

DT 01-249

VERIZON NEW HAMPSHIRE

**Special Contract between Verizon and
Evergreen Advantage, LLC**

Order Denying Special Contract

O R D E R N O. 23,921

February 15, 2002

I. INTRODUCTION

On December 18, 2001, Verizon New Hampshire (Verizon or the Company) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18(b), a Special Contract to provide Integrated Services Digital Network - Primary Rate Interface (ISDN-PRI) service to Evergreen Advantage, LLC (Evergreen). In support of the filing, Verizon submitted records and information, including cost support analysis, that are subject to confidential treatment pursuant to RSA 378:43.

On January 17, 2002, the Commission advised the company by secretarial letter that "[t]he filing raises questions related to the demonstration of the actual level of competition as well as the relationship between Evergreen, who is providing the service, and the end user" and, calling upon its statutory authority pursuant to 378:18-b, II(b), the Commission extended the effective date of the special contract

by 30 days to February 16, 2002.

II. STAFF POSITION

Based on the information provided in this docket, Staff was unable to determine that Verizon is under any credible and demonstrable threat of losing the customer currently served under tariff. Further, the nature of the customer purchasing the non-tariff service is unclear. There are insufficient facts to rule out the possibility that the customer will be reselling Verizon's service to third parties. As a result, Staff was unable to recommend to the Commission that Verizon is facing special circumstances necessary for approval under RSA 378:18.

III. COMMISSION ANALYSIS

We have, on numerous occasions, and particularly in relation to special contracts, voiced our concerns regarding Verizon's ability to meet the standards set forth in DT 99-018. In Docket DT 01-219, for example, it was noted that "[t]he Commission continues to have reservations about the adequacy of the Company's demonstration of the actual level of competition it is encountering with respect to individual special contracts," and further that "in future petitions, the Commission encourages the Company to file additional

information regarding the competition it faces for the customer with whom it seeks special contract approval." 84 NHPUC 646 (1999). As in previous filings, the Commission's concerns remain unaddressed, and based on the information provided in this case, we are not convinced of the likelihood of Verizon losing the customer to a competitor. We cannot therefore conclude that special circumstances exist pursuant to RSA 378:18 and that, as a result, approval of the special contract would be in the public interest.

In Order No. 23,357, we found that the incumbent bears the burden of proof of showing that it faces "actual competition for customers possessing the usage levels and patterns of the special contract customer." We find Verizon has not met its burden of proof in this case and will therefore deny approval of the contract. Further, even if Verizon were able to convince us that sufficient competition existed for this customer so as to warrant a special contract, our concern about the precise relationship between the special contract customer and the end user would preclude our determination that the contract was in the public interest. Because we are unable to determine whether Verizon's customer is reselling this service without the necessary authorization, we cannot find that this contract is "just and consistent with

the public interest" as required by RSA 378:18.

Based upon the foregoing, it is hereby

ORDERED, that the Special Contract between Verizon and Evergreen Advantage is hereby DENIED.

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

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary