

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

North County Communications	)	
Complainant,	)	
	)	
vs.	)	Docket No. 02-0147
	)	
Verizon North Inc. and Verizon South Inc.	)	
Respondents.	)	

**INITIAL BRIEF OF**  
**VERIZON NORTH INC. AND VERIZON SOUTH INC.**

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**I.**  
**Introduction**

North County Communications Corporation (“NCC”) is the first competitive local exchange carrier (“CLEC”) in Illinois to file a complaint against Verizon North Inc. and Verizon South Inc. (hereinafter collectively “Verizon Illinois”). NCC wrongly claims that Verizon Illinois’ alleged anticompetitive behavior is pervasive and that Verizon Illinois is engaged in a systemic scheme to defraud ratepayers. It is unfathomable that if Verizon Illinois engaged habitually in the type of activities NCC alleges, which Verizon Illinois does not, that such activities would have escaped the attention of the Commission and of all the other CLECs, none of which have filed complaints or joined in support of NCC. Rather, it is clear that NCC’s Complaint is an attempt, for its own gain, to take advantage of what, at most, was an innocent miscommunication despite Verizon Illinois’ good intentions. The Commission must deny NCC’s Complaint.

**II.**  
**Executive Summary**

NCC filed its Complaint seeking expedited relief on February 17, 2002. Now, almost two years later, NCC has utterly failed to support its allegations or demonstrate that it is entitled

to any relief. Rather, NCC simply has twisted the language in an e-mail communication contrary to the intent of the drafter and in violation of basic rules of construction. NCC has done so for its own gain here as well as for its gain in other jurisdictions where NCC has filed lawsuits.

First, NCC has not produced any evidence that Verizon Illinois requires CLECs to wait for Verizon Illinois to build unnecessary “wholesale fiber build-outs.” (Complaint, ¶10). NCC has not identified a single instance where Verizon Illinois built an unnecessary “wholesale fiber build-out.” Nor, on the converse, has NCC identified a single instance where Verizon Illinois refused to interconnect over existing facilities that also serve end users. Indeed, NCC currently is interconnected with Verizon Illinois without any “fiber build-out” being built. (Verizon Ex. 3.0, Allison Dir., pp. 11-12; Verizon Ex. 5.0, DD 1.19). The opinion of NCC’s expert is wholly biased and not credible; and NCC’s only evidence is a single e-mail that NCC twists and interprets unreasonably in violation of rules of construction.

Verizon Illinois, on the other hand, has produced substantial evidence that CLECs are not required to wait for unnecessary “wholesale fiber build-outs.” Numerous interconnections where no “wholesale fiber build-out” occurred are in the record. Numerous interconnections over copper facilities that are likely used to serve end users are also in the record. Verizon Illinois’ personnel who actually handle the interconnections testified that “wholesale fiber build-outs” are not required. Most importantly, the record establishes that the e-mail NCC twists unreasonably actually states exactly what its drafter intended and that the intent is not problematic. The Commission must find that Verizon Illinois does not require “wholesale fiber build-outs.”

Second, NCC has not produced any evidence that Verizon Illinois commits rate-of-return fraud as NCC claims in its rebuttal testimony. NCC did not present any direct testimony on this claim, and only introduced a scant eight (8) lines of testimony on rebuttal. NCC’s testifying

witness, moreover, admitted that he is not qualified to render an opinion on the issue. (Tr., p. 312). Nor had the witness conducted any investigation to determine whether NCC's claim was grounded in fact, which it is not. (Tr., pp. 312-13; 317-19). The Commission should sanction NCC for making this frivolous and scurrilous claim.

Third, NCC has not produced any evidence that Verizon Illinois delayed NCC. The record establishes, rather, that Verizon Illinois stood ready to interconnect with NCC from the beginning. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-3). NCC ignored Verizon Illinois' efforts to interconnect and instead only took steps toward litigation. (*See infra*, pp. 25-29). Verizon Illinois could not act independently or without NCC's cooperation.

In fact, NCC did not complete the steps that NCC needed to complete on its own behalf to interconnect with Verizon Illinois until July 24, 2002, when NCC submitted its access service requests ("ASRs").<sup>1</sup> It is uncontested that Verizon Illinois completed the interconnection timely as soon as NCC submitted its ASRs. (Verizon Ex. 3.0, Allison Dir., Att. KJA-9). It is, furthermore, uncontested that Verizon Illinois interconnected with NCC just as NCC requested. (*See*, Verizon Ex. 3.0, Allison Dir., p. 11-12; Verizon Ex. 5, DD 1.19 (NCC's expert admitting that NCC did not wait for a "wholesale fiber build-out")). Verizon Illinois is not responsible for NCC's own failure to act. The Commission must find that Verizon Illinois did not delay NCC.

Fourth, NCC has not presented any evidence that Verizon Illinois acted in bad faith. Verizon Illinois responded diligently and accurately to all of NCC's requests. Verizon Illinois even performed actions that were NCC's responsibility. The Commission must find that Verizon Illinois acted in good faith.

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<sup>1</sup> An ASR is an official industry order form for interconnection trunks.

Finally, NCC has not presented any evidence that it is entitled to any relief whatsoever. Relief cannot be ordered without NCC carrying its burden of proof on its underlying claims. Moreover, as NCC has failed to carry its burden on any of its claims, the Commission must require NCC to bear the Commission's cost of conducting this litigation in full.

NCC bears the burden of proof in this case. This means not only that NCC must set forth some sound and reliable evidence in support of its claims, but that NCC's proof must constitute the preponderance of the evidence. 5 ILCS 100/10-15. NCC has utterly failed to carry its burden, and the Commission must deny its Complaint.

### **III.** **Argument**

#### **A. Verizon Illinois Does Not Require “Wholesale Fiber Build-Outs” (Comp., ¶10)**

The evidence overwhelmingly supports Verizon Illinois' position that it does not require interconnection on unnecessary “wholesale fiber build-outs” and that Verizon Illinois will interconnect on facilities that also serve end users. Witnesses who have personal knowledge of Verizon Illinois' interconnection practices testified to this fact. The record also contains evidence of numerous interconnections without “wholesale fiber build-outs” as well as many on copper facilities that are likely also used to serve end users. NCC's only evidence is a single e-mail that NCC has twisted unreasonably and that, at most, is merely a miscommunication. The Commission must deny NCC's claim that Verizon Illinois requires “wholesale fiber build-outs.”

#### **1. Verizon Illinois Interconnects On Existing “Share d” Facilities**

Verizon Illinois introduced the testimony of Ms. Kathryn Allison. Ms. Allison began her career with the former GTE in 1978 and held positions in Product Management for the eight (8) years leading up to her retirement in December, 2002. (Verizon Ex. 3.0, Allison Dir., p. 1).

During her last three (3) years of employment, Ms. Allison was the Senior Product Manager in charge of the former GTE states, including Illinois. (*Id.*)

Ms. Allison was, in particular, responsible for local interconnections of facility-based CLECs and wireless carriers. (*Id.*) She provided support to account managers as well as ordering and billing, and also participated in the negotiation of interconnection agreements. (*Id.*) In addition, Ms. Allison participated in industry forums on CLEC issues, including interconnection workshops. (*Id.*, pp. 1-2). Ms. Allison even participated in this Commission's workshops to develop and define CLEC interconnection guidelines in Illinois. (*Id.*, p. 2).

Ms. Allison testified that Verizon Illinois does not require interconnection on "wholesale fiber build-outs." She explained that Verizon Illinois will interconnect at existing network facilities regardless of whether the facilities are copper or fiber, or also used to serve Verizon Illinois' end users or other carrier customers.<sup>2</sup> (*Id.*, p. 4). Ms. Allison was unaware of any instance when Verizon Illinois had refused interconnection at an existing facility. (*Id.*, p. 11). In fact, Verizon Illinois even interconnected NCC at an existing copper facility. (*Id.*, pp. 11-12, Att. KJA-1). Ms. Allison also testified that in her position as Senior Product Manager she would have known if Verizon Illinois required interconnection on "wholesale fiber build-outs." (*Id.*)

Importantly, Ms. Allison was the Senior Product Manager in charge of the former GTE states at all times relevant to NCC's Complaint. Ms. Allison retired in December 2002, and NCC's interconnection was completed in September 2002. Ms. Allison would have known if Verizon Illinois required interconnection on "wholesale fiber build-outs" during the time period relevant to NCC's Complaint.

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<sup>2</sup> Ms. Allison's only caveats are that the facilities (1) must be of a type to which it is technically feasible to interconnect, and (2) must have sufficient capacity available for interconnection. (*Id.*, p. 4).

Ms. Allison also testified that it would be virtually impossible for Verizon Illinois to prohibit interconnection on existing facilities that are also used to serve retail customers:

I mean, I find it hard to even fathom separating retail and wholesale. I mean, when you have got a facility, a pipeline, with numerous DS1s and DS3s<sup>3</sup> running in it, how could you say this one is retail, this one is wholesale. They are not plugged in there. They are all running together. They come back to a fiber optic terminal. You know, they all terminate in a fiber optic terminal. They come into a switch. We don't separate and say this switch is retail, this switch is wholesale. There is no distinction whatsoever.

(Tr., p. 587 (internal footnote added)). It would simply be impossible for Verizon Illinois to maintain the wholesale/retail distinction NCC alleges.

