THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2008 TERM

NO. _____

Verizon New England Inc.,
d/b/a Verizon New Hampshire
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications - NNE

# APPENDIX TO
# APPEAL BY PETITION PURSUANT TO RSA 541:6

---


Henry Weissmann
MUNGER TOLLES & OLSON LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071
Telephone (213) 683-9100

Sarah B. Knowlton
N.H. Bar No. 12891
McLANE, GRAF, RAULERSON & MIDDLETON, P.A.
100 Market Street, Suite 301
Portsmouth, New Hampshire 03801
Telephone (603) 334-6928

Alexander W. Moore
Verizon New England Inc.
d/b/a Verizon New Hampshire
185 Franklin Street
Boston, MA 02110-1585

Counsel for Appellant
Verizon New England Inc.
d/b/a Verizon New Hampshire

Frederick J. Coolbroth
N.H. Bar No. 493
Patrick C. McHugh
N.H. Bar No. 10027
Daniel E. Will
N.H. Bar No. 12176
DEVINE, MILLIMET & BRANCH, P.A.
43 North Main Street
Concord, NH 03301
Telephone (603) 226-1000

Counsel for Appellant
Northern New England Telephone Operations LLC b/b/a FairPoint Communications - NNE

## APPENDIX TO APPEAL BY PETITION PURSUANT TO RSA 541:6

## TABLE OF CONTENTS

DT 06-067

FREEDOM RING COMMUNICATIONS, LLC d/b/a BAYRING COMMUNICATIONS

Complaint Against Verizon New Hampshire Re: Access Charges

Order Interpreting Tariff

ORDER NO. 24,837

March 21, 2008

APPEARANCES: Orr and Reno, P.A. by Susan S. Geiger, Esq. on behalf of BayRing Communications; Gregory M. Kennan, Esq. on behalf of One Communications; Jay E. Gruber, Esq. on behalf of AT&T Communications of New England, Inc.; Garnet M. Goins, Esq. on behalf of Sprint Communications; Victor D. Del Vecchio, Esq. on behalf of Verizon New Hampshire; and Lynn Fabrizio, Esq. for the Staff of the New Hampshire Public Utilities Commission.

## I. PROCEDURAL HISTORY

On April 28, 2006, competitive local exchange carrier (CLEC) Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) filed a petition requesting that the Commission investigate the imposition of switched access charges, including carrier common line (CCL) access charges, by incumbent local exchange carrier (ILEC) Verizon New Hampshire (Verizon) on calls that originate on BayRing's network and terminate on a wireless carrier's network. In its petition, BayRing argued that CCL charges are associated with "access" to a Verizon end user via Verizon's local loop, and that calls between carriers using Verizon as an interim carrier do not involve switched access. According to BayRing, a call between a BayRing customer and a wireless customer does not involve a Verizon end user or a Verizon local loop and therefore CCL charges should not apply. BayRing further contended that if the Commission determines that a charge should apply to such a transaction, it should be deemed chargeable as

tandem transit service under Verizon's Tariff No. 84 and not as switched access under Tariff No. 85.

On May 12, 2006, the Commission transmitted a copy of BayRing's complaint to Verizon for response. On May 31, 2006, Verizon filed an answer disputing BayRing's complaint and contending that Tariff No. 85 provides that "all switched access services will be subject to carrier common line access charges." Verizon further stated, among other things, that tandem transit service is "not available to BayRing for the application at issue here."

On June 23, 2006, the Commission issued an order of notice scheduling a prehearing conference for July 27, 2006, scheduling a technical session for August 11, 2006, making Verizon a mandatory party, and determining that further investigation was warranted. In its order of notice, the Commission established the following issues for review in this docket: (1) whether the calls for which Verizon is billing BayRing involve switched access, (2) if so, whether Verizon's access tariff requires the payment of certain rate elements, including but not limited to CCL charges, for calls made by a CLEC customer to end users not associated with Verizon or otherwise involving a Verizon local loop, (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, (4) to what extent reparation, if any, should be made by Verizon pursuant to RSA 365:29, and (5) in the event Verizon's interpretation of the current tariffs is reasonable, whether any prospective modifications to the tariffs would be appropriate.

Timely petitions to intervene were filed by RNK Inc. d/b/a RNK Telecom (RNK) on July 17, 2006, by AT&T Communications of New England, Inc. (AT&T) on July 20, 2006, by One

Communications on July 24, 2006, by Otel Telekom, Inc. (Otel) by fax on July 26, 2006, and by segTEL, Inc. by fax on July 26, 2006.

The prehearing conference took place as scheduled on July 27, 2006, during which the pending petitions for intervention were granted. The parties and Staff met in a technical session on August 11, 2006. A follow-up technical session was conducted by conference call on September 29, 2006. As a result of disclosures made during the technical sessions, BayRing filed a motion on October 6, 2006, to amend its initial petition by adding the assertion that Verizon is improperly assessing access charges to BayRing for calls originated by BayRing end user customers and terminating at wireline (as well as wireless) end user customers served by carriers other than Verizon. In its motion, which effectively requested an expansion of the scope of the docket, BayRing requested further notice and opportunity for comment pursuant to N.H. Code Admin. Rules Puc 203.10(b). On October 10, 2006, AT&T filed a motion to clarify or amend the scope of the proceeding, outlining various call scenarios and corresponding charges levied by Verizon warranting review in this docket and not yet covered in BayRing's initial and amended complaints.

On October 12, 2006, Staff filed a report of the conference call held on September 29, 2006. In its report, Staff recommended alternate schedules for proceeding either to an evidentiary hearing or, in the alternative, to briefings and a decision on the pleadings.

On October 23, 2006, the Commission issued Order No. 24,683, which expanded the scope of the investigation and adopted a schedule for discovery, testimony and an evidentiary hearing. The scope was expanded to include any other CLECs or CTP (competitive telecommunications providers) affected by the relevant tariff applications, and to review calls

made or received by both wireless and wireline end users. Accordingly, the first two issues were revised as follows:

(1) whether calls made or received by end users which do not employ a Verizon local loop involve Verizon switched access; and

(2) if so, whether Verizon's access tariff requires the payment of certain rate elements, including but not limited to CCL charges.

Thus, the scope of the investigation now includes calls made or received by either wireless or wireline end users of carriers other than Verizon that do not employ a Verizon local loop. The Commission also issued a supplemental order of notice on October 23, 2006, scheduling a prehearing conference on the expanded scope of the proceeding.

On October 31, 2006, the New Hampshire Telephone Association (NHTA) filed a petition to intervene.

The second prehearing conference took place as scheduled on November 3, 2006, at which time NHTA's petition to intervene was granted. During the prehearing conference, BayRing asked the Commission to bifurcate the issues of "liability" (i.e., the proper interpretation and application of the Verizon tariffs) and "damages" (i.e., calculation of any refunds and/or reparations due from Verizon). Verizon opposed BayRing's request. Staff convened a technical session on November 14, 2006, and thereafter submitted a written report noting a lack of agreement among parties with respect to bifurcation and asking the Commission to push back the approved procedural schedule two weeks from the issuance of a decision on the issue of bifurcation. On November 17, 2006, AT&T filed a letter stating its support for bifurcation. On November 20, 2006, Verizon filed its opposition to bifurcation. On November 21, 2006, BayRing filed comments in support of bifurcation.

On November 29, 2006, the Commission issued Order No. 24,705, revising the procedural schedule to provide for the conduct of an initial phase of the proceeding to determine tariff interpretation issues. In its order, the Commission also directed each party intending to seek reparations pursuant to RSA 365:29 to submit by January 12, 2007 a calculation of the estimated financial impact of the disputed charges, and to include a description of the calculation method used, an explanation of any assumptions made, and worksheets illustrating how the calculation was determined. The Commission also requested Verizon to submit by January 12, 2007, (1) an estimate of the total financial impact on Verizon of the charges at issue in this proceeding, (2) to the extent practicable, individual estimates of the disputed charge totals Verizon had billed to BayRing and any intervenors, and (3) an estimate of the annual impact on Verizon if the disputed revenue is no longer collected.

On December 18, 2006, Staff filed a series of call flow scenarios developed with input from parties to illustrate the types of calls that can traverse the Verizon tandem switch[1] and applicable charges.

On January 8, 2007, Sprint Communications Company and Sprint Spectrum (Sprint/Nextel) filed a petition to intervene, stating that it had recently discovered that Verizon is billing it for switched access charges, including CCL access charges, on calls that do not involve a Verizon end user or local loop.

Verizon filed, on January 10, 2007, a motion to compel discovery responses from BayRing, AT&T and RNK. At that time, Verizon also moved to suspend the procedural schedule, pending the Commission's resolution of the pending discovery issues. On January 12, 2007, BayRing and AT&T jointly filed a motion to compel Verizon to provide certain discovery materials. On January 16, 2007, AT&T, BayRing and One Communications jointly filed a

[1] A tandem switch is an intermediate switch that is not involved in either originating or terminating calls.

response to Verizon's motion to suspend the procedural schedule, recommending a revised procedural schedule in lieu of the indefinite suspension requested by Verizon. Staff and Verizon concurred in the proposed revisions to the schedule. The Commission approved the proposed, revised procedural schedule by secretarial letter. On January 22, 2007, One Communications. BayRing, AT&T and RNK filed oppositions to Verizon's motion to compel. By secretarial letter dated February 5, 2007, the Commission granted the Verizon discovery motion in part and denied in part.

On February 8 and 9, 2007, One Communications, BayRing and AT&T each filed estimates of improperly billed Verizon access charges. On February 9, 2007, Verizon provided an estimate of the potential financial impact, including the total amount and individual calculations for each intervenor, in the event the Commission decides that Verizon had not properly applied its tariff and orders refunds of the disputed charges. Verizon also provided an estimate of the annual impact to Verizon NH if the disputed revenue were no longer collected.

On February 9, 2007, RNK formally withdrew its intervention.

On March 9, 2007, witness testimony was filed on behalf of the parties as follows: AT&T witnesses Ola Oyefusi, Christopher Nurse and Penn Pfautz; BayRing witnesses Darren Winslow and Trent Lebeck; and Verizon witness Peter Shepherd. Rebuttal testimony was filed by the same parties on April 20, 2007.

The Commission granted Sprint/Nextel's motion to intervene on April 17, 2007, by secretarial letter. On April 19, 2007, Sprint/Nextel filed its estimate of access charges improperly billed by Verizon.

On June 1, 2007, Verizon filed a motion to compel discovery responses from BayRing and AT&T. BayRing and AT&T objected to Verizon's motion on June 7, 2007. On June 7, 2007, the Commission issued Order No. 24,760, denying Verizon's motion.

On July 3, 2007, BayRing and AT&T jointly filed a request that the Commission conduct the July 10-12 hearing with all three commissioners present. In their filing, BayRing and AT&T also requested, with Verizon's concurrence, confirmation that each party will be permitted to present an oral summary of its written prefiled testimony during direct examination and to file post-hearing briefs with legal arguments. The Commission granted the requests by secretarial letter on July 6, 2007.

The hearing was held on July 10 and 11, 2007, as scheduled. On August 10, 2007, Verizon moved for leave to file supplemental discovery. AT&T responded on August 20, 2007, stating that Verizon had styled its motion as a request to supplement a discovery reply when in fact it was a motion to reopen the record and add new evidence. AT&T stated that although it did not object to Verizon's request, it wished to preserve the right to object to any further efforts of Verizon to supplement the record. BayRing concurred with AT&T's response. On August 22, 2007, the Commission granted Verizon's request to supplement the record, noting that the discovery response might have probative value and that the parties would have the opportunity to impeach or rebut the late-filed exhibit in their briefs.

SegTel filed a post-hearing brief on September 7, 2007. AT&T, One Communications, BayRing, and Verizon filed their post-hearing briefs on September 10, 2007.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. Freedom Ring Communications LLC d/b/a BayRing Communications

A panel consisting of Trent Lebeck and Darren Winslow testified on behalf of BayRing at the July 10, 2007 hearing that BayRing had discovered, during a review of its August 2005 bills for intrastate access charges from Verizon, that the bills had increased substantially over prior bills for the same service. According to BayRing, the minutes of use assessed to CCL far exceeded the minutes of use assessed to local switching, which generally should be equal when accessing a Verizon end user through switched access.

According to BayRing, when a BayRing end user calls a Verizon end user, BayRing delivers the call to Verizon at Verizon's tandem switch and Verizon, in turn, delivers the call from its tandem to the end office switch to which the Verizon end user is physically connected via the local loop or common line. In such an instance, terminating switched access should apply because BayRing is using Verizon's end office and common line to access the Verizon end user, and, as a result, Verizon should bill for end office switching with a CCL charge and the minutes of use should be the same.

On the 2005 bills in question, BayRing discovered that the minutes of use that differed substantially from prior bills were labeled "Cellular Tandem Switched" and terminated to a wireless end user rather than a Verizon end user. Such calls, according to BayRing, do not go through a Verizon end-office or use a Verizon common line because they do not connect to a Verizon end user. After a review of Verizon's tariff, BayRing concluded that Verizon was billing CCL charges in error for Cellular Tandem Switched minutes of use. Following the BayRing complaint that triggered these proceedings, Verizon began charging the CCL rate element for other types of calls, including calls that terminated to end users of other CLECs or

independent telephone companies (ITCs), for which Verizon had never billed in the past. According to BayRing, Verizon had not previously imposed CCL charges for calls terminating to CLEC or ITC end users, nor had its third-party billing agent, New York Access Billing LLC (NYAB), imposed these charges in the past ten years.

BayRing submitted that these new CCL charges create a substantial new source of revenue for Verizon. BayRing pointed out that the majority of the disputed charges do not represent long-standing Verizon revenues since Verizon has been assessing the bulk of the disputed charges only since September 2006. BayRing theorized that its complaint had alerted Verizon that it was not billing CCL for CLEC-to-CLEC or CLEC-to-ITC calls and that, as a result, Verizon took the opportunity to impose the additional charges to generate additional revenues.

BayRing asserted that Verizon is not authorized to collect access charges for services it does not provide. BayRing's witness claimed that he had never seen an access bill from a carrier other than Verizon that billed for individual rate elements not provided by the billing carrier. Verizon is charging BayRing a CCL charge when Verizon does not provide the facilities connecting the end office and the end user. BayRing also claimed that at times it is being double-billed because in certain cases a wireless carrier may charge BayRing local termination charges to terminate a call to its end user, or a CLEC or ITC charges terminating switched access for access to its end user over the CLEC or ITC common line, while Verizon is applying a CCL charge for the same call, although the Verizon common line is not being used, so BayRing ends up paying two CCL charges.

BayRing contended that Verizon and wireless carriers obtain an unfair advantage over CLECs as a result of Verizon's unlawful CCL billing scheme, contrary to RSA 378:10.

According to BayRing, Verizon pays only 3 cents per minute in terminating access charges for a call from one of its customers to a CLEC end user, while BayRing pays a total of 5.6 cents per minute when terminating a call from one of its customers to the end user of another CLEC. BayRing contends it pays two terminating access charges for such calls: one to the terminating CLEC, and one to Verizon for a service Verizon does not provide. BayRing points out that Verizon pays a wireless carrier only 0.2 cents per minute to terminate a call, which is considered local pursuant to federal regulations, whereas when a BayRing customer calls the same wireless end user, Verizon charges BayRing 2.8 cents per minute for switched access to the wireless provider (considered by Verizon in this instance as a toll call) in addition to what BayRing pays the wireless carrier to terminate the call to its end user. BayRing contended that the cost differential is substantial and that Verizon's jurisdictional distinction between calls from Verizon end users to wireless customers and calls from CLEC end users to wireless customers is anticompetitive, unjust and unreasonable.

BayRing noted that the CCL charge is described in Tariff No. 85, Section 5.1.1A as follows: "Carrier Common Line access provides for the use of end user's Telephone Company [Verizon] provided common lines by customers for access to such end users to furnish intrastate communications." Section 1.3.2 defines "common line" as "a line, trunk or other facility provided under the general and/or local exchange tariffs of the Telephone Company, terminated on a central office switch." BayRing maintained that Verizon's tariff and the definition of "common line" clearly link the CCL rate element to the common line facilities between Verizon's end offices and end users.

BayRing argued that the tariff provisions indicate that the CCL is authorized to be charged only when a Verizon common line is actually used. BayRing asserted that Verizon's

own graphic exhibit, exhibit 6.1.2-1 in Section 6.1.2 of Tariff No. 85, shows the common line as the facility between the end office and the end user. In addition to the definitions above, BayRing contended that there were other provisions in the Verizon tariff that state CCL should be billed when provided and are specifically linked to other sections of Tariff No. 85 (Sections 4 and 6) and Verizon's FCC Tariff No. 11. BayRing argued that Verizon erroneously relies on a generic sentence within its tariff to assert that CCL applies even when common line facilities are not used. That sentence 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." BayRing submitted that Verizon's interpretation is incorrect because it ignores the phrase "except as set forth herein," which indicates there are exceptions to the general language.

