STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 13, 2001

NEP, LLC Request for Arbitration of Interconnection Rates, Terms, and Conditions with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine Docket No. 97-768	ORDER DENYING REQUEST TO REOPEN ARBITRATION PROCEEDING
NEP, LLC v. VERIZON MAINE Complaint Regarding Unreasonable Utility Acts and Discriminatory Denial of Service, And Petition for Reparation of Overcharges by Bell Atlantic Docket No. 2000-918	ORDER DENYING REQUEST TO OPEN INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we deny the requests of NEP, LLC to reopen an arbitration proceeding under the Telecommunications Act of 1996 (TelAct)[1] and to commence an investigation pursuant to 35-A M.R.S.A. § 1303 and related statutes.[2] We have undertaken an informal investigation at the Commission staff level pursuant to 35-A M.R.S.A. § 1303(1), but decide that the legal and policy claims of NEP lack sufficient

[1]NEP previously initiated an arbitration proceeding (Docket No. 97-768) under 47 U.S.C. § 252, which ended in an informal resolution under which Verizon and NEP agreed to a rate for "Type 3A" service and NEP withdrew the petition for arbitration (with prejudice for the term of the agreement).

[2]The complaint requests investigations pursuant to 35-A M.R.S.A. §§ 1302(3), 1303 and 1309. Section 1302(3) states that a "public utility" (NEP is not a public utility) or the Commission may complain of "any matter affecting its own product, service of charges." Assuming this section could have any applicability in the present circumstance, it adds nothing to the powers of investigation under section 1303. Section 1309 addresses "reparations" where the utility "admits that a rate charged was excessive or unreasonable or collected through error." Verizon has made no such admission.

Although labeled a "complaint" by NEP, the body of the document filed by NEP on November 6, 2000 makes clear that NEP "petitions" the Commission to commence an investigation pursuant to section 1303. That section makes clear the Commission has the discretion to commence or not commence an investigation.

merit to warrant a formal investigation. We find that Verizon has correctly characterized the service subscribed to by NEP as a "reverse billing arrangement" for intrastate local and interexchange calls, and that the service is not a form of "interconnection" as defined by the TelAct and therefore is not subject to the "pricing standards" of 47 U.S.C. § 252.

II. DISCUSSION

A. Whether the Charge Characterized by Verizon as a Reverse Billing Arrangement is a Charge for Interconnection that is Impermissible Under the TelAct

In its request to reopen the TelAct arbitration proceeding, NEP requests that the Commission arbitrate "the rates, terms and conditions for *interconnection* between NEP and … Verizon Maine." (emphasis added) It also requests the Commission to open an investigation pursuant to 35-A M.R.S.A. § 1303 to "remedy the unjust and unreasonable rates and charges and the unreasonable acts and discriminatory practices of Verizon Maine, with regard to Verizon Maine's refusal to provide appropriate *interconnection* services at rates and charges which are just, reasonable and non-discriminatory." (emphasis added)

NEP is a provider of radio paging services in Maine. A person who wishes to signal another person who has a paging device places a telephone call to a number assigned to the paging device. The call is carried over Verizon's network until it terminates on the NEP network. For the purpose of this Order, we will refer to the callers as Verizon end-users. After delivery of the call to NEP's network, NEP sends a paging signal to its subscriber. Verizon refers to this traffic as "land to mobile traffic."

NEP complains specifically of a rate of $0.06 per minute that Verizon charges NEP for calls Verizon's subscribers make to NEP's paging devices. We must initially determine whether the charges by Verizon are charges for "interconnection" as that word is used in the TelAct. Under applicable FCC orders, issued pursuant to authority under the TelAct, an ILEC may not charge a paging company or cellular carrier (commercial mobile radio service (CMRS) providers) for interconnection.

We agree with Verizon that the charges are not charges for interconnection. Instead, as claimed by Verizon, they are for a "reverse billing arrangement" that NEP agreed to pay in lieu of toll charges that Verizon would otherwise charge to Verizon end-users. NEP was faced with a choice between whether Verizon end-users would pay those charges (when the call to a NEP paging device number was outside the local calling area of the end-user) or whether to enter a "reverse billing arrangement" ("called party pays"} under which NEP would pay charges instead, much like 800 service, and no toll charge would be imposed on the end-user making the call. NEP chose the latter course because it wishes to offer a service under which it, rather than end-users who wish to signal its customers' paging devices, will pay for those calls.

NEP has a "Type 3" interconnection with Verizon.[3] Verizon states that for "Type 3" interconnections, there are two types of billing options, Type 3A and 3B. Verizon claims that prior to the enactment of the TelAct, a cellular or paging company that had a Type 3B agreement paid Verizon Maine the equivalent of monthly "Flexpath" charges for a trunk connection to the end office. Verizon states that Type 3B interconnection resembled ordinary business basic exchange access service. Under that arrangement, if a Verizon end user was located outside the local calling area of the paging carrier's serving end office, and dialed one of the paging carrier's Type 3B numbers, the end user incurred a retail toll charge.

Pre-TelAct Type 3A interconnection service, by contrast, included a "reverse-billing" arrangement that Verizon claims was similar in concept to 800 service. Under that arrangement, a Verizon end-user who called a NEP paging device did not incur a toll charge, even if the call was between exchanges that did not have local calling to each other. Instead, paging and cellular companies paid Verizon per-minute charges under a Type 3A agreement.

Under the pre-TelAct arrangements, NEP subscribed to Type 3A interconnection service. It still does, and it is still charged for calls that Verizon end-users make to its paging devices, but there are important legal differences between the prior and present arrangements; those differences are more than just "semantic," as claimed by NEP.

The TelAct, and the *Local Competition Order*[4] issued in 1996 by the FCC pursuant to the TelAct, changed some aspects of the arrangements previously in effect for CMRS providers. Verizon agrees with NEP that section 251(c)(2) of the TelAct requires it, as an incumbent local exchange carrier (ILEC), to interconnect with the equipment of CMRS providers such as NEP at "rates, terms and conditions that are just, reasonable and nondiscriminatory." Indeed, Verizon claims that it does so without any charge whatsoever. It states that it provides interconnection to NEP through the "Type 3" physical connection at the end office that serves NEP's switch. Verizon states further that under the *Local Competition Order* the "interconnection" obligation under § 251(c)(2) "refers only to the physical linking of two networks for the mutual exchange of traffic." Verizon also states that the *Local Competition Order* requires ILECs to

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[3]Type 3 is direct connection between the pager's switch and the Verizon Maine end office serving that switch. Type 2 is direct connection between the CMRS provider's switch and Verizon Maine's tandem office. Verizon states that the actual, physical interconnection between the LEC and CMRS is identical for both Type 3A and Type 3B service.

[4]*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, released August 8, 1996, FCC 96-325.

deliver all *local* traffic originating on their network to CMRS providers without charge[5]; and, in compliance with that requirement, Verizon does not charge NEP or other CMRS providers for such traffic.

Verizon states that it notified all CMRS providers shortly after issuance of the *Local Competition Order* that it could not and would not charge NEP for any "land to mobile traffic" that originated on the Verizon network by Verizon customers. Verizon argues, however, that when one of its own end users places a call to a NEP pager number outside of the caller's local calling area (i.e., an interexchange call), nothing in the *Local Competition Order* prohibits it from charging that end user a toll charge for the call. Verizon argues that charges to its retail customers for such calls are not charges for interconnection under the TelAct.

