

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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Complaint of Freedom Ring)	
Communications, LLC d/b/a BayRing)	Docket DT 06-067
Communications Against Verizon New)	
Hampshire Regarding Access Charges)	
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**VERIZON NEW HAMPSHIRE'S
POST-HEARING BRIEF**

I. INTRODUCTION

This case, though it may appear factually complicated, centers on a matter of basic tariff interpretation and whether competitive providers must pay carrier common line charges to Verizon New Hampshire for the switched access services they receive when their calls traverse Verizon's network. Based on the plain meaning of Verizon's Tariff 85, competitive carriers like BayRing and AT&T are receiving switched access service as that term is used in Tariff 85, and thus Verizon is entitled to be paid for the service provided. Approved tariffs are *prima facie* lawful, and the petitioners – not Verizon – bear the burden of proof in this proceeding;¹ they have failed to meet that burden.

II. FACTS

A. *Procedural Background*

This case arises out of a petition filed by Freedom Ring Communications, LLC d/b/a BayRing Communications (“BayRing”) requesting that the New Hampshire Public

¹ See N.H. Admin. Rules, Puc 203.25 (“Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence”).

Utilities Commission (the “Commission”) investigate Verizon’s assessment of switched access charges, including “carrier common line” (“CCL”) access charges, on calls originating on BayRing’s network and terminating on a wireless carrier’s network. *See* Order No. 24,705 at 1 (November 29, 2006). In its petition, BayRing asserted that Verizon could only apply CCL charges under N.H.P.U.C. Tariff 85 (“Tariff 85” or the “Tariff”) to those calls involving a Verizon end-user via Verizon’s local loop, and not to calls between non-Verizon carriers, *id.*, and that at most, the only charge that could be applied by Verizon was for tandem transit services under N.H.P.U.C. No. 84 (“Tariff 84”). *Id.* BayRing subsequently amended its petition to allege that Verizon was improperly assessing access charges for calls originated by BayRing end-user customers and terminating at end-user wireline customers served by carriers other than Verizon. *See* Order No. 24, 863 (October 23, 2006). AT&T Communications of New England, Inc. (“AT&T”) intervened in July 2006, asserting interests similar to BayRing. PUC Order No. 24,705 at 1 (November 29, 2006).

BayRing, upon conducting “further review” of the call flows, no longer asserts as its “direct position” the theory that the services provided by Verizon are tandem transit services subject to Tariff 84. Instead, it takes the position that Verizon has no tariff authorizing access charges for the traffic at issue, despite the fact that Verizon is plainly providing a service to it. Pre-filed Direct Testimony of Darren Winslow at 8; Tr. Day I at 80.

On October 23, 2006, the Commission issued an order expanding the scope of the investigation to include carriers affected by the relevant tariff provisions and to review calls made or received by wireless and wireline end-users. *Id.* The Commission later

bifurcated this proceeding into two phases, the first of which is limited to determining the proper interpretation of the relevant tariffs and to what extent, if any, reparations are due. *See* Order No. 24,705.² The second phase, if necessary, will determine reparations. Consideration of prospective modifications to Verizon's tariff, if any, was removed for resolution under a separate proceeding. *Id.*

B. Relevant Facts

On September 27, 1993, the Commission approved New England Telephone and Telegraph Company ("NET") Tariff 78 (now Verizon Tariff 85) which set forth regulations, rates and charges applicable to switched access services provided by NET (now Verizon). This tariff, the result of an involved proceeding at the Commission, introduced the CCL charge into the NET access rate design. Specifically, the tariff authorizes Verizon to bill carriers and other entities carrier common line charges for the provision of all switched access services.³ Tariff 85 § 5.4.1.A. Since 1993 Verizon has billed the CCL charge to interexchange carriers ("IXCs") for all switched access calls, including calls originated from or terminating to wireless carrier end-users. In 1996 Verizon elected to outsource the billing of switched access to a third party billing agent for switched access originating from competitive local exchange carriers ("CLECs") and Independent Telephone Companies ("ITCs") where Verizon provided the intermediate switched access transport and tandem switching for calls delivered to another CLEC, ITC

² The Commission identified the following issues for review in Order 24,705: (1) whether calls made or received by end-users which do not employ a Verizon local loop involve Verizon switched access; (2) if so, whether Verizon's access tariff requires the payment of certain rate elements, including but not limited to CCL charges; (3) if not, whether BayRing is entitled to a refund for such charges collected by Verizon in the past and whether such services are more properly assessed under a different tariff provision (e.g., Tariff 84 tandem transit switching); (4) to what extent reparation, if any, should be made by Verizon under the provisions of RSA 365:29; and (5) in the event Verizon's interpretation of the tariffs is reasonable, whether any prospective modifications to the tariffs are appropriate. *Id.*

³ Subject to one limited exception not relevant to these proceedings. Tariff 85 § 5.4.1.A, B.

or IXC. Verizon billed carriers for the CCL charge during this period on the calls it continued to bill, but the third party billing agent, erroneously, did not. In 2006, Verizon ended this outsourced billing arrangement, bringing the billing function in-house⁴, and began billing the CCL charge to all carriers whose calls traversed the Verizon network, regardless of whether the call was initiated by a Verizon customer or terminated with a Verizon customer. Though BayRing and AT&T paid for and did not contest the CCL charges prior to 2006, they now challenge Verizon's authority to charge the CCL under Tariff 85 for these calls.

III. ARGUMENT

A. *Based on the Plain Meaning of Tariff 85, the Common Carrier Line Charge Applies to All Switched Access Calls.*

This case revolves primarily around the interpretation of one sentence in Tariff 85, which states that “[e]xcept as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges.” Tariff 85 § 5.4.1.A. The central question is what constitutes “switched access” under Section 5.4.1 and the extent to which calls are exempt from that charge.

When the Commission sets rates to be charged by public utilities, it performs, in essence, a legislative function. *Appeal of Pennichuck Water Works*, 120 N.H. 562, 566 (1980). As such, a tariff duly approved by the Commission has the “force and effect of law” and binds both the utility and its customers. *See, e.g., Re New Hampshire Electric Cooperative, Inc.*, 86 N.H.P.U.C. 539 (NH PUC August 7, 2001) (*citing Appeal of Pennichuck Water Works*, 120 N.H. 562, 566); *Re Public Service Company of New*

⁴ Originating switched access provided jointly by ITCs and Verizon under a meet point billing arrangement is still performed by the vendor.

Hampshire, 86 N.H.P.U.C. 407 (NH PUC June 28, 2001) (*same*). Thus, the Commission has deemed it appropriate to apply the principles of contractual interpretation and statutory construction contained in common law when interpreting a rate-setting tariff such as Tariff 85. *Re Public Service Company of New Hampshire*, 79 N.H.P.U.C. 688 (December 19, 1994). Under New Hampshire common law, this requires that the Commission ascribe the plain and ordinary meaning to the words used in a tariff. *See, e.g., Appeal of Town of Bethlehem*, 154 N.H. 314, 316 (2006) (“When examining the language of a statute, we ascribe the plain and ordinary meaning to the words used.”); *West v. Turchioe*, 144 N.H. 509, 515 (1999) (“We now turn to the interpretation of the integrated [contract], looking first to its plain language.”).

