

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6553

Investigation Into Tariff Filing of Verizon)	Hearing at
New England Inc., d/b/a Verizon Vermont,)	Montpelier, Vermont
re: Revisions to its Pole Attachment Tariff)	January 17, 2002

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I. SUMMARY

This Docket concerns tariff revisions filed by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), under the Public Service Board's ("Board") amended Pole Attachment Rule 3.700. In this Proposal for Decision I report the results of my review of Verizon's tariff revisions. For the reasons described herein I conclude that Verizon's tariff revisions contain a great many terms that directly contradict the plain language of the Rule, and that are clearly unjust and unreasonable. Thus I recommend that Verizon be required to file a complete revision of this tariff.

II. BACKGROUND

The Board began regulation by rule of attachments to utility poles when it adopted Rule 3.700 on November 15, 1985. The Board, in May of 2001, issued extensive amendments to the Rule along with a Policy Paper supporting these amendments.¹

With the exception of the rental calculation provisions of the Rule, the newly adopted amendments became effective on September 1, 2001.² Under the newly amended rule, each pole-owning utility must file a tariff that sets forth the rates, terms and conditions for attachment to its poles by an entity covered by the Rule.³

On August 3, 2001, and in anticipation of this effective date, Verizon filed amendments to its pole attachment tariff, PSB VT No. 26 (the "Proposed Tariff"). On October 2, 2001, Verizon filed a revision to the amendments to change the effective date of the Proposed Tariff pursuant to the Board's Order of September 13, 2001, in this Docket.⁴ By cover letter dated November 21, 2001, Verizon filed a redline draft (the "Redline Draft") that modifies many of the provisions of the Proposed Tariff. Verizon has not formally submitted the Redline Draft as a proposed tariff amendment for purposes of Board review and approval.

1. *PSB Rule 3.700 - Pole Attachments, Policy Explanation and Summary of Comments* at 1, 17 ("Policy Paper").

2. Rule 3.711.

3. Rule 3.703.

4. The Board issued the Order allowing the Proposed Tariff to take effect while at the same time subjecting its proposed terms to an investigation to determine their justness and reasonableness. Docket 6553, Order of 9/13/01.

Following the filing of testimony by the parties, a technical hearing was held in this matter on January 17, 2002.

The Department and the New England Cable and Telecommunications Association, Inc. ("NECTA") have opposed the Proposed Tariff, through briefs submitted to the Board as well as during the technical hearing.

III. FINDINGS OF FACT AND DISCUSSION OF MAJOR CONTESTED ISSUES

1. Verizon's Proposed Tariff sets forth terms and conditions for other entities to attach their facilities to Verizon's poles. Exh. VZ-1.

A. Rates, Terms and Conditions Not in Proposed Tariff

2. Verizon has not included all rates, terms, and conditions of attachment to Verizon's poles in the Proposed Tariff, and instead has placed many such rates, terms, and conditions in an Administrative Forms and Procedures Package (the "AFAPP"). Larkin pf. at 3–4; Larkin pf. rebuttal at 2–3; exh. DPS-1 at 196–99.

3. The AFAPP contains the forms that an applicant must use and the procedures that an applicant must follow when attaching to Verizon's poles. Larkin pf. at 3; exh. DPS-1 at 196–97.

Discussion: Rates, Terms, and Conditions Not in Proposed Tariff

Rule 3.703(A) requires Verizon to file a tariff that "shall include the rates, terms and conditions governing attachment to its poles" Because the Proposed Tariff fails to incorporate all such rates, terms, and conditions of attachment, the Board should direct Verizon to incorporate the AFAPP into the Proposed Tariff. The incorporation of the AFAPP, either by reference or by attachment, would ensure that all rates, terms and conditions of attachment are included in the Proposed Tariff in conformance with the Rule.

B. The Application Process

1. The 200-Pole Limit

4. The Proposed Tariff limits the number of poles that an applicant can include in any single application to 200 poles. The Proposed Tariff allows an applicant to prioritize the order in which poles will be processed by identifying a priority among multiple applications on file with Verizon. Exh. VZ-1 at § 4.1.1B.

5. Verizon allows multiple, simultaneous 200-pole applications for large projects. Harrington pf. at 24.

Discussion: The 200-Pole Limit

The Board has established timelines for completion of pre-construction surveys and make-ready based on the number of poles in a given application expressed as a percentage of total company poles.⁵ Since the time limits adopted by the Board clearly encompass an application that would contain more than 200 poles, the 200-pole limit in the Proposed Tariff is in direct conflict with the Rule.

Furthermore, in the rule-making process that eventually resulted in the amended Rule 3.700, Verizon asked that the Board allow the 200-pole limit. The Board specifically declined to allow the proposed limits:

Verizon Vermont commented that no attacher should be able to submit an application for more than 200 poles at one time, nor more than 2,000 poles cummulatively. Verizon reports that it currently has such provisions in a tariff and in an agreement with the New England Cable Television Association. The Board declined to change the Final Proposed Rule because the sliding scales adopted for the make-ready periods will ameliorate any problems, and because such limits would form a barrier to entry by new entrants.⁶

I conclude that Rule 3.700 precludes Verizon from instituting a limit of 200 poles per application.

5. See Rule 3.708(C) and (E).

6. Policy Paper at 14.

2. Individual Applications per Municipality

6. In the event an applicant is constructing a project that crosses municipal boundaries, the Proposed Tariff requires the applicant to submit a separate application per municipality, regardless of the number of poles involved. Tr. 1/17/02 at 26–27 (Harrington); exh. VZ-1 at AFAPP, Form 1 Instructions.

Discussion: Individual Applications per Municipality

Rule 3.703(c) requires that the terms of the Proposed Tariff be just and reasonable. To the extent that the terms of the Proposed Tariff create unnecessary burdens on the applicant, these terms are unjust and unreasonable.

The prohibition of multiple municipalities on a single application for individual projects results in unnecessary burdens for applicants in the form of increased administrative costs and multiple application fees, while the elimination of this provision creates no undue burden for Verizon. Consequently, I conclude that Verizon's requirement for individual applications for each municipality is inconsistent with Rule 3.703(c), and thus is not permissible.

3. Third-Party Overlash Applications

7. Verizon's Proposed Tariff requires the submission of a full application where a third party seeks to overlash the facilities of an existing licensee. Exh. VZ-1 at § 7.2.1B.3.; Harrington pf. at 37.

