

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

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

**PETITION FOR REHEARING OF**  
**VERIZON NORTH INC. AND VERIZON SOUTH INC.**

Verizon North Inc. and Verizon South Inc. (collectively “Verizon”) by their attorneys, pursuant to Section 10-113(a) of the Public Utilities Act (“Act”), 220 ILCS 5/10-113(a), and 83 Ill. Admin. Code § 200.880, submit to the Illinois Commerce Commission (the “Commission”) this Petition for Rehearing of the Commission’s October 6, 2004 Order (“Order”) entered in this proceeding.

**I.**  
**Introduction**

Verizon respectfully submits that the Commission erred when it concluded that Verizon somehow had acted in an anti-competitive manner with respect to North County Communications Corporation’s (“NCC”) request for interconnection in December 2001. (Order, pp. 33-35). Without a doubt, there were miscommunications and misunderstandings all around when NCC initially requested interconnection with Verizon at Leaf River, an exchange Verizon does not even serve. However, there was no evidence that Verizon ever intended to delay NCC’s ability to interconnect with Verizon and nothing Verizon did rises to the level of being anti-competitive in nature. Indeed, once the mistakes were resolved, Verizon stood ready to

interconnect with NCC in January 2002. In contrast, NCC was not ready to complete interconnection and begin service until August 2002. Consequently, NCC was not harmed in any fashion during the brief time the mistakes remained unresolved.

The evidence demonstrates that no anti-competitive policy exists at Verizon. Indeed, the Order fails to recognize that no other competitive local exchange carrier (“CLEC”), or even the Commission Staff for that matter, has brought such a claim concerning a purported Verizon policy to require a fiber build-out to interconnect here in Illinois. There is no evidence that the alleged requirement was ever imposed on any other CLEC when facilities were available. Was NCC the only CLEC seeking interconnection with Verizon? Obviously not. Clearly, this is conclusive evidence that in Illinois, Verizon does not have the policy NCC alleges.

As the Order recognizes, the evidentiary record contains many facts that must be considered. (Order, p. 26). Importantly, there is no one fact that indicates, in any way, that Verizon had a policy to act in an anti-competitive manner here in Illinois. Moreover, the totality of the evidence demonstrates only that mistakes were made, and rectified in a relatively short period of time. The totality of the evidence does not demonstrate the existence of an anti-competitive policy in Illinois. Accordingly, Verizon respectfully requests that the Commission grant rehearing to reconsider the record and determine that, contrary to NCC’s ill-founded claims, no anti-competitive policy exists in Illinois.

## **II.** **Argument**

### **A. The Evidence Does Not Support A Finding That Verizon Has The Policy That NCC Claims**

NCC presented only minimal evidence to the contrary, none of which is credible, probative or relevant. The Order’s reliance on such information is in error.

## 1. The E-Mail Miscommunication

The foundation of NCC's claim rests on an e-mail communication between NCC and Verizon personnel. At worst, the e-mail is a miscommunication that occurred despite Verizon's good faith efforts to assist NCC. While Mr. Bartholomew made the explicit statement that Verizon does not require carriers to wait for fiber facilities to be built, Verizon's administrative account manager Ms. Dianne McKernan paraphrased statements in an e-mail received from Mr. Bartholomew by stating that Verizon would "not terminate interconnection trunks on a *retail/enterprise facility*." (Verizon Ex. 1.0, Att. DMM-2, p. 2)(*emphasis added*). NCC allegedly construed Ms. McKernan's statement to mean Verizon would not interconnect on facilities that serve retail customers.

In hindsight, it is possible to see that the referenced phrase, in isolation, could be so interpreted. However, Verizon's intent was to tell NCC that it could not interconnect on facilities Verizon uses to provide retail services.<sup>1</sup> (Verizon Ex. 2.0, pp. 4-8; Verizon Ex. 3.0, pp. 16-19). Both parties agree that facilities used to provide retail services cannot be used for interconnection. (Verizon Ex. 3.0, p. 19; NCC Ex. 3.0, pp. 18-19; NCC Ex. 4.0, p. 7). Such a miscommunication is not evidence that Verizon has the policy to require carriers to wait for fiber facilities to be built.

