

DT 05-083

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Malcolm McLane
(Retired)

April 17, 2006

VIA HAND DELIVERY

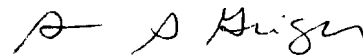
Ms. Debra A. Howland, Executive Director and Secretary
NH Public Utilities Commission
21 South Fruit St., Suite 10
Concord, NH 03301

Re: DT 05-083 and DT 06-012

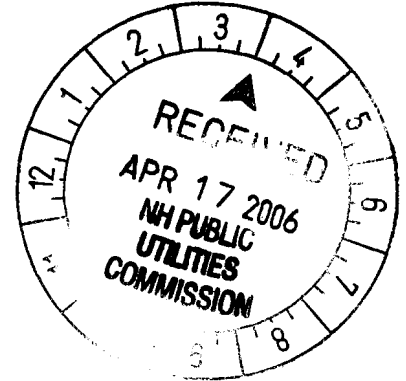
Dear Ms. Howland:

Enclosed for filing in the above-referenced dockets is an original and eight copies of a pleading captioned "Objection of BayRing Communications, Inc. and segTEL, Inc. to Verizon New Hampshire's Motion for Reconsideration, Rehearing and/or Clarification". Electronic copies have been provided to the service list. Please let me know if you have any questions.

Very truly yours,



Susan S. Geiger



Ronald L. Snow
William L. Chapman
George W. Roussos
Howard M. Moffett
James E. Morris
John A. Malmberg
Martha Van Oot
Douglas L. Patch
Connie L. Rakowsky
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Susan S. Geiger
(Of Counsel)

Enclosures
cc: Service List

STATE OF NEW HAMPSHIRE
BEFORE
THE PUBLIC UTILITIES COMMISSION

Docket Nos. DT 05-083 and DT 06-012

**VERIZON NEW HAMPSHIRE
WIRE CENTER INVESTIGATION**

**VERIZON NEW HAMPSHIRE
REVISIONS TO TARIFF 84**

**OBJECTION OF BAYRING, COMMUNICATIONS, INC. AND
segTEL, INC. TO VERIZON NEW HAMPSHIRE'S MOTION FOR
RECONSIDERATION, REHEARING AND/OR CLARIFICATION**

NOW COME BayRing, Communications, Inc. (BayRing) and segTEL, Inc. (segTEL) and object to the Motion for Reconsideration, Rehearing and/or Clarification filed by Verizon New Hampshire (Verizon) with the New Hampshire Public Utilities Commission (Commission) in the above-captioned dockets. In support of their objection, BayRing and segTEL respectfully state as follows:

1. By Motion dated April 4, 2006, Verizon seeks reconsideration, rehearing and/or clarification of the Commission's Order Classifying Wire Centers and Addressing Related Matters (Wire Center Order) issued on March 10, 2006 in the above-captioned matters.

2. More specifically, Verizon asserts four grounds upon which it claims it is entitled to rehearing, reconsideration and/or clarification of the Wire Center Order. They are:

a. The Commission acted unlawfully and unreasonably by excluding from the definition of fiber based collocater (FBC), those competitive local exchange carriers (CLECs) who lease fiber from a competitive fiber provider (CFP);

b. The Commission erred as a matter of law in concluding that when a CLEC obtains dark fiber from a non-ILEC, the fiber must be provided on an indefeasible right of use (IRU) basis in order for the CLEC to be considered an FBC;

c. The Commission should clarify that the effective date of future wire center classification changes set forth in the Wire Center Order (i.e. the date when the Commission approves a tariff revision) is not applicable to the wire center classification changes being investigated in DT 06-020; and

d. The Commission should clarify that while the parties agree that DS1 and DS3 loops and dedicated transport are required under Section 271 of the Telecommunications Act of 1996 (the TAct), Verizon disputes that dark fiber loops or transport are required under Section 271.

3. A motion for rehearing must “set forth every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” NH RSA 541:4. The Commission may grant rehearing if, in its opinion, good reason for the rehearing is stated in the motion. NH RSA 541:3. “Good reason” within the meaning of the foregoing statute “must be more than merely reasserting prior arguments and requesting a different outcome.” *In Re Verizon New Hampshire-Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues*, DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385 (October 29, 2004) at 14.

4. While Verizon's Motion has asserted that the Commission acted unlawfully and unreasonably in certain portions of the Wire Center Order, good cause does not exist for rehearing or reconsidering the Commission's decisions with respect to the issues presented in paragraph 2., above.