Citing *City of Rochester v. Corpening*, 153 N.H. 571 (2006), and *Weare Land Use Assoc. v. Town of Weare*, 153 N.H. 510, 511 (2006), BayRing argued that the tariff language must be interpreted in the context of the overall scheme of the tariff, should not be interpreted in isolation, must lead to a reasonable result and should entail a review of a particular provision, not in isolation, but with all the associated sections. BayRing emphasized that the interplay between tariff Sections 5 and 6 associated with the disputed charges indicates that the CCL charge applies only when another carrier makes use of Verizon's common line to reach a Verizon end use customer and that when a carrier uses the common line, it must also use the end office local switching service in Section 6 in order for Verizon to apply the usage-based CCL charge.

In its post-hearing brief, BayRing asserted that when interpreting provisions of a utility tariff, it is appropriate for the Commission to apply principles of statutory construction and contract interpretation and that, in doing so, the Commission should find that Verizon's Tariff No. 85 does not permit it to charge the CCL rate when Verizon is not providing use of its

common line. According to BayRing the Commission should interpret Verizon's tariff to lead to a reasonable rather than absurd result, citing *Weare Land Use Assoc.* at 511, and that the tariff should not be construed in a manner that produces an unjust and illogical result, citing *State v. Farrow*, 140 N.H. 473, 476 (2005). BayRing maintained that it is unreasonable, absurd, unjust and illogical that Verizon be allowed to impose a usage-based rate element such as the CCL charge when no corresponding service is being provided by Verizon.

BayRing also argued because the tariff language does not specifically describe or address charges associated with calls from CLECs to non-Verizon end users, the tariff does not permit Verizon to impose the disputed CCL charges for these calls. BayRing cited RSA 378:1, which requires that every public utility file "schedules showing rates, fares, charges and prices for any service rendered" and rule Puc 1603.02(m), which requires that a utility provide with each tariff "a full description of the rates and terms under which service shall be provided" to support its argument. BayRing asserted that Verizon is not adhering to state statutory and regulatory requirements or to federal requirements, which are made applicable at the state level through RSA 378:2, that all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations. *See* 47 C.F.R. § 61.2(a).

BayRing also claimed that Verizon's interpretation of the tariff is unjust and unreasonable because it is inconsistent with industry practices. BayRing pointed out that the diagram set forth in Section 6.1.2 of the tariff is consistent with industry-wide treatment of the CCL rate element. BayRing stated that the practice within the telecommunications industry is that a CCL charge is imposed only when the billing carrier actually provides access to its common line or loop and that Verizon admits it is not providing CCL service for the calls at issue. BayRing cited the definition of a CCL charge contained in *Newton's Telecom Dictionary*

as stating that the CCL charge is paid to local exchange carriers "for the privilege of connecting to the end user through the LEC local loop facilities." BayRing indicated that the most persuasive evidence of industry practice regarding the proper application of the CCL charge is the FCC decision in *AT&T v. Bell Atlantic Pennsylvania*, 14 F.C.C.R. 556 (Dec. 9, 1998), in which the FCC held that with respect to interstate calls, "a LEC may impose CCL charges only at points where an interstate or foreign call originates from, or terminates to, an end user via transmission over a common line. . . . Although common line costs are not traffic sensitive, this does not mean that CCL charges are not tied to common line usage."

In addition, BayRing asserted that Verizon's argument that it is entitled to impose the CCL charge as a contribution rate element must also fail as illogical and unreasonable. The plain and undisputed facts of this case undermine Verizon's claim that it is or ever was entitled to collect the CCL charge as a contribution rate for calls that do not traverse a Verizon common line.

**B. AT&T Communications of New England, Inc.**

A panel consisting of Ola A. Oyefusi, Christopher Nurse and Penn Pfautz testified on behalf of AT&T at the July 10, 2007 hearing that AT&T was in agreement with BayRing's position. AT&T claimed that it noticed something amiss while examining its November 2005 bill from Verizon, unsuccessfully attempted reconciliation with Verizon, and subsequently intervened in this docket.

AT&T stated that it disputes Verizon's interpretation of the tariff language regarding CCL charges. AT&T is not disputing switched access charges when it uses Verizon's end office and common line for access to a Verizon end user. The problem, according to AT&T, is that Verizon has begun charging CCL charges on the terminating side, even though Verizon is no

longer supplying access to a Verizon end user via a Verizon local loop or common line. In addition, according to AT&T, Verizon is charging for originating CCL service even when the customer has left Verizon for another company. AT&T stated that even though Verizon has no loop on either end of a call, Verizon is charging AT&T for both originating and terminating CCL service. AT&T emphasized that, as a long distance provider, it already pays those charges to the two CLECs that actually provide use of the originating and terminating loops and believes it is unreasonable to have to pay Verizon as well, when Verizon is not providing the service.

AT&T believes that if the tariff is applied in accordance with Verizon's interpretation, the results are unreasonable. AT&T indicated that it is illogical for Verizon to expect that, when Verizon loses a customer, Verizon would continue to receive revenue from that loop for the CCL that Verizon no longer provides. AT&T pointed out that the CCL component is by far the largest component of the access charges, representing approximately 90 percent. AT&T stated that the tariff language allows Verizon to collect CCL charges only when Verizon supplies the loop, and that Verizon cannot charge for an access rate element unless it actually provides the service associated with that rate element.

In its post-hearing brief, AT&T stated that Section 6 of Tariff No. 85 delineates three major components of what it describes as a "Complete Switched Access Service": local transport, local switching, and common line, along with the applicable rate categories. AT&T stated that Section 6.1.2.B.3 of Tariff No. 85 expressly excludes CCL service as a service provided under Section 6; rather, CCL service is provided under Section 5, which describes CCL access service as follows: "Carrier common line access provides for the use of end users' Telephone Company provided common lines by [IXC] customers for access to such end users to furnish intrastate communications. . . . The Telephone Company will provide carrier common

line access service to customers in conjunction with switched access service provided in Section 6." AT&T concluded that in order to use Verizon's Section 5 CCL services, it must also use Section 6 local switching services.

AT&T asserted that by Verizon's own design, the language in Tariff No. 85 mirrors that of Verizon's FCC Tariff No. 11, under which Verizon concedes it may not charge for CCL for calls that do not involve a Verizon common line. AT&T averred that interpreting the same language differently in federal and state tariffs violates contract and statutory interpretations. AT&T pointed out that the Commission applies well-established principles of statutory construction and contractual interpretation to tariffs.

AT&T stated that Verizon's interpretation of its tariff is anti-competitive and anti-consumer. According to AT&T, following Verizon's interpretation of the tariff would undermine local competition and the benefits it produces, when the tariff's very purpose is to obtain the benefits of competition. AT&T argued that the commission adopted Tariff No. 85 and access rate levels, in particular, for the purpose of promoting competition and lowering rates for telecommunications services. AT&T submitted that when the Commission rejected a proposed settlement agreement in 1993 that included the issue of access charges for intrastate toll competition in New Hampshire in Order No. 20,864 (entered in Docket No. DE 90-002), it was sending a clear message that the proposed access rates were too high and left no doubt that it was endorsing competition as a means of reducing prices for New Hampshire ratepayers.

Finally, AT&T argued that Verizon's past billing practices are in direct conflict with its new tariff interpretation. Tariff No. 85 was adopted in 1993, while Verizon did not begin billing CCL charges without local switching (from the end office connecting the common line to the end user) until the fall of 2005. AT&T stated that Verizon's sudden reinterpretation of its tariff to

generate new revenues for itself and impose substantial costs on competitors is inconsistent with the settled meaning of Tariff No. 85, as established not only by its language, but also by Verizon's behavior and that of its billing agent.

**C. One Communications**

In its post-hearing brief, One Communications argued that the Commission should hold that the access charges at issue in this proceeding are improper and inappropriate because Verizon's access tariff does not permit the imposition of a per-minute usage charge for the CCL when no Verizon common line is involved. One Communications further argued that when the call is originated or terminated to a CLEC or wireless carrier, Verizon does not provide access to the end user via a common line, and the CCL charge should not apply. One Communications asserted that Verizon's tariff language is clear that it may not impose the CCL charge without providing CCL access to a Verizon end user, and therefore no inquiry beyond the language of the tariff is required.

One Communications reiterated the positions of BayRing and AT&T, stating that the Commission should apply the principles of contractual interpretation and statutory construction contained in common law and should ascribe the plain and ordinary meaning to the words used, while interpreting the tariff language in light of the tariff's overall scheme and not in isolation. The Commission should examine any particular section together with all associated sections and should interpret the tariff so as to produce a reasonable outcome, not an absurd one.

One Communications argued that Tariff No. 85 prohibits Verizon from imposing a CCL charge when it does not provide CCL service. The tariff clearly states (in Section 5) that Verizon "will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6." According to One Communications, this language means

Verizon will provide access to the common line only in conjunction with local switching and/or local transport as described in Section 6.

One Communications also reiterated that Verizon's tariff is clear that it may charge only for services it actually provides; therefore, under the tariff, Verizon may not impose a CCL charge unless the call traverses a Verizon common line.

One Communications claimed that calls originated by wireline carriers and terminated to a wireless carrier within New Hampshire are local calls and should not be charged for CCL access. One Communications contended that, under FCC requirements, calls originated by or terminated to a wireless carrier in the same major trading area as the other party are deemed local and subject to reciprocal compensation, not access charges.

One Communications also stated that it does not agree with Verizon's argument that the tariff allows per-minute CCL usage charges even when no Verizon CCL is involved, because Order No. 20,864 authorized Verizon to recover all residual contribution from intraLATA toll revenues through CCL. One Communications asserted that the tariff language is clear that Verizon is not allowed to impose the CCL charge when no Verizon common line is used to access a Verizon end user.

One Communications emphasized that Verizon's billing practice is contrary to industry standard practice and that Verizon's imposition of CCL charges is anomalous even by its own standards. One Communications stated that Verizon does not impose the CCL charge in all or most other jurisdictions, and that it does not impose the charge in any other New England state where no CCL is involved. Under its federal tariff, Verizon does not impose a CCL charge when no common line is used. And finally, One Communications asserts that the failure of Verizon's billing agent, NYAB (which specializes in billing access charges for telecommunications

carriers), to bill CCL charges in such a case speaks volumes about the industry's view of the reasonableness of imposing CCL charges when no CCL is involved. Verizon's historical failure to bill CCL charges undermines its claim that they are an important revenue source.

Finally, One Communications stated that imposing a CCL charge when no Verizon common line is used is contrary to the public interest, creates a competitive advantage for Verizon and Verizon Wireless, while posing a competitive disadvantage for competitors, and undermines the competitive atmosphere in New Hampshire, to the detriment of ratepayers.

**D. segTEL**

SegTEL averred that Verizon is forbidden from charging rates for services that are not properly set out in its tariff, and that there is no applicable rate for CCL access in the absence of a Verizon end user. SegTEL argued that the charges Verizon seeks to assess are not specified in its tariff and are therefore unlawful. Tariff language, according to segTEL, must be clear and unambiguous. SegTEL posits that Verizon's tariff does not entitle it to collect CCL charges for calls to wireless carrier end users because the tariff does not allow for CCL charges where there is no Verizon end user customer. SegTEL stated that in the absence of clear and unambiguous language in Tariff No. 85 specifying the inclusion of CCL charges beyond the limitations established by the tariff, Verizon is prohibited by state law from imposing charges. SegTEL claimed that the Supreme Court has consistently articulated that such "rates, fares, charges and prices for any service rendered" must be set forth in clear and unambiguous language to be enforceable. According to segTEL, the Commission has likewise held that a tariff must be clear and unambiguous in order to permit its enforcement. segTEL alleged that Verizon seeks to charge for services it does not provide and for use of facilities it does not own. segTEL held that

it is precisely to avoid this type of uncertainty that carriers are required to set forth their charges clearly and unambiguously in a tariff.

SegTEL stated that the language governing federal tariff interpretation is equally explicit and supports its argument. 47 U.S.C. § 203(c) states that it is unlawful under federal law for a carrier to charge, demand, collect, or receive a greater or less or different compensation other than the charges specified in a tariff.

SegTEL argued that Verizon's tariff does not provide for CCL charges in the absence of a Verizon-provided common line. The plain language of Verizon's Tariff No. 85 states that CCL charges apply when common lines provide other carriers with access to Verizon's end users. segTEL pointed out that Section 5.1.1.A. states that CCL access provides for the use of Verizon-provided common lines by customers for access to such end users to furnish intrastate communications. SegTEL concluded that Verizon should not be allowed to charge CCL charges for services it does not provide.

**E. Verizon New Hampshire**

Peter Shepherd of Volt Services Group, a division of Volt Information Science Company, testified on behalf of Verizon at the July 11, 2007 hearing. Mr. Shepherd testified that although the arguments of BayRing and AT&T have merit and may be ripe for a separate proceeding to determine if the tariff should be changed in the future, their logic has little relevance to the basis upon which the access charges were established and the intent, interpretation and lawful application of the existing tariff. Mr. Shepherd explained that switched access is a wholesale service for toll calls that provides carriers with the use of transmission, transport and switching facility components of Verizon's network. Mr. Shepherd noted that Section 2.1 of Tariff No. 85 defines "switched access" as follows: "This tariff contains regulations, rates and charges

applicable to switched access services, which essentially are services provided by Verizon New England to interexchange carriers and wireless carriers, including resellers and/or other entities engaged in the provision of public utility common carrier services which utilize the network of the Telephone Company." Verizon argued that it provides the use of its network for the toll services offered by competitive carriers, services which are subject to the carrier common line charge. Verizon further alleged that the CCL rate was deliberately established in the generic competition docket, No. DE 90-002, as a contribution rate element applicable to all switched access services and not as an element to recover use of loop-related costs. Verizon maintained that the tariff is very specific in saying that the CCL charge applies to all switched access minutes of use.

In its brief, Verizon maintained that New England Telephone (NET) Tariff No. 78 (now Verizon Tariff No. 85) introduced the carrier common line (CCL) charge into NET's access rate design and that the CCL charge to long distance providers for all switched access calls including those originated from or terminated to wireless carrier end users has been billed since 1993. In 1996, Verizon elected to outsource billing of switched access services for calls originating from CLECs and ITCs where Verizon provided intermediate switched access transport and tandem switching to deliver calls to another CLEC, ITC, or long distance provider. According to Verizon, its third party billing agent failed to properly assess CCL charges on these calls from 1996 until Verizon ended the out-sourced billing arrangement in 2006.

According to Verizon, this case revolves primarily around the interpretation of one sentence in Section 5.4.1.A of Tariff No. 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." In its brief, Verizon argued that 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. Under New Hampshire common law, this requires that the Commission ascribe the plain and ordinary meaning to the words used in a tariff, citing *Appeal of Town of Bethlehem*, 154 N.H. 314, 316 (2002), and *West v. Turchioe*, 144 N.H. 509, 515 (1999). Verizon concluded that the preamble to Section 5.1 provides important context for interpreting Section 5.4.1.A. The preamble 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" (emphasis added by Verizon), and, according to Verizon, makes clear the intention that the CCL would be billed to every call involving switched access.

Verizon claimed that the clause "except as set forth herein" in Section 5.4.1.A pertains only to an exception for enhanced service providers as required by FCC regulations. Verizon avers that nowhere in Section 5.4.1 is the CCL charge limited to intrastate toll calls involving Verizon end users; rather, it applies broadly to all switched access service components that may be purchased by carriers on a stand-alone or combined basis. Verizon claimed that Sections 5.4.1 and 5.4.2 explicitly require the payment of CCL access service charges for "all" and "each" switched access service provided by Verizon.

Addressing the arguments of BayRing and AT&T that assert that Verizon is not permitted to assess CCL charges on intrastate toll calls involving non-Verizon end users even when Verizon provides an intermediate switched access function, such as tandem switching, Verizon contends that such a view is predicated on an erroneous interpretation of Sections 5.1.1 and 5.2.1 of the tariff. Verizon maintained that while the tariff 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. According to Verizon, language in the tariff at Section 5.1.1.A.1, which states that "[Verizon] will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6," means only that access to the common line is required to be provided in conjunction with switched access service. Verizon claimed that nothing in Section 5.2.1 mandates that the carrier must make use of the Verizon common lines every time it utilizes switched access components. According to Verizon, use of the common line is unrelated to the application of CCL charges, which are governed by Section 5.4 requiring payment of CCL whether the common line is used or not, 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.

Verizon also maintained that the interpretations of BayRing and AT&T contradict 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. Verizon maintained that Section 3.1.2.D of Tariff No. 85 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. Verizon claimed that 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. Verizon contended that if CLECs avail themselves of Verizon's switched access services, they must pay the rates and charges set forth in Tariff No. 85, including CCL charges.

Verizon further disagreed with the claim of BayRing and AT&T that the tariff provisions are not applicable because Verizon is not providing switched access services. Verizon supplies the use of its network, including transmission, transport and switching components for the provision of toll service. Verizon stated that the use of its network to provide an intrastate toll call, regardless of the number of components involved, constitutes "switched access."

Verizon asserted that a billing error of its vendor, NYAB, does not absolve carriers of their obligations to pay CCL charges on switched access services provided by Verizon. Carriers are presumed to know the content of Verizon's tariff, which premise renders the error immaterial. Verizon alleged that carriers have received services from Verizon for several years for which they have paid less than the tariffed rates. Verizon became aware of the billing error and took steps to rectify the error.

Verizon took the position that the history of the development of Tariff No. 78 (now Tariff No. 85) in Docket No. DE 90-002 informs the debate. According to Verizon, the tariff language "was the product of negotiations among carriers." Verizon goes on to state that a plain-language reading of the tariff will give effect to the underlying purpose of the CCL charge, which was designed by Verizon to provide contribution for the support of other services. Verizon refers to its witness's testimony in DE 90-002 that "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." According to Verizon, NET provided extensive testimony in DE 90-002 to support its position that access and toll were the same service and therefore should be priced approximately the same. Verizon cited additional testimony from DE 90-002, which said "[t]he 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," and concluded that since the Commission approved the tariff with the language in dispute today, it gave effect to NET's express intent.

Verizon also pointed to testimony of an AT&T witness in DE 90-002 in support of Verizon's understanding that CCL is a contribution element and not a mechanism to recover the cost of using the local loop. Verizon pointed out that its ultimate agreement to a stipulation on this issue altered its initial position but did not change the fact that CCL was designed to recover contribution.

Verizon points to a similar case in New York where a CLEC argued it should not have to pay CCL and local switching for access to a wireless carrier. The New York Public Service Commission rejected the carrier's argument, similar to the argument here, that "Verizon cannot charge for a service it does not perform" and found that the plain and ordinary meaning of the tariff's terms controlled.

Finally, Verizon dismissed as irrelevant BayRing's assertion that CCL charges are anti-competitive. Verizon intimated that this proceeding is limited to determining the proper interpretation of the relevant tariffs, and that any consideration of modifications to the tariffs or whether the tariffs are anti-competitive is irrelevant to this docket and must be addressed in a future proceeding.

## III. COMMISSION ANALYSIS

The June 23, 2006 order of notice in this proceeding set forth a number of issues for review that were subsequently modified in the October 23, 2006 supplemental order of notice. The issues posed were: (1) whether calls made or received by end users that 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, for such calls, (3) if not, whether BayRing or other carriers are entitled to a refund for such charges collected by Verizon in the past, (4) if not, whether such services are more properly assessed under a different tariff provision, (5) if not, to what extent reparation, if any, should be made by Verizon under RSA 365:29, and (6) in the event Verizon's interpretation of the current tariffs is reasonable, whether any prospective modifications to the tariffs are appropriate.

Subsequently, in Order No. 24,705 (November 26, 2006), the Commission determined to conduct this proceeding in two phases, with Phase I concerning the proper interpretation of the relevant tariff provisions and, if necessary, Phase II concerning the determination of refunds. It was also noted in Order No. 24,705 that a separate proceeding would be initiated if tariff modifications were determined necessary as a prospective matter.

**A. Phase I—Interpretation of Tariff Provisions.**

At issue before us is the proper interpretation and application of Sections 5 and 6 of Verizon's access tariff, Tariff No. 85. When interpreting the provisions of a utility's tariff, we apply principles of statutory construction and contract interpretation. *Public Service Company of New Hampshire*, 79 NH PUC 688, 689 (1994). Accordingly, we look first at the plain and ordinary meaning of the terms of the tariff. *City of Rochester v. Corpening*, 153 N.H. 571, 573 (2006) (citing *Carignan v. New Hampshire Int'l Speedway*, 151 N.H. 409, 419 (2004)).

Section 5 of Tariff No. 85 governs the provisioning of "carrier common line access service." Section 5.1.1.A describes that service as providing "for the use of end users' Telephone Company provided common lines by customers [i.e., carriers] for access to such end users to furnish intrastate communications." A "common line," in turn, is defined in Section 1.3.2 as a "line, trunk or other facility provided under the general and/or local exchange service

tariffs of the Telephone Company, terminated on a central office switch." Section 5.1.1.A.1 further states that Verizon "will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6" of the same tariff. Section 6.1.2.A of Tariff No. 85 states that "switched access services" provided under Section 6 includes originating and terminating access, as well as two-way and 800 database access. Of particular interest in this proceeding are originating and terminating access services, as they address the origination and termination of calls to and from end users who place and receive calls.

Section 6.1.2.B outlines the rate categories applicable in the provision of switched access services, including local transport (as described in Section 6.2.1), local switching (described in Sections 6.2.2 and 6.2.3), and carrier common line (described in Section 5). Thus, the individual, billable elements of "switched access" are local transport, local switching, and carrier common line. Section 6.1.2.D recognizes that when local transport, local switching and carrier common line are combined, they provide a "complete switched access service."

"Local transport" is described in Section 6.2.1.A as the provision of the transmission facilities between the customer's [i.e., the carrier's] equipment[2] and the end office switch(es) where traffic is switched to originate or terminate an end user's call. Local transport includes tandem switching. The petitioners and intervenors use tandem switching and, therefore, local transport for the calls that are the focus of this dispute.

[2] Tariff 85 generally applies to interexchange carriers, commonly referred to as IXCs, which provide long distance service on a competitive basis. "Customer" is defined as "any individual . . . which subscribes to the services offered under this tariff, including ICs [interexchange carriers], resellers or other entities engaged in the provisioning of interexchange services which utilize the network of the Telephone Company ." The reference to the customer's premises in Section 6.2.1.A is to the interexchange carrier's equipment or switch. Local transport is the component of switched access service that transports the call between the end office switch through Verizon's tandem switch to the interexchange carrier on the originating side of a call and the reverse on the terminating side of a call. Local transport includes three components: local transport termination (termination of an interoffice facility in the end office and tandem switch); local transport facility (the interoffice wire or fiber facility) and local transport tandem switching (the switch between carriers).

"Local switching" is described in Section 6.2.2 as the provision "for the use of common lines and the local end office switching and end user termination functions necessary to complete the transmission of switched access communications to the end users served by the local end office." Because the end user is not Verizon's in the calls at issue in this case, local switching is not involved.

"Carrier common line access service" is described in Section 5, separately from Section 6 "Switched Access Service." Section 5 begins with an introductory sentence that states: "Carrier 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 and at the rates and charges contained in Section 30.5" (emphasis added). Section 4.1 sets forth specifics of billing procedures. Thus, our analysis here turns on the regulations specified in Section 5 governing carrier common line access service charges.

Carrier common line access service under Section 5.1.1.A "provides for the use of end user's Telephone Company provided common lines [i.e., Verizon's common lines to Verizon end users] by customers [i.e., other carriers] for access to such end users." Thus, carrier common line access, for which CCL access charges apply, is provided when the CLEC customer uses a Verizon-provided common line to access a Verizon end user. Accordingly, the CCL charge is properly imposed when (1) Verizon provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. It is also reasonable to conclude the inverse to be true, that is, when the use of Verizon's common line and the presence of a Verizon end user are lacking, the CCL charge may not be imposed. The tariff provisions are complex and interpreting them requires a sophisticated understanding of the telecommunications industry, nonetheless, we make our findings based on the language within the four corners of the tariff.

Verizon argues as well, however, that under Section 5.4.1.A of Tariff No. 85, "[e]xcept as set forth herein, *all* switched access service provided to the customer will be subject to carrier common line access charges" (emphasis added). According to Verizon, the wording of Section 5.4.1.A suggests that any and all "switched access service" is subject to a CCL charge.

Tariff No. 85 does not include a specific definition of "switched access." Assuming *arguendo* that an ambiguity exists to the extent that there is an uncertainty of meaning or intent, we look beyond the four corners of the tariff to resolve the ambiguity. We therefore turn to the context of the provisions pertaining to the term "switched access," with a view toward its relation to carrier common line access services. The record in this proceeding reveals that when the language of Section 5 of Tariff No. 85 was initially introduced, it was not contemplated that a carrier would use switched access without using Verizon's common line[3]. In 1993, switched access rates were primarily designed to provide interexchange carriers access to end users of local exchange carriers. At the time, every wireline end user was served by an incumbent local exchange carrier; either NET (a predecessor of Verizon) or an independent telephone company. Interexchange carriers were required to use incumbent carrier common lines or local loops in order to connect with or gain access to the incumbent's end users for the provision of toll calls. Each time an interexchange carrier used local switching and local transport it had to use the common line of an incumbent carrier.

Under Verizon's interpretation of Section 5.4.1.A and the preamble to Section 5.1, Verizon would have billed interexchange carriers CCL when Verizon jointly provisioned switched access with an ITC for a toll carrier's access to an ITC end user. However, the record evidence shows that neither NET nor Verizon billed CCL to toll providers when an ITC end user

[3] Switched access was not contemplated without the use of either a Verizon common line or, alternatively, an ITC common line under a meet-point billing arrangement. For purposes of this discussion, we focus on whether a Verizon common line is used.

was involved until 2006, after this docket was initiated.[4] Nevertheless, Verizon's billing history, including whether it charged or did not charge for certain elements at different times, and the actions of its billing agent are not factors we have relied on in our interpretation of the tariff.

One of the changes Congress wrought through the Telecommunications Act of 1996 was to allow carriers other than incumbents to provide local exchange service. Once CLECs entered the market, incumbents no longer provided local switching and common line service to every end user. The FCC clarified the application of common line charges for the interstate switched access tariff in the 1998 *AT&T* decision cited by BayRing. In that decision, the FCC established that "a [local exchange carrier] may impose CCL charges only at points where an interstate or foreign call originates from, or terminates to, an end user via transmission over a common line." AT&T, 14 F.C.C.R. 556 at ¶ 28.

We agree with Verizon that, at the time the switched access rate was approved in 1993, retail toll service and switched access service used the same physical components of Verizon's network and, therefore, effectively provided the same service. However, as an NET witness testified in Docket No. DE 90-002, which established Verizon's current switched access rate design, the proceeding conducted in that docket was:

> not intended to address issues of separate competing networks or multiple exchange carriers in the same franchise territory. These issues may ultimately require extensive policy decisions on the part of the Commission should this form of competition become a reality in New Hampshire. However, the current state of competition does not require resolution of those issues at this time and is not included in the list of items to be litigated in this docket.

Exh. 2 at 56. Since the issuance in 1993 of Orders No. 20,864 and No. 20,916 resolving the issues in that docket, the telephony market in New Hampshire has seen the entry of numerous

[4] Likewise, Verizon does not bill two separate carrier common line charges when both local switching and local transport are used. *See generally* Tr. Day II at 102-105.

CLECs, many of which employ large portions of their own networks, formerly provided by NET, in the provision of toll service.[5]

In 1993, when Verizon's switched access rate was first approved, end users in Verizon's franchise territory were exclusively Verizon's. Today, CLECs own, operate and maintain local loop[6] and end-office switches serving their own end users. As a result, a CLEC need not purchase "complete switched access service" from Verizon when it is not accessing a Verizon end user. Moreover, we agree with the original NET position that Docket No. DE 90-002 was "not intended to address issues of separate competing networks or multiple exchange carriers in the same franchise territory." Consequently, we do not rely on Docket No. DE 90-002 as precedent for our decision here, where the crux of the dispute arises from the use of separate network facilities owned by competitors.

Section 5.1.1.A.1 states that "[t]he Telephone Company will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6." In the calls at issue here, Verizon is providing a component of switched access from Section 6 (i.e., local transport) but cannot physically provide carrier common line access service to the carrier as required by Section 5.1.1.A.1 because Verizon does not have a common line to the CLEC, ITC or wireless end user. Although, at its initiation, switched access appears to have required access to Verizon's[7] common line by reason of the structure of the network itself, that is no longer the case. Where a non-Verizon carrier provides the local loop that connects an end-user to the public switched network, Verizon does not (and cannot) provide carrier common line

[5] When competition became a reality and multiple carriers were competing in the same franchise area, rather than constructing an interpretation of the tariff to charge customers for a service they did not receive, it was Verizon's responsibility to seek revisions to its tariff if it believed it was somehow not recovering its costs or if the tariff no longer fit changing market and technical conditions.

[6] Some CLECs lease and pay for an unbundled local loop from Verizon. In this case, Verizon maintains the loop, but the CLEC pays Verizon to do so.

[7] See footnote 3.

access in conjunction with local transport. Since access to the common line is required to be provided in conjunction with switched access service and Verizon cannot provide access to the common line in the calls at issue here, we conclude that local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service.

Verizon further argues, however, that the CCL rate element is a contribution element not dedicated to the common line or designed to recover any costs of the common line itself. We disagree. Based on the record before us, we find that the CCL rate element was intended to recover and, in fact, does recover a portion of the costs of the local loop or common line. As a result, we find that the CCL charge may be applied only when Verizon provides the use of its common line.

We note as well in regard to Verizon's interpretation of Section 5.4.1.A that it effectively concludes that a carrier will be "subject to" CCL charges regardless of whether CCL service is provided. We interpret this section, however, to mean that a carrier will be "subject to" CCL charges to the extent CCL service is provided in conjunction with switched access. The phrase "subject to" is plainly meant to be conditional in the sense that a carrier will be "liable for" CCL charges when the condition of CCL service is precedent. Verizon's interpretation improperly nullifies the obvious conditional nature of Sections 5.1.1.A.1 and 5.4.1.A.

We find, furthermore, that Verizon's assertion that the New York Public Service Commission determined that the plain and ordinary meaning of the New York tariff allowed Verizon to charge the CCL rate element for calls terminating to wireless carriers is inapposite because the situation there is distinguishable from the case before us here. The language in the New York tariff explicitly states that "[f]or 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." New York Public Service Commission Tariff No. 11 § 2.4.8, *cited in* Verizon Post-Hearing Brief at 28. In contrast, there is no analogous language in Verizon's New Hampshire tariff that explicitly permits the application of CCL charges for calls to or from wireless end users.

In summary, based on our review of the tariff language and the record developed in this proceeding, we interpret Verizon's access tariff to permit the imposition of CCL charges only in those instances when a carrier uses CCL services. We therefore find that Verizon is, and has been, impermissibly imposing a CCL access charge in those instances where neither Verizon's common line nor a Verizon end-user is involved for either terminating or originating calls.

**B. Phase II--Determination of Refunds.**

As previously noted, in Order No. 24,705 it was determined that this proceeding would be conducted in two phases. Based on our review of the record, we have concluded, as more fully described above, that Verizon's misinterpretation of the provision pertaining to CCL charges under Tariff No. 85 has resulted in it impermissibly imposing CCL charges on certain customers. Therefore, we find that Verizon owes restitution. As a result, we will proceed to Phase II in order to determine the extent to which restitution should be made.

We note in this regard that refunds are an appropriate means for providing restitution for improperly applied charges. *See* Appeal *of Granite State Electric Co.*, 120 NH 536 (1980) (PUC has inherent power to award restitution if one has been unjustly enriched at the expense of another). Furthermore, RSA 365:29 provides for reparations covering payments made within two years prior to the date of filing a petition for any illegally or unjustly discriminatory rate, fare, charge or price demanded and collected by a public utility.

For purposes of the second phase, and pursuant to Order No. 24,705, we received estimates of potential claims from BayRing, One Communications, AT&T, and Sprint Nextel, and we also received from Verizon its estimate of the overall financial impact. Based on this information, some of which has been accorded confidential treatment on a company-by-company basis, the aggregate potential Verizon liability appears to be on the order of $15 million to $20 million. The exact amount of refunds or reparations shall be determined in Phase II of this docket, as will the manner of such refunds or reparations.

On February 25, 2008, Order No. 24,823 was issued in Docket No. DT 07-011 approving the proposed transfer of certain assets from Verizon to FairPoint and Verizon's discontinuance of landline operations in the State of New Hampshire. One condition of approval in that order was the provision that, in the event it was decided that Verizon was not authorized to collect the charges in dispute in the present proceeding, Verizon would be required to refund the amount collected by it. See, Order No. 24,823, p. 75. Furthermore, it was made clear as an ordering clause in that order, at p. 89, that Verizon's discontinuance of operations in New Hampshire was "subject to the ongoing jurisdiction of the Commission for purposes of enforcing the conditions described in the order." Inasmuch as we have determined that Verizon was not authorized to collect the charges at issue here, we will issue an order initiating Phase II, in which the extent of restitution will be determined.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Verizon cease the billing of carrier common line charges for calls that do not involve a Verizon end user or a Verizon-provided local loop.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of March 2008.

| Thomas B. Getz | Graham J. Morrison | Clifton C. Below |
|---|---|---|
| Chairman | Commissioner | Commissioner |

Attested by:

Debra A. Howland
Executive Director

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

| | | |
|---|---|---|
| **Complaint of Freedom Ring Communications, LLC d/b/a BayRing Communications Against Verizon New Hampshire Regarding Access Charges** | ) | **Docket DT 06-067** |

**VERIZON NEW HAMPSHIRE'S MOTION FOR REHEARING AND/OR RECONSIDERATION OF COMMISSION ORDER 24,837**

Verizon New Hampshire ("Verizon") hereby moves the Commission, pursuant to RSA 541:3, to reconsider or conduct a rehearing of Order No. 24,837 issued March 21, 2008. In support of this Motion, Verizon states as follows:

1. On March 21, 2008, the Commission issued Order No. 24,837 (the "Order") in response to a complaint filed by certain competitive carriers alleging that Verizon had imposed a carrier common line charge for the provision of switched access services in violation of Verizon Tariff 85 ("Tariff 85" or the "Tariff"). Despite the fact that Tariff 85 grants Verizon the right to impose carrier common line charges for *all* switched access, the Commission ordered Verizon to stop billing the charge for calls not involving a Verizon end user or a Verizon local loop. The Commission further ordered Verizon to pay restitution.