Verizon also claims that it recognized that some paging providers had provisioned their services so that the ILEC's subscribers could reach paging customers anywhere in the LATA on a toll-free basis. It anticipated that some paging companies might not wish to alter this arrangement, and therefore offered them the *option* of continuing the pre-TelAct reverse-billing practice. Verizon states that its offer to NEP made clear that such a reverse billing arrangement was entirely at NEP's option, and that NEP did not have to pay anything to receive land to mobile traffic.[6]

In support of its claim that the reverse billing arrangement does not violate the TelAct or the requirements of the *Local Competition Order*, Verizon relies on the FCC's decision *In the Matters of TSR Wireless, LLC, et al. v. US West Communications, Inc.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, released June 21, 2000, FCC 00-194, 15 FCC Rcd. 11166, 2000 FCC LEXIS 3219 ("*TSR Wireless Order*"). In that case, TSR Wireless and

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[5]The *Local Competition Order* does allow an ILEC to charge for *terminating* local traffic *from* CMRS providers (*i.e.,* Mobile to Land traffic).

[6]As Verizon states in its answer, NEP, in its complaint, "makes much of" the fact that Verizon initially described the reverse billing option as an "Interconnection Service," but later as a "Reverse Billing Arrangement." Verizon claims that the initial characterization was "harmless vestige of the *pre*-TelAct industry terminology, which characterized the entire arrangement with CMRS as an Interconnection 'Service.'"

NEP also alleges, somewhat misleadingly, that "historically" (until 1997) Verizon provided the service as "Type 3A Interconnection Service." It is clear from the discussion above that Verizon (and probably NEP as well) still characterize the physical interconnection between Verizon and NEP as "Type 3A." It also clear, however, that prior to the TelAct and the *Local Competition Order* the amount of money that NEP paid to Verizon for the toll calls made by Verizon end-users to the NEP network was considered as part of the interconnection service. Now it is a separate charge that, in this case, NEP agreed to pay.

four other paging carriers complained to the FCC, claiming that US West was improperly levying charges for the delivery of Land to Mobile traffic under interconnection arrangements subject to the TelAct and the FCC's interconnection rules. The FCC rejected that claim:

> TSR asserts that rule 51.703(b) prohibits US West from charging for "wide area calling" service.[7] We disagree. We find persuasive US West's argument that "wide area calling" services are not necessary for interconnection or for the provision of TSR's service to its customers. We conclude, therefore, that Section 51.703(b) does not compel a LEC to offer wide area calling or similar services without charge. Indeed, LECs are not obligated under our rules to provide such services at all; accordingly, it would seem incongruous for LECs who choose to offer these services not to be able to charge for them.
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> Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. It does not address the charges that carriers may impose upon their end users.
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> …US West must deliver [local] traffic to TSR's network without charge. However, nothing prevents US West from charging its end users for toll calls [that are delivered to TSR's network]. Similarly, Section 51.703(b) does not preclude TSR and US West from entering into wide area calling or reverse billing arrangements whereby TSR can 'buy down' the cost of such toll calls to make it appear to end users that they have made a local call rather than a toll call.

TSR Wireless Order at ¶¶30-31 (footnotes omitted).

NEP's petition attempts to characterize the payments it makes under the "reverse billing" arrangement as payments that are for interconnection that would be impermissible under the TelAct. The *TSR Wireless Order* makes clear that NEP's argument is without merit. Verizon is free to charge its own customers for toll calls they make to NEP. As the FCC noted, it has no obligation to offer NEP a reverse billing arrangement at all. Similarly, NEP is under no obligation to agree to a reverse billing arrangement under which it can "buy down" the cost of toll calls by Verizon end-users.

For the foregoing reasons, we conclude that NEP's petition does not present any claim under the Telecommunications Act of 1996, and we therefore will deny its request to reopen its 1997 arbitration petition.

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[7]The *TSR Wireless Order* uses the term "wide area calling' to refer to reverse billing arrangements generally. ¶ 1 of the Order refers to "'wide area calling' or similar services where a terminating carrier agrees to compensate the LEC for toll charges that would otherwise have been paid by the originating carrier's customer."