5. With respect to the first issue, BayRing and segTEL concur with and incorporate by reference the arguments advanced on this issue in the Opposition to Verizon New Hampshire's Motion for Reconsideration, Rehearing and/or Clarification filed by Conversent Communications of New Hampshire, LLC et al. Further, BayRing and segTEL submit that no good cause exists to modify that portion of the Wire Center Order that defines the term “operate” in such a way as to exclude from the definition of FBC those CLECs that merely lease a fiber-optic facility from a CFP. Verizon disagrees with the Commission's decision on the ground that the Commission's definition of the word “operate” is “overly broad”, Verizon's Motion at p. 6, and that the Commission's interpretation of the term “fiber-optic cable” is “strained”. *See Verizon's Motion* at p. 11. The Commission is legally authorized to interpret undefined statutory or regulatory terms in accordance with their plain and ordinary meaning. *See Carignan v. New Hampshire International Speedway, Inc.* 151 N.H. 409, 419 (2004), *see also Perez-Olivo v. Chavez*, 394 F.3d 45, 48 (1st Cir. 2005). While Verizon takes exception to the Commission's definitions, it has failed to demonstrate that the Commission's definitions are inconsistent with the plain and ordinary meaning of the terms being defined. Thus, the Commission neither acted unreasonably nor committed an error of law that would warrant rehearing or reconsideration of its plain meaning interpretations of the word “operate” and the term “cable”.

6. Verizon's second ground for rehearing and/or reconsideration is that the Commission erred as a matter of law by concluding that a CLEC must obtain fiber from a

CFP on an IRU basis in order to count as an FBC. Verizon's Motion at p. 14. A close reading of the Wire Center Order reveals that the Commission made no such ruling. Rather, the Commission found that it did not need to address the status of a CLEC that obtains fiber-optic cable from another CLEC on an IRU basis because only one such circumstance existed in this case and the affected CLEC qualified as an FBC on other grounds. *See* Wire Center Order at p. 38. Since the Commission found that it did not need to address how IRUs between CLECs are to be treated, there is no reason for the Commission to reconsider its Wire Center Order on this issue as requested by Verizon.

7. In response to Verizon's request for a determination that the effective date of the Concord, Dover and Salem wire center classifications should be retroactive to March 11, 2006, BayRing and segTEL hereby concur with and incorporate by reference the arguments advanced by Conversent Communications of New Hampshire, LLC et al. on this particular issue in their Opposition to Verizon New Hampshire's Motion for Reconsideration, Rehearing and/or Clarification. Verizon's Motion should be denied because Verizon has shown no good reason why the Concord, Dover and Salem wire center determinations should not be effective in accordance with the rule set forth in the Commission's Wire Center Order, i.e. on the date when proposed amendments to Verizon's Tariff No. 84 become effective.

8. With respect to the issue of whether the Commission should clarify the Wire Center Order to reflect Verizon's position that it is not obligated to provide dark fiber loops or transport under Section 271 of the TAct, BayRing and segTEL oppose Verizon's request and believe there is no good reason for the Commission to revisit its Wire Center Order to restate Verizon's latest explanation of its position on its obligation to provide dark fiber, especially when the position is at odds with Verizon's Section 271 commitments as well as its Tariff No. 84 which was filed in compliance therewith. Further, BayRing and segTEL object on the basis that such a "clarification" by the Commission could be taken out of context in the future and could be interpreted as an endorsement by the Commission of Verizon's position that it need not provide dark fiber as part of its Section 271 obligations.

WHEREFORE, BayRing and segTEL respectfully request that the Commission:

- A. Deny Verizon's Motion for Reconsideration, Rehearing and/or Clarification;
 - B. If it decides to rehear or reconsider any issue, provide the parties and Staff with an opportunity to present oral argument and/or to file additional comments or briefs; and
 - C. Grant such further relief as the Commission deems appropriate.
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Respectfully submitted,

BayRing Communications, Inc. and
segTEL, Inc.

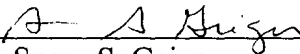
By their attorneys,

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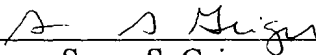
Telephone: 603-223-9154

By: 
Susan S. Geiger

April 17, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 17th day of April, 2006 been mailed postage prepaid to the service list in this matter.


Susan S. Geiger