The preamble to Section 5.1 of Tariff 85 provides important context for the interpretation of Section 5.4.1. It states that “[c]arrier common line access service is billed to each switched access service provided under this tariff in accordance with the regulations as set forth herein and in Section 4.1 [relative to the issuance, payment, and crediting of customer bills], and at the rates and charges contained in Section 30.5.” Tariff 85 § 5.1 (emphasis added). This provision makes clear the intention that the CCL would be billed to every call involving switched access. The clause “[e]xcept as set forth herein” in Section 5.4.1 refers, of course, only to the limited exception set forth for “enhanced service” providers from switched access service rates and regulations, including CCL, in certain local exchange access scenarios. Tariff 85 § 5.4.1.B. This exception is required by FCC regulations, Tr. Day II at 20, and neither BayRing nor AT&T suggests that the disputed call flows involve the provision of any such “enhanced service.”

Nowhere in Section 5.4.1 is the CCL charge limited to intrastate toll calls involving Verizon end-users, as BayRing and AT&T now claim. Rather, it applies broadly to all switched access service components, which may, as BayRing and AT&T have conceded, *see* Tr. Day I at 73, 173, 177, be purchased by carriers on a stand-alone or combined basis:

The switched access service provided by [Verizon] includes the switched access service provided for both interstate and intrastate communications. The carrier common line access rates and charges will be billed to each switched access service provided under this tariff in accordance with Section 4.1 and Section 5.4.2.

Tariff 85 § 5.4.1.C, emphasis added.⁵ Section 5.4.2 prescribes, among other things, the method for determining CCL charges “[w]hen the customer reports . . . intrastate use of switched access service,” Tariff 85 § 5.4.2.C; Section 4.1 governs Verizon billing practices for switched access. Tariff 85 § 4.1. The plain meaning of the tariff provisions set forth above explicitly requires the payment of CCL access services charges for “all” and “each” switched access service provided by Verizon. Any alternative interpretation mandating the provision of a specific switched access element as a prerequisite to application of the CCL charge described in section 5.1 would be contrary to the plain language of the Tariff.

B. *BayRing and AT&T Are Receiving Switched Access Services For Calls in Which a Verizon Customer is Neither at the Initiating or Terminating End of the Call.*

BayRing and AT&T assert that Verizon is not permitted to assess the CCL charge on intrastate toll calls involving non-Verizon end-users (e.g., CLEC end-users), even if Verizon performs some intermediary switched access function such as tandem switching,

⁵ As detailed in Tariff 85 § 6.2 (introduced as Ex. 7), Verizon makes available a host of switched access services and features for use by competitors. No requirement exists that all such services and features must be purchased by a competitor in order for it to use any individual access service or feature.

and claims that Verizon must have its own end-user on the originating or terminating end of a call before CCL charges may be assessed. *See* Pre-filed Direct Testimony of Darren Winslow at 7, 8; *see also* Pre-filed Direct Testimony of Oyefusi, Nurse and Pfautz at 9. Their position is predicated on an erroneous interpretation of Tariff 85, Sections 5.1.1 and 5.2.1, which describe carrier common line *access* but do not speak to the broad application of the CCL charge as explicitly prescribed in the preamble to Section 5 and Section 5.4. Section 5.1.1 simply states, in relevant part, that:

- A. Carrier common line access provides for the use of end users' [Verizon] provided common lines by customers for access to such end users to furnish intrastate communications
 - 1. [Verizon] will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6.

Tariff 85 § 5.1.1. Thus, while Section 5.1.1.A provides for the use of a Verizon-provided end-user loop for the furnishing of intrastate toll service when a carrier uses Verizon's network, it does not mandate such use. *See* Pre-filed Rebuttal Testimony of Peter Shepherd at 17. Moreover, Section 5.1.1.A.1 requires only that this service be provided in conjunction with switched access service; as explained in detail below, however, and as acknowledged by BayRing and AT&T in their testimony before the Commission, other switched access service components may be purchased independent of carrier common line access as it is described in Section 5.1.1.A. Tr. Day I at 73, 173, 177. Nothing in the language of Section 5.1.1 contradicts the plain language of the preamble and Section 5.4.1 stating that CCL is billed to "each" and "all" switched access service.

Moreover, Section 5.2.1 of Tariff 85 similarly requires: "Where the customer is provided with switched access service under this tariff, [Verizon] will provide the use of [Verizon] common lines by a customer for access to end user." Tariff 85 § 5.2.1.A.

Thus, when Verizon supplies switched access for a carrier's use of Verizon's network, it must provide the carrier with use of Verizon end-user loops if and when the toll service originates from or terminates to a Verizon end-user. Pre-filed Rebuttal Testimony of Peter Shepherd at 6. Nothing in Section 5.2.1 mandates that the carrier make use of the Verizon common lines every time that it utilizes Verizon switched access components, which may be used independently of the common line component. *See* Tr. Day I at 73, 173, 177.⁶ It is, quite simply, an availability requirement. It is unrelated to the application of CCL charges, which are governed by Section 5.4, and nothing in Section 5.2.1 contradicts or qualifies the explicit requirement that each and all of the switched access services provided by Verizon be assessed the CCL charge. Tariff 85 §§ 5.1, 5.4.⁷

⁶ Bay Ring asserts that the definition of "switched access service" in FCC Tariff 11 should control in this proceeding simply because Verizon Tariff 85 makes reference to it in certain sections (e.g., Tariff 85 § 6.1.1). As an initial matter, Tariff 85 makes reference to FCC Tariff 11 for convenience, particularly with respect to the technical and operation specifications for feature group offerings and local switching and local transport options. Pre-filed Rebuttal Testimony of Peter Shepherd at 6. Further, nothing in the plain meaning of FCC Tariff 11's definition of "switched access service" implies that Verizon's end-user loops must be used in combination with its switching and trunking facilities to constitute switched access. *See* FCC Tariff No. 11 § 6.1. Rather, under Tariff 85 and FCC Tariff 11, switched access is available to CLECs for use in furnishing a carrier's services, and provides a 2-point communications path between end-users and the carrier.

⁷ In its direct testimony before this Commission, BayRing ultimately conceded the weakness of its interpretation of Section 5.2.1.A:

Q: . . . Can you explain to the Commission what your understanding is as to why the tariff provides in Section 5.2.1.A, which you cited, that where the customer is provided with switched access service, then, in essence, the Company will provide the use of a common line for access to the end user? In other words, . . . what's your understanding as to why . . . it was necessary for the tariff to explain that the Company will provide use of a common line where the customer is provided switched access service, if switched access service necessarily includes the use of a common line?

A: Well, . . . I didn't write the tariff. And, I believe that the tariff . . . talks about providing access to Telephone Company end-users or end offices.

Q: So . . . you're not sure, one way or the other?

A: It's certainly not clear.

Tr. Day I at 98, emphasis added.