Verizon Illinois witness Mr. Charles Bartholomew corroborated Ms. Allison's testimony. Mr. Bartholomew began his career with the former GTE in 1981. (Verizon Ex. 2.0, Bartholomew Dir., p. 1). In 1992, he was promoted to his current position of Specialist - Sales Support in the Technical Support division. Mr. Bartholomew is responsible for assisting CLECs in the technical aspects of their interconnections in several of the former GTE states, including Illinois. (*Id.*) Mr. Bartholomew testified that he had never heard of an alleged prohibition on interconnecting at existing facilities that are also used to serve end users. He explained that Verizon Illinois does not even consider whether facilities are also used to serve end users when provisioning CLEC interconnections. (*Id.*, p. 14).

The record also contains evidence that Verizon Illinois has, in fact, interconnected numerous times without "wholesale fiber build-outs" and at facilities that are also likely used to serve end users. As of October 2002, approximately the same time as NCC's interconnection, Verizon Illinois had thirty-two (32) interconnections, including NCC's, on existing facilities that

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<sup>3</sup> DS1s and DS3s are the transport "pipelines" that carry traffic. Twenty-four (24) DS1s equal 1 DS3. (Verizon Ex. 3.0, Allison Dir., p. 9 n.2).

are also used to serve other customers.<sup>4</sup> (Verizon Ex. 3.0, Allison Dir., Att. KJA-1; Tr., pp. 535-36). Of these interconnections, Verizon Illinois performed all but three (3) on existing copper facilities that are most likely also used to serve end users. (Verizon Ex. 3.0, Allison Dir., pp. 7-8). These interconnections are demonstrative evidence that Verizon Illinois does not require “wholesale fiber build-outs” and will interconnect on facilities that are also used to serve end users. Verizon Illinois’ evidence is substantial.

## **2. NCC Did Not Introduce Any Contrary Evidence**

NCC did not introduce any evidence whatsoever that Verizon Illinois required even a single CLEC to interconnect on a “wholesale fiber build-out” or refused even a single time to interconnect on a facility that also serves end users. The record is completely devoid of any such evidence. NCC, in fact, has admitted numerous times that it has no evidence or knowledge of Verizon Illinois ever taking such actions even a single time. (Verizon Illinois Ex. 3.0, Allison Dir., Att. KJA-4; Verizon Illinois Group Exhibit 5, TL 2.08, TL 2.09, DD 1.22).

Verizon Illinois even conducted an internal investigation to ensure that such alleged action had never occurred. Verizon Illinois was also unable to identify any instance when a CLEC was prevented from interconnecting on existing facilities and required to wait for an unnecessary “wholesale fiber build-out.” (Verizon Ex. 3.0, Allison Dir., Att. KJA-3; Tr., p. 553).

NCC’s complete inability to introduce any evidence that Verizon Illinois ever, even once, refused interconnection on an existing facility and required a CLEC to wait for a “wholesale fiber build-out” speaks volumes. Surely, NCC would have been able to introduce evidence of at least a single instance if Verizon Illinois had a “policy” of doing so as NCC alleges. NCC’s inability to introduce verifiable evidence in support of its claim mandates the claim’s denial.

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<sup>4</sup> The interconnections are listed in Verizon Illinois’ CABS billing system that dates back to 1996. (Tr., p. 536).  
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### **3. The Opinion Of NCC's Expert Is Biased And Not Credible**

The opinion of NCC's expert witness Mr. Dawson does nothing to substantiate NCC's claims. Mr. Dawson has no first-hand knowledge of the events relevant to this proceeding. (Tr., p. 430). In fact, Mr. Dawson has virtually no experience working with Verizon Illinois on interconnection issues at all. (Tr., p. 436; Verizon Ex. 5.0, VZ-NCC 4.02, 4.04). By his own admission, Mr. Dawson's experience with is "quite limited." (Tr., p. 437). Nor does Mr. Dawson have any actual knowledge whether his assertion that Verizon Illinois' network developed along wholesale and retail lines is true, (Tr., p. 431), which it is not. (*See*, Tr., p. 587 (Ms. Allison explaining that the asserted separation would not even be impossible)).

Of his limited experience, Mr. Dawson has no knowledge that Verizon Illinois has ever, even once, acted in bad faith or violated any legal requirement when provisioning a CLEC interconnection. None of the CLECs Mr. Dawson has assisted in interconnecting with Verizon Illinois have ever thought so or filed complaints. (Tr., 436-39; Verizon Ex. 5.0, VZ-NCC 4.05, 4.07). Nor was Mr. Dawson aware of any other CLEC ever filing a complaint against Verizon Illinois for its interconnection practices. (Tr., p. 439; Verizon Ex. 5.0, VZ-NCC 4.09).

Despite the fact that to the best of his knowledge Verizon Illinois had never acted in bad faith or in violation of any legal requirement when performing CLEC interconnections, Mr. Dawson advances an opinion that Verizon Illinois has a pervasive "policy" that violates legal requirements. In making this great and disparate leap from his own personal experiences and knowledge, moreover, Mr. Dawson performs absolutely no factual investigation. Mr. Dawson did not conduct any investigation, study or analysis specific to Verizon Illinois' network. (Tr., p. 432). Nor did Mr. Dawson survey CLECs in Illinois, (Tr., pp. 437-38), or conduct any other type of investigation into Verizon Illinois' actual interconnection practices to determine whether the alleged "policy" actually exists. (Tr., p. 438). Rather, Mr. Dawson relied

solely on the biased and self-serving position of NCC both here and in other jurisdictions as the basis for his opinion. (*Id.*, pp. 430, 438).

In fact, to the extent Mr. Dawson admits that some of his opinions are based non-jurisdictional, such as in NCC's complaint against Verizon Illinois' affiliate in West Virginia, (Tr., p. 430), Mr. Dawson's opinion is even less credible, if that is possible. Mr. Allison explained that the networks the former Bell Atlantic operating companies, such as Verizon Illinois' affiliate in West Virginia, developed under different circumstances and are subject to distinct operating parameters that do not affect Verizon Illinois. (Verizon Ex. 3.0, Allison Dir., pp. 13-16). Any information on the manner in which Verizon Illinois' affiliate in West Virginia either developed or operates its network simply has no probative value with respect to Verizon Illinois. Mr. Dawson's opinion is equally flawed to the extent Mr. Dawson relied on such information as the basis for his opinion regarding Verizon Illinois.

Notably, when Mr. Dawson testified to an identical "policy" opinion before the West Virginia Public Service Commission ("PSC") regarding Verizon Illinois' affiliate in West Virginia, the West Virginia PSC rejected Mr. Dawson's opinion. (Final Order, West Virginia PSC, Docket No. 02-0254-T-C). The West Virginia PSC found that Verizon Illinois' West Virginia affiliate did not have the alleged "policy." Accordingly, to the extent Mr. Dawson's opinion is based on information he has drawn from NCC's complaint against Verizon Illinois' West Virginia affiliate, Mr. Dawson's opinion is even further untrustworthy as the West Virginia PSC drew the exact opposite conclusion to what Mr. Dawson advances as his opinion here.

Ultimately, Mr. Dawson also admitted to his personal bias in favor of supporting NCC. Mr. Dawson is the founder and owner of a consulting company that provides services primarily to CLECs as opposed to ILECs. (Tr., 439-40). Mr. Dawson's consulting company has an entire

team dedicated to CLEC implementation, including negotiating and implementing interconnections, that Mr. Dawson leads. (Tr., pp. 440-41). Clearly, it is in Mr. Dawson's personal interest to support CLEC positions in regulatory proceedings, especially on interconnection issues. Unsurprisingly, Mr. Dawson admitted that he has never testified on behalf of an ILEC against a CLEC despite the fact that he has testified numerous times in a professional capacity. (Tr., p. 448). Mr. Dawson further admitted that NCC is paying him for his testimony on an hourly basis. (Tr., p. 449).

Mr. Dawson's opinion that Verizon Illinois has a pervasive "policy" simply is not credible. His opinion is not founded in fact, but rather on the biased position of NCC here and in other jurisdictions where information gleaned does not even have any probative value with respect to Verizon Illinois. The factual evidence Verizon Illinois introduced, furthermore, completely refutes Mr. Dawson's opinion. The substantial evidence establishes that Mr. Dawson's opinion lacks veracity. The Commission should follow the West Virginia PSC's lead by finding based on the evidentiary record that the alleged "policy" does not exist.

#### **4. NCC Was Not Told It Had To Wait For A "Wholesale Fiber Build-Out"**

NCC admits that Verizon Illinois did not require NCC to wait for a "wholesale fiber build-out." (Verizon Illinois Ex. 5.0, DD 1.19). NCC maintains, however, that Verizon Illinois told NCC it had to. NCC introduced a single e-mail (the e-mail is actually an integrally interconnected group of e-mails and is referred to hereafter as the "E-Mail Chain") in support of its claim. NCC asserts that the E-Mail Chain should be interpreted as providing that Verizon Illinois requires "wholesale fiber build-outs" for interconnection even though the evidence establishes indisputably that Verizon Illinois does not. NCC's sought after interpretation is contrary to the intent of the person Verizon Illinois authorized to respond to NCC's inquiry that initiated the E-Mail Chain and also violates the most basic principles of construction. The

Commission must reject NCC's efforts to twist the E-Mail Chain into meaning something that it does not.

**a. Mr. Bartholomew Was Responsible For Responding To NCC's Inquiry**

NCC's President Mr. Todd Lesser originated the E-Mail Chain on December 11, 2001, when he sent an e-mail to NCC's Account Manager Ms. Dianne McKernan and asked whether Verizon Illinois would require "a fiber build or use of a wholesale fiber mux" for interconnection. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2, p. 4). In response, on December 13, 2001, Ms. McKernan sent Mr. Lesser the E-Mail Chain.<sup>5</sup> (*Id.*, Att. DMM-2, pp. 1-4 (the E-Mail Chain in its entirety)). Mr. Bartholomew provided the answer to NCC's inquiry in the E-Mail Chain, but Ms. McKernan also added an introductory preface to Mr. Bartholomew's statements. (*Id.*, Att. DMM-2, p. 1). Ms. McKernan stated that Verizon Illinois would "not terminate interconnection trunks on a retail/enterprise facility." (*Id.* (emphasis added)).

Ms. McKernan sent the E-Mail Chain and her prefatory statement to NCC in her capacity as NCC's Account Manager. (Verizon Ex. 1.0, McKernan Dir., pp. 6-9). Account Managers are administrative personnel who are responsible for maintaining carriers' accounts, and coordinating the interconnection process between outside carriers and the subject matter personnel who are responsible for handling the technical aspects of interconnections on behalf of the various Verizon LECs. (Verizon Ex. 1.0, McKernan Dir., pp. 2-3). Examples of Account Managers' duties include gathering information, relaying information and arranging meetings between the carriers and the relevant internal subject matter personnel. (*Id.*)

The Account Manager position arose because the carriers themselves requested it. (Tr., pp. 589-91). Given the number of internal subject matter personnel involved in carrier services

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<sup>5</sup> The E-Mail Chain is also in the record at NCC Ex. 1.0, Lesser Dir., Att. C-033 thru C-036. For efficiency, all references to the E-Mail Chain herein will be to Verizon Ex. 1.0, McKernan Dir., Att. DMM-2.

across the different Verizon LECs and the fact that the subject matter personnel generally vary across the different states, the carriers wanted a single point of contact into the Verizon network. (*Id.*) The creation of the Account Manager position made the interconnection process more efficient for the carriers. (*Id.*, p. 591).

Thus, the carrier community knows that the Account Manager position is not a technical or substantive position, nor was the position ever intended to be. Account managers are not trained engineers and do not have technical backgrounds. (*Id.*, pp. 592-93). Carriers simply asked for and received an administrative interface. (*Id.*) Ms. McKernan, like all Account Managers, was only held out in an administrative capacity. (*See e.g.*, Verizon Ex. 1.0, McKernan Dir., p. 3).

Likewise, NCC knew that Ms. McKernan was simply its administrative coordinator. Ms. McKernan never held herself out to NCC as anything other than an administrative coordinator. (Verizon Ex. 1.0, McKernan Dir., p. 3). In fact, when Ms. McKernan first began working as NCC's Account Manager, Ms. McKernan told NCC's President Mr. Lesser that she did not have any technical expertise. (Tr., pp. 646-47). NCC did not present any evidence to rebut Ms. McKernan's testimony on this point. Accordingly, the evidence establishes that NCC knew Ms. McKernan's role was not to assist NCC on technical or substantive issues.

For technical and substantive issues, Verizon Illinois provides carriers direct access to Technical Support personnel. (Tr., 593). Ms. Allison explained that once carriers have Interconnection Agreements,<sup>6</sup> Technical Support personnel are "brought immediately to the arena in order to help facilitate the interconnection[s]." (*Id.*) In this case, the record establishes that Mr. Bartholomew was available immediately to work with NCC, and that Mr. Bartholomew

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<sup>6</sup> Both parties agree that entering into the Interconnection Agreement is the first step that is taken toward interconnection, (Dawson Tr., 403), and is a necessary step because the Interconnection Agreement governs the interconnection process. (Dawson Tr., 404).

functioned as NCC's primary contact on all technical and substantive issues throughout the entire course of NCC's interconnection. NCC once again knew that Mr. Bartholomew was responsible for assisting NCC in a Technical Support capacity as Mr. Bartholomew always identified himself as Technical Support. (*See e.g.*, Verizon Ex. 1.0, McKernan Dir., Att. DMM-2, DMM-3 (Mr. Bartholomew's signature block identifies him as Technical Support)).

Mr. Bartholomew's role speaks for itself.

With respect specifically to the E-Mail Chain, Mr. Bartholomew was responsible for providing NCC with Verizon Illinois' substantive response. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2; Verizon Ex. 2.0, Bartholomew Dir., pp. 2-3). Ms. McKernan merely relayed to NCC the information Mr. Bartholomew provided. (Verizon Ex. 1.0, McKernan Dir., pp. 6-9). Ms. McKernan's intent, furthermore, was only to relay Mr. Bartholomew's response to NCC accurately. (*Id.*, p. 6). Ms. McKernan, as noted, is not technically trained and did not understand the terminology utilized in the E-Mail Chain. (*Id.*, pp. 8-9). Her role and intent was only to relay Mr. Bartholomew's technical/substantive response to NCC. (*Id.*, p. 6).

NCC has admitted that it knew Ms. McKernan's role was exactly as Ms. McKernan describes. Mr. Lesser stated under cross-examination:

Q. Would it be reasonable for you to expect that [Ms. McKernan] would know the answers to all of your questions [contained in NCC's December 11, 2001, e-mail that initiated the e-mail chain] or that she would have to go out and seek assistance from other people within Verizon to answer your questions?

A. Oh, I figured she would have to seek assistance from other people. That's usually what she did.

(Tr., p. 355). Thus, NCC self-admittedly knew that Ms. McKernan was not, and could not be, responsible for Verizon Illinois' substantive response to NCC's initial inquiry that started the E-Mail Chain. The E-Mail Chain itself, furthermore, establishes that NCC knew

Mr. Bartholomew was the person who provided the substantive response Ms. McKernan simply relayed to NCC. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2).

Mr. Bartholomew, therefore, was the only employee Verizon Illinois authorized to provide and held out to NCC as responsible for providing the technical/substantive information in the E-Mail Chain. NCC knew that Mr. Bartholomew was responsible for handling the technical/substantive matters on behalf of Verizon Illinois, and also that Ms. McKernan was merely an administrative interface. Verizon Illinois' intent, accordingly, is defined by Mr. Bartholomew's intent. The Commission must find that Mr. Bartholomew's intent in responding to the inquiries in the E-Mail Chain establishes Verizon Illinois' intent.

**b. Mr. Bartholomew Intended To Tell NCC That Facilities Used To Provide Retail Services Could Not Be Used For Interconnection**

Mr. Bartholomew stated in response to NCC's originating inquiry that Verizon Illinois "does not require a fiber build in order to interconnect." (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2, p. 2). Rather, carriers "may use leased facilities, collocation, or fiber." (*Id.*) These statements are clear on their face. Verizon Illinois does not require "wholesale fiber build-outs." Mr. Lesser agreed under cross-examination that Mr. Bartholomew's initial statements directly responded to NCC's originating inquiry. (Tr., p. 349).

Given her involvement merely as an administrator rather than a subject matter expert, Ms. McKernan, unfortunately, did not understand that Mr. Bartholomew had answered NCC's inquiry. (Tr., pp 690-92). Ms. McKernan explained at the evidentiary hearing that Mr. Bartholomew's use of the term "leased facilities" confused her because she thought, incorrectly, that CLECs could only lease existing facilities for interconnection from third party carriers, such as other CLECs. (*Id.*, pp. 690-91). She did not understand that CLECs could also

lease existing facilities from ILECs. (*Id.*) As the evidentiary hearing demonstrated, Ms. McKernan's veracity cannot be reasonably questioned.

Ms. McKernan also knew that NCC had a pending disagreement with the Verizon Illinois' West Virginia affiliate. (Verizon Ex. 1.0, McKernan Dir., pp. 7-8). She thought that she was assisting NCC in obtaining a response by asking a follow-up question that used the terminology she had heard NCC and the technical personnel involved in NCC's interconnection with Verizon Illinois' West Virginia affiliate use. (*Id.*) She asked:

This customer is interested in using a existing enterprise services mux at the location. Would we be able to place the trunks on that type of facility?

(*Id.*, Att. DMM-2, p. 2 (emphasis added)). Ms. McKernan did not assign any particular meaning to the words she used because she is not a technical person and does not actually understand the technical terminology used to describe equipment. (*Id.*, p. 8). She merely repeated terminology she had heard NCC and the technical personnel responsible for West Virginia use.

Mr. Bartholomew was not involved in NCC's interconnection with Verizon Illinois' West Virginia affiliate. As noted, Mr. Bartholomew's responsibilities are limited to former GTE states. (Verizon Ex. 2.0, Bartholomew Dir., p. 1). Mr. Bartholomew interpreted the follow-up question to ask whether NCC could terminate interconnection trunks on facilities that are used to provide retail services such as DS1 Primary Rate Interfaces ("PRIs")<sup>7</sup> or business dial tone lines. (*Id.*, p. 4).

More specifically, Mr. Bartholomew interpreted the phrase "enterprise services mux" as meaning facilities used to provide retail services because Enterprise is the title of Verizon's corporate division that handles the provisioning of retail services. (Tr., p. 603). Also, the term

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<sup>7</sup> A DS1 PRI is a service that provides 23 data capable lines on one facility along with a main phone number.

“mux” is commonly used as a verb to describe the act of multiplexing. (Tr., p. 571). Thus, in combination, Mr. Bartholomew interpreted the phrase “enterprise services mux” to mean facilities that are used to provide retail services on the demultiplexed side of the switch. DS1 PRIs and business dial tone lines are examples of such facilities.

Mr. Bartholomew did not find the follow-up question as he interpreted it unusual. Rather, Mr. Bartholomew testified that other CLECs had recently asked to interconnect on facilities used to provide retail services such as DS1 PRIs and business dial tone lines. (Tr., pp. 715-16). Given this history, Mr. Bartholomew had no reason to believe that the terminology referenced in the follow-up inquiry could refer to any other type of facilities. Nor did the inquiry give Mr. Bartholomew reason to believe that a miscommunication was occurring. The inquiry made sense to Mr. Bartholomew even though the answer was that carriers could not interconnect on facilities that are used to provide retail services such as DS1 PRIs or business dial tone lines. The inquiry simply did not give Mr. Bartholomew notice of a miscommunication.

Nonetheless, Mr. Bartholomew was diligent and took the additional step of confirming his understanding of the terminology with the Senior Product Manager Ms. Allison. (Verizon Ex. 2.0, Bartholomew Dir., pp. 4-6). Ms. Allison agreed with Mr. Bartholomew. (*Id.*; Verizon Ex. 3.0, Allison Dir., p. 17).

Accordingly, Mr. Bartholomew’s intent in responding to the follow-up question was to tell NCC that carriers could not interconnect on facilities that are used to provision retail services such as DS1 PRIs or business dial tone lines. (Verizon Ex. 2.0, Bartholomew Dir., pp. 4-7; Verizon Ex. 3.0, Allison Dir., pp. 17-18). Both parties agree that it is not possible to provision interconnections over facilities that are used to provide these types of services. (Verizon Ex. 3.0,

Allison Dir., p.19; NCC Ex. 3.0, Lesser Reb., pp. 18-19; NCC Ex. 4.0, Dawson Reb., p. 7).

Verizon Illinois' intended response, therefore, was not problematic.

**c. The E-Mail Chain Accurately Conveyed Mr. Bartholomew's Intent**

By its plain terms the phrase “retail facilities” mean facilities that are used to provide retail services. Mr. Bartholomew testified, in fact, that he chose the term “retail facility” because it was the most accurate expression of the types of facilities he intended to reference. (Verizon Ex. 2.0, Bartholomew Dir., p. 7; *see also*, Tr., p. 716). The addition of the term “enterprise” for “retail/enterprise facilities” does not alter this meaning because, as noted, Verizon's corporate division that provisions retail services is entitled Enterprise. (Tr., p. 603). Accordingly, the E-Mail Chain accurately conveys to NCC exactly what Mr. Bartholomew intended to convey—that carriers cannot interconnect over facilities that are used to provide retail services such as DS1 PRIs or business dial tone lines.

**5. It Would Have Been Untruthful For Mr. Bartholomew To Tell NCC That “Wholesale Fiber Build-Outs” Are Required**

The evidence establishes overwhelmingly that Verizon Illinois does not require “wholesale fiber build-outs.” Mr. Bartholomew could not have intended to tell NCC that such a requirement exists when it does not. Mr. Bartholomew had no incentive to tell NCC an untruth.

In fact, the evidence establishes that Verizon Illinois' representatives are subject to just the opposite incentives - ones that encourage the representatives to do everything they can to establish interconnections. Ms. McKernan testified that compensation and performance evaluation is based, in part, on how many carriers obtain interconnection. (Tr., 700-01). If Verizon Illinois' representatives impeded competition by conveying untruths to CLECs, the representatives would feel the effects both personally through their performance evaluations and

monetarily through their compensation. Mr. Bartholomew simply would not have hurt himself personally by telling NCC that “wholesale fiber build-outs” are required when they are not.

**6. It Is Unreasonable To Interpret The E-Mail Chain As Providing That “Wholesale Fiber Build-Outs” Are Required**

NCC seeks to twist the meaning of the E-Mail Chain to serve its own purpose. That NCC does so is clear from the fact that NCC’s construction violates several of the most basic and primary rules of construction. A construction that violates such fundamental principles is, by definition, unreasonable.

First, it is a well-established rule of construction that one should not read into drafted language words that were not written by the drafter. *Dupont v. Preston*, 9 P.3d 1193, 1200 (Colo. Ct. App. 2000). NCC’s construction would require doing just that. At no place within the E-Mail Chain is it stated that Verizon Illinois requires “wholesale fiber build-outs” for interconnection. NCC’s interpretation would require reading these non-existent words into the E-Mail Chain in violation of this rule of construction.

Second, it is also a well-established rule of construction that two parts of the same textual scheme are not to be read inconsistently. *People v. 1946 Buick*, 127 Ill.2d 374, 376 (1989); *Morton v. Mancari*, 417 U.S. 535 (1974). Again, NCC’s interpretation would require doing just that. It is expressly stated in the E-Mail Chain that Verizon Illinois<sup>8</sup> “does not require a fiber build in order to interconnect.” (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2, p. 2). NCC’s interpretation that “wholesale fiber build-outs” are required is inconsistent with this express statement and violates this second rule of construction.

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<sup>8</sup> Mr. Bartholomew actually used the term VZwest, which is short for Verizon West and represents the former GTE operating companies, including Verizon Illinois.

Mr. Bartholomew also stated that carriers may use “leased facilities” for interconnection. (*Id.*, Att. DMM-2, p. 2). Mr. Bartholomew did not qualify the types of facilities that may be leased in any way. NCC’s interpretation that carriers have to wait for “wholesale fiber build-outs,” therefore, is also inconsistent with Mr. Bartholomew’s express statement that carriers can lease existing facilities for interconnection.

Finally, NCC’s interpretation would violate one remaining rule of construction, namely that the term “or” is disjunctive. *Follett’s Illinois Book & Supply Store, Inc. v. Isaacs*, 27 Ill.2d 600, 607 (1963). Mr. Bartholomew stated that carriers “may use leased facilities, collocation, or fiber.” (Verizon Ex. 1, McKernan Dir., Att. DMM-2, p. 2 (emphasis added)). The term “or” means that the listed items are alternatives, and fiber is only one of the alternatives. It is not a requirement. For example, CLECs could lease existing copper trunks. NCC’s interpretation that carriers have to use “wholesale fiber build-outs” rather than lease existing copper trunks is, yet again, inconsistent with Mr. Bartholomew’s express statements.

NCC’s sought-after interpretation violates primary rules of construction and is, by this fact alone, unreasonable. Moreover, the fact that NCC seeks such an unreasonable interpretation demonstrates that NCC’s efforts are directed towards some purpose other than the truth. Namely, and as explained further herein, NCC clearly saw in the phrase “retail/enterprise facility” an opportunity to unfairly interpret the E-Mail Chain’s underlying meaning to serve NCC’s own purpose. The Commission must reject NCC’s unreasonable efforts to read into the E-Mail Chain words that do not exist and that are entirely inconsistent with express statements that are in the E-Mail Chain.

## **7. At Worst, The E-Mail Chain Is A Miscommunication**

At worst, this matter is about a miscommunication over the subject E-Mail chain. Such a finding, however, is doubtful. The E-Mail Chain expressly stated that a “fiber build” is not

required and that carriers may use “leased facilities.” It simply is not reasonable to interpret the E-Mail Chain as NCC alleges it did—to state the exact opposite. Rather than NCC misinterpreting the E-Mail Chain, the circumstances suggest that NCC took an opportunity that it believed the E-Mail Chain presented to advance NCC’s own litigation objectives in other jurisdictions and, ultimately, monetary benefit. At the very least, even if NCC honestly did misinterpret the E-Mail Chain, NCC’s own conduct contributed to the miscommunication.

**a. It Is Doubtful That NCC Misinterpreted The E-Mail Chain**

NCC’s interpretation of the E-Mail Chain simply is not reasonable. When questioned about the problems with NCC’s interpretation at hearing, Mr. Lesser responded in a way that makes any claim of misinterpretation highly unlikely. Mr. Lesser stated that he simply did not read the E-Mail Chain. (Tr., p. 336). Mr. Lesser claimed, rather, that he read only the single prefatory remark Ms. McKernan provided and interpreted the remark in isolation. (*Id.*) This claim is not believable given the alleged importance of this request to NCC.

NCC was very interested in the E-Mail Chain and the information it contained. As noted *supra*, NCC initiated the E-Mail Chain with its own inquiry. NCC asserts that Verizon Illinois’ answer to its inquiry was of the utmost importance. NCC self-admittedly felt it was imperative to have Verizon Illinois’ answer before NCC took any steps toward interconnection in Illinois. (Tr., p. 335-36). Mr. Lesser’s claim that he did not read the response in its entirety and immediately when received is simply not believable.

Furthermore, NCC knew that Ms. McKernan is only an administrative coordinator. Ms. McKernan specifically told Mr. Lesser that she did not have the expertise to assist NCC on substantive/technical issues. (Tr., 355, 646-47). Mr. Lesser also admitted he knew Ms. McKernan would have to get the answer from someone else. (Tr., 355). Yet, when NCC received the E-Mail Chain, Mr. Lesser claims he ignored everything except Ms. McKernan’s

single prefatory statement. Mr. Lesser claims he did so even though Ms. McKernan specifically directed NCC to the information contained in the E-Mail Chain. (Verizon Ex 1.0, McKernan Dir., Att. DMM-2, p. 1). Again, it is simply not credible that Mr. Lesser would rely in isolation on a single remark from Ms. McKernan under such circumstances.