In response to the subject e-mail inquiry as to whether Verizon would require "a fiber build or use of a wholesale fiber mux" for interconnection in Illinois, Verizon responded unambiguously that it "does not require a fiber build in order to interconnect." (Verizon Ex. 1.0, Att. DMM-2, p. 2). This statement was made on December 11, 2001, only two business days after NCC's first contact concerning Illinois and months before NCC filed its Complaint. That

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<sup>1</sup> Examples of retail services are DS1 primary rate interfaces ("PRIs") and business dial tone lines. (Verizon Ex. 2.0, p. 4; Verizon Ex. 3.0, p. 17). A DS1 PRI is a service that provides 23 data capable lines on one facility along with a main phone number. (Verizon Ex. 3.0, p. 17 n.5).

message was conveyed to NCC on December 11, 2001—eliminating any allegation that it was made only because NCC filed a Complaint. Unfortunately, that statement was misunderstood by the Verizon account executive, who provided an incorrect paraphrase of the answer within the same e-mail chain. When the entire e-mail chain is read fairly, the document dispositively refutes NCC’s claim that Verizon requires carriers to wait for unnecessary “wholesale fiber build-outs.” (Complaint, ¶ 10). Mr. Bartholomew’s statement could not be clearer—Verizon does not require carriers to wait for fiber facilities to be built. NCC’s claim simply is unfounded and unsupported by the record evidence.

The Order, however, erroneously fails to rely on this dispositive evidence. Instead, the Order states it is not clear whether Mr. Bartholomew, Verizon’s technical support representative who made the statement, “understood that [NCC] was asking about interconnecting on an *existing*” facility. (Order, p. 29) (emphasis in original). The Order’s criticism is not based on any evidence whatsoever. At no point did Mr. Bartholomew testify to any such confusion.

The Order’s criticism, moreover, is not well grounded. Generally, interconnections either take place on existing facilities or new fiber facilities are built. New interconnection facilities are fiber because fiber is a more advanced medium than copper. (Verizon Ex. 3.0, pp. 7-8). While copper loops work for residential lines, inter-carrier connections involve significantly greater traffic volumes and require a higher quality medium. (*Id.*) It generally would not satisfy the industry standard of quality to build new copper facilities for interconnections. Mr. Bartholomew’s response was made in this context. He understood that by stating Verizon “does not require a fiber build in order to interconnect,” it meant that Verizon interconnects on existing facilities. The Order misapprehends the technical and operational standards for interconnection.

In conclusion, the evidentiary record demonstrates only that Verizon personnel misunderstood internal communications regarding NCC's December 7, 2001 interconnection request. The e-mail sent to NCC personnel on December 11th, when read in its entirety, provides NCC with the correct answer to its inquiry of December 7th. There simply is no basis to jump to a conclusion that Verizon's Illinois operations had the anti-competitive policy that NCC claims.

**2. Verizon Presented Substantial Evidence That The Alleged Policy Does Not Exist**

In contrast to NCC's speculation about what was meant in the e-mail chain, Verizon's evidence consisted of the sworn testimony of witnesses who have personal knowledge of Verizon's interconnection practices and know for a fact that the alleged policy does not exist. (Verizon Ex. 3.0, pp. 1, 4, 11; Verizon Ex. 2.0, pp. 1, 14). These were the individuals who actually authored the subject e-mails. There is no basis upon which to question the credibility of their testimony.

Verizon also presented evidence that it has performed numerous interconnections on *existing* facilities, which means that Verizon did not build unnecessary fiber facilities for the interconnections. (Verizon Ex. 3.0, Att. KJA-1). Its Illinois engineering group, who physically performs the interconnections, was not able to identify a single instance when any carrier had to wait for Verizon to build a fiber facility. (Verizon Ex. 3.0, pp. 9-10, Att. KJA-3; Tr., pp. 552-53).

