

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 06-067

FREEDOM RING COMMUNICATIONS, LLC D/B/A BAY RING COMMUNICATIONS

Complaint Against Verizon New Hampshire Concerning Access Charges

Order on Motion to Compel Discovery

ORDER NO. 24,760

June 7, 2007

This proceeding concerns the practice of ILEC (incumbent local exchange carrier) Verizon New Hampshire imposing switched access charges, including carrier common line (CCL) access charges, on calls that originate on the network of a CLEC (competitive local exchange carrier) and terminate on the network of a wireless carrier. Pending is a motion submitted on June 1, 2007 by respondent Verizon to compel petitioner Freedom Ring Communications, LLC d/b/a Bay Ring Communications (Bay Ring) and another party, AT&T Communications, to respond to certain discovery requests. Bay Ring and AT&T each filed an objection to Verizon's motion on June 7, 2007.

A provision concerning such motions in our discovery rule, N.H. Code Admin. Rules Puc 203.09(i)(4), requires a party seeking to compel discovery via motion to certify "that the movant has made a good-faith effort to resolve the dispute informally." BayRing and AT&T each point out that the Verizon motion contains no such certification; indeed, each contends that Verizon did not make the requisite good faith effort. This is a critical aspect of our rule governing the resolution of discovery disputes and provides the first of two independent bases for denying the Verizon motion.

The second basis for denying the motion concerns the nature of the six data requests at issue, five propounded to BayRing and one to AT&T. As Verizon points out, we grant 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. *Pennichuck Water Works, Inc.*, Order No. 24,725 (Jan. 12, 2007), slip op. at 5-6. The six data requests at issue here do not meet this standard.

Each of the six 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.

In arguing to the contrary, Verizon points out that Rule 36 of the Federal Rule of Civil Procedure, governing requests for admissions, allows a party to elicit opinions from an opposing party as to matters of both fact and law. To the extent this is so, it is inapposite for three reasons. First, data requests are a vehicle for developing factual information. Second, the federal rules do not apply in proceedings before the Commission. And, finally, Verizon has not styled its data requests as requests for admissions or taken the steps contemplated in Puc 203.09(j) to employ such a device.

Based upon the foregoing, it is hereby

ORDERED, that the motion of Verizon New Hampshire to compel discovery responses by Freedom Ring Communications, LLC d/b/a Bay Ring Communications and AT&T Communications is DENIED.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary