

INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK, INC.

PETITION FOR PRE-EMPTION AND DECLARATORY RULING

CC DOCKET 96-128

TIMELINE OF NEW YORK STATE PROCEEDING

Verizon (then New York Telephone) underlying payphone rates were filed with New York PSC in late 1980's or early 1990's. Rates were based on traditional, embedded or residuary costs.

December 31, 1996 - Verizon files revised line rates, in response to FCC Payphone Orders, to be effective April 15, 1997. Such revised rates were filed only for "smart" payphone lines used by Verizon payphones. Pre-existing rates for "dumb" payphone lines – used by IPPs – were not changed.

January, 1997 – Independent Payphone Association of New York (IPANY) submits objection to PSC Staff over Verizon tariff filing as not meeting FCC Orders, but is denied access to Verizon cost studies supporting filing.

March 31, 1997 – PSC approves Verizon tariff on temporary basis on ground there was "no subsidy of local coin service currently flowing from other intrastate services". There

was no review of whether the FCC's New Service Test standards were followed. In light of IPANY objections, PSC continues review of Verizon's tariff.

April 15, 1997 – FCC Common Carrier Bureau issues "Refund Order" giving Verizon and other RBOCs until May 19 to file NST compliant revisions to state payphone tariffs.

May 19, 1997 – Pursuant to "Refund Order", Verizon files changes to its state payphone tariff for "Smart Line" phones (used by Verizon) but not "Dumb Line" phones used by IPPs, and incorrectly certifies its IPP rates comply with the NST.

July 30, 1997 – PSC continues review of Verizon's tariff by issuing Notice Requesting Comments in Case 96-C-1174. Submission date for comments is extended to September 30, 1997.

September 30, 1997 – IPANY submits comments showing Verizon's payphone rates did not comply with the New Services Test.

October 1997 – December 1, 1999 – PSC keeps proceeding to review tariffs open, but takes no action.

December 2, 1999 - IPANY files supplemental complaint supported by an expert's affidavit and cost study, asking PSC to resolve issues pending since April 1, 1997, in

light of FCC's NST Orders, i.e., the validity of Verizon's payphone rates. Complaint also asks for refunds back to April, 1997, once proper NST rates are established.

January 5, 2000 – PSC issues Notice Requesting Comments on IPANY's December 2, 1999, Complaint.

February – April, 2000 – Verizon and IPANY submit comments and replies to PSC.

March 2, 2000 – FCC Common Carrier Bureau issues First "Wisconsin Order" generally endorsing IPANY positions.

October 12, 2000 – PSC issues Order holding First Wisconsin Order does not apply in New York, and finding Verizon's pre-existing payphone rates complied with the NST because they "recover direct embedded cost plus a reasonable contribution toward common costs". (emphasis added).

December 8, 2000 – IPANY timely files Petition for Rehearing of PSC Order of October 12, 2000.

January – March, 2001 – Verizon and IPANY submit comments and legal arguments on IPANY Petition for Rehearing.

September 21, 2001 – PSC issues Order Denying Petition for Rehearing of October 12, 2000, Order.

January 18, 2002 – IPANY timely files Article 78 Petition in New York State Supreme Court challenging PSC's Orders approving Verizon's payphone tariffs, with request for refunds.

January 31, 2002 – FCC issues Second Wisconsin Order upholding, in significant regard, CCB First Wisconsin Order. IPANY immediately brings that Order to the attention of the Court.

March 8, 2002 – PSC Answer to Supreme Court in Article 78 proceeding states PSC will not follow FCC rulings in Second Wisconsin Order.

July 31, 2002 – New York Supreme Court (Leslie E. Stein, J.S.C.) issues Decision and Order (1) setting aside PSC approval of Verizon's payphone rates, and remanding for further proceedings, (2) holding FCC's Wisconsin Orders are inapplicable to determining NST rates, and (3) directing refunds be made if pre-existing rates did not comply with the NST.

August – September, 2002 – Verizon and IPANY submit Petitions for Clarification or Reargument to Supreme Court.

March 17, 2003 – Individual IPPs file Second Complaint with the PSC again asking it to apply the FCC’s Second Wisconsin Order and award refunds (hoping to reverse the PSC’s earlier refusal). (Second IPP Complaint).

April 17, 2003 – PSC issues Notice Regarding Complaints in Cases 03-C-0428 and 03-C-0519 and refers Second IPP Complaint of March 17, 2003, to Office of Hearings and Alternate Dispute Resolution.

May, 2003 – May, 2006 – Proceedings before PSC in Second IPP Complaint, including review of Verizon cost study submitted in June, 2003. .

May 1, 2003 – Supreme Court issues Decision and Order generally upholding earlier decision of July 31, 2002, including:

- a. PSC did not properly approve Verizon’s pre-existing rates as NST compliant.
- b. On remand, PSC was not required to apply holding of either First Wisconsin Order or Second Wisconsin Order.
- c. Refunds would be required as of April 15, 1997, if correct NST rates were lower than Verizon’s pre-existing (and unchanged) rates.

August – September, 2003 – Verizon and IPANY both file appeals to the Appellate Division of State Supreme Court.

March 25, 2004 – Appellate Division issues Order reversing Supreme Court, holding:

1. PSC had no duty to follow and apply either the First Wisconsin Order or the Second Wisconsin Order, because they only applied to the four largest LECs in Wisconsin.
2. The FCC's Refund Order did not apply to Verizon because it had not filed corrective tariffs between April 15 and May 19, 1997, and did not require Verizon to pay refunds even if its payphone rates were never in compliance with the NST.

July 2, 2004 – IPANY files Petition for Leave to Appeal to New York Court of Appeals or, in the Alternative, for a Stay of Further Proceedings Pending a Ruling From the FCC After Referral.

September 21, 2004 – New York Court of Appeals denies IPANY Motion without comment.

December 29, 2004 – IPANY files Petition for Order of Pre-Emption and Declaratory Ruling at FCC in CC Docket 96-128.

June 30, 2006 – After reviewing Verizon cost studies submitted in June, 2003, PSC issues Order in Second IPP Complaint Resolving Complaints and Inviting Comments Regarding Public Access Line Rates, which applies PSC's interpretation of NST rules,

and directs Verizon to file significantly lower payphone line and usage rates. Order also seeks comments on how original rates from 1997 should be treated i.e., should there be a proceeding to determine whether those original rates complied with the NST. (Although the new rates approved in 2006 as NST compliant were significantly lower than the original rates which remained unchanged until 2006, the PSC had not conducted the remand required by the Supreme Court to determine if the original rates met the NST criteria).

May 24, 2007 – PSC issues Order Denying Rehearing and Addressing Comments in Second IPP Complaint, which generally upholds its earlier rate determination (requiring significantly lower IPP line and usage rates) but also refuses to conduct the Court-order remand to review the 1997 rates until the FCC determines whether refunds are required under the FCC's Orders.

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