Verizon also introduced ten of NCC's responses to Verizon's data requests. In each and every response, NCC admitted that it has no evidence or knowledge of Verizon ever refusing to interconnect a carrier on an existing facility or of Verizon ever requiring a carrier to wait for unnecessary fiber facilities to be built. (Verizon Ex. 3.0, Att. KJA-4; Verizon Ex. 5.0 at TL 2.08,

TL 2.09, DD 1.22). NCC's expert Mr. Dawson also testified that Verizon had never imposed the alleged policy, or otherwise acted in bad faith or violated any other legal requirement with regard to any carrier that Mr. Dawson assisted with interconnection in Illinois. (Tr., p. 439, Verizon Ex. 5.0, VZ-NCC 4.09).

Also unrefuted is the fact that no other CLEC, nor the Commission Staff, ever have alleged, let alone proven, the existence of the policy that NCC claims. The Order, however, does not consider this compelling evidence. Verizon has interconnected with numerous CLECs and other telecommunications carriers. Yet, no other party has alleged the existence of such a policy. It is unreasonable for the Commission to conclude such a policy exists based upon these un rebutted facts.

Finally, the fact that Verizon committed to interconnect NCC in 15 days on December 18, 2001, is also dispositive. (Verizon Ex. 1.0, Att. DMM-3). Verizon made this commitment less than a week after NCC contacted Verizon about interconnection in Illinois and two months before NCC filed its Complaint. Verizon could never have made this commitment if it required fiber facilities to be built for every interconnection.

### **3. A Single, Out-of-Context Statement**

The Order also relies on a statement made by one of Verizon's in-house counsel, Mr. Steven Hartmann, in a letter addressing the interconnection practices of Verizon's *West Virginia* affiliate. (NCC Ex. S). In so doing, the Commission fails to recognize that Verizon was created only 18 months before the subject events. Verizon was integrating its former Bell Atlantic operations with the former GTE operations. The Order does not consider that during this time Verizon was still integrating its operations and practices from the different companies. Unfortunately, the subject letter does not discuss Illinois policy.

Mr. Hartmann wrote his letter with regard to a lawsuit NCC had pending in West Virginia, which NCC had initiated *before* it contacted Verizon about interconnection in Illinois. The very first sentence of his letter states: “I write in response to your letter of February 11, 2002, regarding the interconnection facility between [NCC] and *Verizon West Virginia in Charleston, West Virginia.*” (NCC Ex. S (*emphasis added*)). Mr. Hartmann’s comments, as he very clearly indicated, pertained to Verizon’s former Bell Atlantic affiliate in West Virginia. There is no basis in the evidence to find that Mr. Hartmann’s comments pertained to Verizon’s interconnection practices in Illinois.

The Order acknowledges that Mr. Hartmann’s comments pertained to NCC’s dispute in West Virginia. (Order, p. 32). The Order notes, nonetheless, that Mr. Hartmann used the terms “courtesy” and “special exception” to describe the commitment of Verizon’s West Virginia affiliate to interconnect NCC on a certain “existing” facility while permanent fiber facilities were built. (Order, p. 32). The Order wonders why Mr. Hartmann would use such terms if Verizon does not have a policy to build new fiber facilities for interconnections *in Illinois*. The answer is that Mr. Hartmann would use those terms because he was addressing the interconnection practices of Verizon’s affiliate in West Virginia, not the interconnection practices of Verizon in Illinois.

In sum, the Order takes Mr. Hartmann’s statement completely out-of-context and, therefore, its reliance on the statement is not appropriate. It is contrary to the evidence to presume, as the Order does, that an interconnection practice exists in Illinois simply because it may exist in West Virginia<sup>2</sup> or, for that matter, any other former Bell Atlantic state. The Order’s presumption is not legally sustainable.