2. The Commission's order is unlawful and unreasonable because, despite clear language in the Tariff to the contrary, it concludes that while local transport is a component of switched access, it does not constitute switched access service when provided on a stand-alone basis. Having held that local transport is not switched access

in the absence of a Verizon-provided common line, the Commission then compounds its error by holding that Verizon cannot assess carrier common line charges to customers receiving switched access components, even though the plain language of the Tariff provides that all switched access provided to a customer will be subject to common carrier line access charges.

3. The Order also results in the confiscation of Verizon's property because the Commission concludes that Verizon is providing a service (local transport) to customers but is not entitled to be compensated for that service under Tariff 85. Once it concluded that stand-alone switched access services are nonetheless *not* switched access – thus determining that Verizon is not entitled to assess the associated carrier common line charge that switched access service triggers – the Commission's interpretation of Tariff 85 becomes even more untenable. If the stand-alone services Verizon provides and has provided for years are not switched access services available under Tariff 85, then Verizon has no right to charge for services the competitive carriers are in fact using. Despite having identified this issue in its October 23, 2006 Supplemental Order of Notice - "whether such services are more properly assessed under a different tariff provision" in the event they are not switched access – the Commission arbitrarily skipped over the matter, leaving Verizon with no mechanism to be compensated for the relevant services it continues to provide. As a result, Verizon's constitutional rights are violated when it is required to make the stand-alone services available to competitors in the absence of compensation under Tariff 85. Alternatively, the net effect of the Commission's Order is that Verizon has no legal obligation to make stand-alone service such as local transport available since it has no right to charge for it under Tariff 85. The Commission should

reconsider and rescind the Order because it is premised on multiple factual and legal errors and causes an absurd result.

## I. APPLICABLE STANDARD.

4. Motions for rehearing and/or reconsideration of a Commission order are governed by RSA 541. RSA 541:3 provides that the Commission may grant a motion for rehearing if "good reason for the rehearing is stated in the motion." *See Connecticut Valley Electric Company Public Service Co. of New Hampshire,* DE 03-030, Order No. 24,189 dated July 3, 2003 at 2. As stated in *Dumais v. State,* 118 N.H. 309, 312, 386 A.2d 1269 (1978), the purpose of a rehearing is to provide consideration of matters that were either overlooked or "mistakenly conceived" in the original decision. *See also, Investigation as to Whether Certain Calls are Local,* DT 00-223/00-054, Order No. 24,218 dated October 17, 2003 at 8 ("Motions for rehearing direct attention to matters 'overlooked or mistakenly conceived' in the original decision and require an examination of the record already before the fact finder.").

5. In reviewing any motion for rehearing, the Commission thus analyzes each and every ground that is claimed to be unlawful or unreasonable to determine if there is a basis to grant the request, *i.e.*, if there is "good reason" shown. *In re Wilton Telephone Company and Hollis Telephone Company,* DT 00-294/DT 00-295, Order No. 23,790 dated September 28, 2001; *see also, Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996,* DT 97-171, Order No. 23,847 dated November 21, 2001 at 11-12.[1]

[1] By way of illustration, the Commission has found good reason for rehearing when rulings were made without sufficient opportunity for an affected party to comment. *Verizon New Hampshire Tariff Filing Introducing Charges for Busy Line Verification,* DT 01-008, Order No. 23,676 dated April 12, 2001.

## II. THE COMMISSION MISINTERPRETED THE PLAIN LANGUAGE OF THE TARIFF.

6. The primary question before the Commission in this docket is whether the tandem switching and local transport services provided to competitive carriers under the Tariff constitute "switched access." If so, Verizon is entitled to assess the common carrier line charge for those services based on the plain language of Section 5.4 of the Tariff.

7. In interpreting a tariff, the Commission applies principles of contract interpretation and statutory construction. *Re Public Serv. of N.H.*, 79 NH PUC 688 (1964). It is well established that absent ambiguity, the intent of the contracting parties should be determined based on plain meaning of language used in the contract, *see Robbins v. Salem Radiology*, 145 N.H. 415, 418 (2000), and that the contract must be read as a whole. *General Linen Servs. v. Franconia Inv. Assocs.*, 150 N.H. 595, 597 (2004). Similarly, "...no clause, sentence or word, shall be superfluous, void or insignificant." *Churchill Realty v. City of Dover Zoning Bd.* (N.H. 1-15-2008) at page 7. The Commission committed legal error in defining what constitutes "switched access" under the Tariff by failing to ascribe the plain meaning to words used in the Tariff, reading words out of the Tariff, and failing to interpret the Tariff as a whole.

8. Section 2.1.1.A sets forth the scope of Tariff 85 and provides that it:

> "contains regulations, rates and charges applicable to switched access services and other miscellaneous services ... provided by Verizon New England, Inc. ... to interexchange carriers and wireless carriers, including resellers or other entities engaged in the provision of public utility common carrier services which utilize the network of the Telephone Company...."

Section 6 of the Tariff, titled "Switched Access Service," provides that "[s]witched access service is ordered under the access order provisions set forth in Section 3 and

billed at the rates and charges set forth in Section 30." Section 6.1.1..A. Section 6.1.2.A, in turn, identifies the types of switched access services provided ("The switched access services provided under this tariff are: originating, terminating, or two way FGA, FGB, FGD and FG2A, and 800 database access"),[2] while Section 6.1.2.B sets forth the rate categories which apply to switched access service. Those rate categories include local transport, local switching and carrier common line. Section 6.1.2.D also separately identifies that "[l]ocal transport, local switching and carrier common line when combined to provide a complete switched access service is as illustrated in Exhibit 6.1.2-1."

9. When reading these provisions as a whole, it is evident that: switched access services are provided and billed under Tariff 85; switched access services include originating, terminating, or two way FGA, FGB, FGD and FG2A, and 800 database access; and there are three rate categories that apply to these services (local transport, local switching and carrier common line). Indeed, the Commission itself acknowledged that "the individual, billable elements of 'switched access' are local transport, local switching, and carrier common line." Order at 26.

10. Despite Tariff 85's detailed provisions describing what compromises "switched access," the Commission committed a fundamental error: it concluded that "local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service." *Id.* at 31. The Commission's Order is internally inconsistent and contradictory because, at the same time, the Commission found that

---

[2] Similarly, 47 U.S.C. § 153 (16) defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll service." Switched access is distinguishable from private line service ("furnishing facilities for communications between specified locations"). Verizon Tariff 83, Part B § 1.1.1.A; see also § 1.3.

"*[i]n the calls at issue here*, Verizon *is providing a component of switched access service*..." *Id.* at 30 (emphasis added).[3]

11. Yet there is not a single word in the Tariff that provides that switched access exists only when provided in combination with Verizon's common line. Switched access 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.[4] Tr. Day II at 104-05. Switched access is not measured in degrees; once a component of the Verizon network constituting switched access is used by a carrier for 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.

12. BayRing and AT&T conceded this point. For example, 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 (emphasis added). And on cross examination, Mr. Winslow conceded that a Verizon end-user was not the only "something" to which switched access service provides access:

---

[3] The Commission concluded that the "petitioners and intervenors use tandem switching, and therefore, local transport for the calls that are the focus of the dispute." Order at 26.

[4] 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.

**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.

13. 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).

14. 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, the Commission's conclusion that Verizon is not providing switched access governed by Tariff 85 is unfounded.

15. Based on its erroneous interpretation of what constitutes switched access, the Commission then committed further legal error in its interpretation of Section 5.4 of the Tariff. That Section unambiguously states that "[e]xcept as set forth herein, *all switched access service* provided to the customer *will be subject to common carrier line access charges*" (emphasis added). Yet the Commission concludes that Verizon has no right to assess the common carrier line charge because only a component of switched access is being provided, effectively eliminating from Section 5.4 the word "all," and thereby allowing for the recovery of the common carrier line charge in only a fraction of cases where switched access is provided.

16. In an unfounded effort to justify this conclusion, the Commission reads words into Section 5.4: "We interpret this section [5.4], however, to mean that a carrier will be 'subject to' CCL charges to the extent CCL service is provided in conjunction *with* switched access. The phrase 'subject to' is plainly meant to be conditional in the sense

that a carrier will be 'liable for' CCL charges when the condition of CCL is precedent." Order at 31 (emphasis added). The Commission grafts this condition precedent onto Section 5.4 despite its statement earlier in the Order that "we make our findings *based on the language within the four corners of the tariff*." *Id.* at 27 (emphasis added).

17. There is no language in Section 5.4, Section 5.1.1 or anywhere else in Tariff 85 that creates such a condition precedent to the imposition of the carrier common line charge. Rather, the Commission arbitrarily concludes that the provisions in Section 5.4 only apply if all components of switched access service are provided, not if *any* element of switched access is provided on a stand-alone basis. But the Tariff does not require *all* components of switched access to be provided and in fact refers instead to the purchase of individual components of switched access on a stand-alone 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).

18. By ignoring the plain and ordinary meaning of the words used in the Tariff – such as the word "each" in Section 5.4.1 and the word "all" in Section 5.4 – the Commission violates basic tenants of contract and statutory interpretation. *See supra, Robbins v. Salem Radiology*, 145 N.H. 415, 418 (2000); *Churchill Realty v. City of Dover Zoning Bd.* (N.H. 1-15-2008) at page 7. As a result, the Order is unreasonable and unlawful and should not be sustained on rehearing.

19. Even if one were to follow the Commission's suit and look outside the Tariff to determine its meaning, extrinsic evidence supports Verizon's interpretation. Verizon presented documentary evidence from its billing records of how Section 5.4 of the Tariff

was intended to operate, *i.e.*, undisputed evidence showing that it had assessed the charges consistent with the Tariff from as early as 2001. The Commission never addresses the fact that the Petitioners did not refute this evidence, even though they bear the burden of proof in this proceeding. 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 or proving the truth of any factual proposition by a preponderance of the evidence."). This is yet another instance of the Commission ignoring compelling record evidence that supports Verizon's position.

20. Further, that its third party billing agent erred and did not assess the charge does not absolve the competitive carriers from paying it. *See Guglielmo v. WorldCom, Inc.*, 148 N.H. 309, 313 (2002). Even BayRing conceded that it shared this understanding of the Tariff language when its representative testified that "[c]arrier common line is billed as part of a switched access call." Tr. Day 1 at 96. Yet the Commission ignores all of this evidence. In reductive fashion, the Commission claims that Verizon should have changed a Tariff provision that it reasonably believed covered the service being provided[5] and that had the unequivocal "force and effect of law." *See Pennichuck Water Works*, 120 N.H. 562, 566 (1980). This conclusion is unreasonable and unsupported by the evidence.

[5] Specifically, the Commission stated that "[w]hen competition became a reality and multiple carriers were competing in the same franchise area, rather than constructing an interpretation of the tariff to charge customers for a service they did not receive, it was Verizon's responsibility to seek revisions to the tariff if it believed it was somehow not recovering its costs or if the tariff no longer fit changing market and technical conditions." Order at 30, n.5. Needless to say, Verizon never believed that it was necessary to change the Tariff because it has always understood that switched access included local transport and that as a result, the carrier common line charge must be charged to recipients of that service under its existing, legally effective Tariff.

## III. THE ORDER RESULTS IN AN UNCONSTITUTIONAL TAKING OF VERIZON'S PROPERTY BECAUSE, UNDER THE COMMISSION'S CONSTRUCTION OF THE TARIFF, VERIZON IS REQUIRED TO PROVIDE STAND-ALONE ACCESS SERVICES FOR WHICH IT IS NOT AUTHORIZED TO CHARGE UNDER TARIFF 85'S ACCESS PROVISIONS.

21. Under the Commission's interpretation of the Tariff, Verizon's provision of local transport and local switching, independent of carrier common line services, do not constitute switched access services under Tariff 85. [6] At the same time, however, both the Commission and the competitive carriers admit that the carriers have been receiving those services from Verizon. *See* Order at 31 ("petitioners and intervenors use tandem switching, and therefore, local transport for the calls that are the focus of the dispute."). If the local transport that is being provided is not switched access under Tariff 85, what is it? The Commission identified this issue in its October 23, 2006 Supplemental Order of Notice as one to be considered in this docket – "whether such services are more properly assessed under a different tariff provision." Order at 25. However, the Commission failed to address it in its Order. In continuing to require Verizon to provide those services, while at the same time failing to determine the basis for Verizon's associated compensation, the Commission confiscates Verizon's property in violation of Part I, Article 12 of the New Hampshire Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

22. Verizon presented unrefuted evidence that it supplies the use of its network, including transmission, transport and switching facility components, to competitive

[6] "[L]ocal transport, used independently without the benefit of Verizon's common line, does not constitute switched access service." Order at 31.

carriers so that they can provide toll service. Tr. Day II at 10, 11. Witnesses for the competitive carriers conceded that Verizon has been providing them services in the form of local transport tandem switching, local transport termination and local transport facilities. Tr. Day I at 78, 80-81. Even the Commission agreed that Verizon is providing service to the competitive carriers. *See* Order at 26 ("petitioners and intervenors use tandem switching, and therefore, local transport for the calls that are the focus of the dispute.").

23. The record evidence is thus undisputed that 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.[7] 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. Rather than pay the charges for switched access service prescribed by Tariff 85, however, BayRing instead took the 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, which the Commission appears to have adopted in part, defies logic, is contrary to the plain language of Tariff 85 and violates New Hampshire law.[8]

---

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

[8] 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

24. Verizon is legally entitled to be fairly compensated for providing services that its Tariff expressly describes as switched services. A Commission order that concludes that "local transport, used independently without the benefit of Verizon's common line" – as Tariff 85 permits – "does not constitute switched access service" for which Verizon is to be compensated under Tariff 85, is pure confiscation of Verizon's property in violation of its constitutional rights. *See Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 at 602 (1944); *see also Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 524-527 (2002) (while Telecommunications Act favors novel rate-setting to give competitors incentives to enter local telephone markets, such rates cannot confiscate the incumbent's property).

25. Tariff 85 has permitted carriers to purchase transmission, transport and switching facility components as switched access services, on an individual basis or in combination (Tr. Day II at 10), for years.[9] During that same time, Section 5.4 of the Tariff has provided that "*all switched access service* provided to the customer *will be subject to common carrier line access charges*" (emphasis added). Nothing has changed justifying an abandonment of a Tariff provision that has the continuing force and effect of law.

---

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 use of and payment for these services under Tariff, in turn, triggers the application of the carrier common line charge.

[9] "[T]he individual, billable elements of 'switched access' are local transport, local switching, and carrier common line." Order at 26.

26. Furthermore, utilities are legally entitled to receive a just and reasonable rate for use of their property. That rate must fall into a zone of reasonableness "between the extremes of confiscating a utility's property at one end, and exploiting customers for the utility's benefit at the other." *Appeal of Public Serv. Co. of N.H.*, 130 N.H. 748, 750 (1988). As the United States Supreme Court has observed, "[i]t is not the theory, but the impact of the rate order which counts." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314 (1989); *see also Petition of Public Serv. Co. of N.H.*, 130 N.H. 265, 275 (1988) (investors constitutionally entitled to be compensated for the risk associated with their investment in utility property). As written, the effect of the Order is to require Verizon to provide free service, in violation of the law. *See* RSA 378:14. Thus, the Hobson's choice the Commission presents is either to have Verizon's rights violated or to have Verizon violate the law – no choice at all.

27. Alternatively, under the Commission's interpretation of Tariff 85, if the provision of tandem switching (or any other individual switched access component) does not constitute "switched access," Verizon has no legal obligation under the existing Tariff to provide the service it all. Verizon could cease providing tandem switching (or other switched access service components) at any time. Surely, this cannot be what the Commission or the competitive carriers desire.

28. Based on the reasons set forth above, the Commission's Order is unlawful and unreasonable. Verizon thus requests that the Commission reconsider its decision and allow for the assessment of the carrier common line charge to those carriers purchasing any component of switched access services.

WHEREFORE, Verizon respectfully requests that the Commission:

A. Grant this Motion for Rehearing and/or Reconsideration; and

B. Grant such other and further relief as the Commission deems necessary and just.

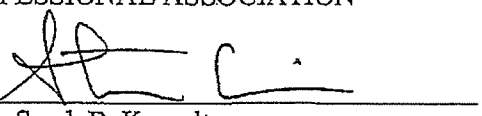
Respectfully submitted,

VERIZON NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: March 28, 2008

By: 
for Sarah B. Knowlton
100 Market Street, P.O. Box 459
Portsmouth, New Hampshire 03802
Telephone (603) 334-6928

Victor D. Del Vecchio, Esquire
Verizon New England Inc.
d/b/a Verizon New Hampshire
185 Franklin Street
Boston, MA 02110-1585

Certificate of Service

I hereby certify that on March 28, 2008, a copy of the foregoing Motion has been forwarded to the parties listed on the Commission's service list in this docket.