NCC, moreover, had a clear motivation for distorting the E-Mail Chain in the manner NCC alleges itself to have interpreted it – namely, to advance NCC’s litigation interests. NCC had actual and threatened lawsuits filed against Verizon Illinois’ affiliates in several other states at that time. NCC clearly believed its alleged interpretation would advance its litigation position in those jurisdictions. It also gave NCC an alleged reason to add Verizon Illinois to its growing list of lawsuit respondents.

NCC asserts it is here, however, for the overall good and that it wants no monetary damages.<sup>9</sup> The same self-promoting ploy was seen through in West Virginia. The Commission in that state recognized that NCC intended to use any Commission finding in NCC’s favor as the basis to seek substantial monetary damages in yet another lawsuit that NCC would file in [circuit] court.

Accordingly, the more likely scenario is that NCC read the entire E-Mail Chain but purposefully disregarded everything except the prefatory statement. NCC seized what it perceived to be a self-fulfilling opportunity. Unfortunately for NCC, in the only jurisdiction to have ruled on NCC’s claim of a “policy” – a jurisdiction where NCC presented the E-Mail Chain as its alleged “smoking gun” – the jurisdiction completely and utterly rejected NCC’s claim. (Final Order, West Virginia Public Service Commission Docket No. 02-0254-T-C).

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<sup>9</sup> NCC withdrew its request for monetary damages. (NCC Ex. 3.0, Lesser Reb., p. 3).

**b. If NCC Did Misunderstand, NCC's Own Actions Contributed To The Miscommunication**

NCC is not exempted from the requirement to act reasonably by virtue of its status either as the Complainant or a CLEC. If the Commission finds that a misunderstanding did, in fact, occur between the parties, the Commission must recognize that NCC's own unreasonable actions contributed significantly to the miscommunication. Each of the following unreasonable acts on the part of NCC led directly to any miscommunication:

**i NCC Asked A Vague And Ambiguous Question**

NCC's original inquiry, by Mr. Lesser's own admission, was unclear, vague and ambiguous. (Tr., p. 349-50). Mr. Lesser tries to excuse this unreasonable act by claiming that NCC sent its original inquiry to individuals who were involved in NCC's West Virginia dispute and would know what NCC meant. (*Id.*) However, NCC knew that none of the individuals NCC sent its original inquiry to who were involved in the West Virginia dispute would be involved because it was an Illinois inquiry. Ms. McKernan called Mr. Lesser immediately upon receiving NCC's original inquiry and told him so. (Tr., 351). NCC certainly could not have reasonably relied on Ms. McKernan to accurately decipher NCC's original vague inquiry for the new individuals who would be responsible for an answer on behalf of Verizon Illinois as NCC knew Ms. McKernan did not have the expertise. (Tr., p. 355; 646-47). Yet, upon learning that brand new individuals would answer NCC's inquiry, NCC did absolutely nothing to clarify its vague and ambiguous question. In fact, NCC did not call anyone to seek clarification. Rather, NCC chose to rely on a partial reading of an e-mail. Such conduct invites misunderstanding.

**ii NCC Did Not Consider The Information Provided**

Even if the Commission finds that NCC did not read and purposefully disregard the information in the E-Mail Chain, at the very least NCC's alleged failure to read the information

in the first instance was unreasonable. Had NCC read the information, NCC would have known that a “fiber build” was not required and that NCC could interconnect using “leased facilities.” NCC’s alleged failure to read the information, therefore, directly caused the miscommunication.

**iii NCC Did Not Follow-Up With Verizon Illinois**

NCC allegedly interpreted the E-Mail Chain in a manner NCC found problematic. Yet, NCC did not raise its alleged concern with Verizon Illinois. (Verizon Ex. 1.0, McKernan Dir., pp. 9-10; Verizon Ex. 2.0, Bartholomew Dir., pp. 8-9). NCC, instead, chose to go directly to litigation.

**(a) NCC Had Access to Technical Support**

NCC claims that it did not follow-up with Verizon Illinois because it allegedly did not have access to Technical Support. (NCC Ex. 3.0, Lesser Reb., p. 11). NCC’s claims simply are not credible.

Verizon Illinois provides CLECs direct access to Technical Support immediately. (Tr., 593). The record in this case establishes undisputedly that from the beginning NCC had direct contact with Mr. Bartholomew. Mr. Bartholomew provided the information in the E-Mail Chain. Mr. Bartholomew identified himself as Technical Support and provided his direct telephone number and e-mail address twice in the E-Mail Chain. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2, p. 1-2). Mr. Bartholomew, further, contacted NCC directly on December 18, 2001, just five (5) days after the E-Mail Chain. (*Id.*, Att. DMM-3). Mr. Bartholomew again identified himself as Technical Support and included his contact information.

Clearly, NCC could have followed-up with Mr. Bartholomew regarding any alleged concerns beginning the very moment NCC received the E-Mail Chain. Despite the clear opportunity, NCC chose to remain quiet. Had NCC called or e-mailed Mr. Bartholomew, it is

highly likely any alleged misunderstanding would have been resolved immediately. NCC's failure to do so was unreasonable and directly contributed to any miscommunication.

**(b) NCC Chose To Go Directly To Litigation**

Verizon Illinois did not know that NCC allegedly misinterpreted the E-Mail Chain until January 17, 2002. The only reason Verizon Illinois found out at that time was because NCC initiated its pre-filing requisites for litigation. NCC sent Verizon Illinois a letter demanding resolution of the alleged issue pursuant to Section 13-515(c) of the Illinois Public Utilities Act ("PUA"), 220 ILCS 5/13-515(c). (Verizon Ex. 3.0, Allison Dir., Att. KJA-7).

NCC's Section 13-515(c) letter could potentially have served as a catalyst for the parties to communicate and resolve the alleged issue. However, NCC prevented its letter from serving such a purpose. NCC did so by demanding the alleged issue be resolved in a manner that was impossible for Verizon Illinois to satisfy. In particular, NCC demanded that Verizon Illinois physically interconnect with NCC by January 21, 2001, just two (2) business days later.

NCC's demanded timeframe was extremely fast and considerably more rapid than the timeframe NCC itself admits is reasonable. (Verizon Ex. 3.0, Allison Dir., Att. KJA-9). However, Verizon Illinois was unable to interconnect with NCC by the demanded due date not only because of the turnaround but also because NCC had not completed the numerous steps NCC needed to take on its own behalf for interconnection, not the least of which was entering into an Interconnection Agreement.<sup>10</sup> Accordingly, when NCC finally notified Verizon Illinois of its alleged concerns, NCC simultaneously placed Verizon Illinois in an impossible position to satisfy NCC's demands.

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<sup>10</sup> Verizon Illinois discusses all of the steps NCC had not undertaken at that time *infra* and for purposes of brevity will not repeat them here. (See *infra*, pp. 34-39).

NCC sent a second letter on February 6, 2002, the only difference of which was NCC gave Verizon Illinois three (3) business days to physically interconnect. (Complaint, Exhibit 1). It was impossible for Verizon Illinois to satisfy NCC's second demand letter for the same reasons it was impossible for Verizon Illinois to satisfy the first.

No ILEC could physically interconnect with a CLEC under the circumstances NCC demanded. NCC knew that was the case. NCC, however, did not write the letters because NCC thought the letters were necessary to obtain interconnection in Illinois. The evidence establishes this for two reasons.

First, Mr. Bartholomew committed to interconnecting with NCC within fifteen days on December 18, 2001—one (1) whole month before NCC sent its first demand letter. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-3). Accordingly, all NCC had to do as early as December 18, 2001, was work with Mr. Bartholomew and NCC would have been interconnected in fifteen (15) days. Had NCC only been interested in interconnection, NCC would have worked directly with Mr. Bartholomew in response to his e-mail. NCC, however, did not even respond to Mr. Bartholomew's e-mail. (Verizon Ex. 1.0, McKernan Dir., p. 12; Verizon Ex. 2.0, Bartholomew Dir., pp. 10-11). NCC did not write the demand letter in an effort to get interconnected in Illinois.

Rather, the evidence establishes that NCC wrote the letters as a tool to coerce concessions from Verizon Illinois' affiliates in other jurisdictions. In particular, NCC lumped Verizon Illinois in with all other states in its demands in the out-of-state litigation. For example, in West Virginia NCC was refusing to roll onto facilities built for NCC in that state unless a commitment was made to interconnect over "shared facilities" in all venues. (NCC Ex. T). While Verizon Illinois is able to and does interconnect over "shared" facilities, *see supra*, the

circumstances in other states are not necessarily the same as Illinois. Ms. Allison explained that the physical networks of Verizon LECs in other states, especially the former Bell Atlantic operating territories, were developed differently than Verizon Illinois.’ Accordingly, the Verizon LECs in other states have different network considerations than Verizon Illinois. (Verizon Ex. 3.0, Allison Dir., pp. 13-16; *see also*, Final Order, West Virginia Public Service Commission Docket No. 02-0254-T-C). Thus, while NCC apparently hoped that by threatening Illinois litigation and introducing NCC’s spin on the E-Mail Chain into evidence in the other jurisdictions that NCC could coerce concessions in those states, Verizon had no choice but to tell NCC to proceed with the litigation in Illinois. (NCC Ex. S).

