

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance  
Company, Verizon Select Services Inc. and FairPoint Communications, Inc.

Docket No. DT 07-011

**VERIZON NEW ENGLAND INC. ET AL.'S MOTION TO COMPEL OFFICE OF  
CONSUMER ADVOCATE'S RESPONSES TO VERIZON'S FIRST SET OF  
DATA RESPONSES**

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services Inc. ("Verizon") respectfully requests that the Commission compel the Office of Consumer Advocate ("OCA") to respond to Verizon's First Set of Data Requests. In support hereof, Verizon states as follows:

1. On August 10, 2007, in accordance with the procedural schedule in this case, Verizon propounded its first set of data requests on OCA (the "Data Requests"). Copies of Verizon's data requests are attached as Exhibit A. OCA objected to the Data Requests on August 20 but indicated that it would respond to the requests<sup>1</sup> without waiving its objections. On August 24, 2007, Verizon filed a Notice of Reservation of Rights in which it reserved its rights to move to compel responses, depending on the extent of OCA's responses.

2. On August 28, 2007, OCA responded to Verizon's data requests, though failed to respond fully to requests 8-11. Copies of OCA's responses to these particular requests are attached as Exhibit B. Consistent with established practice in this docket, Verizon's counsel conferred with OCA regarding its replies in an effort to obtain complete responses without resort

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<sup>1</sup> OCA objected to Verizon requests 1, 2, 4, 5, 8-11, 16 and 19 but indicated it would respond without waiving the objection. OCA objected to request 6 without agreeing to respond.

to seeking relief from the Commission. OCA subsequently revised a portion of its response to requests 8-11 on September 7, 2007, but indicated that it would not respond to the remaining portions of each request and would rely on its objection. Verizon now moves to compel complete responses to requests 8, 9, 10 and 11.

3. As the Commission is aware, the standard for discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. Re Investigation into Whether Certain Calls are Local, 86 NH PUC 167 (2001). The Commission reaffirmed that standard in this case in its Order No. 24,488 (July 8, 2005) ("...the information being sought is or is likely to lead to relevant evidence that would be admissible in the proceeding."). The Commission will typically deny discovery requests only when it "can perceive of no circumstance in which the requested data will be relevant." Lower Bartlett Water Precinct, 85 NH PUC 371 (2000); Accord, Petition for Authority to Modify Schiller Station, 2004 NH PUC LEXIS 38, \*7 (2004). Clearly, a party in a legal proceeding in New Hampshire is entitled to "be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponents and whether the evidence is in the possession of his opponent or someone else." Scontsas v. Citizens Insurance Co., 109 N.H. 386, 388 (1969).

4. Verizon Request 8,, which was directed at Susan Baldwin's testimony, inquired:

Please refer to pages 74-76 of Susan Baldwin's Direct Testimony. Is it Ms. Baldwin's position that the changes in the Telecommunications Act of 1996 and the Commission's pro-competitive policies implementing the Act are not relevant to a Commission review of Verizon NH's overall service quality today? If so, please provide the basis for that position. If relevant, please identify any Commission Order incorporating these policies into the existing service quality measures and standards and provide a copy of each Order.

OCA responded to this request as follows:

Objection. The request is argumentative. Also, the appropriate docket for consideration of this issue is DT 04-019. The merits of Verizon NH's service quality problems and the quality of service standards applicable to Verizon NH are not subject to dispute in this docket. The request seeks information and/or a review of documents that is equally available to the requester and can be undertaken by the discovering party as readily as by Ms. Baldwin or the OCA, and therefore is unduly burdensome.

Subject to and without waiving the objection, Ms. Baldwin states as follows:  
Commission orders are publicly available.

I did not rely upon or refer to a Commission Order as the basis for my statements.

5. Verizon Request 9, 10 and 11 contained similar questions, each inquiring into the basis of Ms. Baldwin's opinion regarding whether certain changes to the regulatory landscape constitute relevant factors for purposes of assessing Verizon's service quality. *See Exhibit A.* OCA asserted identical objections to each such request. *See Exhibit B.*

6. OCA has objected to answering Requests 8, 9, 10 and 11 to the extent they seek Ms. Baldwin's position on the basis that the request is argumentative. *See Exhibit B.* Apparently, OCA believes that its position is supported by *Re Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 (June 7, 2007) in which the Commission refused to compel responses to data requests that sought to "elicit further legal characterizations or argument from an opposing party or an effort to engage an opposing party in what is essentially a written dialogue about what the Commission has or has not previously decided or what a particular witness has or has not said."

7. The data requests in question here do not fall within the ambit of those disallowed by *Re Freedom Ring Communications*. Here, the requests are in the nature of contention interrogatories, which:

...inquire into an opinion or contention that relates to fact or the application of law to fact. Contention interrogatories may, among other things, ask a party to (1) state what it contends or whether it is making a certain contention, (2) explain the facts underlying its contention, (3) **assert a position or explain that position with regard to how the law applies to the facts**, or (4) articulate the legal or theoretical reason for a contention.

7-33 Moore's Federal Practice - Civil § 33.02 (emphasis added).

8. Verizon Requests 8 through 11 each seek to understand the basis for Ms. Baldwin's position regarding Verizon's service quality, and the factors that are relevant for the Commission to consider when evaluating that service quality. This is a classic contention interrogatory – one that requests that a party explain its position with regard to how the law (the 1996 Telecommunications Act and the Commission's policies) applies to the facts (the assessment of Verizon's service quality). There is nothing about the requests that are argumentative; rather, they seek clarification of what the OCA's contentions are in this case.

9. The Commission should compel OCA to respond to Requests 8 through 11 because OCA has not, and cannot, provide any legally justifiable basis for not responding. "The general view is that contention interrogatories are a perfectly permissible form of discovery, to which a response is required...a contention interrogatory is not objectionable merely because it calls for opinion or contention. Rather a contention interrogatory should be treated in the same manner as any other interrogatory, with the burden on the party opposing discovery to show why it cannot answer." *Id.*

10. Verizon has been prejudiced by OCA's failure to respond to these discovery requests because it has not had the benefit of these responses in time to prepare its rebuttal testimony. In accordance with the procedural schedule, Verizon's rebuttal testimony was due on September 10. Because Verizon has not received complete responses to its requests, Verizon reserves the right to supplement its rebuttal testimony to include OCA's responses should the Commission grant this motion.

11. For these reasons, the Commission should compel OCA to respond to Verizon Requests 8, 9, 10, and 11.

WHEREFORE, Verizon respectfully requests that the Commission:

- A. Grant Verizon's Motion to Compel and order the Office of Consumer Advocate to Respond to Verizon Data Requests 8, 9, 10, and 11; and
- B. Grant Verizon the right to supplement its Rebuttal Testimony based on OCA's responses to Request 8 through 11; and
- C. Grant such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

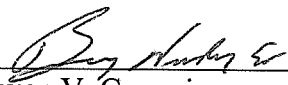
VERIZON NEW ENGLAND INC.  
BELL ATLANTIC COMMUNICATIONS, INC.  
NYNEX LONG DISTANCE COMPANY  
VERIZON SELECT SERVICES INC.

By their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

Date: September 10<sup>th</sup>, 2007


By: \_\_\_\_\_

  
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Certificate of Service

I hereby certify that on September 10<sup>th</sup>, 2007, a copy of this Motion to Compel Office of Consumer Advocate's Response to Verizon's First Set of Data Requests has been forwarded to the parties listed on the Commission's service list in this docket.

  
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Sarah B. Knowlton