Sarah B. Knowlton

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

| | |
|---|---|
| BayRing Petition For Investigation Into Verizon New Hampshire's Practice Of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, On Calls Which Originate On BayRing's Network And Terminate On Wireless and Other Non-Verizon Carriers' Networks | Docket No.06-067 |

# JOINT OPPOSITION OF AT&T, BAYRING COMMUNICATIONS AND ONE COMMUNICATIONS TO VERIZON'S MOTION FOR REHEARING AND/OR RECONSIDERATION


Of Counsel:

Mark A. Keffer
AT&T Services, Inc.
3033 Chain Bridge Rd
Oakton, VA 22185
703.691.6046
832.213.0131 (fax)
mkeffer@att.com

Jay E. Gruber
AT&T Services Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
617.574.3149 (voice)
218.664.9929 (fax)
jegruber@att.com

Susan Geiger
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com

Gregory M. Kennan
One Communications Corp.
220 Bear Hill Road
Waltham, MA 02451
781-622-2124 Tel.
781-522-8797 Fax
gkennan@onecommunications.com


Dated: April 9, 2008

## TABLE OF CONTENTS

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

| | |
|---|---|
| BayRing Petition For Investigation Into Verizon New Hampshire's Practice Of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, On Calls Which Originate On BayRing's Network And Terminate On Wireless and Other Non-Verizon Carriers' Networks | Docket No.06-067 |

**JOINT OPPOSITION OF AT&T, BAYRING COMMUNICATIONS AND ONE COMMUNICATIONS TO VERIZON'S MOTION FOR REHEARING AND/OR RECONSIDERATION**

On March 28, 2008, Verizon New Hampshire ("Verizon") filed a motion ("Motion") asking the New Hampshire Public Utilities Commission ("Commission") to reconsider or conduct a rehearing of its Order No. 24,837, issued on March 21, 2008, in this docket ("*Order*"). Freedom Ring Communications LLC d/b/a BayRing Communications ("BayRing"), One Communications ("One") and AT&T Corp. ("AT&T") (collectively "Competitive Carriers") oppose Verizon's Motion for the reasons set forth below.

**Introduction**

Verizon's attack on the Commission's *Order* is premised on a mistatement of the central issue raised and decided by the case, and raises a challenge to a decision the Commission did not even make. After almost two years of litigating the issue of whether Verizon may lawfully impose a carrier common line ("CCL") charge when its CCL is not involved in a call, Verizon now attempts to recharacterize the issue as "whether the tandem switching and local transport services provided to competitive carriers under the

Tariff constitute 'switched acess.'" Motion, at ¶ 6. Having thus attempted to misfocus the issue on tandem switching and local transport, Verizon then claims that the *Order* violated its constitutional rights by "confiscating" its right to collect charges when it provides those two services. Motion, at ¶¶ 21-26.

It is no wonder that Verizon wants to engage in some misdirection. After all, it is hard for Verizon to claim that its property has been "confiscated" when the only thing being determined by the Commission's decision is that Verizon is prohibited from charging for a service (CCL service) that it does not provide. Unable or unwilling to deal with that reality, Verizon instead invents a world in which, at least in its own mind if nowhere else, it is being prohibited from charging for services (tandem switching and local transport services) it ***does*** provide. But Verizon's invented world bears no relationship to reality. No party in the case disputed Verizon's right to be compensated for providing tandem switching and local transport functions. Indeed, the parties expressely recognized that Verizon provides those functions and should be compensated for them.

The only issue in this case – the issue Verizon attempts to sidestep in its appeal – is whether Verizon should be permitted to collect a carrier common line charge when a call does not traverse a Verizon common line. The Commission addressed this narrow issue with sound logic based on the law of New Hampshire and the undisputed facts regarding the structure of the telecommunications industry at the time the tariff was adopted. The Commission found that, because Verizon's common line was always used "in conjunction with" tandem switching and local transport in Verizon territory when Tariff 85 was adopted, the right to charge the CCL rate was based on that assumption,

*i.e.*, conditioned on the involvement of a Verizon common line. In the absence of that condition, the Commission reasoned, the tariff provides no right to charge the CCL rate. Such reasoning is not only logically sound, it is also consistent with equity and common sense. Verizon was always free to update its tariff to accommodate situations not contemplated at the time the tariff was introduced. In the Commission's reasonable view, Verizon should not be allowed now to exploit its own failure to do so.[1]

Nothing in Verizon's Motion warrants a deviation from the Commission's finding -- certainly not the the mischaracterization of the issues and decision, and certainly not Verizon's rehashing of its unsuccesful tariff interpretation arguments. The Commission should deny Verizon's Motion out of hand.

## Argument

### I. STANDARD OF REVIEW

The Commission will not grant rehearing unless there is "good reason" to consider an order either unlawful or unreasonable. RSA 541:3, 541:4; *In re Investigation as to Whether Certain Calls Are Local,* DT 00-223, DT 00-054, Order Denying Verizon New Hampshire's Petition for Rehearing of Order Approving Agreements, Order No. 24,266, at 2 ((May 13, 2005); *In re Global NAPs — Petition for an Order Directing Verizon to Comply with Its Interconnection Agreement,* DT 01-127, Order Denying Motion for Reconsideration, Order No. 24,367, at 5 (Sept. 2, 2004). Good reason exists only where there is something the Commission either "overlooked or mistakenly conceived." *In re Verizon New Hampshire — Investigation of Verizon New Hampshire's*

[1] Indeed, it would be particularly unfair to allow Verizon to charge the CCL rate in situations not contemplated when Tariff 85 was adopted, where – as in the present case – had Verizon sought to change its Tariff 85 to give it the right to charge the CCL rate when its CCL service is not involved, the Commission would likely have denied it. The Commission appropriately does not now give to Verizon what Verizon could not have obtained had it sought the right explicitly.

*Treatment of Yellow Pages Revenues,* DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385, at 14 (Oct. 19, 2004).

The Commission will not grant rehearing merely so that a party may have a second chance to present material it could have presented earlier. *Investigation as to Whether Certain Calls Are Local,* Order No. 24,266, at 3. "A successful motion does not merely reassert prior arguments and request a different outcome." *In re Verizon New Hampshire — Wire Center Investigation,* DT 05-083, Order Denying Motions for Rehearing or Reconsideration, Order No. 24,629, at 7 (June 1, 2006); *Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues* at 14.

Given that much of Verizon's Motion is devoted to rehashing its unsuccessful tariff interpretation arguments, the Motion must be denied. In addition, and for the reasons discussed below, to the extent that the Motion alleges that the Commission's Order is either unreasonable or unlawful, those arguments must fail.

## II. VERIZON'S MOTION FAILS BECAUSE THERE IS NO INCONSISTENCY OR MISINTERPRETATION IN THE COMMISSION'S DECISION.

Verizon's argument hinges on the claim that the Commission committed a fundamental error when

> it concluded that "local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service." *Id.* at 31

Motion at ¶ 10. *See also, id* at ¶ 2, and ¶ 21, n. 6. Verizon argues that this statement – which it quotes out of context – is incorrect as a matter of tariff interpretation and is "internally inconsistent" with the Commission's statement on page 30 of the *Order* that:

> "*[in] the calls at issue here*, Verizon *is providing a component of switched access service...*" *Id.* at 30 (emphasis added).

Motion at ¶ 10, quoting *Order* (emphasis added by Verizon). Contrary to Verizon's claim, however, there is nothing incorrect about the Commission's tariff interpretation of what constitutes switched access and nothing inconsistent about these two statements.

The correctness of the Commission's statement ("local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service") becomes apparent when it is placed in the context of the Commission's *Order*. That statement follows an extended discussion of the evolution of the telecommunications industry that included, among other things, the fact that, when Verizon's switched access rate was first approved, Verizon's common line was always provided in conjunction with the Section 6 local transport and tandem switching elements, simply because at that time there were no other carriers providing local exchange service in competition with Verizon. *Order*, at 30. In that context, the Commission understood Section 5.4.1.A ("Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charge.") to be predicated on the factual assumption that a Verizon common line would always be involved when a call flow involves Verizon's local transport or tandem switching elements (and thus charges for CCL would be appropriate).[2] Because Verizon never changed its tariff to accommodate the possibility that, once other competitors emerged in New Hampshire, Section 6 elements could be used without a Verizon common line, the Commission in its *Order* simply gives effect to the assumption upon which the tariff is

[2] Indeed, that assumption was expressly stated, as the Commission noted, in Section 5.1.1.A.1 ("The Telephone Company will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6."). *See, Order*, at 30.

based and its unstated, but natural, corrollary by concluding that (a) the Section 5.4.1.A. right to charge the CCL rate on switched access is predicated on the factual assumption that the CCL is provided, and (b) when the predicate for charging the CCL rate is missing (*i.e.*, that CCL is not provided), Verizon does not have the right to charge for it. *See*, *Order*, at 27;[3] *see, also, id.*, at 31.[4]

Moreover, the structure of Verizon's tariff and the relationship between Section 5 and Section 6 support the Commission's interpretation. The Commission's statement that "local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service" was – in context – referring to the *switched access service to which Section 5 refers.* The switched access service to which Section 5 refers (and to which the CCL charge in Section 5 applies) is the Section 6 switched access elements *that the Section 5 carrier common line is used in conjunction with. See*, Section 5.1.1.A.1. This result follows from the organization of the tariff. The terms and conditions applicable to Section 6 elements are, of course, in Section 6; not in Section 5. Clearly, Section 5 cannot dictate the terms of the Section 6 local transport service when a carrier orders Section 6 service without the Section 5 CCL service. Carriers using a Section 6 switched access element without using the Section 5 CCL service would have

---

3 The Commission stated:

"Accordingly, the CCL charge is properly imposed when (1) Verizon provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. It is also reasonable to conclude the inverse to be true, that is, when the use of Verizon's common line and the presence of a Verizon end user are lacking, the CCL charge may not be imposed."

4 The Commission stated:

"The phrase 'subject to' is plainly meant to be conditional in the sense that a carrier will be "liable for" CCL charges when the condition of CCL service is precedent. Verizon's interpretation improperly nullifies the obvious conditional nature of Sections 5.1.1.A.1 and 5.4.1.A."

no reason to look at Section 5, so the provisions in Section 5 cannot apply to Section 6 services used without Verizon's common line.[5] *See*, Transcript I, at 194-195. Therefore, the Section 6 elements, standing alone, do not constitute the switched access service to which Section 5 applies.

Indeed, the Commission made clear that the tariff, when properly understood, conditions the application of the CCL charge to circumstances when the carrier common line was used in conjunction with the Section 6 switched access elements. That is precisely what is reflected in the following statement by the Commission:

> We interpret this section,, however to mean that a carrier will be "subject to" CCL charges *to the extent CCL service is provided in conjunction with switched access*.

*Order* at 31 (emphasis added).

When the Commission's statement is properly understood in context, it becomes evident that there is nothing inconsistent with the second statement cited by Verizon that "*[in] the calls at issue here*, Verizon *is providing a component of switched access service*...". Motion at ¶ 10, quoting *Order* at 30. Verizon can, and does, provide a component of switched access (local transport) for which it is entitled to charge under Section 6 when it transports a call over its facilities for delivery to another carrier.[6] In that circumstance, however, it is *not* providing the switched access to which Section 5 refers, because Section 5 is referring only to the switched access (*e.g.*, local transport)

---

[5] Thus, in context, the Commission concluded that "local transport, used independently without the benefit of Verizon's common line, does not constitute [*a complete*] switched access service." *See*, Section 6.1.2.D ("Local transport, local switching and carrier common line when combined to provide a *complete* switched access service is as illustrated in Exhibit 6.1.2-1."), emphasis added.

[6] Section 6.2.1.A. describes local transport that is offered under the tariff, and Section 6.7.1. prescribes the manner in which Verizon is permitted to charge, and the carriers must pay, for local transport. The rates for local transport are set out in Sections 30.6.1 through 30.6.7. For a good description of how carriers can purchase local transport without purchasing carrier common line, *see* Transcript I, at 177-178.

used in conjunction with Section 5; it is not referring to the "local transport, used independently without the benefit of Verizon's common line." *Order*, at 31.

## III. ASSUMING, *ARGUENDO*, THERE IS AN AMBIGUITY IN THE TARIFF, IT WAS CREATED BY VERIZON, AND THE COMMISSION WAS CORRECT TO RULE THAT VERIZON WILL NOT BE PERMITTED TO EXPLOIT IT TO ITS ADVANTAGE.

Verizon complains that the Commission goes beyond the "four corners of the Tariff" and ignores the plain meaning of the words in the tariff. Motion, at ¶¶ 7, 16-18. At the outset, Verizon's arguments concerning the appropriate interpretation of the tariff in the cited paragraphs of the Motion are mere restatements of arguments it has previously made. For example, Verizon's arguments in paragraphs 17-18, claiming that all components of switched access service bear the CCL charge regardless of whether a Verizon CCL is used in the call, restate the arguments of pages 4-6 of Verizon's September 2007 post-hearing brief. Likewise, the arguments in paragraph 20, concerning the effect of the admitted failure by Verizon's billing agent to bill the CCL for calls terminated to non-Verizon end-users, repeats pages 15-17 of Verizon's post-hearing brief. As described above in Section I, restatement of previous arguments does not constitute good cause to reconsider the *Order*.

It is also worth noting that the Commission is in good company, if the Commission ignored the so-called "plain meaning" that Verizon claims exists. This is because Verizon's own billing agent did so as well. For a period of ten years (from 1996 to 2006), the New York Access Billing Pool ("NYAB"), whose job was to understand and apply Verizon's Access Tariff 85 to call flows involving CLEC and ITC end-users, also failed to see the so-called "plain meaning" claimed by Verizon. Rather, for that ten

year period, the NYAB applied the tariff in accordance with the interpretation the Commission now finds is proper.

In any event, any perceived ambiguity in the tariff arises because of Verizon's failure to adapt it to changed circumstances.[7] As the Commission noted in its *Order*, when the predecessor to Tariff 85 was initially adopted to permit toll competition, there was no local exchange competition. There was no doubt whose carrier common line would be used when a call originated and/or terminated in Verizon's territory; it would be Verizon's line. *Order*, at 30. ("In 1993, when Verizon's switched access rate was first approved, end users in Verizon's franchise territory were exclusively Verizon's.") As a result, it was reasonable for the Commission to conclude that Tariff 85 reflects the assumption that the Verizon loop would be used. Today, in the numerous situations where the Verizon loop is now no longer used, it would not be unreasonable if the Commission were to have concluded that it is simply not possible to apply Tariff 85 according to its strict terms.

The language in Section 5 is a good example. On the one hand, Verizon points to language in Section 5 to the effect that all switched access will be subject to a carrier common line charge and complains that the Commission cannot ignore the "plain meaning" of such language. *See, e.g.*, Section 5.4.1. On the other hand, Verizon wants the Commission to ignore the "plain meaning" of other language in Section 5: the requirement that Verizon provide carrier common line access service (Section 5.1.1.A.1) and the exceptions to the application of the CCL charge (Section 5.4.1.A). In such a

---

[7] The Commission did not find that the tariff is ambiguous. The Commission's analysis merely assumed *arguendo* that an ambiguity exists. *Order*, at 28. When the relationship between Section 5 and Section 6 is properly understood, each word in the tariff may be given effect in accordance with its plain meaning and the structure of Tariff 85. *See*, AT&T Post-Trial Brief, at 7-17.

situation, Verizon's shibboleth of "plain meaning" hardly resolves the problem. Contrary to Verizon's contentions (Motion at ¶¶ 16-19), therefore, it would not have been unreasonable for the Commission to have considered extrinsic evidence to interpret the tariff.

Moreover, the extrinsic evidence fully supports the Commission's decision. In resolving the problem of interpreting the tariff when new call flows not contemplated by the tariff exist under which two different provisions required by the original tariff language could not both apply,[8] the Commission appropriately considered the historical reality and evolution of the industry, *i.e.*, the introduction of local exchange competition that eliminated Verizon's monopoly over the carrier common line. It would hardly be appropriate for the Commission to ignore the Section 5 requirement that Verizon provide a carrier common line service in order to charge for it when it was within Verizon's power, and indeed Verizon's responsibility under RSA 378:1 and 378:2, to modify its tariff to reflect changed circumstances. It would be perverse indeed to excuse Verizon from its Section 5 obligation to provide CCL while continuing to permit Verizon to charge for it for calls being routed to Verizon's competitors. The Commission appropriately determined that it should not read out of the tariff the requirement to provide the CCL when Verizon failed to change its tariff to reflect the fact that it no longer always provides it.[9]

---

[8] At the risk of repetition, we note again that there is a way to interpret the existing language of the tariff, without reference to extrinsic evidence, to support the Commission's decision (see note 7, *supra.*); and, indeed, we read the Commission's reference to the tariff ambiguity as part of an "assuming *arguendo*" discussion.