8. When an existing licensee overlashes more of its own facilities to its existing attachments, the Proposed Tariff requires only advance notice of the intent to overlash and allows the licensee to conduct its own pre-construction survey, thus avoiding the initial \$250 fee associated with applications. Exh. VZ-1 at § 7.2.1B.1, AFAPP at Section 5, page 2 of 4.

Discussion: Third-Party Overlash Applications

To require a third party wishing to overlash facilities to submit a full pole attachment license application creates an unnecessary burden for the applicant. Based on the presumption that existing licensee attachments are correctly placed on Verizon poles, Verizon allows licensees

to self-survey prior to an overlash of more of the licensee's own facilities. The same procedure is appropriate for a third-party overlash. The existing facilities should be presumed to be correctly placed, so that an overlash should not cause any clearance violations. Any additional strength requirements are properly dealt with in the same manner as for a single-party overlash: notice to Verizon of the possible need for make-ready at identified locations, followed by a limited pre-construction survey of those locations.

Thus, I conclude that third parties seeking to overlash facilities should only be required to submit notice to Verizon which contains the corporate identity, a certification that the third party has been issued a certificate of public good in Vermont, contact information for the third party, the pole locations and the number of poles, and a certification that the overlashing party agrees to be governed by Rule 3.700 and the Verizon Proposed Tariff.

4. The Forty-Five Day Application Cancellation Provision

9. Verizon's Proposed Tariff provides that Verizon may cancel an application in the event an applicant does not provide payment of pre-construction survey or make-ready charges within 45 days of being billed for such charges by Verizon. Exh. VZ-1 at § 3.4.1C.

10. In the event such a cancellation occurs and the applicant wishes to proceed with the project, the Proposed Tariff requires the applicant to proceed as if the initial application had never been submitted. Exh. VZ-1 at § 3.4.1C.

11. The Proposed Tariff does not differentiate between situations where partial payment has been made and Verizon is merely billing for additional costs incurred, and where the applicant has failed to submit any advance payment whatsoever. Exh. VZ-1 at § 3.4.1C.

Discussion: The Forty-Five Day Application Cancellation Provision

The forty-five day cancellation provision is not unreasonable nor does it result in an undue burden on applicants. The duty to provide timely payment cannot be considered unjust or unreasonable. Furthermore, Verizon is correct that the process of refileing the application is not a

particularly burdensome task. As Verizon points out, the applicant may simply photocopy the original application and resubmit it.⁷

There is a difference, however, with respect to partial payments. An applicant who has provided partial payment has illustrated an intent to proceed with an application. To cancel an application when a party has provided partial payment would create an undue burden for the party.

I conclude that Verizon should be allowed to place applicants who have not provided any payment within 45 days on an inactive status; this inactive status should extend for a minimum of 90 days, after which Verizon should be allowed to cancel the application if no payment has been submitted. During this 90-day period, any attachment application which Verizon receives should take priority over the inactive applications. However, this conclusion does not extend to applicants who have provided partial payments. I recommend that Verizon not be allowed to require an applicant to submit a new application, along with another application fee, if the applicant has provided partial payment⁸ to Verizon.

C. Access and Denial of Access

1. Denial of Access to Poles

12. Verizon's Proposed Tariff allows it to deny access on its poles to an applicant if Verizon believes that placement of the new facilities would interfere with Verizon's existing service requirements or would create an unsafe condition. Exh. VZ-1 at § 2.2.2D.

Discussion: Denial of Access to Poles

Rule 3.707(A) creates a right of access to Verizon's poles for attaching entities. The Rule limits the grounds on which Verizon may deny access to its poles to reasons of safety, reliability, generally accepted and applicable engineering standards, lack of capacity, or reservation of space for Verizon's own use in accordance with a bona fide development plan. These grounds for denial listed in the Rule are limited and objective. Under Rule 3.707, Verizon has the burden to

7. Verizon reply brief at 7.

8. Verizon should be permitted to set a reasonable minimum partial payment.

present an objective rationale as to why it should deny an applicant within the limits set by the Rule. Any grounds beyond those listed in Rule 3.707(A), especially those resting on a subjective rather than objective basis, are impermissible. Consequently, I conclude that Verizon may not deny access on its poles to an applicant unless Verizon is able to present an objective rationale as to why it should deny access to an applicant within the parameters set by Rule 3.707.

2. Access to Verizon Anchors

13. Verizon's Proposed Tariff allows Verizon to deny access to Verizon's anchors at Verizon's discretion. Exh. VZ-1 at § 7.1.1.D.

14. Verizon typically books the costs of anchors into account 2441, which is the investment account used in the calculation of the annual rent paid by attaching entities to Verizon. Glist pf. at 17.

Discussion: Access to Verizon Anchors

Verizon has conceded in its reply brief that the costs of anchors and guys are included in its pole attachment rate formula.⁹ It is unjust to require attaching entities to contribute to the costs of Verizon's anchors while at the same time denying them a complete right of access to anchors with sufficient capacity. Accordingly, I recommend that the Board require Verizon to grant licensees access to Verizon's guys and anchors.

3. Access to Easements and Rights-of-Way

15. Verizon's Proposed Tariff allows it to deny access to its poles when the underlying property owner has questioned a licensee's use of an easement, and requires that an applicant obtain written permission for use of a right-of-way occupied by Verizon's poles in order to attach its facilities to the poles. Exh. VZ-1 at §§ 6.1.1B. and C.

9. Verizon reply brief at 8.

Discussion: Access to Easements and Rights-of-Way

The language of the Rule is clear. Rule 3.702 (A) defines "access" as physical access to poles and rights-of-way sufficient for an attaching entity to connect, inspect, maintain and repair its cables. Rule 3.703(A) requires Verizon's tariff to provide access to rights-of-way. Verizon may not limit licensees' access to the right-of-way.

Verizon may not deny access to its poles except in the limited circumstances set forth in Rule 3.707, i.e., safety, insufficient capacity, or reservation for its own core service where it has a bona fide development plan. As stated previously, Verizon must have an objective basis for limiting access. Limiting access for fear that an objection might later arise is not only unreasonable, but it is also in clear violation of the Rule. Verizon should, however, be allowed to require licensees to indemnify Verizon in the event of a legal challenge with respect to the licensee's use of the right of way. Consequently, I recommend that the Board require Verizon to allow licensees access to Verizon's rights-of-way.