The interpretation put forth by BayRing and AT&T contradicts the standard industry practice of collaboration among carriers for the provision of switched access services, as well as the provisions of the Tariff governing “Meet Point Billing” arrangements. NET was not the sole local exchange carrier in 1993 when the Tariff was proposed and adopted; independent telephone companies and wireless service providers were also in existence at the time, and the Tariff’s provisions contemplate collaboration with such other carriers. Tr. Day II at 22, 45. More than one exchange carrier can participate in the provision of end-to-end switched access whereby intrastate toll calls are carried over multiple exchange carrier networks, a principle that is illustrated in many of the call flow diagrams presented to the Commission by BayRing and AT&T. *See, e.g.*, Pre-filed Direct Testimony of Darren Winslow, Exhibits B – E; Pre-filed Direct Testimony of Oyefusi, Nurse and Pfautz, Exhibit A. In such a scenario, each exchange carrier provides its own switched access service for the use of any component of each exchange carrier’s network. Tr. Day II at 23.

Such collaborations are specifically covered in Sections 3.1 (particularly 3.1.2.D) and 4.1.12 of Tariff 85, which govern “meet point billing.” A meet point billing scenario arises when “more than one exchange telephone company is involved in the provision of access service,” Tariff 85 §§ 3.1.2.A, 4.1.12, and the Tariff authorizes Verizon to bill for such access services in accordance with the provisions of Section 3.1, which governs the “ordering, rating and billing of access services where more than one exchange telephone company is involved.” Tariff 85 §§ 3.1, 4.1.12. Section 3.1.2.D of the Tariff provides for the allocation of local transport elements among multiple exchange carriers

collaborating in the provision of switched access to a carrier for use of the exchange carriers' network in furnishing toll service:

Each exchange telephone company will provide the portion of the local transport element in its operating territory to an [interconnection point] with another exchange telephone company and will bill the charges in accordance with its access service tariff. The charges for the local transport element will be determined as described in Section 3.1.2.K and 3.1.2.L. All other appropriate charges in each exchange telephone company tariff are applicable.

This provision plainly authorizes Verizon to bill carriers for switched access when Verizon functions as an intermediate carrier for calls originating or terminating with another carrier, i.e., without the use of a Verizon end-user loop. Pre-filed Rebuttal Testimony of Peter Shepherd at 8-9. BayRing concedes this:

Q. I asked whether your carrier - - your customer can purchase tandem switching with local transport, in the absence of a Verizon end-user?

A. (Lebeck) To another carrier that has Meet Point Billing arrangements with Verizon.

Tr. Day I at 73. Tariff 85 is Verizon's access service tariff (*see* Tariff 85 § 2.1.1), and, as noted in detail above, the CCL charge unequivocally applies to each and all of the switched access services provided by Verizon. Tariff 85 §§ 5.1, 5.4.⁸

Nothing in Sections 3.1 or 4.1.12 of Tariff 85 requires the involvement of a Verizon end-user as a precondition to Verizon's billing for switched access service provided in collaboration with another exchange carrier. Rather, Tariff 85 explicitly authorizes Verizon to bill "charges in accordance with its access tariff" and "[a]ll other

⁸ BayRing asserts that "there are no Verizon intermediate carrier [meet point billing] percentages for switched access in NH shown in NECA's [National Exchange Carrier Association] FCC Tariff # 4 for the disputed call flows." Pre-filed Direct Testimony of Trent Lebeck at 7. Mr. Lebeck neglects to note that the listing of such information is the responsibility of the respective operating company, not Verizon, or the fact that meet point billing arrangements wherein one company provides 100% of the interoffice transmission facilities and the other company provides 0% (as is the case in the disputed calls) are generally not listed in NECA FCC Tariff No. 4. Pre-filed Rebuttal Testimony of Peter Shepherd at 9-10. At any rate, it is Tariff 85, not FCC Tariff 4, that controls in this case, and BayRing's argument is without merit.

appropriate charges” when it provides such a service. Tariff 85 § 3.1.2.D. This encompasses the application of the CCL charge prescribed in Section 5.4 and contested by BayRing, which concedes the validity of meet point billing arrangements but nevertheless advances a contradictory interpretation of Tariff 85.

Finally, BayRing feebly points out that the general “service structure” diagram in Section 6.1.2-1 identifies the facility connecting the local switch to the end user as the “common line.” Tr. Day I at 21; *see also* Tariff 85 § 6.1.2-1. BayRing further asserts that CCL charges are “normally” associated with such facilities, and refers to the NECA (National Exchange Carrier Association) Handbook for support. The NECA handbook does not, of course, control the terms of a Tariff approved by this Commission, which has the force and effect of law. *Re New Hampshire Electric Cooperative, Inc.*, 86 N.H.P.U.C. 539 (August 7, 2001). BayRing’s opinion with respect to CCL charges notwithstanding, Verizon’s Tariff clearly identifies CCL as a switched access service rate category, Tariff 85 §§ 6.1.2.B.3, 30.5.1, which may be combined with other switched access services to provide a “complete switched access service.” Tariff 85 § 6.1.2.D. And while switched access service components may be purchased separately from carrier common line access, the CCL charge plainly and unambiguously is to be billed for each and all of Verizon’s switched access services. Tariff 85 §§ 5.1, 5.4. As BayRing itself admits: “Carrier common line is billed as part of a switched access call.” Tr. Day I at 96, emphasis added.

Ultimately, the language of Tariff 85 must control, and the Tariff quite simply authorizes the billing of CCL charges for all switched access services rendered by Verizon. If BayRing, AT&T or any other carrier is dissatisfied with this provision, and

believes that it should not be required to pay it (despite acknowledging that failing to do so would leave Verizon uncompensated for certain services), that carrier has the option of directly accessing and exchanging intrastate toll traffic with other carriers, thereby avoiding the switched access service charge. Tr. Day II at 25. These carriers may provide their own transport directly to the terminating carrier switch. *Id.* If, however, they avail themselves of Verizon's switched access services, they must pay the rates and charges set forth in Tariff 85, including the CCL charge. As such, the Commission should reject BayRing's complaint.

C. *Verizon is Providing a Service To BayRing and AT&T.*

In an effort to avoid the application of the plain meaning of Tariff 85, BayRing and AT&T claim that the tariff provisions are not applicable because Verizon is not providing any "switched access" service to them. This position is without merit. Verizon supplies the use of its network, including transmission, transport and switching facility components to competitive carriers such as Bay Ring and AT&T for the provision of their toll services.⁹ Tr. Day II at 10, 11. This service is "switched access" and it is, essentially, wholesale toll service. *Id.* at 10; *see also* Tariff 85 § 6.2.1. It encompasses any use of Verizon's network for the provision of toll service, whether that use be of a singular component, such as a tandem switch (i.e., on an unbundled or stand-alone basis), or whether it uses that component in combination with transport and local switching. Tr.

⁹ In doing so, Verizon provides a service to which the carrier common line is subject. *See* Tariff 85 §§ 5.1.1.A.1, 5.2.1.

Day II at 104-05. Simply stated, the use of Verizon's network to provide an intrastate toll call, regardless of the number of components involved, constitutes "switched access."¹⁰

BayRing does not dispute that Verizon supplies local transport tandem switching, local transport termination, and local transport facility services for its use in providing toll calls. *See* Pre-filed Direct Testimony of Darren Winslow at 12-13, 15-16; *see also* Tr. Day I at 78, 80-81. These services constitute "switched access." *See, e.g.*, Tariff 85 § 6.2.1.G. Rather than pay the charges for switched access service prescribed by Tariff 85, however, BayRing instead takes the incredible position that Verizon must provide these "routing functions" for BayRing's use; that BayRing ought to be assessed some charge or fee for their use, and is willing to pay such a charge or fee; that Verizon, nevertheless, is not authorized to charge for such use; and that until Tariff 85 is "updated," Verizon must continue to provide services but is not permitted to charge for them. *See* Pre-filed Direct Testimony of Darren Winslow at 12-13, 15-16; *see also* Tr. Day I at 78-82. This interpretation defies logic, is contrary to the plain language of Tariff 85, and violates New Hampshire law.¹¹

Moreover, whether Verizon provides transmission, transport and switching facility components on an individual ("unbundled") basis or in combination, Tr. Day II at 10, 105, it is still switched access. Switched access is not measured in degrees; once a component of the Verizon network constituting switched access is used by a carrier for

¹⁰ Thus, where one CLEC transports a toll call from its end user to the end user of another CLEC, and Verizon provides only the transport switching function, Verizon nonetheless provides switched access service and the CCL charge applies on a minute of use basis, per the terms of Tariff 85.

¹¹ RSA 378:14 prohibits the provision of any free service. Specifically, it states that "[n]o public utility shall grant any free service, nor charge or receive a greater or lesser or different compensation for any service rendered to any person, firm or corporation than the compensation fixed for such service by the schedules on file with the commission and in effect at the time such service is rendered," emphasis added. Because there is no dispute that Verizon has provided BayRing and AT&T services under Tariff 85, Verizon is legally obligated to charge – and the carriers are obligated to pay – for the services rendered.

the provision of intrastate toll service, the applicable “regulations, rates and charges” of Tariff 85 apply. *See, e.g.*, Tr. Day II at 104-105. BayRing and AT&T concede this point. In its Pre-filed Direct Testimony, BayRing witness Darren Winslow provided the following definition of “switched access service:”

“Switched access service” is a service that provides “access” to a telephone company’s local exchange end user for the origination or termination of toll traffic As the term “access” indicates, Verizon’s switched access service allows another carrier to reach something (i.e. Verizon’s end use customers) over which Verizon has rights or control.

Pre-filed Direct Testimony of Darren Winslow at 22. And on cross examination, Mr. Winslow conceded that a Verizon end-user was not the only “something” to which switched access service provides access:

- **Q:** [W]hy did you use the word “something” when defining the term “access”?
- **A:** In order to provide access, you have to provide access to something.
- **Q:** Okay. And is Verizon’s tandem switched access, local transport tandem switching, local transport termination, and/or local transport facilities something?
- **A:** Yes, it is.
- **Q:** And, does Verizon have rights or controls over its tandem switching equipment and facilities?
- **A:** Yes, it does.

Tr. Day I at 97. “Tandem switched access,” “local transport tandem switching,” “local transport termination,” and “local transport facilities” are “switched access service” explicitly defined in Tariff 85. *See* Tariff 85 §§ 6.2.1.B, G.

Furthermore, BayRing witness Trent Lebeck confirmed that BayRing presently purchases certain intermediary switched access components from Verizon for the purposes of furnishing intrastate toll services:

- **Q:** . . . Does Bay Ring purchase tandem switching with local transport from Verizon in the absence of a Verizon end-user presently?
- **A:** Would you please state that again please.

- **Q:** I'm asking you whether BayRing currently can and does purchase tandem switching and local transport, even in the absence of a Verizon end-user, presently?
- **A:** Under the auspice that we are originating or terminating calls to an IXC [inter-exchange carrier].
- **Q:** A toll call?
- **A:** Yes.

Tr. Day 1 at 73, emphasis added. The AT&T panel of witnesses also acknowledged that switched access elements may be purchased on a stand-alone basis or in combination:

- **Q:** Does the switched access tariff require that all of the elements be purchased if a carrier wishes to purchase only certain of the elements of switched access?
- **A:** . . . [Y]ou can buy the Section 6 ["Switched Access Service"] tariff items, and you can buy those on a stand-alone basis.

- **Q:** So, when you say that you "can buy the Section 6 items on a stand-alone basis," those are the local transport tandem switching, local transport termination, local transport facilities, etcetera, as contained in Section 6.2 that we discussed earlier with BayRing?
- **A.** (Nurse) Yes.

Tr. Day I at 177; *see also* Tr. Day I at 173 ("[Any of the items in Section 6 . . . can be provided on a stand-alone basis or in combination[.]]"). In light of these unambiguous admissions, BayRing and AT&T's assertion that Verizon is not providing switched access governed by Tariff 85 is completely untenable and should be rejected.

D. *Verizon's Billing Error Does Not Absolve Carriers of Their Obligation to Pay CCL Charges on Verizon Switched Access Service.*

BayRing alleges that it first noticed an increase in Verizon's intrastate access charges in 2005, and that the increase could be attributed to assessment of the CCL charge upon minutes of use. Tr. Day I at 18. Verizon acknowledges that the CCL charge was not assessed for certain calls involving switched access service, due to the error of a vendor, New York Access Billing LLC ("NYAB"), to which the billing task had been outsourced. Tr. Day II at 36. However, this billing error does not absolve BayRing,

AT&T or any intervening carrier of its obligation to pay the CCL charge on Verizon-provided switched access services as prescribed in the Tariff. Carriers are conclusively presumed to know the contents of Verizon's tariff, *see Guglielmo v. WorldCom, Inc.*, 148 N.H. 309, 313 (2002), and this presumption renders Verizon's error immaterial. *Cf. id.* (explaining that filed rate doctrine precludes avoidance of tariff rates by invocation of estoppel or ignorance claims).

Simply stated, BayRing and AT&T received services from Verizon, for which they paid less than the tariffed rate, for several years. Verizon, cognizant of its error, does not seek retroactive payment for the services it rendered but did not bill for; rather, it is now billing for what it has always been entitled to charge under the plain language of Tariff 85. Furthermore, Verizon did bill for CCL charges prior to August 2006 on some intrastate traffic originating and terminating to non-Verizon providers and end-users that was not outsourced to NYAB. Tr. Day II at 36, 51, 126-27; Ex. 26 (Third Supplemental Reply to Staff 1-19) and Ex. 17 (First and Second Supplemental Replies to Staff 1-19).¹² BayRing concedes this fact, Tr. Day I at 104, yet it never contested the application of the

¹² Staff 1-19 sought copies of the oldest bills to BayRing or AT&T under certain scenarios (numbers 3 and 20) that Verizon NH could produce showing either (1) Verizon CCL charges billed to an interexchange carrier for toll calls routed through a Verizon tandem where another (non-Verizon) carrier's end office local switch was used to originate (or presumably to terminate) the call to a non-Verizon end-user, or (2) Verizon CCL charges billed to a competitive local exchange carrier for its toll calls routed through a Verizon tandem where another (non-Verizon) carrier's end office local switch was used to terminate the call to a non-Verizon end-user.

Verizon NH's First and Second Supplemental Replies to Staff 1-19, introduced into the record by AT&T as part of Exhibit 17, provided examples of billing information that related to a variety of disputed scenarios, including scenario numbers 3, 8, 9, 10, 16 and 20. The Third Supplemental Reply, in turn, also related to disputed scenario numbers 8, 9, 10 and 16 (addressed in the earlier supplements) as well as disputed scenario numbers 14 and 15. The Third Supplemental Reply provided billing information (bills and summary billing output) from Verizon NH's carrier access billing system from 2001 through 2004.

Despite their burden of proof, the petitioners failed to produce any information responsive to various discovery requests Verizon served on them regarding the matters addressed by the supplemental replies: namely, historical billing information relevant to this proceeding.

CCL charge prior to filing its present complaint. BayRing cannot now seek to avoid payment of the CCL charge on switched access service as mandated by the plain language of the Tariff by taking advantage of an error made by Verizon's billing vendor, NYAB.

Verizon has estimated that it billed approximately **[BEGIN PROPRIETARY] XXXXXXXX [END PROPRIETARY]** in CCL charges to carriers for intrastate switched access where Verizon was not the provider of the end-user access lines from January 2005 through December 2006. Pre-filed Direct Testimony of Peter Shepherd at 30. It further estimated that the annual impact to Verizon and its ratepayers should the CCL charges no longer be collected would be approximately **[BEGIN PROPRIETARY] XXXX [END PROPRIETARY]** per annum. *Id.* Eliminating this valid and duly approved source of contribution despite the plain language of the Tariff would potentially require increases in other rates. For these and other reasons, the Commission should reject BayRing's complaint.

E. *The History of Tariff 85 Supports the Plain Language Interpretation Requiring Assessment of Carrier Common Line Charges for All Switched Access.*

The language of Tariff 85 is straightforward and plain: CCL charges apply to each and all of the switched access services provided by Verizon. As noted above, the Commission applies the principles of contractual interpretation and statutory construction contained in common law when interpreting a rate-setting tariff such as Tariff 85. *Re Public Service Company of New Hampshire*, 79 N.H.P.U.C. 688 (December 19, 1994). Thus, when the language of a tariff is plain and unambiguous, the Commission need not look beyond it for further indication of underlying intent. *Debenedetto v. CLD*

Consulting Engineers, Inc., 153 N.H. 793, 798 (2006) (explaining principles of statutory construction); *see also Behrens v. S.P. Constr. Co.*, 153 N.H. 498, 503 (2006) (“Absent ambiguity,” the intent of parties to a contract “will be determined from the plain meaning of the language used in the agreement.”).

Here, the Tariff language was the product of negotiations among carriers and was ultimately approved by this Commission; it cannot be second-guessed simply because BayRing and AT&T are now displeased with a certain provision. The Commission need not look back fifteen years to determine the intent underlying each provision of the Tariff when they were first proposed and ultimately approved. Nevertheless, as Verizon explains below, a plain-language reading of the Tariff will give effect to the underlying purpose of the CCL charge, which is to provide contribution for the support of services, an approach it adopted when establishing intrastate switched access rates in other New England states.

The access charge structure set forth in Tariff 85, including the common carrier line charge prescribed in Section 5.4, was established in Docket DE 90-002, the “Generic Investigation into IntraLATA Toll Competition Access Rates.” Tr. Day II at 11; AT&T Pre-filed Rebuttal Testimony at 7; *see also, e.g., Re Generic Investigation into IntraLATA Toll Competition Access Rates*, 78 N.H.P.U.C. 541 (September 27, 1993) (approving Tariff 78, the precursor to Tariff 85). Prior to the DE 90-002 proceedings, the carrier common line charge did not exist in the access charge structure; rather, contribution was obtained from local transport and local switching rate categories. Tr. Day II at 11. In Docket DE 90-002, the carrier common line rate element was deliberately designed to provide contribution flowing from all switched access usage on a “residual” basis, while

the local transport and local switching rate elements were set at incremental cost. *See* Tr. Day II at 11, 12; *see also* DE 90-002 Testimony Day X (McCluskey) at 199-200.¹³ It was not designed or proposed as an element seeking recovery of end-user loop related costs, as BayRing and AT&T suggest. As New England Telephone explained to the Commission during the DE 90-002 proceedings:

- **Q:** [W]hat you do in setting, within the terminating rate what you do is set local switching and local transport at NET's version of its incremental cost for those elements, is that correct?
- **A:** Right, trying to encourage efficient utilization of NET's network, that's right.
- **Q:** And the common carrier line charge is set residual?
- **A:** That's correct. It's basically, we look at it as more of a contribution type element.
- **Q:** And this structure, within the originating side, is set the same way, correct?
- **A:** Yes.

DE 90-002 Testimony Day 10 (McCluskey) at 199-200, emphasis added; *see also id.* at 225 (“[Carrier common line is] a contribution element. In general, it's a contribution element, but not necessarily dedicated to the access line.”). The CCL rate element was designed to apply to all switched access because retail toll and wholesale switched access are the same service, and should therefore provide the same level of contribution per minute of use. Tr. Day II at 12. NET took the same approach when it established intrastate switched access rates in Massachusetts, Maine, Vermont and Rhode Island. Tr. Day II at 13, 14; *see also* May 1, 1992 Direct Testimony of Michael McCluskey at 13 (“Carrier common line charges are found in . . . the access tariffs of the other New England States.”).¹⁴

¹³ Referenced testimony and transcript excerpts are contained in attachments (Exhibits III and IV) to the Pre-filed Direct Testimony of Peter Shepherd.

¹⁴ The CCL charge has since been phased out in the other New England states for various regulatory factors, such as rate rebalancing. Tr. Day II at 43.

As a general concept, contribution recovers costs that are not recovered directly from other rates and charges, and helps cover a firm's joint and common costs so that the firm is able to meet its revenue requirements. Tr. Day II at 100; *see also* DE 90-002 Testimony Day XIV (McCluskey) at 49. In this instance, the purpose of recovering contribution from switched access is, in addition to covering joint and common costs, to provide funding for future investment in Verizon's network and support important public policy objectives such as rate continuity, earnings stability and preservation of universal service. Tr. Day II at 12-13, 62. NET provided extensive testimony before the Commission evidencing its rationale for proposing the CCL rate charge as a contributory element. For example, in his direct testimony before this Commission on May 1, 1992, NET witness Michael McCluskey stated:

In addition to the local switching and local transport element, the Company is introducing originating and terminating carrier common line elements which reflect contribution. The sum of the cost-based local transport and local switching rate elements which would apply on an end-to-end basis would fall far below the retail rates, since the sum would contain no contribution beyond incremental cost. The sole purpose of the carrier common line rate element is to bring the end-to-end access rate from the incremental costs of transport and switching up to a level which results in the proper relationship between toll and access.

May 1, 1992 Direct Testimony of Michael McCluskey at 12-13, emphasis added. Mr.

McCluskey further explained in Rebuttal Testimony that:

[T]he Company's proposal to establish the traffic sensitive [i.e., local switching and local transport] switched access rates at the level of incremental costs and recover contribution through a separate originating and terminating carrier common line rate element is more appropriate and will facilitate future transitions of toll and access rates in the direction of overall incremental costs in response to competitive market forces.

August 21, 1992 Rebuttal Testimony of Michael McCluskey at 32, emphasis added.

In addition to Mr. McCluskey, several other witnesses explained to the Commission in the DE 90-002 proceedings that that the CCL rate element was designed to recover contribution. Peter Shepherd, who has provided testimony before the Commission in this case, testified that:

NET's proposal consists of two switched rate element categories. The first category comprises the network-based "traffic sensitive" elements of Local Transport and Local Switching. The second category is the Carrier Common Line element which is an element designed to provide contribution and establish the correct overall price relationship, based on the difference in cost to provide the retail versus wholesale service.

May 1, 1992 Direct Testimony of Peter Shepherd at 4, emphasis added. He further explained NET's rationale for recovering contribution from the CCL rate element:

[T]he Company believes it is . . . appropriate to isolate these contribution elements from the network elements, in order to establish the proper price signals to the market and facilitate the appropriate retail/wholesale linkage for any future transition of these retail and wholesale prices towards the overall level of their costs.

Id. at 5.

Testimony before the Commission made it clear that the CCL rate element applied to all toll carriers for all switched access for the purposes of recovering contribution. This principle was articulated in the direct testimony of Dr. William Taylor, an economist, who explained to the Commission:

The required level of contribution from access charges will be obtained through originating and terminating carrier common line charges - which are effectively non-cost-based charges levied on all toll carriers for interconnecting with the NET network. The advantage of isolating the required contribution into charges for interconnection (at the originating and terminating ends) is that it minimizes the distortion caused by pricing carrier access above incremental cost.

Direct Testimony of Dr. William Taylor at 4, emphasis added. Echoing the testimony of Dr. Taylor, Mr. Peter Shepherd explained during cross examination that the CCL charge established by NET's proposed intrastate switched access tariff was solely an element to provide contribution and applicable to all switched access minutes of use:

- Q: In addition to the traffic-sensitive elements there's a carrier common line element?
- A: Yes, there is.
- Q: And, could you describe for the commission the structure of that rate element?
- A: Yes. The carrier common line element is an element that applies on both an originating and a terminating basis to the extent that the carrier uses the local exchange carrier network.

DE 90-002 Testimony Day XIV (Peter Shepherd) at 85-86, emphasis added. Thus, when the Commission approved the Tariff in 1993 and included the requirement that the CCL charge apply to each and all switched access service provided by NET (now Verizon), Tariff 85 §§ 5.1, 5.4, it gave effect to NET's express intent.

Additional testimony explaining – at length – the contributory design underlying the CCL rate element was provided throughout the DE 90-002 proceedings, leaving no doubt that the Commission was aware of the proposed application of the charge to all switched access minutes of use to provide the required contribution. For example:

- Q: Is the carrier common line charge synonymous with contribution? Are those interchangeable terms here?
- A: Basically under our proposal, yes. So, what we tried to do is set the various aspects, set them at the incremental cost and then isolate the contribution element in the carrier common line charge

DE 90-002 Testimony Day XII (McCluskey) at 203-04; *see also id.* at 196-98, 205-14.

- Q: Now with respect to the contribution to be derived under the NET access proposal, as I understand it, the contribution will come from the carrier common line component of the access charges . . . ?
- A: That is true.

DE 90-002 Testimony Day XII (McCluskey) at 169-70; *see also id.* at 24-26.

[C]arrier common line elements. . . . are separate elements that have been provided to provide contribution and establish the overall economically efficient differential between [NET's] retail toll rates, ensuring that all participants, whether it be a local exchange carrier or an interexchange carrier, provides the same level of contribution for the same services, making use of the same network facilities.

DE 90-002 Testimony Day XIV (Peter Shepherd) at 74; *see also id.* at 48-52, 84-89, 98-106.

More significantly, an expert witness for AT&T, Mr. William Salvatore, testifying before the Commission about the Stipulation and Agreement negotiated between the parties to the DE 90-002 generic competition proceeding, conceded that the CCL rate element was residually set to provide contribution and even deferred to NET's witness, Mr. Peter Shepherd:

Q: During the hearings if I recall the testimony from Mr. Peter Shepherd and Mr. McCluskey in terms of a carrier common line element, they talked in terms of a contribution element as opposed to anything specific geared to the local loop.

A: (Salvatore) As I said, traditionally the carrier line charge was a charge for the local loop. Mr. Peter Shepherd can help me with this, the way the elements themselves are structured is that the local transport and local switching elements are set at incremental costs. The remainder of the access charge is put into the carrier common line charge. So, one could think of it as a contribution element.

Q: So, what you're saying, you're not suggesting that the loop is being priced at incremental cost, are you?

- **A:** (Salvatore): No, I'm saying that the local transport and the switch are priced at incremental cost. Carrier common line is the difference between the incremental cost for local switching and the incremental cost of local transport to get to the . . . total access charge.
- **Q:** So, it's the remainder?
- **A:** (Salvatore) It is the remainder. I used the term "residual."

March 22, 1993 Panel Testimony at 19-20, emphasis added. Thus, the fact that the CCL rate element was designed as a contribution element set on a residual basis, and not as a mechanism to recover the cost of using a local loop, was confirmed for the Commission

by AT&T's own expert witness. This critically undermines AT&T's present position that the CCL rate element recovers end-user loop related costs only, Pre-filed Direct Testimony of Oyefusi, Nurse and Pfautz at 11-12, and the Commission should decline to credit its testimony on the matter.

It is important to note that while NET initially took the position before the Commission that the CCL rate element was intended to provide a level of contribution equivalent to that which would otherwise have been provided by toll rates and charges, NET advocated an altered, though still unmistakably contribution-based, position throughout the negotiation process resulting in the Stipulation and Agreement presented to the Commission for approval. Tr. Day II at 47-48, 65-67. Thus, the rate structure established in docket DE 90-002 set target rates, as well as a transitional framework designed to lower access rates over a four year period, wherein the CCL rate element would function to recover contribution linked to those target rates. *Id.* at 16-17, 47-48, 65; *see also Re Generic Investigation into IntraLATA Toll Competition Access Rates*, 78 N.H.P.U.C. 283 (1993). These "target rates" were the result of negotiations between the parties involved in the DE 90-002 proceedings, as well as the Commission's desire to transition rates toward interstate levels on an expedited basis. Tr. Day II at 48-49; *Re Generic Investigation into IntraLATA Toll Competition Access Rates*, 78 N.H.P.U.C. 283. As such, contribution provided by the CCL rate element is not equivalent to what would have been received from toll revenues, but, rather, equivalent to what would be received from the "target rates" ultimately set by the Commission. Tr. II at 48. In other words, any linkage between contribution recovered by the CCL charge and the absolute level of toll contribution was severed well before the Commission reviewed and approved the

Tariff. *Id.* at 16-17, 47-48, 65. Ultimately, the CCL rate element remained a rate element designed to provide a level of contribution targeted to an overall rate level and set on a residual basis, and not simply a mechanism for recovering costs related to end-user loops.

Clearly, Verizon is not creating, for self-serving purposes, a *post hoc* rationale for interpreting the carrier common line charge as a rate element established for the purposes of providing contribution. BayRing and AT&T, however, do just that in an effort to avoid paying the charges clearly prescribed in the Tariff, a development that NET predicted in 1992:

The caution I would advise the Commission . . . is to make sure that unbundling isn't used as a mechanism to avoid paying contributions. That people, if you . . . lower the contribution in one of those elements they tr[y] to avoid that particular element so they're not paying contribution and only want to pay the incremental cost. That is not in the best interest.

DE 90-002 Testimony Day XII at 197. As evidenced by the extensive testimony set forth above, the parties to the DE 90-002 generic competition investigation negotiated and agreed upon the CCL charge as a contribution element, and presented it as such clearly and repeatedly to the Commission throughout the proceedings. The Commission approved the Tariff with that element intact. No Commission order, including Order 20,864, states that the CCL rate element may not recover contribution as proposed by NET. The Commission knew the underlying purpose of the CCL rate element; the Commission approved the Tariff establishing the CCL rate element, giving it the force and effect of law; and the plain and unambiguous language of the Tariff authorizes the billing of the CCL charge for each and all switched access service provided by Verizon.

F. *The Tariff Establishing CCL Charges for Switched Access Service Was the Product of a Negotiated Stipulation by the Parties to the DE 90-002 Generic Competition Investigation.*

It is essential that the Commission take notice of the fact that the Tariff, including the provisions explicitly applying the CCL rate element to all switched access regardless of end-user loop involvement, was the product of negotiations between the parties to the DE 90-002 generic competition investigation. Tr. Day II at 16-17, 48-49. Approximately nineteen signatories, including AT&T, the Commission Staff and the Office of the Consumer Advocate, assented to the terms of the Stipulation. Pre-filed Direct Testimony of Peter Shepherd at 26, n. 15. The CCL charge, in the form agreed upon by the parties and set forth in the Stipulation and compliance tariff, was not designed as a “revenue guarantee,” as suggested by BayRing and AT&T, but, rather, as a way to ensure that each minute of use using Verizon’s network provides the same absolute level of contribution. Tr. Day II at 35. As noted above, any linkage between contribution to be recovered by the proposed CCL charge and the absolute level of toll contribution was severed; the Stipulation agreed upon by the parties established target rates, as well as a transitional framework, wherein the CCL rate element functioned to recover contribution linked to those target rates. *Id.* at 16-17, 47-48, 65; *see also* Pre-filed Direct Testimony of Peter Shepherd at 26-27.

Nevertheless, the CCL rate element proposed in the Stipulation was unmistakably intended as a contribution element, as evidenced by the testimony of AT&T’s expert witness, Mr. William Salvatore, set forth above. *See* March 22, 1993 Panel Testimony at 19-20. That testimony was delivered to the Commission in the course of panel testimony

regarding the Stipulation, in which witnesses representing the Commission Staff, New Hampshire Independent Telephone Companies and NET also participated. Pre-filed Direct Testimony of Peter Shepherd at 27, n. 17; *see also* Tr. II at 101. A series of orders were subsequently issued by the Commission shortly thereafter, approving the Stipulation without commenting on or modifying the contributory function of the CCL rate element. *See Re Generic Investigation into IntraLATA Toll Competition Access Rates*, 78 N.H.P.U.C. 283 (1993); *Re Generic Investigation into IntraLATA Toll Competition Access Rates*, 78 N.H.P.U.C. 365 (August 2, 1993). NET accordingly filed a compliance tariff on August 16, 1993, Tr. Day II at 17, which the Commission approved on September 27, 1993. *See Re Generic Investigation into IntraLATA Toll Competition Access Rates*, 78 N.H.P.U.C. 541 (1993).¹⁵ That Tariff (Tariff 78), and all of its subsequent iterations, including Tariff 85, have thus included a rate framework wherein the CCL charge functions as a contribution element applying to all switched access. Tr. Day II at 18-19.

The parties to the DE 90-002 investigation negotiated and assented to a CCL rate element designed to recover contribution linked to target rates that were also the subject of negotiation. Numerous witnesses, including a witness for AT&T, attested to this fact before the Commission, which subsequently approved the Tariff, including the provisions unequivocally applying the CCL charge to all switched access services, without

¹⁵ BayRing and AT&T assert that Verizon was ordered to recover a portion of its loop costs from toll service in Docket 89-010, and infers from this that the CCL charge proposed and approved in Docket 90-002 is designed only to recover loop costs. Pre-filed Rebuttal Testimony of Oyefusi, Nurse and Pfautz at 10. This is contradicted by the extensive testimony provided to the Commission stating otherwise, including the testimony of AT&T's expert witness, in DE 90-002; moreover, the Commission made no reference to the order referred to by AT&T in its orders approving the Tariff, and neither BayRing nor AT&T present any evidence whatsoever that the Commission established a connection between the CCL charge and the recovery of loop costs in DE 90-002.

commenting on or modifying those provisions. Upon approval, the provisions of the Tariff assumed the force and effect of law. *Re New Hampshire Electric Cooperative, Inc.*, 86 N.H.P.U.C. 539 (2001). As such, BayRing and AT&T cannot now in good faith challenge the CCL charge by claiming that it is merely designed to recover end-user loop costs.

G. *Verizon's CCL Charge for Switched Access Involving Non-Verizon End Users Has Been Approved and Upheld Elsewhere.*

The New York State Public Service Commission (the "NYSPSC") rejected an analogous attack by an interexchange carrier on Verizon New York's duly approved tariff assessing CCL charges for switched access service where no Verizon end-user was involved. Specifically, the NYSPSC was called upon to determine whether Verizon New York's tariff allowed it to impose certain rate elements, including but not limited to CCL charges, in any situation where it handled intrastate traffic that terminated to a wireless carrier's end user in New York, whether Verizon provided the local switching component or not. *Order Denying WilTel Communications, LLC's Complaint*, NYSPSC 04-C-1548 (May 30, 2006). The tariff language authorizing the contested billing stated, in relevant part: "For traffic which originates or terminates at RTU [wireless] Interconnections, Carrier Common Line Service and Switched Access Service Local Switching rates and charges as specified in [the tariff] will apply." PSC Tariff No. 11 § 2.4.8.