[9] Verizon's "reasons" for not changing its tariff (that it did not believe that changed circumstances required it) defies credibility. First, as an objective matter, there are the patently clear issues pointed out in this pleading that arose from the – at the time, new –development of carrier common lines being provided by non-Verizon local exchange carriers in Verizon's service territory. But more importantly, as a subjective matter, Verizon *actually knew* that its tariff was not appropriate for such circumstances. Indeed,

Moreover, contrary to Verizon's claim (Motion, at ¶ 19), the extrinsic evidence of billing records did *not* support Verizon's contention that it had always billed the CCL charge even when its CCL service was not used. First, as noted at the outset of this section, for a ten year period from the beginning of local exchange competition until the year prior to the initiation of this case, the NYAB did not apply the CCL charge to calls that were originated from or terminated to CLECs or independent telephone companies and thus did not involve a Verizon common line. Second, there was undisputed, *affirmative* evidence in the record that not even Verizon itself applied the CCL charge to calls not involving a Verizon common line from the inception of local competition in 1996 to 2001.[10] In short, Verizon's claim that the Competitive Carriers failed to refute Verizon's extrinsic evidence of billing behavior is contradicted by the record.

## IV. VERIZON'S CONFISCATION ARGUMENT MUST FAIL.

Verizon's confiscation claim is patently meritless. First and most damning, as noted above, Verizon assumes a decision that the Commission did not make. Second, compounding the error of basing its argument on a non-existent Commission decision, Verizon assumes a "confiscation" that has not happened and that there is no reason to believe will happen. Third, Verizon seeks to attribute to the government a (hypothetical) loss for which it, and not the government, is responsible. Fourth, even if all Verizon's hypotheticals, assumptions and predictions were certain to occur, Verizon applies the wrong standard for determining whether there has been a "government taking." Fifth, on a going forward basis, Verizon has no property to be "confiscated."

---

Verizon's own witness stated that the issues before the Commission in Docket 90-002 did not include "issues of separate competing networks or multiple exchange carriers in the same franchise territory." *See*, McCluskey Testimony, at 3, in Docket 90-002 (Attachment 2-20(a) to Verizon's response to AT&T 2-20), quoted in Exhibit 9 (Panel Rebuttal Testimony of AT&T), at 12.

[10] *See*, AT&T Post-Trial Brief, at 39-40, and the detailed citations to the record contained therein.

### A. THE COMMISSION DID NOT MAKE THE DECISION VERIZON CLAIMS TOOK ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

As we noted in our introduction, Verizon's attack on the Commission's *Order* is premised on a mistatement of the issue raised by the case, and based on a decision the Commission did not make. As we noted above, Verizon now attempts to recharacterize the issue as "whether the tandem switching and local transport services provided to competitive carriers under the Tariff constitute 'switched acess.'" Motion, at ¶ 6. Verizon then claims that the *Order* violated its consitutional rights by "confiscating" its right to collect charges when it provides those two services. Motion, at ¶¶ 21-26.

This claim can easily be laid to rest. The Commission did not say that Verizon cannot collect its tariffed rates for tandem switching and local transport services when it provides the service, only that Verizon could not charge its CCL when a call does not traverse a Verizon common line. Indeed, the Commission's ordering clause expressly states: "ORDERED, that Verizon cease the billing of carrier common line charges for calls that do not involve a Verizon end user or a Verizon-provided local loop." *Order* at 33. Moreover, under the procedural orders in this case, and pursuant to the *Order*, Phase 2 of this case will address reparation of CCL charges, not charges for tandem switching or local transport services. *Id.* Only the CCL charge was at issue in the Commission's decision.

### B. THE "CONFISCATION" ABOUT WHICH VERIZON COMPLAINS IS ENTIRELY HYPOTHETICAL AND SPECULATIVE.

No party has claimed that it is not responsible to pay for the tandem switching or local transport services it receives, nor has any party stated an intention not to pay for such functions in the future, nor has any party asked the Commission to preclude Verizon from collecting compensation when Verizon provides those services. Indeed, the record

evidence is to the contrary.[11] Most importantly, Verizon's right to impose those charges was simply not litigated in the case.

Verizon seeks to fabricate an issue here, where there is none, based on a mistatement of the issue in the case and a mischaracterization of the Commission's decision. Verizon takes the Commission's statement *construing Section 5* (that local transport used independently of Verizon's common line is not switched access to which the CCL charge applies) and deliberately misinterprets it to mean that, *under Section 6*, Verizon cannot charge for local transport when used independently of the loop.[12] Such an interpretation of the Commission's *Order* is pure fantasy. First, the Commission did not say that ***no*** charge applies to tandem switching or local transport. Second, if it had reached such a conclusion, it would have had to address the many provisions in the tariff that provide for the offer, use and payment for many services or service components that do not constitute a complete switched access service. As described in Section II, *supra*, Section 6 of Tariff 85 permits Verizon to charge for local transport when used independently of the loop. *See*, Sections 6.2.1.A, and 6.7.1. Lest there be any doubt, AT&T witnesses at the hearing in this case described the process for doing so. *See*, Transcript 1, at 177-179; *see also*, *id.*, at 194, lines 12-20. Finally, Tariff 85 on its face

---

[11] It is not relevant, for purposes of Verizon's confiscation claim, that BayRing argued at certain points in the case that the disputed call flows are not subject to Tariff 85 on the ground that they are not "switched access." BayRing has never taken the position that it is not required to pay Verizon for actual use of Verizon's network. Indeed, BayRing, like the other Competitive Carriers in this case, has expressly acknowledged its obligation to pay Verizon for use of its network. *See, e.g.*, Transcript I, at 78-79 (BayRing witness Winslow agrees that Verizon should be compensated for services Verizon provides, including the local transport and tandem switching services that Verizon provides in the disputed call flows.); *see also, id.*, at 82-83.

[12] See, Motion at ¶ 24 ("A Commission order that concludes that 'local transport, used independently without the benefit of Verizon's common line' – as Tariff 85 permits – 'does not constitute switched access service' for which Verizon is to be compensated under Tariff 85 is pure confiscation of Verizon's property in violation of its constitutional rights.")

expressly purports to apply to "switched access services *and other miscellaneous services*[.]" Section 2.1.1.A. (emphasis added)

Because the issue of whether Verizon can charge for local transport or tandem switching was never litigated, because it was never decided, and because the logic of the Commission's *Order* cannot be read to create a Verizon obligation to provide the tandem switching and local transport functions without compensation, the confiscation about which Verizon claims is hypothetical, speculative and no grounds for a cognizable claim.

### C. EVEN IF VERIZON WERE TO SUFFER A LOSS, THE LOSS IS CAUSED BY VERIZON, NOT BY THE COMMISSION'S DECISION.

As noted above, even if somehow an issue not litigated or decided were nevertheless resolved, with the result that Tariff 85 does not require carriers to pay for local transport and tandem switching under Section 6 when the call does not involve a Verizon carrier common line, such a government decision would still not constitute a "government taking." In such a hypothetical scenario, the Commission would merely be interpreting a poorly drafted tariff against the drafter. In other words, in Verizon's fantasy interpretation of the Commission's decision, the reason for Verizon's inability to collect local transport and tandem switching charges would be Verizon's filing of a tariff that, when fairly interpreted, did not allow it to recover for certain functions.

Moreover, Verizon could easily remedy its would-be inability to charge for services provided – it need only file a clear tariff. If it were to do so, the Commission would certainly approve a provision that provides Verizon a fair opportunity to recover for services it does provide. But the Commission cannot approve such a tariff unless and until Verizon proposes it.

In short, even if all the hypotheticals and parade of horribles were to come true in the future, they would still not constitute the basis for a confiscation claim.

### D. Even If The Commission Were To Find That Verizon Is Not Allowed To Charge For Local Transport Or Tandem Switching --Which It Did Not-- There Would Be No Unlawful "Confiscation" Of Verizon's Property Arising From Such A Finding.

Aside from the most obvious shortcoming in Verizon's argument – that the Commission found that Verizon could not charge for Local Transport or Tandem Switching, a finding the Commission did not make, Verizon's confiscation argument also attempts to apply a ratemaking concept designed for general rate cases to an issue to which it is not germane. Verizon's argument has no application to a case involving a single rate, and certainly no application to a case involving the interpretation of how an existing and approved tariff applies a specific rate.

#### 1. Verizon's Confiscation Argument Has No Application To A Complaint Regarding The Rate For A Particular Service.

All the cases addressing the confiscation issue that Verizon cites concern themselves with rate-setting – the establishment of rates that a company is permitted to charge to recover its overall costs of service (including capital costs) necessary to provide the services it offers. Moreover, the cases address issues that affect the utility's overall rate of return resulting from the revenues from all services and the costs of providing them.[13] As a result, none of the cases cited by Verizon concerns the situation at issue

[13] An examination of Verizon's authorities shows the overarching nature of allegedly confiscatory regulation. *Appeal of Public Service Company of New Hampshire,* 130 N.H. 748 (1988), related to the cost of capital that the Commission determined should be applied in setting PSNH's rates. *Petition of Public Service Company of New Hampshire,* 130 N.H. 265 (1988), concerned the impact of the elimination of tens or hundreds of millions of dollars of construction costs from PSNH's rate base by the application of the anti-construction work in progress statute, RSA 378:30-a. *Duquesne Light Company v. Barasch,* 488 U.S. 299 (1989) also involved a similar prohibition against inclusion in the rate base of any facility until used and useful in public service. *Verizon Communications Inc. v. FCC,* 535 U.S. 467 (2002) concerned the

here — the particular rate that a utility is allowed to charge for an individual service. Thus, the legal authorities that Verizon cites do not support its claim that a constitutionally cognizable confiscation results from the *Order*'s alleged prohibition against recovery of any charges for switched access services.

That is because, as the New Hampshire Supreme Court pointed out in a case that Verizon cites, the constitution requires only a rational process that – overall – produces rates that yield "a rate of return 'commensurate with returns on investments in other enterprises having corresponding risks.'" *Petition of PSNH,* 130 N.H. at 274 (quoting *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S.591, 603 (1944)). The New Hampshire Supreme Court's formulation of the confiscation test essentially follows that in *Hope Natural Gas,* the seminal U.S. Supreme Court case on the constitutional requirements for the rates of an entire enterprise. That case stands for the proposition that a rate-setting authority may not constitutionally set rates at a level that does not permit the enterprise as a whole the opportunity to recover its costs and earn a rate of return "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." *Hope Natural Gas*, at 603. Like all of its progeny, *Hope* provides no constitutional test for the level at which a single rate must be set, or whether a rate is to be applied at all.

To be clear, these constitutional standards are inapposite here. They have no meaning when applied in the context of the particular rate for an individual service. It makes no sense to suggest that a too-low rate for one particular service would not allow Verizon to operate successfully, maintain its financial integrity, attract capital, or

FCC's TELRIC ratesetting methodology for unbundled network elements. *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944), concerned use of the "present fair value" versus "actual legitimate cost" methodologies for determining the rate base.

appropriately compensate its investors. A too-low rate for one service may be balanced by generous rates for other services. It is the overall levels of rates, revenues, and costs that determine a company's financial integrity and attractiveness to investors.

The U.S. Supreme Court later amplified this point, explaining the matter as follows:

> Errors to the detriment of one party may well be canceled out by countervailing errors or allowances in another part of the rate proceeding. The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.

*Duquesne Light Company v. Barasch,* 488 U.S. 299, 314 (1989). Thus, even if Verizon were correct that the Commission's *Order* results in a too-low rate for switched access services -- which it does not -- that is of no constitutional concern in the absence of evidence regarding Verizon's overall rates and costs. Indeed, the foregoing principle underlies the Commission's traditional disdain for "single-issue ratemaking." *Re Statewide Low-Income Electric Assistance Program*, DE 02-034, *Order* No. 23,980 (May 30, 2002) (Commission refused to implement a bad debt offset on the ground that any offsetting adjustment would constitute single-issue rate making.).

In the absence of a consideration of the adequacy of Verizon's overall rate levels, Verizon cannot state a cognizable constitutional claim for confiscation.

**2. Verizon's Confiscation Argument Has No Application To A Tariff Interpretation Case.**

In any event, this case does not involve a Commission rejection of a Verizon request to set rates at any particular level. Even if the Commission had determined that Verizon cannot apply the local transport and tandem switching rates to the disputed call flows (which, as demonstrated above, is patently false), the Commission would have

simply determined that the existing tariff does not permit existing rates to be applied in the manner that Verizon contends. If Verizon or any other utility regulated by this Commission believes that a Commission tariff interpretation drives earnings below authorized levels, the utility is always free to propose other tariff changes to cure that concern.

### E. On A Going Forward Basis, Verizon Has No Property To Be "Confiscated."

The *Order* operates both retrospectively and prospectively. It prohibits Verizon from imposing CCL charges on calls to non-Verizon end users in the future, and orders restitution for such charges improperly imposed in the past. Verizon clearly rests part of its confiscation claim on the prospective aspect of the *Order*:

> In continuing to require Verizon to provide those [switched access] services, while at the same time failing to determine the basis for Verizon's associated compensation, the Commission confiscates Verizon's property in violation of Part I, Article 12 of the New Hampshire Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

Motion at ¶ 21.

Even if Verizon were correct that the *Order*'s alleged prohibition against any charges for switched access services formed the basis of a constitutional confiscation claim -- which is most assuredly not the case -- the prospective aspect of that claim necessarily fails for the simple reason that Verizon has sold its New Hampshire operations to FairPoint. *In re Verizon New England Inc. et al. — Petition for Authority to Transfer Assets and Franchise,* DT 07-11, Order Approving Settlement Agreement with Conditions, Order No. 24,823 (Feb. 25, 2008). Therefore, the Commission no longer can "continue[] to require Verizon to provide those services." Likewise, Verizon no longer

has any expectation of revenues from the provision of those services. In short, Verizon has no "property" for the Commission to confiscate.

Accordingly, even if any aspect of Verizon's confiscation claim had merit, there is no basis to sustain such a claim with respect to the future provision of access services.

**Conclusion**

For the foregoing reasons, the Commission should reject Verizon's Motion as meritless.

Respectfully Submitted,

**AT&T CORP.**

By its attorney,

Jay E. Gruber (ssg)

Jay E. Gruber
AT&T Services Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
617.574.3149 (voice)
218.664.9929 (fax)
jegruber@att.com

Of Counsel:

Mark A. Keffer
AT&T Services, Inc.
3033 Chain Bridge Rd
Oakton, VA 22185
703.691.6046
832.213.0131 (fax)
mkeffer@att.com

ONE COMMUNICATIONS CORP

By its attorney,

Gregory M. Kennan (ssg)

Gregory M. Kennan
One Communications Corp.
220 Bear Hill Road
Waltham, MA 02451
781-622-2124 Tel.
781-522-8797 Fax
gkennan@onecommunications.com

FREEDOM RING COMMUNICATIONS LLC D/B/A BAYRING COMMUNICATIONS

By its attorney,

S. A. Geiger

Susan Geiger
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com

Dated: April 9, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Joint Opposition has on this 9th day of April, 2008 been sent either by first class postage prepaid or by electronic mail to the parties named on the Service List in the above-captioned matter.

Susan S. Geiger

462851_1.DOC

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 06-067

Freedom Ring Communications LLC d/b/a BayRing Communications
Complaint Against Verizon New Hampshire Regarding Access Charges

**Motion for Rehearing and/or Reconsideration of Northern New England Telephone Operations LLC. d/b/a FairPoint Communications - NNE**

Pursuant to RSA 541:3 and N.H. Admin. Rules Puc 203.33, Northern New England Telephone Operations LLC, d/b/a FairPoint Communications-NNE, a Delaware limited liability company having its principal office at 521 E. Morehead Street, Charlotte, North Carolina ("FairPoint") hereby moves the Public Utilities Commission (the "Commission") to reconsider Order No. 24,387, dated March 21, 2008 (the "Order"), or order a rehearing in the above-docketed proceeding (this "Docket") and, in support of this Motion, states as follows:

## I. INTRODUCTION

As this Commission and the parties to this Docket well know, FairPoint acquired the regulated wireline based telecommunications assets and business of Verizon New England Inc. ("Verizon") in New Hampshire effective with the closing process of March 31, 2008. *See ex. In re Verizon New England Inc. et al. - Petition for Authority to Transfer Assets and Franchise*, DT 07-011, Order 24,823 (February 25, 2008) (the "Transfer Order"). With all necessary regulatory and other approvals having been granted, and through the closing of the transactions contemplated in the Transfer Order, FairPoint became the successor in interest to Verizon's New

Hampshire landline telecommunications franchise, business and properties. As such, to the extent the Order compels FairPoint to take certain actions with respect to billing for switched access or other "access" services, the Order directly impacts FairPoint's property and other interests.[1]

This Commission's Order directly and adversely affects FairPoint's financial and operational interests. In relevant part, the Order requires FairPoint to "...cease the billing of carrier common line charges for calls that do not involve a [FairPoint] end user or a [FairPoint]-provided local loop." *See* Order at p. 33. For the reasons set forth below, FairPoint submits that good cause exists for this Commission to reconsider the Order and/or grant a rehearing in this Docket.

## II. STANDARD OF REVIEW

The standard of review for this Motion is well established. The governing statute states:

> Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or ***any person directly affected thereby***, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

RSA 541:3 (emphasis added).

The purpose of a rehearing or reconsideration of an order is to allow for the consideration of matters either overlooked or mistakenly conceived in the underlying proceedings. *See Dumais v. State*, 118 N.H. 309, 312 (1978). *See also Appeal of the Office of the Consumer Advocate*, 148 N.H. 134, 136 (Supreme Court noting that the purpose of the rehearing process is to provide an opportunity to correct any action taken, if correction is necessary, before an appeal to court is filed).