B. Reasonableness of the Rate

NEP also argues that the rate for the reverse billing arrangement is unjust and unreasonable. NEP claims that the "costs" of providing "the network elements actually necessary to provide service to CMRS providers in Maine" are "no more than $0.015" per minute, and that the rate for the reverse billing arrangement of $0.06 per minute[8] is "completely out of line with the cost structure of providing [the] service, and [is] likewise inconsistent with the requirements of the Telecommunications Act."

We have decided above that the rate that NEP complains of is not a rate for "interconnection" under the TelAct. Instead, as claimed by Verizon, it is a rate for Verizon retail interexchange toll services. Verizon provides those services to its own end-users, but NEP has agreed to pay for them under a reverse billing arrangement. The rate is not subject to the cost-based "Pricing Standards" of section 252(d)(1) of the TelAct.[9] It is subject only to the "just and reasonable" pricing standard of Maine law. While it is a general Commission objective that rates for utility services be cost-based, we also recognize that for many utility services we have achieved that goal imprecisely, if at all. For some utility services, such as interexchange telephone services, our knowledge of the costs is not complete. The price for any particular utility service is likely to reflect allocations of common costs that are not precise and rate design decisions that are not necessarily related to costs at all.

For the purpose of this complaint, we are satisfied that the rate charged to NEP is just and reasonable because it is reasonably comparable to other retail toll rates charged by Verizon, particularly those for other reverse billing arrangements such as 800 service. Indeed, $0.06 per minute is well below most Verizon retail toll rates, and a review of Verizon's tariffed rates for retail inward (including 800) service indicates that the lowest rate is $7.20 per hour or $0.12 per minute. That rate requires a three-year service agreement and a 7200-hour annual commitment.

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[8]Prior to the settlement in the 1997 case, NEP paid $0.02 for each message in addition to the $0.06 rate. The settlement eliminated the message charge. NEP claims that its cost per call was approximately $0.04 under the prior agreement. It appears, therefore, that the $0.06 per minute rate was billed in less than whole minute segments and that more than one call can fit into a minute of billing time. The elimination of the $0.02 message charge probably resulted in a reduction of the amount billed for each call from about $0.04 to $0.02.

[9]The discussion of "costs" in NEP's complaint (e.g., its comparisons to UNE pricing) makes clear that the costs it refers to are based on the TelAct pricing standard, in 47 U.S.C. § 252(d)(1), that is applicable to interconnection and unbundled network elements.

The various rate comparisons NEP has made are not valid. NEP claims that the rate is "discriminatory" compared to a rate of $0.015 per minute it claims applies to Type 2A Interconnection rates for cellular providers. Verizon argues that the comparison is invalid because the $0.015 rate is the *terminating* rate that Verizon charges cellular carriers for "mobile to land traffic" (i.e., traffic originated by the cellular company's users that is delivered to Verizon Maine for termination on the landline network), not the "land to mobile" compensation challenged in this case by NEP. Verizon argues that the correct comparison of NEP's arrangement with Verizon Maine is to the rate Verizon Maine charges cellular carriers for "land to mobile" calls under a "Type 2A, Calling Plan 2" reverse billing arrangement. Verizon states that under that plan (as under Type 3A reverse billing for NEP), the Verizon's end users do not incur toll charges for land to mobile calls; instead, the cellular carrier incurs a per minute charge for those calls. The rate for Calling Plan 2 is presently $0.093 per minute, compared to the $0.06 per minute that NEP pays for traffic under a Type 3A arrangement.

NEP next attempts to draws a comparison with a rate that it claims is "for the same service" in Massachusetts. NEP has provided no information about the level of retail toll rates in Massachusetts that Verizon would be attempting to recover under a substitute reverse billing arrangement, or any of the reasons that either Verizon or Massachusetts regulators may have stated in support of such a rate. In the absence of this information, the comparison to the rate in Maine is meaningless.