Thus, Verizon Illinois could do nothing to avoid litigation even after Verizon Illinois received notice of NCC’s alleged interpretation of the E-Mail Chain. NCC purposefully crafted its demand letters so that Verizon Illinois could not comply, and utilized this Illinois litigation and NCC’s alleged interpretation of the E-Mail Chain as a tool to coerce concessions in out-of-state litigation. NCC chose to go this route. There was nothing Verizon Illinois could do to resolve the issue otherwise.

**(c) *The Evidence Corroborates That NCC Is Only Interested In Litigation***

The record substantiates that the clear signal NCC’s actions relating to the E-Mail Chain send are accurate. NCC has been completely unable to introduce any evidence that it ever had an interest in operating a business as a competitive carrier in Illinois. To the contrary, the only evidence in the record demonstrates that NCC has not developed, initiated or even begun to contemplate a marketing strategy to gain customers in Illinois. (Verizon Ex. 3.0, Allison Dir., pp. 42-44). Mr. Allison testified that NCC does not have any documents that could realistically be defined as a business plan for Illinois or that demonstrate NCC has identified or made contact

with even a single potential customer in Illinois. (*Id.*) Furthermore, NCC has not transmitted anything other than test traffic despite having been interconnected with Verizon Illinois for over one (1) year and three (3) months at this time. (*Id.*, p. 44; Verizon Ex. 5.0, VZ-NCC 3.14, VZ-NCC 5.15, TL 2.16).

Certainly, NCC would have some documentation to prove that it was interested in providing service rather than creating litigation claims if that were the case. The fact that NCC is, once again, completely unable to speak volumes. NCC saw an opportunity to twist an e-mail sent in good faith into a litigation claim for monetary reward and took it.

## **B. Verizon Illinois Has Not Committed Rate-of-Return Fraud**

NCC wrongly claims that Verizon Illinois has committed rate-of-return fraud by adding the expense of the alleged “wholesale fiber build-outs” to its rate base. (Complaint, ¶11). NCC, however, has provided no evidence, and there is none, to support its claim. NCC’s claim is merely conjecture that fails to withstand any degree of scrutiny.

### **1. NCC Did Not Produce Any Evidentiary Support For Its Claim**

NCC introduced no evidence in its direct case on its claim of fraud. NCC only introduced a scant eight (8) lines of testimony on rebuttal. Such an evidentiary foundation, in and of itself, is wholly insufficient.

Further, NCC’s witness Mr. Lesser was not competent to render an opinion on the claim. Mr. Lesser admitted he is not an expert in rate-of-return regulation. (Tr., p. 312). Mr. Lesser further admitted that he did not conduct an investigation or any type of study, analysis or review to determine whether the facts underlying Verizon Illinois’ rate base support NCC’s allegations of fraud. Mr. Lesser did not even know when or how the Commission has ruled on Verizon Illinois’ rate base. (Tr., pp. 312-13, 317-19).

Moreover, NCC admitted that its claim is nothing more than a hypothetical theory. (Tr., pp. 312-13). NCC did not introduce evidence of even a single time that Verizon Illinois included an unnecessary “wholesale fiber build-out” in rate base. NCC’s claim is pure speculation.

All claims, especially those of fraud, must be founded in fact and substantiated by evidence. NCC has wholly failed to do so. The Commission must reject NCC’s fraud claim.

## **2. NCC’s Conjecture Does Not Withstand Scrutiny**

NCC did not introduce any evidence that Verizon Illinois has ever built even a single unnecessary “wholesale fiber build-out.” There must be evidence that such facilities have been built before the Commission can even consider a claim that Verizon Illinois has fraudulently passed the costs of the facilities on to ratepayers.

Furthermore, the Commission completed Verizon Illinois’ last rate case in 1994. *See*, ICC Docket Nos. 93-0301/94-0041, *consol.* Verizon Illinois could not include the expense of unnecessary “wholesale fiber build-outs” incurred post-1996<sup>11</sup> in Verizon Illinois rate base established in 1994 even if Verizon Illinois had build such facilities, which it has not. Moreover, Verizon Illinois’ rates have been reduced substantially since Verizon Illinois’ last rate case. As Verizon Illinois’ 1994 rate base could not have possibly included the costs of any alleged unnecessary “wholesale fiber build-outs” post-1996, the costs of such alleged facilities certainly could not be recovered through rates that have been reduced several times since 1994.

In sum, there simply is no basis whatsoever for NCC’s claim about Verizon Illinois’ rates. NCC’s claim is predicated upon mere speculation, by a witness who admittedly knows little about the ratemaking process. Accordingly, the Commission should reject NCC’s musings on this point.

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<sup>11</sup> As NCC claims Verizon Illinois built the alleged facilities to inhibit CLEC competition, Verizon Illinois presumes NCC’s theory contemplates the facilities were built post-1996.

### **3. NCC Should Receive Sanctions**

All claims filed under Section 13-515 must be “formed after a reasonable inquiry of the subject matter,” “well grounded in law and fact” and “have evidentiary support.” 220 ILCS 5/13-515(i). Claims that do not satisfy this statutory standard are deemed frivolous, and the Commission is required to impose sanctions. *Id.*, §13-515(i), (j).

NCC’s claim that Verizon Illinois has committed rate-of-return fraud does not satisfy this statutory standard. (*See supra*, pp. 30-31). The nature of NCC’s claim—one of fraud that carries substantial negative connotations and is highly slanderous—make NCC’s conduct of alleging the claim without any factual basis even more inappropriate. The Commission must sanction NCC in accordance with Subsection 13-515(j)’s requirements.

#### **C. Verizon Illinois Did Not Delay NCC**

Verizon Illinois has acted diligently in responding to NCC at all times. NCC agrees with the exception of an approximate two (2) month time period – December 7, 2001 thru February 5, 2002. (NCC Ex. 3.0, Lesser Reb., p. 3). NCC has not introduced evidence, however, that Verizon Illinois delayed NCC during the two (2) month time period. Instead, the evidence establishes that Verizon Illinois was ready to interconnect but NCC had not taken the steps that NCC needed to take on its own behalf to interconnection with Verizon Illinois. The Commission must deny NCC’s claim that Verizon Illinois delayed NCC’s interconnection.

#### **1. NCC Agrees There Was No Delay After February 5, 2002**

NCC admitted that there was no delay once the parties signed an Interconnection Agreement:<sup>12</sup>

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<sup>12</sup> At other places in the record, NCC identifies the point in time that the alleged delay ceased as when NCC filed its Complaint. As NCC filed its Complaint within ten (10) days of entering into an effective Interconnection Agreement, the alleged time period of delay is essentially the same irrespective.

Q. Once you signed your interconnection agreement in Illinois did your interconnection process go quickly?

A. Yes. I received the best service I have ever received from GTE/Verizon in eighteen years. My interconnection went so fast.

(NCC Ex. 3.0, Lesser Reb., p. 3). The parties' Interconnection Agreement became effective on February 5, 2002. *See*, ICC Docket No. 02-0181 (approving the Agreement). Accordingly, the only time period before the Commission on NCC's claim of delay is between December 7, 2001, and February 5, 2002.

**2. Verizon Illinois Did Not Delay NCC Before February 5, 2002**

**a. The Acts NCC Identifies In Its Complaint Are Not Delays**

NCC's Complaint alleges two acts taken by Verizon Illinois prior to February 5, 2002, as grounds for NCC's delay claim. It has already been found that these acts were not delays. In fact, Administrative Law Judge ("ALJ") Showtis stating his finding as follows: "I find it preposterous to claim that there was a tremendous dragging of feet on this case based on the pleadings that are [in the Complaint.]" (Apr. 10, 2002 Tr., pp. 25-26).

**b. The E-Mail Chain Was Not An Act Of Delay**

Verizon Illinois diligently provided the E-Mail Chain in response to NCC's initial inquiry. NCC sent its initial inquiry on December 11, 2001, and Verizon Illinois sent the E-Mail Chain in response just two (2) days later on December 13, 2001. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-2). No reasonable person would consider such a turn-around to be an intentional delay.

Nor can the content of the E-Mail Chain somehow modify it into an act of delay. The E-Mail Chain accurately related Mr. Bartholomew's intended message; and the parties' agree that Mr. Bartholomew's intended message was not problematic. (*See supra*, p. 19.) Any alleged

misinterpretation by NCC, if that is what the Commission finds, cannot somehow turn Verizon Illinois' diligent and truthful response into an intentional act of delay.

**c. NCC Caused All Delay Itself**

The evidence establishes that NCC was wholly unprepared to interconnect with Verizon Illinois in December, 2001. In fact, NCC was not prepared to interconnect with Verizon Illinois until July 24, 2002, when NCC submitted its access service requests<sup>13</sup> ("ASRs").

Both parties agree that there is an established protocol for interconnection. (*See* Dawson Tr., pp. 403-15). The process starts with the parties' entry into an Interconnection Agreement. (Dawson Tr., p. 403). The Interconnection Agreement is a contract that governs the process and sets forth each party's obligations. (Dawson, Tr., pp. 404-05). While parties may agree to take preliminary steps towards interconnection prior to entering into an Interconnection Agreement,<sup>14</sup> the Agreement must be entered into prior to the actual, physical interconnection taking place. (Dawson Tr., p. 407). NCC did not have an effective Interconnection Agreement with Verizon Illinois until February 5, 2002. *See*, ICC Docket No. 02-0181. Accordingly, NCC could not have interconnected with Verizon Illinois before February 5, 2002.