D. Construction Standards

16. Verizon's Proposed Tariff requires licensees to construct their attachments on Verizon poles using standards derived from multiple sources, including the Blue Book Manual of Construction Procedures published by Telecordia Technologies, Inc., the National Electric Code, the National Electric Safety Code, the rules and regulations of the U.S. Department of Labor issued by the Occupational Safety and Health Administration ("OSHA") and any other governing authority with jurisdiction over the subject matter. Where more than one standard exists for a given situation, the Proposed Tariff requires the licensee to conform to the more stringent standard. Exh. VZ-1 at § 6.1.1A.

17. In addition to these published objective standards, Verizon's Proposed Tariff also requires licensees to construct and maintain attachments in a manner acceptable to Verizon. Exh. VZ-1 at § 7.1.1A.

18. Verizon has developed a *Cable Placing Handbook*, which is an internal document that Verizon relies upon when placing its own attachments. The *Cable Placing Handbook* does not

replace the codes cited in the Proposed Tariff at 6.6.1, and is not used to evaluate a licensee's attachments. Harrington pf. at 18–21; tr. at 18–21, 112–114 (Harrington).

Discussion: Construction Standards

Rule 3.701(c) expressly provides that ". . . nothing in this Rule shall be construed to supersede, overrule, or replace . . . the engineering and work practices of any Attaching Entity or Pole Owner." Verizon can set construction standards beyond those commonly accepted in various industries. However, to the extent that Verizon's own construction standards are more stringent than those found in the referenced sources, Verizon must make such standards known to attaching parties before construction work is begun. This places an affirmative burden on Verizon to ensure that the construction standards it employs are available to attaching parties. This will ensure that "hidden" standards cannot be used to assess the construction work of the parties.

The Department asserts that the *Cable Placing Handbook* should be made available to licensees.¹⁰ I see no need for Verizon to make its *Cable Placing Handbook* available to attaching parties, as long as the standards by which Verizon will assess the adequacy of construction are available to attaching parties before construction commences.

Consequently, I conclude that Verizon is entitled to require licensees to construct their attachments to Verizon's poles using standards acceptable to Verizon, provided that Verizon makes these standards available to licensees. Furthermore, I conclude that there is no need for Verizon to make its *Cable Placing Handbook* available to attaching parties.

E. Tree-Trimming Costs

19. Verizon's Proposed Tariff allows it to directly charge a licensee for tree-trimming costs that, in Verizon's opinion, are necessary to accommodate a new attachment. Exh. VZ-1 at § 7.1.1G.

10. Department's Brief at 25.

20. Verizon's Proposed Tariff allows it to charge tree trimming costs directly to a licensee when necessary to clear a licensee's "drop," or attachment from the line to the customer. Exh. VZ-1 at § 7.1.1H.

21. Verizon's Proposed Tariff allows it to apportion among its licensees the costs of tree-trimming necessitated by adverse weather conditions, with each licensee's share to be negotiated in good faith on a case-by-case basis. Exh. VZ-1 at § 7.1.1I.

22. If Verizon regularly and properly maintains its lines, then trimming should generally not be required to accommodate an attachment which is placed above Verizon's and below the power company's facilities. Larkin pf. at 39; Larkin pf. reply at 42.

23. There may be some instances where an application for attachment may result in the need for tree-trimming, such as when the attachment requires Verizon to install a taller pole. Larkin pf. at 40.

24. In most instances where make-ready work involves rearrangement of facilities in the communications space on a pole, no tree-trimming would be required. Harrington pf. at 32.

Discussion: Tree-Trimming Costs

The costs of routine maintenance, which includes routine tree trimming, are included in the rate charged to attaching entities.¹¹ To impose a charge for these services on top of this pre-existing charge is unjust and unreasonable. If routine maintenance is done properly, in most cases there should be no need for Verizon to perform additional tree trimming during the make-ready process or in any actions involving a line drop.

Accordingly, I conclude that any additional charges to the attaching entity relating to routine maintenance, such as tree trimming, which appear in the Proposed Tariff are impermissible. Verizon should bear the burden to prove that tree trimming beyond mere maintenance is required. Otherwise, all tree trimming costs should be considered routine maintenance.

11. See Rule 3.706(D)(4) defining the term "carrying cost ratio" to include annual maintenance expenses.

F. Survey and Make-ready Charges

25. Verizon's Proposed Tariff provide that, in response to an application for access to its poles, Verizon conducts a pre-construction survey to determine what make-ready work is necessary to prepare a pole for attachment. Exh. VZ-1 at §§ 1.3.1, 5.1.1A.

26. Verizon utilizes unit costs for assessing charges against applicants for pre-construction surveys and for make-ready work performed in preparing poles for attachment of new facilities. Tr. 1/17/02 at 42, 45–46 (Harrington).

27. The unit costs are based on averages and do not reflect actual costs incurred by Verizon in performing particular pre-construction surveys or make-ready tasks. Tr. 1/17/02 at 60 (Harrington).

28. Verizon does not reconcile the unit costs with actual charges upon completion of a survey or a particular make-ready project. Tr. 1/17/02 at 45–46 (Harrington).

29. Verizon is generally billed by the contractors it uses to conduct the surveys at an hourly rate. Tr. 1/17/02 at 40 (Harrington).

30. Even though Verizon is billed by its contractors at an hourly rate, Verizon bills the license applicants at the unit costs it has established and listed in the AFAPP. Tr. 1/17/02 at 34–35 (Harrington).

31. Once a pre-construction survey is completed, Verizon will perform any make-ready work necessary to prepare the pole for attachment by the new licensee. Exh. VZ-1 at § 5.1.1D.2.

32. In determining the unit costs charged to applicants for survey and make-ready work, Verizon uses "loaded" labor rates. The loaded plant labor rates and loaded engineering labor rates are intended to represent the full cost of the employee(s) performing a survey or make-ready task by taking their basic hourly wage and adding on all of the overheads that are applicable to the position, such as the cost of lights in Verizon's buildings, use of motor vehicles, and vacation time benefits. Tr. 1/17/02 at 64 (Harrington).

33. Verizon's loading factor¹² for the plant labor and engineering labor rates is substantially higher than the industry standard, and Verizon has not justified the higher rates. For instance,

12. The actual loading factors were based upon information alleged to be, and treated as, confidential. They were, however, several times the Adelphia and State numbers shown in this finding.

Adelphia uses a factor just under 40% for calculating overheads in developing the penetration factor for its line extensions, while the State of Vermont uses a loading factor of roughly 30% to calculate loaded labor rates. *See* exh. DPS-6; Larkin pf. at 10.

34. I find 40% to be a reasonable loading factor. Findings 32 and 33, above.

35. Verizon's calculation of unit costs includes multiple, and duplicative, charges for travel time incurred by Verizon work crews. *See* exh. DPS-2; tr. 1/17/02 at 75–76 (Harrington).

Discussion: Survey and Make-ready Charges

Board Rule 3.708(H) requires a pole-owning utility to reconcile the amount of any estimated pre-payments associated with make-ready work upon completion of the task and to either refund any overpayment or bill for any portion of costs not covered by the original estimate. Verizon's Proposed Tariff fails to comply with this requirement. The Board should require Verizon to incorporate this reconciliation of actual versus estimated costs into the Proposed Tariff.

The Department has requested that personnel selected under pre-survey contracts be the least expensive individual qualified to perform such a survey.¹³ Rule 3.708(F) specifies that "a Pole-Owning Utility shall pursue reasonable least-cost alternatives." However, Rule 3.701(C) states that "nothing in this Rule shall be construed to supersede, overrule, or replace . . . work practices of any Attaching Entity or Pole Owner." I believe that the language of Rule 3.701(C) is sufficiently direct and, consequently, I recommend that the Board decline to require that Verizon utilize the least expensive qualified person for the survey. Verizon should be reminded, however, that costs that are passed on to the attaching entity must be reasonable.

Verizon's loaded labor rates are substantially higher than those of similarly situated companies. Verizon has not provided any justification as to this discrepancy from common industry practices. A more accurate loading factor, based upon similarly situated companies and the Department's expert testimony, would be approximately 40%. I recommend that the Board require Verizon to use the figure of 40% in calculations involving loaded labor rates, unless

13. Department brief at 36.

Verizon can provide reliable information as to why the Board should allow its proposed loaded labor rates.

To bill licensees multiple times for the same amount of travel time is clearly unjust and unreasonable. Verizon must ensure that the travel time charges do not reflect any double billing. In order to make the total travel time charges more transparent and acceptable, I recommend that this cost be broken out of the task costs and charged only once.

G. Third Parties and Joint Use Agreements

36. Verizon uses the term "Joint Use agreement" to describe a pre-existing contract between Verizon and a company that shares a Verizon-owned pole. Tr. 1/17/02 at 119–122 (Harrington)

37. Under Verizon's Joint Use agreements, a licensee pays rent separately to both the owner of the pole and the joint use entity. The licensee pays an amount to each entity equal to half the amount that entity would charge on a solely-owned pole not subject to a Joint Use agreement. Tr. 1/17/02 at 119–21 (Harrington).

38. Verizon's Proposed Tariff requires an applicant to submit an application to and obtain a license from a joint user, an entity that has no ownership interest in a pole. Exh. VZ-1 at §§ 2.2.1A., 2.2.2C., 6.1.1B, 6.1.1C., AFAPP Procedure 3 at 2–7 of 7; Form 1 and instructions; Form 6; Section 4, at 2 of 3.

39. Section 7.1.1E.2 of the Proposed Tariff grants Joint Users the right to rearrange or transfer the attachments of a licensee without the licensee's permission. Exh. VZ-1 at § 7.1.1E.2.

40. Verizon's Proposed Tariff provides that a joint user must be notified of a pending application and survey and has the right to attend such a survey and be reimbursed for its costs. Exh. VZ-1 at § 5.1.1A.; tr. 1/17/02 at 139–40 (Harrington).

Discussion: Joint Use Agreements

Verizon apparently confuses joint *users* with joint *owners*. Although Rule 3.705 envisions a legal relationship between the licensee and each pole owner, no such legal relationship exists between the licensee and a joint user.

Rule 3.701(A) "governs the attachment of lines, wires, cables or other facilities by any Attaching Entity seeking to attach to a pole owned by a Pole-Owning Utility, at rates, terms and conditions that are just and reasonable." Thus, the rights and obligations between an attaching entity and a pole-owning utility are defined by the Rule in the absence of an agreement that provides otherwise. While Verizon is correct that the Rule allows pre-existing contracts concerning the cost, maintenance, and use of poles to remain in effect until their expiration (by virtue of Rule 3.704(A)(2)), this provision does not allow Verizon to impose burdens on attaching entities not party to such contracts and whose rights are otherwise set forth in the Rule.

The plain language of the Rule illustrates that joint users are not entitled to the same rights as the pole owning utility. Rule 3.705 recognizes the possibility of jointly-owned poles and the need for rates payable to each owner in accordance with its ownership interest. Rule 3.703(A) requires that each pole-owning utility file a tariff setting forth the rates, terms, and conditions for attachment to poles in which it has an ownership interest. Rule 3.706(B) further dictates that each pole-owning utility shall calculate the cost of attaching to its poles and include it in its tariff. The Rule is thus quite clear that only the owner of the pole is entitled to require rent, receive an application, be reimbursed for costs, or perform work on the facilities of an attaching entity.

Rule 3.708(A) requires that application for access to poles be made in writing to the **pole-owning utility**. Nothing in the Rule remotely envisions the need for an applicant to seek permission for access from an entity that does not have any ownership in a pole. Accordingly, since it is impermissible to require application to a non-owner joint user, it is impermissible for any non-owner joint user to charge any application fees to an entity seeking attachment.¹⁴

Additionally, Rule 3.701(B) specifically states that nothing in the Rule shall be construed to confer a right upon one attaching entity to alter, move, or otherwise perform work on the facilities of another attaching entity. Verizon's grant of authority to joint users to do just that, in

14. Although a joint user may be given the right to attend a survey, Verizon likewise cannot require an applicant to reimburse the joint user.

section 7.1.1E.2 of the Proposed Tariff, runs counter to the Rule and should be removed from the Proposed Tariff.

Accordingly, I recommend that the Board require Verizon to remove from the Proposed Tariff any obligations that licensees would have to joint users.

H. Billing Disputes and Dispute Resolution

41. Verizon's Proposed Tariff allows it to refuse to perform make-ready work for a licensee, even if Verizon has received pre-payment for that work, if there is an existing billing dispute with that licensee and the licensee fails to pay any disputed amount up to \$10,000, fails to establish an escrow account for disputed sums in excess of \$10,000, or fails to invoke the Proposed Tariff's dispute resolution process within six months of establishing such an escrow account. Exh. VZ-1 at § 3.5.1B.

42. Verizon's Proposed Tariff requires a licensee to submit complaints to Verizon and to follow Verizon's internal dispute resolution process over Proposed Tariff terms that a licensee believes are unreasonable or unjust. Only after completing the tariffed dispute resolution process would a licensee be entitled to bring a complaint before the Board. Exh. VZ-1 at § 15.1.10A.

43. Verizon's Proposed Tariff requires a licensee to negotiate substitute terms with Verizon in the event any material term of the Proposed Tariff is found to be unenforceable. VZ-1 at § 15.1.4A.

Discussion: Billing Disputes and Dispute Resolution

It is unjust and unreasonable for Verizon to link make-ready work for pole attachments to collateral work for which the billing is contested. Verizon has other, less objectionable, means to ensure payment for the new make-ready work. Verizon can require the licensee to prepay for make-ready work, ensuring that there will be no dispute over payment for make-ready work. Additionally, Verizon has ample recourse if the licensee fails to pay rent. Any linking of make-ready work to payment for other work should be prohibited.

Board Rule 3.710(A) sets out the complaint procedures that parties involved in a pole attachment dispute may utilize. The Rule specifically states: "A party aggrieved by a violation

of these rules may file a complaint or petition with the Board." Such language prohibits Verizon from requiring that disputes under the Proposed Tariff must first be brought to Verizon's internal dispute resolution procedure. Although an internal dispute resolution process is strongly encouraged before the parties avail themselves of the Board, licensees should not face the prospect of being placed in a limbo of Verizon's making. Thus, I recommend that the Board require Verizon to modify its Proposed Tariff by eliminating the requirement that licensees utilize Verizon's internal dispute resolution process.

30 V.S.A. § 225 requires that any amendments to a company's schedule of rates, and all terms and conditions affecting such rates, be filed with the Board and Department for review and Board approval at least 45 days before their proposed effective date. 30 V.S.A. § 225(a). Consequently, the Proposed Tariff's requirement that a licensee negotiate substitute terms with Verizon in the event any material term of the Proposed Tariff is found to be unenforceable should also include language that these proposed revisions to the Proposed Tariff must be subject to the statutory filing and approval process.

I. Liability Provisions

44. Section 13 of Verizon's Proposed Tariff sets forth provisions that impose liability on a licensee for a variety of situations, including financial responsibility for damages caused to Verizon's facilities by a licensee and indemnification of Verizon by a licensee for any and all costs incurred by Verizon arising from or in connection with the Proposed Tariff, except those caused by Verizon's negligence. Exh. VZ-1 at §§ 13.1.1B. & D.

45. Section 13 also sets forth Verizon's liability to licensees in the event Verizon damages licensee facilities. Exh. VZ-1 at § 13.1.1C.

46. The liability language in Sections 13.1.1B, C, and D regarding damage to facilities imposes a greater degree of liability on licensees than it does on Verizon, allowing Verizon to recover "any and all loss" from such damage and "all costs incurred in making repairs." Licensees, however, are allowed to recover from Verizon only the "reasonable, direct costs incurred in making repairs." Exh. VZ-1 at §§ 13.1.1B and D; Larkin pf. at 33; Larkin pf. rebuttal at 33.

47. Subsection D lists circumstances in which a licensee must indemnify Verizon from numerous costs and expenses for eight specified scenarios, unless the costs incurred are the result of Verizon's negligence. There is no comparable reciprocal liability to Verizon for harms suffered by licensees. Exh. VZ-1 at § 13.1.1D.

Discussion: Liability Provisions

Rule 3.703(A) allows Verizon to include terms in its Proposed Tariff governing liability limitations, indemnification, and insurance requirements. However, as with all terms of the Proposed Tariff, such terms must be just and reasonable. To hold licensees liable to a greater extent than Verizon is unjust and unreasonable. I recommend that the Board instruct Verizon to create congruent liability provisions for all involved parties in order to comply with the Rule.

J. Routine Maintenance Activity

48. Section 7.2.1A. of the Proposed Tariff requires notification to Verizon by a licensee of the licensee's intent to perform maintenance activity on its attachments. Exh. VZ-1 § 7.2.1A.

49. Verizon's Proposed Tariff defines routine maintenance activity as work on fewer than six adjacent spans and states that "significant simultaneous maintenance activity within a given geographic area" may be deemed by Verizon to be rebuild activity and subject the licensee to increased administrative burden under the Proposed Tariff. Exh. VZ-1 at § 7.2.1A.; Harrington pf. at 35.

50. Verizon's Proposed Tariff fails to define what constitutes "significant simultaneous maintenance activity" as well as what constitutes a particular "geographic area." Larkin pf. at 42; Larkin pf. reply at 46.

Discussion: Routine Maintenance Activity

It is unreasonable for Verizon to intrude upon a licensee's routine maintenance in the manner provided in the Proposed Tariff. The Proposed Tariff's suggestion that work on more than six adjacent spans constitutes rebuild activity has no basis in reality.

I recommend that the Board order Verizon to modify the Proposed Tariff so that rebuild procedures apply only when the work requires additional clearance or adds sufficient additional stress so as to require make-ready work.

K. Inspections, Post-Construction, Subsequent, and Periodic

51. Verizon's Proposed Tariff permits it, at its discretion, to conduct post-construction, subsequent, and periodic inspections of licensee facilities. Exh. VZ-1 at § 8.1.1A.

52. Under the Proposed Tariff, a post-construction inspection by Verizon is conducted following attachment by a licensee to determine if the newly placed attachments have been constructed in compliance with applicable standards. Exh. VZ-1 at §§ 1.3.1 and 8.1.1B.

53. Under the Proposed Tariff, periodic inspections are performed in Verizon's discretion on 60 day's notice to a licensee. Such inspections may be of all or any part of a licensee's facilities attached to Verizon's poles. Exh. VZ-1 at §§ 1.3.1 and 8.1.1F.

54. Under the Proposed Tariff, subsequent inspections are performed by Verizon to confirm that non-compliant conditions identified during a post-construction or periodic inspection have been properly corrected. Exh. VZ-1 at §§ 1.3.1 and 8.1.1D.

55. In each of the described inspections, the licensee would be liable to Verizon for all costs of the inspection. Exh. VZ-1 at §§ 8.1.1A and 3.3.1B.

56. Verizon regularly inspects its poles and their attachments as part of routine field work on a daily basis, and Verizon should therefore identify non-compliant attachments as a matter of course without the need for specific inspections. Larkin pf. at 45.

57. Routine maintenance is included in the calculation of the annual pole rental charge. Rule 3.706(D)(4).

Discussion: Inspections, Post-Construction, Subsequent, and Periodic

It is unreasonable to expect the cost of post-construction inspection to be borne by the licensee. The entities performing the required work are established cable operators that have extensive experience in construction. Even newer entities are presumptively qualified to build

networks. There is no reasonable justification for charging them with Verizon's costs should Verizon wish to buy peace of mind through a post-construction inspection.

The terms regarding subsequent and periodic inspections are likewise unreasonable. Verizon engages in routine maintenance, which is included in the calculation of the annual pole rental charge. Since the licensee pays for this routine maintenance, it is unjust and unreasonable to charge licensees twice for this service.

Consequently, I recommend that the Board require Verizon to strike the provisions that allow Verizon to charge licensees for post-construction, periodic, and subsequent inspections from the Proposed Tariff.

L. Termination Provisions

58. Verizon's Proposed Tariff allows it to terminate licenses for attachment for certain enumerated breaches by a licensee upon 60 day's notice of the breach. Exh. VZ-1 at § 10.1.1.

59. Verizon's Proposed Tariff also allows it to immediately terminate licenses for attachment for certain enumerated breaches by a licensee without any notice to the licensee. Exh. VZ-1 at §§ 10.2.1 and 10.3.1C.

60. Where termination is initiated by a licensee's removal of facilities, the Proposed Tariff allows Verizon to bill for the terminated attachment for up to two months following its removal. This occurs because, under the Proposed Tariff, Verizon affords itself 30 days after licensee notice of removal to verify the removal of the attachment and permits billing until the end of the month in which the verification occurs. Exh. VZ-1 at § 10.4.1A.

Discussion: Termination Provisions

PSBR 3.709(A) requires 60 days' written notice by Verizon prior to a termination of service to facilities or removal of facilities when such termination or removal is based on a breach of licensee obligations. Consequently, Verizon's Proposed Tariff cannot afford Verizon the ability to immediately terminate licenses. Such an action would be contrary to the Rule.

Additionally, billing a licensee for pole rental after the licensee has removed lines from the pole is unjust and unreasonable. Billing of licensees should end once Verizon receives notification from the licensee that it has removed its lines from Verizon's poles.

Thus, I recommend that the Board require Verizon to adopt a termination clause which provides for 60 days' notice. I further recommend that the Board require Verizon to cease billing licensees once Verizon receives notification that the licensee has removed its lines from Verizon's poles.

M. Transfer of License

61. Verizon's Proposed Tariff requires Verizon's prior written consent for a licensee to transfer its pole-attachment license to any non-affiliated entity. Exh. VZ-1 at § 11.1.1A.

62. Verizon relies on this consent requirement to attempt to ensure that the transferor licensee has paid its license-related bills in full, or in the alternative to pressure the transferee licensee to accept the debts of the transferor as a condition of Verizon's consent to the transfer. Harrington pf. at 44.

Discussion: Transfer of License

Verizon's attempts to restrict the transfer of licenses unless bills are paid (or transferred) are unjust and unreasonable. Verizon should not require prior written consent for a non-affiliate transfer of an attachment license as long as the licensee can verify that the transferee holds a certificate of public good in Vermont. Rule 3.702(B) defines an Attaching Entity under the Rule as one that holds a certificate of public good issued by the Board. In order to obtain a certificate of public good, a company must demonstrate that the operation of its business in the State of Vermont will promote the general good.¹⁵ In making such a finding, the Board typically looks at, among other things, the financial soundness of a company. By restricting the transfer of licenses, Verizon is providing itself veto power over the Board's determination of which companies may operate in Vermont. I recommend that the Board instruct Verizon to remove the

15. 30 V.S.A. §§ 102, 231(a), 503.

Proposed Tariff provision requiring prior written consent for a non-affiliate transfer of an attachment license.

N. Bond Requirement

63. Section 12 of the Proposed Tariff permits Verizon to require a licensee to secure a bond to insure licensee payment obligations under the Proposed Tariff, including sums due for attachment fees and any work performed by Verizon under the Proposed Tariff. Exh. VZ-1 at § 12.1.1.

64. Verizon's Proposed Tariff allows it to terminate service to an attaching entity that fails to make its payments pursuant to the terms of the Proposed Tariff. Exh. VZ-1 at § 10.2.1A2.

Discussion: The Bond Requirement

The requirement that licensees be required to post a bond is unreasonable because Verizon is already afforded adequate protection against non-payment by licensees under Vermont law. It has the right to terminate service to that entity pursuant to the Proposed Tariff and the Rule. For any unpaid balances existing post-termination, Verizon has access to Vermont's courts for collection of such amounts. Consequently, I recommend that the Board require Verizon to delete the bond requirement from the Proposed Tariff.

O. Miscellaneous Provisions

Both the Department and NECTA have provided highly detailed comments on many additional terms of the Proposed Tariff. These additional comments reflect not so much significant substantive disagreements as recommendations for improving the clarity of the Proposed Tariff. Because the changes recommended in this proposed decision will require Verizon to rewrite virtually the entire Proposed Tariff, Verizon should study these additional recommended changes offered by the Department and NECTA as well as the terms of Rule 3.700. To the extent that Verizon incorporates these additional comments in the rewritten Proposed Tariff, most of the lesser objectionable terms not specifically addressed here should disappear, decreasing the chances of another challenge to Verizon's tariff. Adherence to the Rule

and attention to the criticism of the Proposed Tariff by the Department, NECTA, and the Board will aid Verizon in constructing a tariff which conforms to the principle of just and reasonable rates.

IV. CONCLUSION

I conclude that the Proposed Tariff filed by Verizon does not meet the requirements of Rule 3.700 and the Board should not approve the Proposed Tariff. Instead, Verizon should be required to revise its tariff in accordance with the recommended changes set forth above.

Proposed findings of fact inconsistent with the above are hereby rejected.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 24th day of June, 2003.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

V. BOARD DISCUSSION

This docket has been open and actively litigated for two years. We appreciate the efforts of the parties to bring resolution to the myriad issues raised by implementation of the Board's revised Rule 3.700. Verizon raised many issues in its brief and oral argument, and we address most of those issues below. However, in general we accept the findings, conclusions, and recommendations of the Hearing Officer, including his conclusion that Verizon must redraft and refile its entire pole attachment tariff. We share his reluctance to finely parse the language of the filed tariff when the company has already agreed to make a large number of changes (including but not limited to the "Redline Draft" referred to during oral argument), the exact nature and language of which are not before us. As counsel for Verizon suggested,¹⁶ a better result is likely to come from discussions and negotiations between the various stakeholders than from the Board attempting to fill in the many blanks left by the proposed decision.

We also wish to address one comment by counsel for Verizon to the effect that, to the extent that Verizon must modify its tariff pursuant to the Board's rulings, the company assumes that congruent requirements will be imposed upon other pole owners in later proceedings. We fully agree with the principle that similarly situated parties ought to be treated as uniformly as possible. Indeed, we suppose that the "precedential" weight of the review of Verizon's tariff has contributed to the amount of time and effort that have gone into this docket.

Positions Addressed and Revisited

Verizon urged that the Board take a "long, hard look" at the proposed decision, in part because "the PFD rejects all of Verizon's positions and . . . ignores Verizon's proposed findings, legal argument, and even concessions that Verizon made in its briefs." First, we observe that the Hearing Officer's proposed decision addresses a total of nineteen tariff provisions; of those, Verizon prevails on three, and on several others the Hearing Officer merely concluded that Verizon had failed to prove its costs, which may be cured when Verizon files its overall revision. Of the sixteen points that Verizon lost, only five were based upon the Hearing Officer's

16. Tr. 7/9/03 at 73 and 80.

conclusions about public policy or the requirement that rates and rules be "fair and reasonable." The rest were provisions that are directly contrary to the Board's Rule, including some that had been strongly argued during the rulemaking process but on which Verizon's viewpoint had not prevailed. Verizon does not actually argue that such scorekeeping is relevant, but we think it is worth pointing out that the decision is not nearly so one-sided as the company represents.

Proposed Revisions

Verizon also raised the objection that the proposed decision did not discuss the many concessions Verizon made, both in the Redline Draft and in its briefs. As the Department argued, Verizon had a filed tariff in effect; Verizon's many proposed revisions were not under review. It is certainly possible that, where a filed tariff has merely a few rough edges that can be polished through discussion during the hearing process, the decision-maker can integrate the filing with the revisions and propose an order that includes what would be a finished product. We decline to accept that the Hearing Officer here erred by declining to attempt a synthesis of tariff provisions contained in many different documents, many of them in briefs and oral representations but not in evidence.

Burden of Proof and Persuasion

The parties were at odds as to the relative burdens of the company and the opponents in defending and challenging the tariff. The company cited *Carpenter v. Home Telephone Company*, 122 Vt. 50, 163 A.2d 838 (1960), for the proposition that a properly filed tariff that is not suspended by the Board enjoys a presumption of validity, and that the burden is upon the challengers of the tariff to prove that it is unjust, unreasonable, or otherwise invalid. Verizon's reliance on *Carpenter* is misplaced. In that case a customer had challenged a requirement by Home Telephone Company of a \$500 deposit, pursuant to its filed tariff, as a precondition to continued residential service. The Public Service Commission ruled that the burden was upon the telephone company to show that the deposit requirement, as applied to *Carpenter*, was justified. The Supreme Court ruled that to require the company "to establish its right to invoke any duly filed and established rate regulation on each occasion of its use would be to nullify the

notice protection now in the law and set the statutory procedures at naught. . . ."¹⁷ On the contrary, the present case is not a consumer case but an investigation by the Board of a major revision to Verizon's tariff, opened at the request of the Department. We certainly agree as a general matter that filed tariffs enjoy a presumption of validity; indeed, it was the Department's intention when it recommended that we allow the tariff to go into effect but to investigate it that the tariff be regarded as valid amongst those in the world who are affected by it. However, the reason behind this rule of law is to provide certainty to the utility as well as clear notice of utility rates and practices to the public. When, as here, the Department recommends that we immediately open an investigation because the new tariff is better than the old one, and makes clear that the tariff still has many problems, the company is not unfairly disadvantaged by being required to come forward and show that its lengthy and complex tariff is fair and reasonable, and that the rates it imposes are not unjust. Contrary to the argument of counsel, the tariff in question was not "approved" by the Board,¹⁸ it was **allowed** to go into effect, subject to investigation.

Unit vs. Actual Costs

Verizon argues that it ought to be allowed to use a "unit cost" method for charging attaching entities for surveys and make-ready work. The Hearing Officer's proposed decision¹⁹ is not exactly clear on this point, but it does seem to suggest that Rule 3.708(H) requires use of actual costs instead of averaged unit costs. To the extent that this is the meaning of the proposed decision, we do not accept it. The Board has for many years allowed utilities to bill customers for line extensions and other work on a unit cost basis, rather than attempting to track exact costs for work performed, and there is no reason for work under Rule 3.700 to be treated differently. However, the proposed decision may also be read to require that Verizon true up the charges for survey and make-ready work after it is performed, to the extent that some work units may have been charged and pre-paid but turn out to be unnecessary and not performed, and we endorse that requirement.

17. *Carpenter* at 55, 842.

18. Tr. 7/9/03 at 66.

19. Proposed decision at 14.

Also in that section of the proposed decision the Hearing Officer criticizes the "loading rate" that Verizon applies to labor rates, and proposes that Verizon be limited to a 40% markup. We accept the Hearing Officer's recommendation, but observe that it appears based upon a failure of proof of Verizon's proposed markup, and a substitution of a similar markup applied by entities that may not be in the same position as Verizon. Since Verizon seems to have filed two separate versions of these charges, one in the proposed tariff and one in the Redline Draft, we expect that Verizon will take a fresh look at these charges when it files its revision to the tariff. Likewise the Hearing Officer's criticism of the treatment of travel charges in the unit cost items may well be obviated when Verizon files its revision.