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<sup>2</sup> Notably, the West Virginia Commission found that Verizon’s West Virginia affiliate does not have the alleged policy either. (WV Dkt. No. 02-0254-T-C).

## **B. The Evidence Does Not Support A Finding That Verizon Delayed NCC**

The evidence establishes that Verizon was ready and prepared to interconnect NCC within only 15 days when NCC first contacted Verizon about interconnection in Illinois. NCC, on the other hand, was not prepared for interconnection and had not taken the steps legally required when it demanded interconnection. It would not have been possible or lawful for Verizon to interconnect NCC any earlier than it did. The Order's finding that Verizon is, nonetheless, responsible for intentionally delaying NCC's interconnection is contrary to the evidentiary record.

### **1. Verizon Introduced Substantial Evidence That NCC Caused All Delay**

Verizon was prepared and willing to interconnect NCC on existing facilities within only 15 days. (Verizon Ex. 1.0, Att. DMM-3). The evidence further establishes that Verizon acted diligently in all efforts to interconnect NCC. Verizon responded timely to all of NCC's requests,<sup>3</sup> assisted NCC in performing actions that the parties' interconnection agreement imposes on NCC,<sup>4</sup> and repeatedly took the initiative when NCC failed to act.<sup>5</sup> NCC itself is responsible for the delay in its interconnection.

### **2. NCC Did Not Introduce Credible Evidence Of Delay**

NCC's delay claim is limited to only two months, December 7, 2001 to February 5, 2002, when the parties signed their interconnection agreement. (NCC Ex. 3.0, p. 3 (NCC's President Mr. Lesser testifying that after February 5, 2002, when the interconnection agreement was

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<sup>3</sup> For example, NCC alleges that on December 10, 2001, Verizon "got around to responding" to NCC's initial e-mail dated December 7, 2001. (Complaint, ¶¶ 6-7). December 7, 2001, was a Friday and December 10, 2001, was a Monday. So, Verizon actually responded to NCC's e-mail in a single business day - hardly the delay NCC claims. The evidence establishes that Verizon was equally as diligent in responding to NCC at all other times.

<sup>4</sup> Mr. Bartholomew identified four locations for NCC's interconnection even though § 37.6.1 of the parties' interconnection agreement required NCC to identify the location. (Verizon Ex. 3.0, pp. 31-34; Verizon Ex. 1.0, Att. DMM-8; Verizon Ex. 2.0, Att. CB-1, CB-2).

<sup>5</sup> For example, on December 18, 2001, Verizon offered to interconnect NCC within 15 days. (Verizon Ex. 1.0, Att. DMM-3). After not hearing from NCC for two months following this offer, Ms. McKernan resent the offer to NCC and asked NCC if it intended to pursue interconnection. (*Id.*, Att. DMM-5).

executed, NCC received the best service ever—its interconnection went so fast)). During the period of NCC’s alleged delay, however, Verizon could not have interconnected NCC legally because the parties did not even have an interconnection agreement. This does not support a finding of intentional delay. (Verizon Ex. 3.0, p. 24).

Moreover, NCC’s alleged grounds for delay during this period, set forth in its Complaint, are not credible. (Complaint, ¶¶ 7, 8). NCC alleges that Verizon delayed NCC because its account manager forwarded its initial e-mail contact to Verizon’s technical support group. (*Id.*, ¶ 7). NCC also alleges Verizon “began its delay tactics in earnest” by informing NCC that the parties needed an interconnection agreement, which NCC asserts somehow brought “all steps towards interconnection to a halt.” (*Id.*, ¶ 8). ALJ Showtis already ruled that NCC’s allegations of delay are “preposterous.” (Tr., pp. 25-26). Accordingly, the Commission should revisit its decision on this point.