Notably, the date the parties' Interconnection Agreement became effective is the very date that NCC admits the alleged delay ceased. (NCC Ex. 3.0, Lesser Dir., p. 3). NCC, therefore, could not have interconnected with Verizon Illinois during the entire two month period NCC claims Verizon Illinois delayed NCC's interconnection. The Commission cannot find that Verizon Illinois delayed NCC's interconnection during a period of time when NCC could not legally interconnect with Verizon Illinois. The non-existence of an effective interconnection agreement during the alleged period of delay is dispositive.

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<sup>13</sup> The ASR is the industry's official order form for interconnection. (Tr., p. 413-14).

<sup>14</sup> For example, Mr. Bartholomew offered to move forward on the preliminary steps toward interconnection on December 18, 2001, which was before NCC had an Interconnection Agreement. (Verizon Ex. 1.0, Att. DMM-3).

Nonetheless, NCC was also unprepared in numerous other respects. As noted, the Interconnection Agreement is a binding contract that governs the interconnection process. Most of the obligations NCC had not fulfilled during the alleged delay period are obligations the parties' Interconnection Agreement places on NCC. To the extent the parties' Interconnection Agreement did not impose the obligations on NCC, both parties agree that CLECs routinely undertake the obligations as a matter of course for practical reasons.

*First*, the Interconnection Agreement required NCC to provide Verizon Illinois with a traffic forecast that is significantly more detailed than the minimal information NCC set forth in its initial e-mail dated December 7, 2001:

By the end of contract month 1, [NCC] will provide a forecast of the quantities of Local Services, Network Elements, Combinations and Ancillary Functions to be made available to [NCC] during contract year 1, on a State-wide basis.

In addition, [NCC] will furnish a per month quarterly forecast of service order volumes, quantities of Local Services, Network Elements, Combinations and Ancillary Functions on a State-wide basis. These forecasts will be furnished one month before the beginning of the quarter covered by the forecast. These projections will allow [Verizon Illinois] to provide sufficient Staff for the projected demand and to secure appropriate inventories to meet [NCC's] requirements.

(IA, §5, Att. 12 (Capacity Planning)). Verizon Illinois witness Ms. Allison explained that the forecast information is necessary for maintaining network reliability. (Verizon Ex. 3.0, Allison Dir., pp. 26-27). NCC's expert Mr. Dawson agreed that it is customary for CLECs to provide this type of information, and that it is CLEC forecast is a factor that impacts ILECs management of their networks. (Tr., pp. 409-10; Verizon Ex. 5.0, VZ-NCC 4.27).

Verizon Illinois' representatives, moreover, had to ask NCC for the forecast information repeatedly. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-3, DMM-5, DMM-7). NCC did not

complete the forecast template until February 15, 2002. Notably, this was already ten (10) days after the alleged delay period ended. Moreover, as of March 20, 2002, NCC admitted that it still had not even estimated the percentage of its traffic that NCC anticipated would be local. (Verizon Ex. 5.0, VZ-NCC 1.12). Accordingly, NCC was not in a position to interconnect with Verizon Illinois during the alleged delay period for this reason, too. In fact, it would have been wholly irresponsible from a network reliability perspective for Verizon Illinois to interconnect with NCC without the requisite forecast information. It also constitutes a breach of the parties' Interconnection Agreement for NCC to demand that Verizon Illinois interconnect without this information.

*Second*, the Interconnection Agreement required NCC to identify its desired location for interconnection. (IA, §37.6.1). While the ILEC can check whether identified locations have sufficient capacity, Ms. Allison explained that it is very difficult for Verizon Illinois or any other ILEC to pick a CLEC's interconnection location. (Verizon Ex. 3.0, Allison Dir., pp. 31, 33-34). For example, an ILEC would have no way of knowing whether any particular location would have sufficient floor space, air conditioning, etc., to accommodate a CLEC's equipment. (Verizon Ex. 2.0, Bartholomew Dir., p. 12). NCC's expert Mr. Dawson agreed that the choice of interconnection location is really a business decision for the CLEC to make. (Tr., 410).

NCC, nonetheless, demanded that Verizon Illinois identify an interconnection location for NCC.<sup>15</sup> (Verizon Ex. 1.0, McKernan Dir., Att. DMM-6). Mr. Bartholomew tried to accommodate NCC's demand. (*Id.*, Att. DMM-8; Verizon Ex. 2.0, Bartholomew Dir., Att. CB-2). While every location Mr. Bartholomew identified was appropriate for interconnection, as the evidence establishes that other carriers are interconnected at each of the locations today (Verizon

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<sup>15</sup> Even worse, NCC demanded single business day turn-around from Verizon Illinois. (Verizon Ex. 3.0, Allison Dir., p. 32-33).

Ex. 3.0, Allison Dir., p. 34), NCC did not like Mr. Bartholomew's choices. (Verizon Ex. 2.0, Bartholomew Dir., Att. CB-1). NCC finally decided to fulfill its own responsibility to identify an interconnection location. Unsurprisingly, once NCC did so a location was identified almost immediately. (*Id.*, CB-3).

It was not until March 13, 2001, however, that NCC selected its location. Once again, this is well after the period when NCC alleges Verizon Illinois delayed interconnection. The fact that NCC did not select a location until well after the alleged delay period is yet another reason why it was impossible for Verizon Illinois to interconnect with NCC during the alleged period.

**Third**, NCC did not receive its number prefixes from Neustar until June 4, 2002. (Verizon Ex. 5.0, VZ-NCC 3.01). Prefixes provide the information necessary for switches in the ILECs' network to route calls to the interconnecting CLECs. (Verizon Ex. 3.0, Allison Dir., pp. 35-36; *see also*, Dawson Tr., pp. 413-14). In other words, without prefixes, the interconnection will not function.<sup>16</sup> Verizon Illinois requires CLECs to provide their prefix information as part of their ASRs because CLECs had historically neglected to provide their prefix information otherwise and then routinely complained that their inbound traffic was blocked. (Tr., pp. 584-86). Accordingly, NCC could not have had a functioning interconnection prior to June 4, 2002 when NCC received its prefixes. The issue of delay becomes moot because any interconnection that would have been completed before NCC had prefixes could not have physically functioned. The Commission cannot find that Verizon Illinois delayed NCC when NCC could not have even utilized the interconnection.

**Fourth**, Section 37.6.4 of the parties' Interconnection Agreement requires both parties to participate in interconnection planning meetings. The purpose of the meetings is "to determine

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<sup>16</sup> NCC has argued that a CLEC does not need prefixes to send out-bound traffic; but, NCC stated in its forecast that **all** of NCC's traffic would be in-bound. (Verizon Ex. 1.0, McKernan Dir., DMM-7, p. 2). Accordingly, prefixes would be a prerequisite to NCC's interconnection functioning.

the following representative, but not exclusive, information (i) forecasted number of trunk groups, and (ii) the interconnection activation date.” (IA, §37.6.4). Ms. Allison explained that the characterization of these meetings as “representative, but not exclusive” means that the meetings are intended to address all items that could impact the interconnection, such as the status of number prefixes. (Verizon Ex. 3.0, Allison Dir., p. 37). NCC’s expert Mr. Dawson agreed that it is normal practice for ILECs and CLECs to hold planning sessions. (Tr., pp. 409-11). NCC breached the parties’ Interconnection Agreement by unilaterally refusing to participate in any planning meetings after April 3, 2002. (Verizon Ex. 2.0, Bartholomew Dir., pp. 26-27, Att. CB-7, CB-8).

*Fifth*, it is customary for both parties to visit the interconnection location once it is determined to ensure that the facilities are arranged properly for the interconnection. (Dawson, Tr., p. 412-13). Verizon Illinois only undertakes such visits in conjunction with a representative from the CLEC so that both parties are comfortable with the condition of the facilities. (Verizon Ex. 2.0, Bartholomew Dir., p. 28). NCC’s expert Mr. Dawson agreed that was reasonable. (Tr., p. 412). As soon as NCC identified its location, Mr. Bartholomew began asking NCC for the name of a local contact in order to visit the location. Mr. Bartholomew had to ask at least four (4) times. (Verizon Ex. 2.0, Bartholomew Dir., Att. CB-6; CB-8; CB-9; CB-10). NCC did not provide the name of a local contact until May 6, 2002. (*Id.*, p. 29; CB-10).

*Sixth*, it is illegal for carriers to provision retail local telephone service in Illinois without a tariff being on file with the Commission. (Verizon Ex. 5.0, DD 1.11). NCC did not have an effective tariff on file until November 19, 2002. Once again, this renders the issue of delay moot because NCC could not have legally utilized any interconnection provisioned before November 19, 2002. The Commission cannot find that Verizon Illinois delayed NCC when NCC could not have legally utilized any interconnection that was provisioned. .

*Seventh*, Section 37.6.1 of the Interconnection Agreements provides that “[NCC] shall issue an ASR to [Verizon Illinois] ... to order the Interconnection facilities and trunks.” The ASR is an industry standard official order form for interconnection. (Dawson, Tr., pp. 413-14). It is normal course for the CLEC to submit the ASR to order the facilities that will be used to transfer traffic from the ILEC to the CLEC, i.e., in-bound traffic. (Dawson, Tr., p. 415). NCC did not submit its ASRs until July 24, 2002. (Verizon Ex. 3.0, Allison Dir., p. 35).

