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June 26, 2007

Via Hand Delivery

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
Walker Building
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429



Re: **DT 07-011 - Verizon New England Inc., Bell Atlantic Communications, Inc.,
NYNEX Long Distance Company, Verizon Select Services Inc. and FairPoint
Communications, Inc.**

Dear Ms. Howland:

Enclosed for filing with the Commission are an original and six copies of Verizon New England Inc., et al.'s Motion for Rehearing and/or Reconsideration and Stay of Commission Order 24,767 and Affidavit of Henry C. Jacobi. I will provide the original of the Jacobi affidavit to the Commission tomorrow. An electronic copy of the filing will be provided to the PUC librarian.

Thank you for your assistance with this matter.

Very truly yours,

Sarah B. Knowlton

Enclosures

cc: Service List (by electronic mail)
Librarian (by electronic mail)
Meredith Hatfield, Esq., Consumer Advocate (by electronic mail and hand delivery)

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 FOR REHEARING
AND/OR RECONSIDERATION AND STAY OF COMMISSION ORDER 24,767**

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services Inc. ("Verizon") hereby move the Commission, pursuant to RSA 541:3, to reconsider or conduct a rehearing of Order No. 24,767 issued June 22, 2007 and, pursuant to RSA 541:5, to immediately stay such order. In support of this Motion, Verizon states as follows:

1. On June 22, 2007, the Commission issued Order No. 24,767 (the "Order") requiring Verizon New England Inc. to produce business plans of its corporate parent, Verizon Communications Inc., by close of business on June 27, 2007. The Commission should vacate or otherwise reconsider the Order because it contains multiple factual and legal errors and thus is unlawful and unreasonable. In addition, the Commission should immediately stay the Order because production of the business plans, if they can be compelled at all, would result in substantial harm to Verizon Communications Inc.

2. The Commission's Order requiring the production of Verizon Communications Inc.'s business plans contains several fundamental flaws: (1) the Commission ignored the OCA's agreement to narrow its original data request, and as a

result the Order seeks to compel production of documents not subject to a pending data request, (2) the Commission's analysis is incorrectly premised on the understanding that Verizon failed to make the appropriate relevance objection to the OCA's request and (3) the Commission either failed to apply or misapplied the proper standard for resolving the OCA's data request.

I. APPLICABLE STANDARD

3. Motions for rehearing and/or reconsideration of a Commission order are governed by RSA 541. RSA 541:3 provides that the Commission may grant a motion for rehearing if "good reason for the rehearing is stated in the motion." *See Connecticut Valley Electric Company Public Service Co. of New Hampshire*, DE 03-030, Order No. 24,189 dated July 3, 2003 at 2. As stated in *Dumais v. State*, 118 N.H. 309, 312, 386 A.2d 1269 (1978), the purpose of a rehearing is to provide consideration of matters that were either overlooked or "mistakenly conceived" in the original decision. *See also, Investigation as to Whether Certain Calls are Local*, DT 00-223/00-054, Order No. 24,218 dated October 17, 2003 at 8 ("Motions for rehearing direct attention to matters 'overlooked or mistakenly conceived' in the original decision and require an examination of the record already before the fact finder.").

4. In reviewing any motion for rehearing, the Commission thus analyzes each and every ground that is claimed to be unlawful or unreasonable to determine if there is a basis to grant the request, *i.e.*, if there is "good reason" shown. *In re Wilton Telephone Company and Hollis Telephone Company*, DT 00-294/DT 00-295, Order No. 23,790 dated September 28, 2001; *see also, Petition for Approval of Statement of*

Generally Available Terms Pursuant to the Telecommunications Act of 1996, DT 97-171, Order No. 23,847 dated November 21, 2001 at 1112.¹

II. THE COMMISSION FAILED TO RULE ON THE DATA REQUEST THAT WAS PENDING

5. OCA's initial data request to Verizon sought "a complete copy of Verizon's business plan for the years 2004, 2005, 2006, 2007 and 2008." Verizon objected to this request on the grounds that:

The request for copies of Verizon's business plans is overbroad and calls for information that would be unduly burdensome to produce because it seeks information on companies other than Verizon New Hampshire. The request also seeks information that is not reasonably calculated to lead to the discovery of admissible evidence regarding whether the transaction with FairPoint in New Hampshire meets the no net harm standard or will be for the public good.

OCA then moved to compel a response to this request, but after discussions between the parties withdrew its original request and agreed to narrow it substantially. The relevant language of the agreement, which was attached as Exhibit A to Verizon's objection to OCA's Second Motion to Compel, expressly included reference to Verizon's previously asserted objection, and in pertinent part stated as follows: "To the extent available and subject to and without waiving its objections, VZ will provide answers to: 1-5 (since 2004 and NH only)."

6. The parties' agreement did not reserve a right for OCA to revert to its initial, broader request for "a complete copy of Verizon's business plan for the years 2004, 2005, 2006, 2007 and 2008," nor did it in any way withdraw Verizon's initial objection. Yet in its Second Motion to Compel, OCA unilaterally attempted to revert to

¹ By way of illustration, the Commission has found good reason for rehearing when rulings were made without sufficient opportunity for an affected party to comment. *Verizon New Hampshire Tariff Filing Introducing Charges for Busy Line Verification*, DT 01-008, Order No. 23,676 dated April 12, 2001.

its initial request because it was unsatisfied when Verizon New England informed it that no business plans of the type sought by OCA's modified request existed.

7. The Commission erred when it allowed the OCA to ignore its prior agreement to narrow the data request and ruled on a data request that is no longer pending. The only data request validly at issue between Verizon and OCA at this point is the OCA's request for business plans "since 2004 and NH only." The Order contains no analysis or discussion of whether the business plans it compels production of fall within the scope of the revised data request for business plans "since 2004 and NH only," apparently because the Commission erroneously believed it was ruling on the OCA's original data request for "a complete copy of Verizon's business plan for the years 2004, 2005, 2006, 2007 and 2008."

8. Instead of first ruling on whether the documents in question were within the scope of the revised request, the Commission skipped over this step and undertook an analysis of whether business plans in general are relevant to this proceeding. The Commission exceeded its authority when it unilaterally rewrote the agreed upon discovery request, instead of acting in the role of arbiter of the discovery dispute pending before it.²

² In its agreement to narrow OCA 1-5, OCA stated that it "reserves the right to seek to compel a further response. The OCA also reserves its rights to ask follow-up questions, and VZ reserves its right to object." See Exhibit A to Verizon Objection to OCA Second Motion to Compel. OCA reserved the right to move to compel if Verizon did not do what it said it would do in responding to the revised OCA 1-5. Verizon did respond to the revised request appropriately and that should have concluded the matter. Ironically, Verizon's response to the revised OCA 1-5 reflects that it did more than was required. The revised request sought information on "NH only," yet Verizon responded by stating that business plans that "*pertain to New Hampshire operations*" (emphasis added) do not exist, thereby providing OCA with even further information.

III. THE BUSINESS PLANS ARE NOT RELEVANT OR REASONABLY CALCULATED TO LIKELY TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE, AN OBJECTION THAT VERIZON PRESERVED

9. The Commission then committed a further error when it determined that “Verizon ... nowhere states that the information fails to meet the threshold for discoverability.” Order at 9. Verizon’s objection to OCA 1-5 expressly asserted that the documents sought by the OCA were “not reasonably calculated to lead to the discovery of admissible evidence regarding whether the transaction with FairPoint in New Hampshire meets the no net harm standard or will be for the public good.”

10. As noted above, Verizon further preserved this objection when it agreed to respond to the data request as narrowed by the OCA. Verizon’s objection to OCA’s motion to compel also asserted the lack of relevance of OCA’s request: “Further, as Verizon has informed OCA repeatedly, such business plans do not contain any information specific to the assets at issue in this investigation, i.e., the relevant New Hampshire operations of the Verizon parties in this docket,” Verizon Objection at 2, and “The Commission should deny OCA’s Motion because it seeks to compel confidential information of the highest order that is wholly irrelevant to this proceeding.” *Id.* Thus, the Commission’s conclusion that Verizon failed to assert an objection to the request, both on the grounds that it was not reasonably calculated to lead to the discovery of admissible evidence and sought irrelevant information, is incorrect. Even the OCA did not claim that Verizon had failed to assert a valid objection to its request.

11. In fact, this discovery dispute does not revolve around the issue of whether the appropriate objection was asserted. In this case, the OCA is seeking to compel

discovery of documents that Verizon New England has already indicated do not exist and that it does not have in its possession. Apparently, the OCA does not find this credible, and so it is seeking other information which goes beyond what it agreed to accept. To do so, it is now seeking the Commission's imprimatur on an attempt to revert to its original data request, one which it previously agreed to forgo and to which Verizon properly objected. OCA bargained away that right when it entered into the written agreement with Verizon to resolve outstanding Group One data requests. OCA was not forced to enter into that agreement and could have rested on its initial request, but chose not to do so. By allowing the OCA to revert to its initial data request, the Commission would significantly erode the incentive for parties to enter into negotiations to resolve discovery disputes. Under the Commission's Order, such agreements would be meaningless because they would be unenforceable. The Commission could not have intended this result.

12. Even assuming for argument's sake that OCA's initial data request was at issue here, which it is not, the information it seeks is not properly subject to discovery. The Commission's Order holds that the business plans of Verizon New England's corporate parent are relevant because they "would reflect at the parent company level various strategic determinations as to which lines of business to develop and which, if any, to shed." Order at 8-9. To the extent the business plans discuss divestiture of any lines of business or assets, such information goes to the motivation of Verizon Communications to cause Verizon New England Inc. to transfer the assets that are the subject of this case. There has been no showing, and never can be a showing, that the parties' alleged or actual motivations are relevant to an objective determination of whether the proposed transaction meets the "public good" standard.

13. As the Commission acknowledges in the portion of the Order on OCA's discovery dispute with FairPoint, it "will not compel the discovery of information simply to shed light on the thinking of parties that enter into contracts subject to our review." Order at 4. The Commission reached this conclusion based on well established principles. *See Public Service Co. of New Hampshire*, 89 NH PUC 226 (2004)(Commission refused to compel the production of documents relating to precontractual negotiations); *see also, City of Nashua*, Order No. 24,654 (August 7, 2006), *reh'g denied*, Order No. 24,671 (Sept. 22, 2006). Thus, the Order is internally inconsistent to the extent it protects from discovery FairPoint documents that reflect its pre-merger negotiations and motivations yet compels the discovery of information from Verizon that may relate to its decision to transfer the assets in question.

14. There is no dispute in this case that Verizon New England has decided to seek to withdraw from providing regulated telephone service in New Hampshire. What is properly at issue is whether it is consistent with the public interest for FairPoint to provide that service instead of Verizon New England.

15. The Commission then compounds this error when it concludes that "[e]ven assuming that business plans responsive to the request would be inadmissible at hearing on this ground, it is enough that the information is reasonably calculated to lead to the discovery of *other* information that *would* be admissible" (emphasis added and in the original). *Id.* at 9. Yet there is nothing in the Order explaining why the Verizon Communications business plans would lead to the discovery of information that is admissible. Not surprisingly, the OCA also failed to articulate how business plans that do not discuss New Hampshire operations or New Hampshire assets have any relevance to

whether the transfer of Verizon New England's assets to FairPoint is in the public interest. At best, it is the OCA's *hope* that the business plans may include some information that will direct it to some other material that may be of interest to it, but it cannot explain how or why, *precisely* the kind of fishing expedition that the rules of discovery are intended to prohibit. "While the standard of relevancy [in discovery] is a liberal one, it is not so liberal as to allow a party to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so." *In re Fontaine*, 402 F. Supp. 1219, 1221 (E.D.N.Y. 1975). The OCA's data request as originally formulated and as acted upon by the Commission was most definitely not *reasonably* calculated to lead to admissible evidence.

16. In short, the Commission's decision would allow the OCA to stretch the limits of discovery well beyond what is legally permissible by failing to require it to offer a rational explanation of how the requested information is relevant or is reasonably calculated to lead to the discovery of admissible evidence. Granting OCA's motion to compel on the grounds that the request *may* lead to the discovery of "*other* information that *would* be admissible," Order at 9 (emphasis added and in the original), would, in essence, mean that there are effectively no limits on what information can be compelled.³

³ That is particularly troubling in a case like this, where Verizon has already responded to approximately 865 data requests (many of which included numerous additional subparts), 348 of them from the OCA alone.

IV. VERIZON NEW ENGLAND INC. DOES NOT POSSESS THE DOCUMENTS IN QUESTION

17. The Commission's Order is also unlawful because it holds that OCA is "entitled to all Verizon documents ... regardless of whether such documents are in the possession of Verizon New Hampshire or an affiliate." Order at 9. Verizon New England does not have custody or control over documents that belong to its corporate parent, Verizon Communications, and itself does not have the legal right to compel Verizon Communications to produce such documents in this proceeding. Rather, it is within the complete discretion of Verizon Communications, a non party, whether to make available to Verizon New England documents sought by other parties in this proceeding. To hold Verizon New England responsible for such production on the assumption that it has the legal ability to compel Verizon Communications to do so would be unlawful.

18. Further, the Commission's conclusion that Verizon has "waived any argument based on inability to produce," Order at 7, note 3, is erroneous, because Verizon New England has no legal ability to produce the documents. Simply put, Verizon New England (and, for that matter, the other Verizon affiliates that are parties to this proceeding) cannot "waive" a right it does not have and cannot produce the documents at issue because it does not have them. It is not a matter of whether it will or won't do so. There is simply nothing for it to produce, and what the Commission erroneously seeks to compel production of are documents that are in the control of an entity that is not a party to this case.

V. THE COMMISSION SHOULD HAVE NOTIFIED THE PARTIES THAT IT WAS REINTERPRETING THE PROCEDURAL SCHEDULE

19. Verizon has been further harmed by the Commission's decision to change or reinterpret its prior order approving the procedural schedule in this case without notice to any of the parties. Apparently, the Commission has determined that parties to discovery disputes that extend beyond an initial motion to compel are not entitled to the opportunity to present the dispute first to a hearings examiner prior to decision by the Commission. Yet the parties in this docket expressly agreed that there would be an opportunity to present arguments first to the hearings examiner on pending motions to compel. Verizon reasonably expected that it would have that opportunity with regard to the OCA's Second Motion to Compel, which it was denied.

20. The Commission should have given the parties prior notice of its new interpretation of the procedural schedule so the parties could respond appropriately. By failing to do so, the Commission violated RSA 365:28, which in turn led the Commission to err on both a factual and legal basis because it did not have the benefit of further clarification and development of the issues from the parties. Verizon understands that the Commission was motivated largely by the desire to save time when it decided to skip this step, which is unfortunate given the significant efforts to date made by Verizon and other parties to act promptly to resolve discovery disputes and meet the needs of all parties in light of the schedule in this case. At a minimum, the Commission should grant oral argument on this Motion so that the parties have the full opportunity to be heard, as was contemplated by the parties' agreement.

VI. VERIZON COMMUNICATIONS INC. WILL SUFFER SUBSTANTIAL HARM IF THE BUSINESS PLANS ARE DISCLOSED

21. In addition, Verizon requests that the Commission grant an immediate stay of the Order so that the Commission can consider the Affidavit of Henry C. Jacobi, filed herewith, prior to ruling on this request for rehearing. Verizon is confident that upon further review, it will be clear to the Commission that the documents in question fall outside the scope of the OCA's revised data request and contain no information relevant to the New Hampshire assets or reasonably calculated to lead to the discovery of admissible evidence regarding those assets.

22. According to the Jacobi affidavit, the March 2007 Verizon Communications business plan contains highly confidential information disclosed only to the board of directors of Verizon Communications and approximately 15 members of the most senior management of that company, some of whom have not even seen the entire document. Allowing the documents, which contain extensive non-public information about numerous businesses that are unrelated to the regulated telephone business or any of the entities in this case (such as information on Verizon Communications' wireless services), to be produced to parties to this proceeding even under a protective order, is not sufficient to protect the highly proprietary interests of Verizon Communications and its many affiliates that have no connection to this proceeding. If such information is produced, it will be all but impossible for the OCA's and other parties' consultants, who themselves provide telecommunications consulting services across the United States, to eliminate such information from their overall understanding of Verizon's operations and

highly confidential business planning and their advocacy on behalf of other clients in other jurisdictions.⁴

23. If the Commission denies the request for the stay and the information is produced, Verizon Communications will suffer substantial harm. *See Public Service Company of NH*, 87 NH PUC 876, 890(December 31, 2002)(approving withholding of confidential information from party on the basis that disclosure would likely cause harm to utility and its ratepayers); *see also, Eastern Utilities Associates/Unitil Corporation*, 75 NH PUC 382, 385 (July 17, 1990)(denying disclosure of Unitil’s internal analysis of EUA’s tender offer on basis that disclosure would provide EUA with considerable advantage in take-over negotiations, resulting in special harm to Unitil); *City of Nashua*, Order No. 24,495 (July 29, 2005)(approving protection of commercial and financial information that if released would likely cause substantial economic harm to Pennichuck Corporation); *Union Leader Corporation v. N.H. Housing Finance Authority*, 142 N.H. 540, 554 (1997)(finding that for purposes of New Hampshire Right-to-Know Law, whether information is “sufficiently ‘confidential’ to justify non-disclosure, the party resisting disclosure must prove that disclosure ‘is likely: (1) to impair the [State’s] ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.’”).

24. Further, because Verizon Communications Inc. is a publicly traded company, it is bound by federal securities laws and the rules of the New York Stock

⁴ Indeed, a perfect example of this putative “institutional memory” is OCA’s representation in its Second Motion to Compel that “[b]ased on information and belief, the OCA understands that Verizon has some type of business plans, perhaps not prepared by state but instead by line of business or some other internal organization, that direct its activities in various areas of the business.” OCA Motion at 8. While this statement is inaccurate with regard to the specific data request here, OCA’s admission is telling to the extent it relates to the production in other jurisdictions of any Verizon documents under seal.