### **C. The Order’s Failure to Sanction NCC Violates the Act**

One of NCC’s claims is that Verizon has committed fraud against its ratepayers in Illinois. (Complaint, ¶¶ 10-11). In particular, NCC charged that Verizon passes the costs of unnecessary fiber facilities built for carriers’ interconnections onto the ratepayers and then collects an unauthorized rate of return on those costs. (*Id.*) NCC’s scurrilous claim is particularly harsh and has the serious potential to harm Verizon’s reputation.

NCC has admitted that it had no basis for its fraud claim. Its President, Mr. Lesser, admitted that NCC did not undertake any investigation into the accuracy of its charge. (Tr., pp. 312-13, 317-19). It simply advanced the claim. NCC did not even know when or how the Commission had last ruled with regard to Verizon’s rates. (*Id.*) Apart from a mere eight lines of testimony from Mr. Lesser, (NCC Ex. 3.0, pp. 4-5), which Mr. Lesser admitted he was

unqualified to render, (Tr., p. 312), NCC did not present any evidence in support of its claim nor could it have. NCC itself described its fraud claim as a “hypothetical theory.” (Tr., pp. 312-13).

The Order acknowledges that NCC “alleged rate-of-return fraud by Verizon” and that “NCC has not supported its claim.” (Order, p. 33). Nonetheless, the Order finds that Verizon’s concerns over NCC’s claim “can not be taken seriously” given what the Order describes, incorrectly, as “the extreme paucity” of NCC’s charge. (*Id.*) The Order’s ruling does not reflect an appreciation for the seriousness of the charge or accurately reflect the record.

First, the severe and pervasive nature of NCC’s allegations cannot accurately be described as “extreme paucity.” NCC alleged fraud at every opportunity. Beginning with its Complaint, NCC told the Commission *and the public* that Verizon has committed fraud on the ratepayers of Illinois, illegally reaping millions of dollars. (Complaint, ¶¶ 10-11). This charge is the heart and theory of NCC’s case, and sets the tone of every pleading NCC filed, even making it into such innocuous pleadings as NCC’s Response to Verizon’s Motion for a Protective Order. (*See*, NCC Res., p. 5 (carrying forward the fraud theme of its case by stating that “[b]ut for [NCC’s] complaint, it is clear that the matter of the ‘fiber build scam’ would never have been brought to the Commission’s attention”). Indeed, the charge appears predominately in the Complaint and is set forth, as though it is a foregone conclusion, in the testimony of NCC’s witnesses. The Order’s mere dismissal of Verizon’s concern and NCC’s conduct in advancing such a serious charge so harshly and without any foundation is not appropriate.

Second, the Order’s ruling violates Subsections 13-515(i) and (j) of the Act, which **require** the Commission to sanction carriers who bring claims that are not “formed after a reasonable inquiry of the subject matter,” are not “well grounded in law and fact,” and that do not “have evidentiary support.” 220 ILCS 5/13-515(i), (j). NCC itself admitted that it did not

conduct a reasonable inquiry of the subject matter. (Tr., pp. 312-13, 317-19). NCC's claim was not well grounded in fact as NCC did not even know the facts. NCC did not introduce any evidentiary support.<sup>6</sup>

The evidence establishes indisputably that NCC has violated Section 13-515. NCC's violation is particularly egregious given the serious nature of its claim. The Commission should reverse the Order's ruling and sanction NCC as mandated by Section 13-515.

**III.**  
**Conclusion**

For the foregoing reasons, Verizon respectfully requests that the Commission grant Rehearing in this matter.

Dated: November 5, 2004

Respectfully submitted,

VERIZON NORTH INC. AND  
VERIZON SOUTH INC.

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<sup>6</sup> Eight lines of speculative testimony is not "evidentiary support."

**CERTIFICATE OF SERVICE**

I, John E. Rooney, hereby certify that I served this Petition for Rehearing of Verizon North Inc. and Verizon South Inc. upon the service list in Docket No. 02-0147 by email on November 5, 2004.

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John E. Rooney