[1] FairPoint's Petition to Intervene has been submitted this day, along with the present Motion and an appearance of counsel.

## III. FAIRPOINT'S BASIS FOR REHEARING AND/OR RECONSIDERATION[2]

*1. The Order should be reconsidered, as the plain meaning of Tariff 85 allows for the imposition of a CCL charge for the access service at issue in this Docket.*

The Commission should apply principles of contract interpretation and statutory construction when interpreting a tariff. Order at 25, citing *Re Public Serv. of N.H.*, 79 NH PUC 688, 689 (1964). It is well established that absent ambiguity, the intent of the contracting parties should be determined based on plain meaning of language used (*Id. See also Robbins v. Salem Radiology*, 145 N.H. 415, 418 (2000)), and that a contract must be read as a whole. *See General Linen Servs. v. Franconia Inv. Assocs.*, 150 N.H. 595, 597 (2004). Similarly, "...no clause, sentence or word, shall be superfluous, void or insignificant." *Churchill Realty v. City of Dover Zoning Bd.* (N.H. 1-15-2008) at page 7. FairPoint submits that the Commission committed legal error in defining what constitutes "switched access" under the tariff by failing to ascribe the plain meaning to words used in Tariff 85, reading words out of the tariff, and failing to interpret the tariff as a whole.

Section 2.1.1.A sets forth the scope of Tariff 85 and provides that it:

> "contains regulations, rates and charges applicable to switched access services and other miscellaneous services ... provided by Verizon New England, Inc. ... to interexchange carriers and wireless carriers, including resellers or other entities engaged in the provision of public utility common carrier services which utilize the network of the Telephone Company...."

Section 6 of the Tariff, titled "Switched Access Service," provides that "[s]witched access service is ordered under the access order provisions set forth in Section 3 and billed at the rates and charges set forth in Section 30." Section 6.1.1.A. Section 6.1.2.A, in turn, identifies the

[2] In order to preserve FairPoint's procedural and substantive rights, and in an attempt to avoid being unduly repetitious in this Motion, FairPoint hereby incorporates by reference, as if fully set forth herein, the positions set forth by Verizon in its Post-Hearing Brief, dated September 10, 2007, and in its Motion for Rehearing and/or Reconsideration, dated March 28, 2008, as would be applicable to FairPoint.

types of switched access services provided ("[t]he switched access services provided under this tariff are: originating, terminating, or two way FGA, FGB, FGD and FG2A, and 800 database access"),[3] while Section 6.1.2.B sets forth the rate categories which apply to switched access service. Those rate categories include local transport, local switching and carrier common line. Section 6.1.2.D also separately identifies that "[l]ocal transport, local switching and carrier common line when combined to provide a complete switched access service is as illustrated in Exhibit 6.1.2-1."

When reading these provisions as a whole, it is evident that: switched access services are provided and billed under Tariff 85; switched access services include originating, terminating, or two way FGA, FGB, FGD and FG2A, and 800 database access; and there are three rate categories that apply to these services (local transport, local switching and carrier common line). Indeed, the Commission itself acknowledged that "the individual, billable elements of 'switched access' are local transport, local switching, and carrier common line." Order at 26.

Despite Tariff 85's detailed provisions describing what compromises "switched access," the Commission concluded that "local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service." *Id.* at 31. The Commission's Order is inconsistent because, at the same time, the Commission held that "*[i]n the calls at issue here*, Verizon *is providing a component of switched access service...*" *Id.* at 30 (emphasis added).[4]

---

[3] Similarly, 47 U.S.C. § 153 (16) defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll service." Switched access is distinguishable from private line service ("furnishing facilities for communications between specified locations"). Verizon Tariff 83, Part B § 1.1.1.A; *see also* § 1.3.

[4] The Commission concluded that the "petitioners and intervenors use tandem switching, and therefore, local transport for the calls that are the focus of the dispute." Order at 26.

Nowhere in Tariff 85 does it state that switched access exists only when provided in combination with a common line. Switched access encompasses any use of FairPoint'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.[5] *See* Tr. Day II at 104-05. Switched access is not measured in degrees; once a component of FairPoint's network constituting switched access is used by a carrier for 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 conceded 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 (emphasis added). 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.

---

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

**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, the Commission's conclusion that Verizon is not providing switched access governed by Tariff 85 is not well founded and is not supported by the record evidence. Freedom Ring Communications LLC ("BayRing"), AT&T Corp. ("AT&T") and One Communications Corp. (collectively, the "Competitive Carriers") did not refute this evidence, even though they bear the burden of proof in this proceeding. *See* Puc 203.25 ("[u]nless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden or proving the truth of any factual proposition by a preponderance of the evidence.").

By deviating from the plain and ordinary meaning of the words used in Tariff 85, the Order does not adhere to basic tenants of contract and statutory interpretation. *See supra, Robbins* at 418; *Churchill Realty* at page 7. As a result, the Order is unreasonable and unlawful and should not be sustained. FairPoint submits that the Commission should reconsider its Order and allow FairPoint to continue imposing the CCL charge at issue. In the alternative, the Commission should grant a rehearing in this matter.

2. *The Commission, in its Order, essentially confiscated FairPoint's property by requiring the provision of a telecommunications service without compensation and provides the Competitive Carriers with an unjust windfall and competitive advantage.*

Verizon raised issues related to the Commission's Order constituting an unlawful and unconstitutional confiscation of its property. *See, e.g.*, Verizon's Motion for Rehearing and/or Reconsideration of Commission Order 24,837, dated March 28, 2008, at pp. 11-14. In turn, the

Competitive Carriers claim, among other things, that Verizon has no property to be confiscated. *See* Competitive Carriers Joint Opposition to Verizon's Motion for Rehearing and/or Reconsideration, served April 9, 2008 (the "Joint Opposition") at p. 18. According to the Competitive Carriers, Verizon "...invented a world [that] bears no relationship to reality." *Id.* at 2. Despite such inflammatory comments, which have no legal significance, it is clear that the effect of the Commission's Order is to require FairPoint to provide a telecommunications service to the Competitive Carriers without compensation.

The Competitive Carriers make a significant admission and concession that should not be lost on the Commission as it considers the pleadings filed in the present motion practice. The Competitive Carriers conceded that:

> No party in the case disputed Verizon's right to be compensated for providing tandem switching and local transport functions. Indeed, the parties expressly recognized that Verizon provides those functions and should be compensated for them.

Joint Opposition at p. 2. The Commission apparently recognized this issue as its Order of Notice, dated October 23, 2007, raised issues related to (i) whether such services are more properly assessed under a tariff provision different than the provisions of Tariff 85 at issue in this Docket and (ii) whether prospective modifications to the tariff provisions are appropriate in the event Verizon's issued the billing charges in an appropriate manner. *See* Order of Notice, October 23, 2007, at pp. 2-3; *see also* Order 24,837 at ps. 24-25.

Notwithstanding this identification of issues in the Order of Notice, the Commission never addressed whether the services at issue in this case should be assessed under a tariff provision other than the provisions of Tariff 85 at issue. The Commission also never addressed whether prospective modifications to the tariff would be appropriate. The Commission's failure to address these issues, combined with (i) an order to cease billing for service and (ii) a clear

admission from the Competitive Carriers that they ought to be paying for a service provided now by FairPoint, constitutes an unlawful taking or confiscation of FairPoint's property. The issue does not turn on this Docket being something other than a rate case. *See* Joint Opposition at pp. 15-16. In ordering FairPoint to cease billing for services (i.e., setting the rate at zero), the Commission did not consider that "[t]he fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated." *See Federal Power Commission et al v. Hope Natural Gas Co.*, 320 U.S. 591, 601 (1944). The constitutional concern is that the end result must be just and reasonable, and that the constitutional limitation with the Commission's methodology is that it produce neither confiscatory nor exploitive rates. *See Petition of PSNH*, 130 N.H. 265, 268 (1988).

Assuming, *arguendo*, that Tariff 85 does not allow FairPoint to impose a CCL charge for the "access" service provided, the Commission should have decided (i) what "access" was being provided and (ii) the appropriate charge Verizon should have imposed in the past, leading to a charge that FairPoint could impose in the present and on a "go forward" basis. By simply ordering the cessation of billing for the service, however, the Commission confiscated Verizon and now FairPoint's property in violation of Part I, Article 12 of the New Hampshire Constitution and the Fifth and Fourteenth Amendments of the United States Constitution. Allowing the Competitive Carriers to secure service absent the payment of compensation provides the carriers with a windfall and a competitive advantage over FairPoint. FairPoint submits that a rate of zero for a telecommunications service can not be deemed to be anything other than confiscatory and exploitive. *See also,* RSA 378:14 (prohibiting free service). For these reasons alone, the Commission should reconsider its decision and order a rehearing in this Docket.

3. *To the extent that the Order is based on the premise that the application of the CCL charge under Tariff 85 to service rendered in the past was not just and reasonable, the Order amounts to retroactive ratemaking and is unreasonable and unlawful.*

The power of the Commission to fix or adjust rates is *prospective* in nature. RSA 378:7 provides (with emphasis added):

> Whenever the commission shall be of the opinion . . . that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, . . . the commission shall determine the just and reasonable or lawful rates, fares and charges to be ***thereafter observed and enforced.***

In setting rates, the Commission is "performing essentially a legislative function and accordingly cannot exceed the limitations imposed on the exercise of that function under [the New Hampshire] and Federal Constitutions." *Appeal of Pennichuck Water Works*, 120 N.H. 562, 565-566 (1980). Moreover, tariffs "do not simply define the terms of the contractual relationship between a utility and its customers. They have the force and effect of law and bind both the utility and its customers." *Id.*, p. 566. The Supreme Court clearly stated that:

> If the PUC were to allow a rate increase to take effect applicable to services rendered at any time prior to the date the petition for the rate increase was filed, it would be retroactively altering the law and the established contractual agreement between the parties. In essence, such action would be creating a new obligation in respect to a past transaction, in violation of Part 1, Article 23 of our State Constitution and, due to the retroactive application, would also raise serious questions under the Contract Clause of the Federal Constitution, U.S. Const. Art. I, 10, Cl. 1. *Id.*

These principles apply with equal force to tariff provisions as applied to service furnished in the past where the Commission determines subsequently that those tariff provisions are not just and reasonable. While FairPoint believes its access rates to be just and reasonable, any challenge by a customer or action by the Commission on its own motion must address the issue through proceedings that are prospective in effect only. "[I]t is a basic legal principle that a rate

is made to operate in the future and cannot be made to apply retroactively...." *Pennichuck* at 566.

Ultimately, a utility is entitled to rely on a final rate order until a new rate is fixed by the governing regulatory commission. *See, e.g., Arizona Grocery Co.*, 284 U.S. at 389. "Consequently, the revenues collected under the lawfully imposed rates become the property of the utility and cannot rightfully be made the subject of a refund." *So. Central Bell Telephone Co. v. Louisiana Pub. Serv. Comm'n*, 594 So.2d 357, 359 (La. 1992). The Commission can effect that change only on a *prospective* basis. Thus, FairPoint should be permitted to impose the CCL charge for the switched access (or "access") being requested by the Competitive Carriers until the Commission determines, after an evidentiary hearing, what new rate should apply.[6]

In this case, the rate in question was based on a straightforward application of the Tariff (discussed in Verizon's Motion for Rehearing and/or Reconsideration) and is not illegal. Moreover, since as early as 2001, Verizon has billed, and competitive providers have paid, the carrier common line charge based on the plain meaning of a tariff that has the force and effect of law. The record evidence was not refuted that Verizon billed the CCL charge for the access service prior to the 2005 - 2006 time frame. *See ex.* Tr. Day 2 at 36-37. None of the Competitive Carriers has claimed that Verizon has been "discriminatory" in applying the carrier common line charge to particular competitive carriers. Thus, the general rule against retroactive ratemaking – and not the reparations statute – applies in this instance.

WHEREFORE, FairPoint respectfully requests that the Commission:

(1) Schedule oral argument concerning the motions for rehearing and/or reconsideration filed by Verizon and FairPoint; or

[6] While FairPoint does not concede that a rate other than the CCL charge would be justified, it is clear that the Competitive Carriers admit that some other rate should apply. Until the Commission sets that rate, the CCL charge is the appropriate rate.

(2) Grant this Motion for Rehearing and/or Reconsideration and allow FairPoint to impose the CCL charge at issue until and unless the Commission revises the rate on a prospective basis.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC, D/B/A FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,

DEVINE, MILLIMET & BRANCH, PROFESSIONAL ASSOCIATION

Dated: April 21, 2008

By: _____

Frederick J. Coolbroth
Patrick C. McHugh
43 North Main Street
Concord, NH 03301
(603) 226-1000
fjcoolbroth@devinemillimet.com
pmchugh@devinemillimet.com

Shirley J. Linn, Esq.
Michael J. Morrissey, Esq.
FairPoint Communications, Inc.
521 E. Morehead Street, Suite 250
Charlotte, NC 28202

**CERTIFICATE OF SERVICE**

I hereby certify that a PDF copy of the foregoing motion was forwarded this day to the parties by electronic mail.

Dated: April 21, 2008

By: _____

Frederick J. Coolbroth, Esq.
Patrick C. McHugh, Esq.

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

| | |
|---|---|
| BayRing Petition For Investigation Into Verizon New Hampshire's Practice Of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, On Calls Which Originate On BayRing's Network And Terminate On Wireless and Other Non-Verizon Carriers' Networks | Docket No.06-067 |

# JOINT OPPOSITION OF AT&T, BAYRING COMMUNICATIONS AND ONE COMMUNICATIONS TO FAIRPOINT'S MOTION FOR REHEARING AND/OR RECONSIDERATION


Of Counsel:

Mark A. Keffer
AT&T Services, Inc.
3033 Chain Bridge Rd
Oakton, VA 22185
703.691.6046
832.213.0131 (fax)
mkeffer@att.com

Jay E. Gruber
AT&T Services Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
617.574.3149 (voice)
218.664.9929 (fax)
jegruber@att.com

Susan S. Geiger
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com

Gregory M. Kennan
One Communications Corp.
220 Bear Hill Road
Waltham, MA 02451
781-622-2124 Tel.
781-522-8797 Fax
gkennan@onecommunications.com


Dated: April 28, 2008

## TABLE OF CONTENTS

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

| | |
|---|---|
| BayRing Petition For Investigation Into Verizon New Hampshire's Practice Of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, On Calls Which Originate On BayRing's Network And Terminate On Wireless and Other Non-Verizon Carriers' Networks | Docket No.06-067 |

**JOINT OPPOSITION OF AT&T, BAYRING COMMUNICATIONS AND ONE COMMUNICATIONS TO FAIRPOINT'S MOTION FOR REHEARING AND/OR RECONSIDERATION**

On April 21, 2008, Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE ("FairPoint") filed a Motion for Rehearing and/or Reconsideration ("Motion") repeating, often *verbatim*, the same points Verizon raised in its March 28, 2008 Motion challenging the Commission's March 21, 2008 Order No. 24,837. Freedom Ring Communications LLC d/b/a BayRing Communications ("BayRing"), AT&T Corp. ("AT&T"), and One Communications ("One") (collectively "Competitive Carriers") already rebutted Verizon's arguments in our April 9, 2008 Opposition to the Verizon Motion, and we again explain here why there is no merit to either the Verizon or FairPoint Motions for Reconsideration. The Commission should affirm its prior decision.

## Introduction

The Commission should reject FairPoint's meritless and flawed Motion. The bulk of FairPoint's pleading merely repeats Verizon's arguments. The Competitive Carriers rebutted Verizon's arguments in their Opposition to the Verizon Motion, which the

Competitive Carriers incorporate herein by reference. And, to the minor extent that FairPoint raised anything new, FairPoint lacks standing to seek rehearing and/or reconsideration of those parts of the Order requiring Verizon to pay restitution for past charges unlawfully charged or collected, as it has suffered no injury in fact from those aspects of the Commission's Order. In any event, FairPoint's claim that the Order constitutes unlawful retroactive retemaking is incorrect and should be rejected. FairPoint's Motion also is untimely as a matter of law and must be rejected on that basis alone.

## Argument

### I. STANDARD OF REVIEW

The Commission will not grant rehearing unless there is "good reason" to consider an order either unlawful or unreasonable. RSA 541:3, 541:4; *In re Investigation as to Whether Certain Calls Are Local,* DT 00-223, DT 00-054, Order Denying Verizon New Hampshire's Petition for Rehearing of Order Approving Agreements, Order No. 24,266, at 2 ((May 13, 2005); *In re Global NAPs — Petition for an Order Directing Verizon to Comply with Its Interconnection Agreement,* DT 01-127, Order Denying Motion for Reconsideration, Order No. 24,367, at 5 (Sept. 2, 2004). Good reason exists only where there is something the Commission either "overlooked or mistakenly conceived." *In re Verizon New Hampshire — Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues,* DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385, at 14 (Oct. 19, 2004).

The Commission will not grant rehearing merely so that a party may have a second chance to present material it could have presented earlier. *Investigation as to Whether Certain Calls Are Local,* Order No. 24,266, at 3. "A successful motion does not

merely reassert prior arguments and request a different outcome." *In re Verizon New Hampshire — Wire Center Investigation,* DT 05-083, Order Denying Motions for Rehearing or Reconsideration, Order No. 24,629, at 7 (June 1, 2006); *Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues* at 14.