NEP also argues that Verizon is not entitled to charge for calls that originate in the Portland calling area, and that terminate at the NEP switch in Portland, because calls placed to NEP paging devices from within the Portland calling area are local rather than toll. Both parties agree that under the TelAct and FCC rulings, Verizon is not allowed to charge for the delivery of local traffic to a CMRS provider.

Under the reverse billing arrangement agreed to by NEP and Verizon, NEP does pay a per minute rate for all calls made by Verizon customers to NEP paging devices, whether they are "local" (because they originate in the same local calling area (Portland) as the NEP switch) or are "toll" (because they originate outside that area). Verizon states that under the Type 3 agreement between NEP and Verizon, NEP has agreed to pay a "composite" rate that reflects the fact that there is a mix of local and toll traffic and that eliminates the need for either carrier to separately track and bill "local" from "non-local" calls. Verizon states that NEP is not required to pay a charge for receiving "local" traffic, and that it could choose to receive all local traffic without charge if NEP chose not to have a reverse billing arrangement at all (in which case, Verizon end-users would pay, or not pay, toll charges depending on where they originated the call). The difficulty or inability to distinguish between local and toll traffic is apparently

an artifact of any reverse billing arrangement, including 800 service. Accordingly, rates for reverse billing arrangements are always "composite" rates. [10]

Finally, in a letter filed on March 5, 2001, NEP attempted to compare the $0.06 rate to a claimed "wholesale" rate of $0.026 per minute for the "applicable rate elements in Verizon's tariff for 800 service." Verizon states that the "rate elements" identified by NEP are for "carrier *access* service on 800 *originated* traffic" (emphasis added) and argues that "the network cost of carrier access service" is irrelevant to the recovery of "foregone retail toll revenues." NEP does not explain why a wholesale or access rate is relevant to the question of what it should pay under a reverse billing arrangement for *retail* toll revenues that Verizon would otherwise receive from its own customers. In addition, the retail toll rates that Verizon charges its customers include both originating and terminating costs,[11] whereas the access rate claimed by NEP apparently applies only to Verizon's originating access charges.

III. CONCLUSION

For the foregoing reasons, we decline to reopen the arbitration proceeding initiated by NEP in 1997. We also decide that we will not open a formal investigation pursuant to 35-A M.R.S.A. § 1303(2) because NEP has not presented sufficient grounds to warrant such an investigation.

Accordingly, we

1. DENY the request of NEP, LLC to reopen the arbitration proceeding initiated by NEP, LLC pursuant to 47 U.S.C. § 252 on October 6, 1997 in Docket No. 97-768; and

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[10]For at least some of the alternative rates that NEP espouses, it suggests a further reduction to reflect the fact that some of the traffic is local. At least as far as the $0.06 reverse billing arrangement rate is concerned, this argument overlooks the fact that the rate is already a "composite" rate that takes into account the mix of local and toll traffic. If it were possible for NEP to pay only for toll calls made by Verizon customers, it presumably would be asked to pay a higher per-minute rate.

As part of the preliminary investigation, the Commission staff asked Verizon to conduct a traffic study (using samples) to determine the local-interexchange mix of traffic destined for NEP. The purpose of that exercise was to determine if there was any possibility of adjusting the $0.06 rate, if the study showed that local traffic was a very high percentage of total traffic. The study showed a relatively low percentage of local traffic.

[11]Verizon's retail toll rates include its network costs for the origination of the traffic and its network or access costs to terminate the traffic. If the traffic terminates on Verizon's own network, those costs are its own network costs; if the traffic terminates on another carrier's network, those costs are the terminating access charges Verizon must pay to the other carrier.

2. CLOSE the informal investigation opened in this matter pursuant to 35-A M.R.S.A. § 1303(1) and DENY the request of NEP, LLC to commence a formal investigation (pursuant to 35-A M.R.S.A. §§ 1302(3), 1303(2) and 1309) into the matters raised in its Complaint filed on November 6, 2000.

Dated at Augusta, Maine, this 13th day of December, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.