Verizon Illinois completed NCC’s ASRs on August 21, 2002, only twenty (20) business days after NCC submitted its ASRs. (*Id.*, p. 40). Verizon Illinois submitted a single ASR to NCC on August 6, 2002. NCC accepted Verizon Illinois’ ASR on September 10, 2002. (*Id.*) The total time that it took to provision the interconnection was thirty-three (33) business days. (*Id.*) NCC’s expert Mr. Dawson agreed that Verizon Illinois completed NCC’s ASRs in a reasonable timeframe. (*Id.*, Att. KJA-9).

Accordingly, the evidence establishes overwhelmingly that NCC was not ready to interconnect with Verizon Illinois until July 24, 2002. It simply would not have been possible or reliable from a network management perspective for Verizon Illinois to do so sooner. Once NCC submitted its ASRs on July 24, 2002, Verizon Illinois processed the orders timely. NCC’s claim that Verizon Illinois delayed NCC’s interconnection from December 7, 2001, until February 5, 2002, is completely unfounded. The Commission must reject it.

**d. Verizon Illinois Was Ready To Interconnect On Day One**

The evidence establishes that Mr. Bartholomew contacted NCC to proceed with interconnection on December 18, 2001. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-3). Mr. Bartholomew outlined the initial steps for NCC to proceed with interconnection. (*Id.*) Mr. Bartholomew also committed to interconnecting NCC within an approximate fifteen (15) days timeframe. (*Id.*) NCC ignored Mr. Bartholomew’s December 18, 2001, e-mail.

NCC did not take steps to proceed with interconnection until February 14, 2002 – approximately two months after Mr. Bartholomew attempted to start the process. When confronted with this fact, NCC asserted that it was working on the Interconnection Agreement. (NCC Ex. 3.0, Lesser Reb., pp. 12-13). While that may be true, it is not a reason for NCC to forego taking preliminary steps toward interconnection with Mr. Bartholomew simultaneously. (Dawson, Tr., p. 407 (stating that parties should work together pending the Interconnection Agreement’s finalization)).

Notably, NCC also admits that it took steps toward litigation during the approximate two month timeframe that NCC failed to respond to Mr. Bartholomew’s efforts to proceed with interconnection. (NCC Ex. 3.0, Lesser Reb., p. 13). As addressed *supra*, NCC sensed an opportunity to distort the E-Mail Chain for its own gain and, acting on such, made all efforts toward litigation and none toward interconnection.

Accordingly, Verizon Illinois was ready and made efforts to begin working with NCC toward interconnection in December, 2001. The Commission cannot find Verizon Illinois delayed NCC when it was NCC who failed to take any steps toward interconnection and only sought litigation. Verizon Illinois simply is not responsible for NCC’s own failure to act.

**D. NCC Is Not Entitled To Any Relief**

**1. There Is No Need To Order The Parties To Interconnect**

NCC seeks an order requiring Verizon Illinois to immediately interconnect with NCC. The parties interconnected in September, 2002. NCC’s request is moot on its face.

## **2. Verizon Has Not Violated Section 13-514**

NCC has not satisfied its burden of proof on any of its claims. NCC bears the burden of proof by a preponderance of the evidence. 5 ILCS 100/10-15. The Commission must find that Verizon Illinois has not violated Section 13-514 given NCC's failure to satisfy its burden.

Furthermore, Section 13-514 requires a carrier to have "knowingly" or "unreasonably" impeded competition. The evidence certainly does not establish that Verizon Illinois willfully delayed NCC. The Commission must not find that Verizon Illinois violated Section 13-514.

Finally, the obligation to interconnection that NCC claims Verizon Illinois allegedly violated flows from Section 251(c) of the Telecommunications Act of 1996. The Commission cannot find that any alleged violation of Section 251(c) of the Telecommunications Act of 1996 ("TA96") serves as a basis for finding an alleged violation of Section 13-514. Verizon Illinois has at all times complied in good faith with the requirements of TA96. NCC did not, however, seek interconnection in a location where Verizon Illinois is the ILEC or, for that matter, even a provider of local exchange service. (Verizon Ex. 1.0, McKernan Dir., Att. DMM-1 (NCC seeking interconnection in Leaf River, Illinois)). NCC has admitted that it did not seek interconnection with the ILEC in Leaf River, Illinois. (Verizon Ex. 5.0, TL 2.18). As a matter of law, the duties of Section 251(c) do not flow to areas where carriers are not ILECs. 47 U.S.C. §251(h). Verizon Illinois cannot have breached an alleged duty to NCC that is not legally imposed and, therefore, does not exist in the first place. The Commission cannot apply the standards of Section 251(c) to Verizon Illinois in this case.

## **3. NCC Has Not Incurred Damages**

NCC requests damages "in an amount according to proof." (Complaint, ¶9). NCC, however, withdrew its request for damages. (NCC Ex. 3.0, Lesser Reb., p. 3). The Commission must find NCC's request for damages withdrawn.

Should the Commission, for some reason, find that NCC's request is not withdrawn, the Commission must not award any damages to NCC. NCC must satisfy its burden of proof on its claims before the Commission may even consider the issue of damages. NCC has not carried its burden with respect to any claim; thus, the issue of damages is not before the Commission.

Irrespective, the evidentiary record does not demonstrate that NCC has incurred any damages. NCC did not present any evidence whatsoever on the issue of damages. Any Commission finding that NCC is entitled to a specific damage award would constitute reversible error because the finding could not possibly be supported by the evidence.

Further, the evidence demonstrates that NCC could not have possibly been damaged. Even if Verizon Illinois could have interconnected NCC sooner, which Verizon Illinois could not, NCC's interconnection could not have functioned because NCC did not have number prefixes or a Commission approved tariff. In addition, the evidence is undisputed that NCC plans for market entry were not affected. (Verizon Ex. 3.0, Allison Dir., pp. 42-44). In fact, to this day, despite having been interconnected for over one (1) year, with the sole exception of test traffic, NCC has not transmitted any traffic. (*Id.*, p. 44; Verizon Ex. 5.0, VZ-NCC 3.14, VZ-NCC 5.15, TL 2.16).

Finally, even if the Commission, somehow, found that NCC had incurred damages, Verizon Illinois did not cause NCC to incur the damages. (*See supra*, Part III (A)-(C)). Accordingly, if NCC's request for damages is not found to be withdrawn for some reason, the Commission must deny the request.

#### **4. NCC Is Not Entitled To Costs And Attorneys Fees**

The Commission cannot award costs and attorneys fees unless a violation of Section 13-514 is demonstrated. 220 ILCS 5/13-516(a)(3). NCC has not carried its burden on its claimed

Section 13-514 violations. The Commission, therefore, does not have the authority to award NCC costs and attorneys fees.

Even if the Commission had the authority, which it does not, it would not be equitable for the Commission to award NCC costs and attorneys fees. The record evidence overwhelmingly establishes that Verizon Illinois acted in good faith and took all appropriate actions to advance NCC's interconnection at all times. The problems and delays were caused by NCC itself. It would be wholly inequitably to hold Verizon Illinois responsible for NCC's costs and attorneys fees in pursuing and maintaining this lawsuit.

#### **5. NCC Is Not Entitled To Penalties**

NCC seeks a punitive penalty of up to \$30,000 or 0.00825% of Verizon Illinois' gross intrastate annual telecommunications revenue, whichever is greater. NCC is statutorily barred from seeking this relief. This relief is only permitted for multiple violations of Section 13-514. 220 ILCS 5/13-516(a)(2). NCC's Complaint is the only complaint that has ever been filed alleging Verizon Illinois to have violated Section 13-514.

Furthermore, given the extreme punitive nature of the penalty, the Commission has provided that any action to impose the relief "shall be on the Commission's own motion." 83 Ill. Admin. Code §766.410(a). NCC's request is not on the Commission's own motion.

Finally, it would be inequitable for the Commission to impose the punitive relief NCC seeks. Punitive damages are only appropriate for willful bad acts. The evidence establishes that Verizon Illinois acted in good faith at all times. Punitive relief simply is not appropriate.

#### **6. NCC Is Required To Reimburse The Commission For Its Costs**

The Commission is required to divide its costs for conducting the proceeding "according to the resolution of the complaint." 220 ILCS 5/13-515(g). The Commission must find that

Verizon Illinois did not violate Section 13-514. Given resolution in favor of Verizon Illinois, the Commission is required to assess its own costs in conducting this proceeding to NCC. The evidence establishes overwhelming that NCC's own actions led to the alleged misunderstanding and delays, and Verizon Illinois acted in good faith and stood ready to interconnect at all times. It is only fair that NCC bear the cost of this litigation.

**7. NCC Is Not Entitled To A Cease And Desist Order**

As reflected in the foregoing arguments, NCC has not carried its burden of proof with respect to its claim that Verizon Illinois violated Section 13-514. Consequently, there is no violation of Section 13-514 for the Commission to order Verizon Illinois to cease and desist from.

**IV.**  
**Conclusion**

WHEREFORE, for each and all of the foregoing reasons, Verizon Illinois respectfully requests that the Commission find against NCC, deny NCC's requests for relief, assess NCC the Commission's costs in conducting this proceeding, and grant Verizon Illinois any and all other appropriate relief.

December 23, 2003

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Sarah A. Naumer, hereby certify that I served a copy of the Initial Brief of Verizon North Inc. And Verizon South Inc. in Docket No. 02-0147 upon the service list by email on December 23, 2003.

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Sarah A. Naumer