Finally, Verizon argues²⁰ that the proposed decision does not address the Department's contention that Verizon should use "note takers" for survey work rather than "engineers." However, not only does the proposal address this issue at page 14, Verizon's position is adopted.

Joint Users

Verizon's proposed tariff requires a potential attacher to poles to submit an application to joint users of the poles and to obtain permission from them to attach. It also requires payments by the attachers to both Verizon and the joint users, and allows joint users to rearrange the facilities of the attachers without notice. The proposed decision correctly requires that Verizon remove these provisions. While the Rule does not disturb the existing contracts between Verizon and its joint users, that does not mean that the Rule is superceded by those contracts. Only the owner of a pole need receive an application to attach, and only the owner is entitled to rents. If the contract between Verizon and the joint user provides for the joint user to receive applications and a share of the rent, it is up to Verizon to supply those things, not the attaching entity.

Verizon's reliance upon the Order in Docket 6607 is entirely misplaced. Both the Stipulation in that case and the Order adopting it contain the following language:

Finally, the parties acknowledge that the Department's entry into this Stipulation is without prejudice to its position in Docket 6553 challenging the provisions of Verizon VT's Tariff No. 26 requiring attaching entities to make payments to Verizon VT as

20. Tr. at 16.

a non-owning joint user under joint use agreements. In the event that the Board rules adversely to Verizon VT on that issue in that docket, Verizon VT will, subject to its legal rights to seek reconsideration or modification of, appeal, or otherwise challenge the Board's order, modify its tariff in accordance with the Board's final order.

Docket 6607, Order entered July 16, 2002, at 2. Verizon cannot rely upon the Board's acceptance of payments to joint users in Docket 6607 as precedent to challenge the present proposed decision when that Docket's result was made subject to the ruling on the issue in this docket.

Applications for Each Municipality

The proposed tariff requires an attaching entity to provide Verizon with a separate application for each town where work would occur. The proposed decision concludes that this is both burdensome on the attacher and contrary to Rule 3.703(c). At argument, Verizon argued that its tariff included this provision because Verizon needs to enlist each attached electric utility in the make-ready survey process, and electric utility service territories "generally track" municipal borders. They do not,²¹ and we accept the Hearing Officer's recommendation.

Inspections

Verizon's proposed tariff allows the company to charge the attaching entity for inspections, both post-construction to assure compliance and afterward. The Hearing Officer concluded that Verizon ought not to charge for any of these inspections. At argument the Department agreed that Verizon should be allowed to charge for inspections where non-compliance is found. We agree with the Department that Verizon ought to be allowed to inspect the poles to assure compliance with construction standards, and to charge the attaching entity for the inspection where violations are discovered. Subsequent inspections, on the other hand, are more likely to be for the benefit of Verizon and all the attachers generally, and the cost of those inspections ought to be folded into the pole-attachment rental charge. We do note, in passing, the comment by counsel for Verizon to the effect that attaching entities can control these costs

21. See the service territory map at <http://www.cvps.com/customer/map.shtml>.

"because for both post construction and periodic inspections, Verizon generally refrains if the applicant has a history of compliance."²² These inspections must not be used as a barrier to entry by new telecommunications providers, who would be unlikely to have any history of compliance or non-compliance.

Assurance of Payment

Verizon's tariff allows it to require new attaching entities to post a bond to guarantee payment of pole rental fees, and to remove a licensee's facilities in the event of non-payment. The proposed decision eliminates both these provisions.

We agree that Verizon is entitled to be assured that it will be compensated for make-ready work it performs; Rule 3.708(d)(2) allows such assurance, normally obtained by pre-payment of make-ready charges. If Verizon wishes to accept a bond in place of pre-payment, we would be inclined to accept that provision. However, Verizon seems to be requiring the bond to assure payment of pole rentals; to that extent, we agree with the Hearing Officer that Verizon has sufficient recourse either through the Board or through the courts, and that a bond is an unreasonable burden upon the attacher. Unlike make-ready work, the charge for pole rental does not reflect an out-of-pocket expense by the pole-owner, and there is no reason to provide greater security than we allow under our customer deposit rules. It is especially troubling that the provisions for discontinuing pole attachment are not clearly tied to non-payment of pole-attachment rental. Any tariff provision that allows Verizon to refuse to perform make-ready work, or to take action to remove attachments once made, must be closely tied to non-payment of similar charges, not to collateral disputes.

Liability Provisions

The proposed decision would require that the liability limitations, indemnifications, and insurance requirements of Verizon and of the attaching entities be "congruent." Verizon has argued that the relative positions of the parties are very different, and that there is justification for some disparity between the treatment of the pole owner and the attacher. We do not agree that

22. Tr. at 20.

the liability and insurance protections of the two parties need to be identical; if that is what the Hearing Officer meant by "congruent," we reject that. However, Verizon should not attempt to place a substantially greater burden upon the attachers than upon itself without some clear justification. As noted above, Verizon has represented that it will attempt to negotiate with the Department and other stakeholders before it resubmits its tariff, and this expect that this provision will be adjusted in that process.

VI. BOARD CONCLUSION

Except as explicitly noted above, we accept the findings, conclusions, and recommendations of the Hearing Officer, including his conclusion that Verizon must redraft and refile its entire pole attachment tariff, with provisions consistent with this Order and with our Rule 3.700. Any other proposed findings or legal arguments are hereby rejected. Verizon is urged to abandon its reliance upon the contracts it has obtained with attaching entities in other states, but instead to enter discussions with the Department and with Vermont attaching entities to reach a fair and usable revised tariff.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings, Conclusion, and recommendations of the Hearing Officer are adopted, except as modified above.
2. Verizon shall file a revised tariff, not inconsistent with the terms of this Order, not more than 30 days from this date.
3. This Docket is remanded to the Hearing Officer for consideration of the tariff compliance filing.

Dated at Montpelier, Vermont, this 22nd day of October, 2003.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 22, 2003

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.