

Complaint of Freedom Ring
Communications, LLC d/b/a BayRing
Communications Against Verizon New
Hampshire Regarding Access Charges

Verizon New Hampshire (“Verizon” or the “Company”) hereby moves the Commission to strike Global Crossing Telecommunications, Inc.’s (“Global Crossing”) reply to Verizon’s Response to Petitions to Intervene. In support of this motion, Verizon states as follows:

2. The Commission should strike the Global Crossing reply because it is not permitted by Commission rules, and Global Crossing did not seek leave to file it. *See City of Nashua*, Order 24,555, p. 2 (December 2, 2005, revised December 6, 2005) (“The Commission’s procedural rules do not authorize responses to objections and multiple rounds of pleadings are

not favored.”); *City of Nashua*, Order 24,488, p.6, n.4 (July 18, 2005)(“Replies to objections and the like are not authorized and will not be allowed absent specific authorization.”). The fact that Verizon’s pleading was titled a “Response” and not an objection is a distinction without a difference.

3. Moreover, nothing prevented Global Crossing from addressing the subject of its reply – the time period for which it may be entitled to reparations – in its intervention petition. Global Crossing could have anticipated this issue, because its reply goes on at length to quote the reparations statute, RSA 365:29.

4. In the event the Commission does not strike Global Crossing’s reply, and intends to consider Global Crossing’s argument that its reparations period should extend two years back from the Commission’s order of notice of this case (rather than from the date Global Crossing sought to intervene), then the Commission should also consider that the statutory language upon which Global relies does not apply to this proceeding. That language is the result of a recent amendment to RSA 365:29 which only took effect on August 31, 2008, *see* Chapter 309-2008, more than *two years* after this proceeding had commenced. Prior to this amendment, reparations petitions did not date back to the Commission’s notice of hearing, but to the date the party in question filed its reparations petition.

5. The retrospective application of a statute violates the New Hampshire Constitution. *See* N.H. Const’n, Part I, art. 23 ([r]etrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.”). The New Hampshire Supreme Court has held repeatedly that “every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to

transactions or considerations already past” is a retrospective that violates Part I, article 23. *See North American Mfg., Inc. v. Crown Int’l, Inc.*, 115 N.H. 114, 116 (1975).

6. In this case, retrospective application of the amended form of RSA 365:29 would clearly create a new obligation on Verizon because it would require Verizon to pay reparations to Global Crossing for up to an additional two years, depending on whether the reparations period began on the date on which BayRing filed its petition or the date on which the order of notice was issued.¹ Indeed, had Global Crossing filed its petition just before the amendment to RSA 365:29 became effective on August 31, 2008, its reparations period would have reached back only to August of 2006 (i.e. two years before the date of its petition). Under Global Crossing’s argument, however, its delay in seeking intervention until after the effective date of the amendment would more than double its reparations period – extending it all the way back to June 23, 2004 (i.e. two years before the date of the Commission’s first order of notice of June 23, 2006). The statutory amendment would have thereby created in Global Crossing a claim (for reparations for the period June 23, 2004 to August of 2006) which it *did not have and could not have brought* before the statute was amended. By creating new claims in Global Crossing and imposing new obligations on Verizon, this reading of the statute would render it exactly the type of highly injurious, oppressive and unjust law that the New Hampshire Constitution prohibits.

7. Moreover, there is no legislative history that would even suggest that the new provisions in RSA 365:29 should apply retrospectively. *See Norton v. Patten*, 125 N.H. 413, 417

¹ Even if the Commission were to consider applying the amended RSA 365:29 here, the date to which Global Crossing’s reparations claim dates back is not clear. The amended statute provides that an order for reparations “shall cover only payments made within 2 years before the earlier of the date of the commission’s notice of hearing or the filing of the petition for reparation.” In this case, the Commission issued two orders of notice – one on June 23, 2006 and the other on October 23, 2006, in which it expanded the scope of the proceeding and scheduled a second prehearing conference. At best, Global Crossing’s claim for reparations would flow from the October 23, 2006 order of notice, not the order of notice issued on June 23, 2006.

(1984)(“Where a law affects substantive rights and liabilities, it is presumed to apply only to future causes of action unless there is some evidence of legislative intent that the statute be applied retrospectively.”) Here, the statutory amendment as interpreted by Global Crossing affects Verizon’s substantive rights because it increases Verizon’s potential financial obligation to Global Crossing and other intervenors. The New Hampshire Supreme Court has found the retrospective application of other legislative acts changing the terms of a party’s underlying liability unconstitutional because it affected the party’s substantive rights. *See e.g., McKinley v. Cummings*, 123 N.H. 282 (1983)(statute providing for double damages could not be applied retrospectively because it affected substantive rights and liabilities and was not in effect at time of accident or filing of plaintiff’s writ); *Geldhof v. Penwood Associates*, 119 N.H. 754 (1979)(statute requiring payment of interest on security deposits cannot be applied to lease agreements executed prior to the effective date of the statute); *Mihoy v. Proulx*, 113 N.H. 698, 700-701(1973)(retrospective application of an increased statutory limit for wrongful death actions from \$60,000 to \$120,000 would “clearly enlarge the defendant’s liability retrospectively” and is unconstitutional). Applying the amended RSA 365:29 to Global Crossing’s claims here would affect Verizon’ substantive rights and enlarge its liability retrospectively, and therefore would violate the New Hampshire Constitution. For this reason alone, the Commission should reject Global Crossing’s request.

8. Further, Global Crossing should not be permitted to benefit from its own dilatory behavior. Nothing prevented Global Crossing from intervening at the beginning of this proceeding. To allow Global Crossing and other intervenors to piggyback on BayRing’s filing date is not only unjust, but also will create essentially a perpetual statute of limitations. This cannot have been the intent of the legislature in amending the statute.

9. For these reasons, the Commission should not only strike Global Crossing's reply but should make clear that the look-back period for an award of any reparations to Global Crossing begins from the date of its intervention petition and no sooner.

WHEREFORE, Verizon respectfully requests that the Commission issue an order:

- A. Striking Global Crossing's reply;
- B. Limiting the time period for reparations to two years from the date on which Global Crossing filed its petition to intervene; and
- C. Granting such other and further relief as the Commission deems necessary and just.

Respectfully submitted,


VERIZON NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: October 22, 2008

By:




for

Sarah B. Knowlton
100 Market Street, P.O. Box 459
Portsmouth, New Hampshire 03802
Telephone (603) 334-6928

Alexander W. Moore, Esquire
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 October 22, 2008, a copy of the foregoing Motion to Strike has been forwarded to the parties listed on the Commission's service list in this docket.



for

Sarah B. Knowlton