

**BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**DT 07-011**

**VERIZON NEW ENGLAND, INC., BELL ATLANTIC COMMUNICATIONS, INC.,  
NYNEX LONG DISTANCE CO., VERIZON SELECT SERVICES, INC.,  
AND FAIRPOINT COMMUNICATIONS, INC.**

**Transfer of Assets to FairPoint Communications, Inc.**

**OFFICE OF CONSUMER ADVOCATE'S OBJECTION TO  
VERIZON NEW ENGLAND'S MOTION TO COMPEL**

The Office of Consumer Advocate (the "OCA") respectfully objects to the motion to compel filed by Verizon New England *et al.* ("Verizon") on September 10, 2007 ("Verizon's motion").

In support, the OCA states the following facts and law.

1. Verizon seeks to compel the OCA's responses to Verizon data requests 8 through 11.

See Exhibits A and B to Verizon's motion.

2. The Commission "grants a motion to compel discovery when the movant has shown that the information sought would be relevant at hearing or that the question or questions are reasonably calculated to lead to the discovery of admissible evidence."

Re Freedom Ring Communications LLC d/b/a Bay Ring Communications, Order No. 24,760 (June 7, 2007), slip. op. at 2 (citation omitted).

3. The four data requests at issue here do not meet this standard.

4. Each of the four is "either an attempt 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. These questions are argumentative and not reasonably calculated to assist Verizon in discovering facts admissible as evidence that it will need to advance its position at hearing." Id.

Moreover, these questions relate to issues more properly addressed in another open

Commission docket (DT 04-019, re Verizon service quality), and seek documents (i.e., Commission Orders) which, to the extent that they exist, can be obtained independently by Verizon.

5. Because the disputed data requests do not meet the standard, the Commission should deny Verizon's motion .
6. Verizon cites to a treatise on federal civil practice to support its request to compel the disputed data requests. In pertinent part, Verizon asserts that it is appropriate to ask the OCA's witness to "**assert a position or explain that position with regard to how the law applies to the facts.**" Verizon motion at 4 (emphasis in original).
7. The federal treatise, however, is "inapposite for [two] reasons. First, data requests are a vehicle for developing factual information. Second, the federal rules [or practice standards] do not apply in proceedings before the Commission." Re Freedom Ring Communications LLC d/b/a Bay Ring Communications, slip. op. at 2.
8. Also, Verizon seeks to "reserve the right to supplement its rebuttal testimony to include OCA's responses should the Commission grant [its] motion." Verizon's motion at 4.
9. If the Commission was to grant Verizon's motion, Verizon should not be permitted to supplement its rebuttal testimony. Before the filing deadline for rebuttal, Verizon could have sought an extension to the schedule pursuant to the Commission's rules. Puc 202.04. By failing to request such an extension "before the period originally prescribed," Puc 202.04 (a), Verizon waived any rights to additional time or opportunity for rebuttal.
10. Assuming *arguendo* that the Commission permits Verizon to supplement its rebuttal, the OCA requests an equal amount of time to propound and receive responses to data

request on any Verizon revised rebuttal. Such an extension should permit the OCA sufficient time to compel further responses to any voluntary (i.e., non-compelled) responses of Verizon pursuant to the Commission's rules. See Puc 203.09 (i).

11. To the extent that these extensions of the schedule would fall beyond the date of the hearings, the OCA requests that the Commission delay the start of the hearings as necessary to allow discovery on rebuttal to be completed.

Wherefore, the OCA respectfully requests that the Commission provide the following relief:

- A. Deny Verizon's motion to compel the OCA's responses to Verizon's data requests 8 through 11;
- B. Deny Verizon's request to supplement its rebuttal testimony;
- C. In the alternative, provide additional time for the OCA to conduct and complete discovery on any revised rebuttal;
- D. To the extent that it is necessary to permit the completion of discovery on rebuttal, delay the start of the hearings; and
- E. Grant such other relief as justice requires.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

September 13, 2007

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Meredith A. Hatfield