virtual collocation, Verizon may file a compliance tariff no later than 30 days from the date of this order.

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

**ORDERED**, that Verizon's proposed revisions to Tariff No. 84 are **ACCEPTED** in part and **REJECTED** in part, as discussed herein; and it is

**FURTHER ORDERED**, that Verizon, if it decides to accept the Commission's findings with respect to virtual collocation, shall file a revised tariff in compliance with this Order by December 7, 2005.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 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