

SUPREME COURT OF NEW HAMPSHIRE

Appeal of Verizon New England, Inc. d/b/a Verizon New Hampshire and another

Appeal of Verizon New England, Inc., 158 N.H. 693, 972 A.2d 996 (2009) · No. No. 2008-645 · Decided May 7,
2009

SUMMARY

The Supreme Court of New Hampshire reviewed a New Hampshire Public Utilities Commission decision requiring Verizon and FairPoint to stop billing competing carriers certain carrier common line access charges. The court held, under a de novo interpretation of the applicable tariff, that the charge applied to each aspect of switched access service provided, even when Verizon's common line was not physically used. The court reversed the Commission's decision.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Broderick, C.J.; Duggan, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	May 7, 2009
DOCKET	No. 2008-645
DISPOSITION	reversed
PROCEDURAL POSTURE	Verizon and FairPoint appealed a New Hampshire Public Utilities Commission decision requiring them to cease billing competing telephone carriers for carrier common line access charges on certain intrastate toll calls.
STANDARD OF REVIEW	Under RSA 541:13, the party seeking to set aside a PUC order must show that it is contrary to law or, by a clear preponderance of the evidence, unjust or unreasonable. PUC factual findings are presumed prima facie lawful and reasonable. The court gives considerable deference to the PUC's policy choices and balancing of competing economic interests, but reviews the PUC's interpretation of the tariff de novo because the tariff has the force and effect of law.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.

PARTIES

Verizon New England, Inc. d/b/a Verizon New Hampshire, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE v. Freedom Ring Communications, LLC d/b/a BayRing Communications, One Communications, AT&T Corporation

TOPICS

judicial review of agency action administrative law standard of review plain meaning rule
statutory interpretation

PRACTICE AREAS

administrative law public utilities regulation telecommunications law appellate procedure
statutory interpretation

QUESTIONS PRESENTED

1. Whether NHPUC Tariff No. 85 permitted Verizon to impose a carrier common line access charge on calls that did not traverse Verizon's common line but involved local switching and local transport supplied by Verizon.
2. Whether the Supreme Court of New Hampshire should defer to the PUC's interpretation of Tariff No. 85 or review that interpretation de novo.
3. Whether Verizon violated Tariff No. 85's billing provision by charging for carrier common line access service in connection with calls for which it provided local switching and local transport but not a physical common line.

HOLDINGS

1. The court reviews the PUC's interpretation of NHPUC Tariff No. 85 de novo rather than deferentially.
2. Tariff No. 85 permits Verizon to impose the carrier common line access charge for each aspect of switched access service that Verizon provides, including local switching and local transport, even when the call does not traverse Verizon's common line.
3. Verizon did not violate section 4.1.1.A of Tariff No. 85 by imposing the carrier common line access charge on the disputed calls.

KEY QUOTATIONS

"Because a tariff has the same force and effect as a statute, we interpret a tariff in the same manner that we interpret a statute." (998)

"The plain meaning of these three provisions is that the carrier common line access charge applies to each aspect of switched access service that Verizon provides." (999)

"If the tariff should be amended, it should be amended as a result of regulatory process, and not by a decision of this court." (1001)

FACTUAL BACKGROUND

The petitioners were competing telephone companies that used Verizon's network to provide telephone services in New Hampshire. The disputed calls originated and terminated through non-Verizon end offices or wire centers, but Verizon provided local switching and local transport through its access tandem; the calls did not traverse Verizon's common line. Verizon assessed carrier common line access charges for those services under NHPUC Tariff No. 85.

PROCEDURAL HISTORY

BayRing petitioned the New Hampshire Public Utilities Commission to investigate Verizon's imposition of carrier common line access charges on certain local or intrastate toll calls. After a hearing, the PUC ruled for BayRing and the other competing carriers. Verizon and FairPoint appealed to the Supreme Court of New Hampshire, which reversed the PUC's decision.

DISPOSITION

reversed

CASES CITED

- Appeal of Verizon New England, 153 N.H. 50, 56, 889 A.2d 1027 (2005)
- Appeal of Conservation Law Foundation, 127 N.H. 606, 616, 507 A.2d 652 (1986)
- Appeal of State of N.H., 138 N.H. 716, 719-20, 647 A.2d 1302 (1994)
- Appeal of Pennichuck Water Works, 120 N.H. 562, 566, 419 A.2d 1080 (1980)
- Laclede Gas Co. v. Public Service Comm'n, 156 S.W.3d 513, 521 (Mo. Ct. App. 2005)
- Nenni v. Comm'r, N.H. Ins. Dep't, 156 N.H. 578, 581, 938 A.2d 116 (2007)
- AT&T Corp. v. Bell Atlantic-Pennsylvania, 14 F.C.C.R. 556, 557-58, 570-75, 592-93 (1998)
- WilTel Communications, Inc. v. Verizon New York Inc., Case 04-C-1548, 2006 WL 1479507 (N.Y.P.S.C. May 30, 2006)
- Bradshaw v. Wilkinson Water Co., 94 P.3d 242, 245 (Utah 2004)