The NYSPSC rejected the carrier's complaint, finding that Verizon New York's billing practice was in concert with the NYSPSC's prior rate determination, rejected the carrier's assertion that "Verizon cannot charge for a service it does not perform," the very same charge made by BayRing and AT&T in these proceedings, and further noted that

the carrier's complaint "amount[ed] to a collateral attack" on the rate design approved by the NYSPSC. *Order Denying WilTel Communications, LLC's Complaint*, NYSPSC 04-C-1548 at 7. It further explained that the plain and ordinary meaning of the tariff's terms controlled:

Based on the plain reading of the language in the tariff, Section 2.4.8 allows Verizon to charge the disputed rate when switched access service involves intrastate traffic that terminates at a wireless RTU where the local transport is provided by Verizon. Nothing in the tariff language assumes that Verizon performs all of the stated functions including the CCL and local switching. The tariff simply implements the rate design ordered by the Commission

Id. at 8, emphasis added. In this case, the plain language of Tariff 85 unambiguously authorizes Verizon to apply CCL charges to all switched access. Tariff 85 §§ 5.1, 5.4.1.A, C. Witnesses, including a witness for AT&T, repeatedly explained the purpose of the CCL charge to the Commission, which duly approved the Stipulation negotiated by the parties and the subsequently filed compliance tariff with this language intact. It is, therefore, inappropriate for BayRing and AT&T to now collaterally attack the Commission's rate determination, and thus BayRing's complaint should be denied.¹⁶

¹⁶ The parties' possible reliance on a recent decision of the Eight Circuit Court of Appeals, holding that certain calls are "local" even if routed through an interexchange provider, is entirely misplaced. *See Alma Communs. Co. v. Mo. PSC*, 490 F.3d 619, 2007 U.S. App. LEXIS 13636 (8th Cir. Mo. 2007). First, the *Alma* decision involved the issue of whether calls made from landline phones to cell phones within the same area are local calls subject to reciprocal compensation under the federal *Telecommunications Act of 1996*; *Alma* had nothing to do with a state PUC's interpretation of an intrastate access tariff adopted under state law. Second, the Eighth Circuit decision held that reciprocal compensation, not access, governed intraMTA (wireless Major Trading Area) calls terminated to a wireless carrier even if they are carried by an IXC between the originating LEC and the terminating wireless provider. Thus, the issue directly involved in *Alma* was whether the originating LEC was required to pay reciprocal compensation to the terminating CMRS provider. The case before the New Hampshire PUC, by contrast, involves the issue of whether calls handed off by an IXC or CLEC to Verizon, and then handed off by Verizon to a terminating CMRS provider, IXC or CLEC, can include the CCL and switching/transport rate elements. In other words, the instant scenario involves (i) calls terminated to more than CMRS providers and (ii) charges *paid by the IXC or CLEC to Verizon*, not the rights and responsibilities between the terminating CMRS provider and the originating (landline) LEC.

H. *Tariff 84 Governs Only Local Traffic and is Therefore Inapplicable.*

BayRing no longer asserts as its “direct position” that the services provided by Verizon in the disputed call flows should be subject to “tandem transit service” charges prescribed by Tariff 84. Pre-filed Direct Testimony of Darren Winslow at 8; Tr. Day I at 80. Nevertheless, Verizon briefly addresses the reasons why Tariff 84 is plainly inapposite to the issues now before the Commission.

“Tandem Transit Service”¹⁷ is a switched interconnection service provided by Verizon on a voluntary basis as a means for a telecommunications carrier to interconnect indirectly with the facilities of other carriers for the express purpose of exchanging local traffic pending establishment of direct interconnection arrangements between such providers. Pre-filed Direct Testimony of Peter Shepherd at 6; Tr. Day II at 108. Verizon is not obligated under the Telecommunications Act of 1996 or FCC rules promulgated thereunder to provide this service; rather, it is the product of negotiations with carriers. Pre-filed Direct Testimony of Peter Shepherd at 6; Tr. Day II at 108. Tandem transit service is expressly limited to the transport and termination of local calls from one party’s network to that of another: “Switched Interconnection Services may only be used for the termination of local calls to NXXs¹⁸ served on [Verizon’s] network” Tariff 84, Part C § 1.1.1.C.1, emphasis added. The tariff defines such “local” traffic as “any intrastate

¹⁷ “An offering provided by [Verizon] to requesting competitive LECs that enables the [Telecommunications Carrier] whose customer originated an intra-LATA call destined for a customer of another LEC (not a customer of [Verizon]) to utilize a [Verizon] tandem switch as a means of establishing connectivity with the terminating competitive LEC. Tandem transit service is not applicable to calls that utilize an interexchange carrier for which interconnection with either the originating and/or terminating LEC(s) are provided pursuant to meet point billing, while service to the interexchange carrier is provided pursuant to switched exchange access service tariffs or other applicable contract arrangements.” Tariff 84, Part A § 1.3.2.

¹⁸ An “NXX” is “[t]he three-digit code which appears as the first three digits of a seven-digit phone number.” Tariff 84, Part A § 1.3.2.

call which is originated and terminated within a local calling area.” Tariff 84, Part A § 1.3.2.

The calls disputed by BayRing are, as BayRing acknowledges, intrastate toll calls. Tr. Day I at 26. Though Tariff 84 allows for the provision of toll and switched access traffic on the same physical facilities used to provide tandem transit service for local calls, it requires that toll and switched access services be rated separately “under the appropriate State and/or Federal Tariffs.” Tariff 84 Part C §§ 1.1.1.C, 1.7.3; *see also* Tariff 84 Part C § 1.1.2.B (“When the [telecommunications carrier uses combined trunk groups as described in Section 1.7.3, the rates and charges below will only apply to the local traffic of the [telecommunications carrier].” Emphasis added). With respect to the calls now disputed by BayRing, Verizon provides the carrier with transmission and switching for the purposes of originating toll service, i.e., switched access service, and the “appropriate State tariff” is Tariff 85, as explained above.

I. *BayRing’s Assertion That the CCL Charge is Anti-Competitive is Not Relevant.*

As a final matter, BayRing and AT&T assert that the CCL charge, as applied by Verizon in accordance with Tariff 85, is “anti-competitive.” *See, e.g.*, Pre-filed Direct Testimony of Darren Winslow at 34-35; Pre-filed Direct Testimony of Oyefusi, Nurse and Pfautz at 24-25; Tr. Day I at 39-40, 62-63. This phase of the DT 06-067 proceedings is limited to determining the proper interpretation of the relevant tariffs and to what extent, if any, reparations are due. Order No. 24,705 (November 29, 2006). Any consideration of prospective modifications to Verizon’s tariff is not before the Commission. *Id.* Thus, any consideration of whether Verizon’s Tariff effects an anti-competitive result (which Verizon denies), if at all, must be addressed in a future

proceeding and is not relevant here.

IV. CONCLUSION

For the reasons set forth above, the Commission should find that the disputed calls involve switched access service and that the disputed access charges, including the common carrier line charge, are being applied in accordance with the rate design and terms set forth in Tariff 85. The Commission should, accordingly, reject BayRing's complaint.

Respectfully submitted,
By its attorney,

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