Exchange. For example, if any material non-public information from the Verizon Communications business plan is disclosed selectively, Verizon Communications could be required simultaneously to disclose that information publicly in a press release or SEC Form 8-K. *See* SEC Regulation FD (17 C.F.R. § 243). As stated above in paragraphs 22 and 23, that forced disclosure would cause Verizon to suffer substantial harm. Similarly, the New York Stock Exchange listing requirements require a listed company to make timely release to the public of any information that might materially affect the market for the company's securities developments, including selectively disclosed material information. *See* Sections 202.03 and 202.05 of the New York Stock Exchange Listed Company Manual. The New York Stock Exchange may halt trading in a company's securities pending the release of such material information. *See* Section 202.07 of the New York Stock Exchange Listed Company Manual. The Commission should not take these legal obligations lightly when reconsidering whether to compel the production of these documents.

25. Finally, the Commission's Order compelling the production of "all documents responsive to the request at issue," Order at 10, also is at best unclear about the number of years that are subsumed within the order. Certainly there can be no relevance – under any circumstance – of business plans for historical years such as 2004, 2005 and 2006, when what is at issue in this case is whether the proposed transfer of assets is in the public good *now*. But the Commission should not seek to compel production of even the 2007 Verizon Communications business plan, for the reasons stated above.

26. For these reasons, Verizon requests that the Commission grant this motion for rehearing and/or reconsideration and stay.

WHEREFORE, Verizon respectfully requests that the Commission:

- A. Grant an immediate stay of Order 24,767;
- B. Consider the Affidavit of Henry C. Jacobi;
- C. Conduct an oral argument on this Motion;
- D. Grant this Motion; and
- E. 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: June 26, 2007

By:



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Verizon New England Inc.

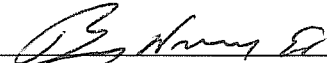
d/b/a Verizon New Hampshire

185 Franklin Street

Boston, MA 02110-1585

Certificate of Service

I hereby certify that on June 26, 2007, a copy of the foregoing Motion has been forwarded to the parties listed on the Commission's service list in this docket.



Sarah B. Knowlton

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

AFFIDAVIT OF HENRY C. JACOBI

I, Henry C. Jacobi, do hereby depose and state as follows:

1. Since 2000, I have been employed as the Vice President of Corporate Planning and Performance Assurance, Verizon Corporate Services Group Inc.
2. Verizon Corporate Services Group Inc. is an affiliate of Verizon Communications Inc. (“Verizon Communications”).
3. I am familiar with the March 2007 Board of Directors plan document for Verizon Communications Inc. (the “Plan”). I was responsible for compiling the Plan after receiving information from the various, principal business groups within Verizon Communications.
4. The Plan consists of the sections described in the next sentence and describes Verizon Communications’ March 2007 strategic plan for its major business segments. The major sections of the materials are: Strategic Transition (pages 3-8); Verizon Portfolio 2007-

2011 Strategic Plans (pages 9-68); Consolidated Financials (pages 69-72); Workplace, Culture and Corporate Responsibility (pages 73-78); Competitive Environment (pages 79-109); Competitors' Profiles (115-134); Key Statistics (pages 135-138); and a Glossary. It is 144 pages long.

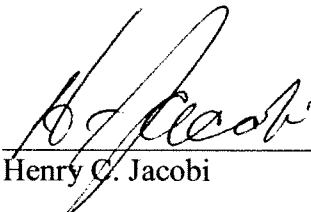
5. There is no information in the Plan that refers to or relates to the Verizon New England Inc. assets in New Hampshire with the exception of statistics in the Key Statistics section that list the number of access lines and the number of employees by state.

6. The Plan has not been provided to anyone at Verizon New England Inc.

7. Verizon Communications has provided the Plan only to its Board of Directors and to approximately 15 members of its senior management, some of whom have received only portions of the Plan.

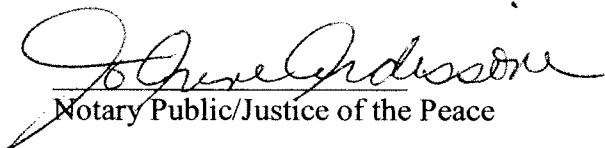
8. The Plan is highly proprietary and if disclosed, even pursuant to a protective order, would cause substantial harm to Verizon Communications.

Dated: June 26, 2007


Henry C. Jacobi

STATE OF NEW JERSEY
COUNTY OF SOMERSET

Subscribed and sworn to me this 26 day of June, 2007 by Henry C. Jacobi.


Notary Public/Justice of the Peace

JoAnne Ardissonne
Notary Public, State of New Jersey
My Commission Expires
July 13, 2011