## II. FAIRPOINT'S TARIFF INTERPRETATION CLAIMS MERELY REITERATE VERIZON ARGUMENTS THAT ALREADY HAVE BEEN LAWFULLY AND REASONABLY REJECTED.

FairPoint states that "in an attempt to avoid being unduly repetitious in this Motion, FairPoint hereby incorporates by reference, as if fully set forth herein, the positions set forth by Verizon in its Post-Hearing Brief... and in its Motion for Rehearing and/or Reconsideration...as would be applicable to FairPoint." *Motion*, footnote 2, p. 3. Whatever effort FairPoint made to "avoid being unduly repetitious" has failed, because FairPoint's Motion reiterates *verbatim* several of the arguments made by Verizon in its Post-Hearing Brief and Motion for Rehearing and/or Reconsideration. Indeed, the first seven (7) pages of FairPoint's challenge to the Commission's interpretation of Tariff 85 contain language that is either identical or very similar to several paragraphs of Verizon's Motion for Rehearing and/or Reconsideration.[1]

[1] More specifically: The first paragraph of page 3 of FairPoint's Motion corresponds to paragraph 7 of Verizon's Motion in that both are worded similarly and contain the same citations to legal authority; the second paragraph on page 3 of FairPoint's Motion which carries over onto page 4 corresponds to paragraph 8 of Verizon's Motion in that both are worded nearly identically and contain identical footnotes; the first full paragraph on page 4 of FairPoint's Motion is worded identically to paragraph 9 of Verizon's Motion; the last paragraph on page 4 of FairPoint's Motion corresponds to paragraph 10 of Verizon's Motion and even includes the same typographical error in the first line thereof (i.e. the word "compromises" should be "comprises"); the first paragraph on page 5 of FairPoint's Motion corresponds to paragraph 11 of Verizon's Motion with two of the three sentences worded identically; the second paragraph on page 5 of FairPoint's Motion which carries over onto page 6 is worded identically to paragraph 12 of Verizon's Motion; the first full paragraph on page 6 of FairPoint's Motion is identical to paragraph 13 of Verizon's Motion; the last paragraph on page 6 of FairPoint's Motion that carries over to the top of page 7 is nearly identical to

FairPoint's cutting and pasting of Verizon's arguments may have added length to its pleading, but, like Verizon, it fails to advance any tariff interpretation arguments the Commission has not already considered and rejected. FairPoint's Motion should be rejected for that reason alone. *See In re Verizon New Hampshire – Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues,* DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385 ( October 19, 2004) at 14. The Competitive Carriers' April 9 Joint Opposition, in Sections II and III, which the Competitive Carriers incorporate by reference, explains why the Commission's interpretation of Tariff 85 that CCL charges cannot be imposed on traffic not involving a Verizon (and now FairPoint) common line pursuant to the tariff as written is supported by the evidence and is otherwise reasonable, lawful and equitable. Accordingly, FairPoint's tariff interpretation arguments must fail.

## III. FAIRPOINT'S REPETITION OF VERIZON'S CONFISCATION ARGUMENT FAILS FOR THE SAME REASONS THE COMMISSION REJECTED VERIZON'S ARGUMENT.

### A. FAIRPOINT'S CUT-AND-PASTE CONFISCATION ARGUMENT IS PREDICATED ON THE SAME FLAWED INTERPRETATION OF THE ORDER ON WHICH VERIZON RELIES.

FairPoint's Motion states that the Order "essentially confiscated FairPoint's property by requiring the provision of a telecommunications service without compensation and provides Competitive Carriers with an unjust windfall and competitive advantage[2]." *Motion,* p. 7. The Motion also states that "...it is clear that the effect of the

paragraph 14 of Verizon's Motion; and the middle paragraph on page 7 of FairPoint's Motion is basically the same as paragraph 18 of Verizon's Motion.

[2] FairPoint offers no factual support for the propositions that the Commission's Order provides the Competitive Carriers with an unjust windfall and competitive advantage. In fact, the opposite is true – the elimination of the CCL charge helps to level the playing field by reducing the significant cost advantage

Commission's Order is to require FairPoint to provide a telecommunications service to the Competitive Carriers without compensation." *Motion*, p. 8. However, nowhere in the Motion does FairPoint describe with specificity "the service" that the Order allegedly requires FairPoint to provide without compensation. If FairPoint is referring to the carrier common line service, then FairPoint's claim is based on an error of fact and can be summarily dismissed. Verizon (and now FairPoint) is not providing a carrier common line service in the disputed call flows at issue. As a result, the Commission's Order prohibiting Verizon/FairPoint for charging the CCL in such situations is not requiring Verizon/FairPoint to provide a service without compensation.

If FairPoint's claim is that the Order is confiscatory because it "does not allow FairPoint to impose a CCL charge for the [local transport and tandem switching ] service provided..." (*Motion*, p. 9), then FairPoint's argument suffers the same fatal flaw as that of Verizon: it assumes a decision that the Commission did not make. The Competitive Carriers demonstrated beyond doubt that such a claim is baseless in Section IV of their April 9 Joint Opposition, which is hereby incorporated by reference as if set forth fully herein. A plain reading of the Order indicates that the Commission did not simply order Verizon to stop billing for all access service, but rather ordered Verizon to cease billing ***for CCL service when Verizon does not provide that service.*** The Commission's decision on this point is clearly worded:

> In summary, based on our review of the tariff language and the record developed in this proceeding, we interpret Verizon's access tariff to permit the imposition of CCL charges only in those instances when a carrier uses CCL services.

---

that Verizon/FairPoint have over competitors when the CCL charge is improperly applied. *See Exhibits 4 and 5; see also Post-Hearing Brief of BayRing Communications*, at pp. 29-33.

*Order*, at 32. The sole ordering paragraph of the Order is similarly clear and uncomplicated:

> **ORDERED**, that Verizon cease the billing of carrier common line charges for calls that do not involve a Verizon end user or a Verizon-provided local loop.

*Order*, at 33.

FairPoint's fabrications notwithstanding, the Commission did not require that Verizon/FairPoint cease billing for individual components of switched access service when the services *are* actually provided. Nor did the positions of the parties require it to. The issue of whether Verizon (and now FairPoint) can charge for services that it does provide (such as the Section 6 services of Local Transport or Tandem Switching) was never contested. No party has claimed that it is not responsible to pay for the services it receives, nor has any party stated an intention not to pay for such functions in the future, nor has any party asked the Commission to preclude Verizon/FairPoint from collecting compensation when services which are specified in the tariff are actually provided. Indeed, the record evidence is to the contrary.[3]

FairPoint, like Verizon, seeks to fabricate an issue here, where there is none, based on a mistatement of the issue in the case and a mischaracterization of the Commission's decision.

---

[3] It is not relevant, for purposes of Verizon's confiscation claim, that BayRing argued at certain points in the case that the disputed call flows are not subject to Tariff 85 on the ground that they are not "switched access." BayRing has never taken the position that it is not required to pay Verizon for actual use of Verizon's network. Indeed, BayRing, like the other Competitive Carriers in this case, has expressly acknowledged its obligation to pay Verizon for use of its network. *See, e.g.*, Transcript I, at 78-79 (BayRing witness Winslow agrees that Verizon should be compensated for services Verizon provides, including the local transport and tandem switching services that Verizon provides in the disputed call flows.); *see also, id.*, at 82-83.

B. FAIRPOINT'S COMPLAINTS THAT THE COMMISSION DID NOT ADDRESS CERTAIN ISSUES HAVE NO MERIT, BECAUSE FAIRPOINT MISCONCEIVES THE SCOPE OF THE CASE AND THE ORDER, AND BECAUSE NOTHING IN THE ORDER PREVENTS FAIRPOINT FROM FILING TARIFF LANGUAGE THAT ENSURES JUST COMPENSATION FOR THE SERVICES IT IS PROVIDING.

On page 8 of its Motion, FairPoint takes exception to the Order because it did not address whether the services at issue in this case should be assessed under a tariff other than Tariff 85 and did not address whether prospective modifications to the tariff would be appropriate. The latter criticism of the Order levied by FairPoint is invalid because it fails to recognize that the October 23, 2007 Order of Notice in this docket indicated that the issue of prospective modifications to the tariff would be addressed "in the event Verizon's interpretation of the current tariffs is reasonable". *Order* at 25. Since the Commission did not find that Verizon's interpretation of Tariff 85 was reasonable, there was no need for the Commission to address the issue of prospective tariff modifications. Moreover, in its Procedural Order in this docket dated November 29, 2006, the Commission decided that consideration of prospective modifications to the tariff will not be part of this proceeding, and will be resolved "in a separate proceeding to be initiated at a later date if necessary." *Procedural Order,* Order No. 24, 705 (Nov. 29, 2006) at 6.

With respect to the issue of whether the services at issue in this case should be assessed under a tariff provision other than the provisions of Tariff 85, a reasonable reading of the Commission's Order indicates that the Commission found that unnecessary and that Tariff 85 governs all of the services at issue in this case. A fair interpretation of the Commission's decision is as follows: local transport, on its own, does not constitute a "complete" switched access which would warrant the imposition of a CCL charge; however, FairPoint/Verizon may nonetheless be compensated for individual access

components or rate elements listed in Tariff 85 (*e.g.* local transport) when the corresponding network services are actually provided. Thus, there is no need for the Commission to investigate whether tariff provisions other than Tariff 85 apply to the issues raised in this case.

Lastly, and perhaps most importantly as to the issue of FairPoint's tariff complaints, nothing in the Commission's decision found that FairPoint does not have the right to charge for services it does provide. Indeed, even if the Commission had decided – which it did not – that Tariff 85, *as currently drafted*, does not permit FairPoint to charge for the transport and switching services it does provide, then FairPoint has both the ability and the responsibility to rectify the situation. If FairPoint believes that Tariff 85 does not accurately reflect or describe the rates and services it is providing to the Competitive Carriers (and others), then FairPoint, not the Commission, bears responsibility for filing tariff revisions.[4] N.H. RSAs 378:1 and 378:2. FairPoint should not be permitted to use the rehearing process in this case to short circuit or otherwise evade its statutory tariff filing responsibilities.

### C. FairPoint's Confiscation Argument Has No Application To A Tariff Interpretation Case Involving A Single Rate Element.

Just like Verizon's argument, FairPoint's confiscation claim also attempts to apply a ratemaking concept designed for general rate cases to this case, which involves whether Verizon's tariff permits it to apply the CCL charge when no CCL is provided.

[4] Herein lies the difference between this case, which is a tariff interpretation case, and a ratemaking or ratesetting case. In a ratemaking case, a Commission is acting in its "legislative" capacity to determine the rights to charge prospectively without regard to whether the current tariff permits or does not permit such charges. In a rate interpretation case, the Commission is acting in an adjudicatory capacity to determine rights under existing tariff language and is making no "legislative" pronouncement regarding anything else the utility might be entitled to do.

FairPoint's confiscation argument has no application to a case involving a single rate, and certainly no application to a case involving the interpretation of how an existing and approved tariff applies a specific rate.

The cases addressing the confiscation issue that Verizon cites (and FairPoint copied) concern themselves with rate-setting or "the fixing of prices" which involves the **establishment** of rates that a company is permitted to charge to recover its overall costs of service (including capital costs) necessary to provide the services it offers. Moreover, the cases address issues that affect the utility's overall rate of return resulting from the revenues from all services and the costs of providing them.[5] As a result, none of the cases Verizon cited (and FairPoint copied) concerns the situation at issue here — the particular rate that a utility is allowed to charge for an individual service. Thus, for all of the reasons set forth in the Competitive Carriers' Joint Opposition to Verizon's Motion for Rehearing and/or Reconsideration at pages 11 through 18 (which are incorporated by reference as if set forth fully herein), the Commission should reject FairPoint's copycat confiscation claim.

Significantly, FairPoint's Motion, just like the Verizon Motion it copied, does not allege the extent, if any, to which the Order affects FairPoint's overall revenue requirement. Thus, in the absence of specific factual evidence to support the allegation

---

[5] An examination of Verizon's authorities shows the overarching nature of allegedly confiscatory regulation. *Appeal of Public Service Company of New Hampshire*, 130 N.H. 748 (1988), related to the cost of capital that the Commission determined should be applied in setting PSNH's rates. *Petition of Public Service Company of New Hampshire*, 130 N.H. 265 (1988), concerned the impact of the elimination of tens or hundreds of millions of dollars of construction costs from PSNH's rate base by the application of the anti-construction work in progress statute, RSA 378:30-a. *Duquesne Light Company v. Barasch*, 488 U.S. 299 (1989) also involved a similar prohibition against inclusion in the rate base of any facility until used and useful in public service. *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002) concerned the FCC's TELRIC ratesetting methodology for unbundled network elements. *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944), concerned use of the "present fair value" versus "actual legitimate cost" methodologies for determining the rate base.

that the Order does not permit FairPoint to achieve its authorized revenue requirement, the confiscation argument surely must fail. Moreover, if FairPoint believes that a Commission tariff interpretation drives earnings below authorized levels, it may take curative action by making an appropriate filing with the Commission.

## IV. THE COMMISSION SHOULD REJECT FAIRPOINT'S CLAIMS OF RETROACTIVE RATEMAKING.

There is no merit to FairPoint's claim that the Commission engaged in improper retroactive rulemaking when it ruled that Verizon's tariff did not permit it to impose a CCL charge when no Verizon common line or end-user was involved. FairPoint has no standing to raise this claim, as it has not suffered any injury in fact by the Order's restitution requirement. Substantively, FairPoint is incorrect; the Commission did not set rates retroactively, but merely interpreted Verizon's tariff and found that in many cases Verizon was imposing CCL charges that its tariff did not authorize.

### A. FAIRPOINT LACKS STANDING TO RAISE ITS CLAIM OF RETROACTIVE RATEMAKING.

In order to seek rehearing of the Commission's decision, FairPoint must show that it is "directly affected thereby." RSA 541:3. To be directly affected means that a person has suffered or will suffer an "injury in fact." *Appeal of Richards,* 134 N.H. 148, 154, 590 A.2d 586, 589-90 (1991) (per curiam). Mere interest in a problem is insufficient to confer standing. *Id.,* 134 N.H. at 156, 590 A.2d at 591.

FairPoint has not alleged that the Order requires it to make restitution or that the Order has any other retrospective effect on it. To the contrary, FairPoint admits that the Order's effects upon it are prospective only. In asserting that the Order directly and adversely affects its interests, FairPoint claims, "*In relevant part,* the Order requires FairPoint to '. . . *cease the billing* of carrier common line charges for calls that do not

involve a [FairPoint] end user or a [FairPoint]-provided local loop.'" Motion at 2, quoting Order at 33 (emphasis added; ellipsis in original). Notably, FairPoint does not cite to any "relevant part" of the Order requiring it to make restitution.

Nor could it. The Commission carefully confined the restitution obligation to Verizon.

> Based on our review of the record, we have concluded, as more fully described above, that Verizon's misinterpretation of the provision pertaining to CCL charges under Tariff No. 85 has resulted in it impermissibly imposing CCL charges on certain customers. Therefore, we find that Verizon owes restitution.

Order at 32. The Commission specifically noted the FairPoint transaction and took pains to explain that Verizon, not FairPoint, would be responsible for restitution of charges that Verizon had improperly imposed in the past.

> On February 25, 2008, Order No. 24,823 was issued in Docket No. DT 07-011 approving the proposed transfer of certain assets from Verizon to FairPoint and Verizon's discontinuance of landline operations in the State of New Hampshire. One condition of approval in that order was the provision that, in the event it was decided that Verizon was not authorized to collect the charges in dispute in the present proceeding, Verizon would be required to refund the amount collected by it.

*Id.* at 33.

The Order was issued and effective on March 21, 2008, prior to the March 31 closing date of the Verizon-FairPoint transaction. *See* Motion at 1. Presumably, FairPoint is complying with the Order and is not billing CCL charges when the calls do not involve a FairPoint end-user or local loop. Therefore, the only legally cognizable complaint FairPoint could have would be with the Order's prohibition against FairPoint's imposition of the CCL charge going forward. There is nothing "retroactive" in that.

Thus, FairPoint has not shown, or even alleged, that it has suffered any injury in fact from the Commission's alleged retroactive ratemaking. In charging that the Commission's action constitutes retroactive ratemaking, FairPoint challenges the Commission's ability to scrutinize any rate imposed or collected in the past. While this position is legally incorrect (see below), it also is clear that FairPoint's concern about the alleged retroactive ratemaking in this case rises only to the level of mere interest in the alleged problem. That is insufficient to confer standing on FairPoint to seek rehearing based on its claims of retroactive ratemaking.

### B. THE ORDER DOES NOT CONSTITUTE RETROACTIVE RATEMAKING.

Even if FairPoint had standing to raise the issue of retroactive ratemaking, which it does not, the Commission should reject FairPoint's claim. FairPoint mischaracterizes the Order. In the Order, the Commission did not set any rate — retroactively or otherwise. Instead, the Commission interpreted Verizon's tariff and correctly determined that *under the terms of that tariff,* Verizon was not entitled to impose or collect the CCL charge when no Verizon end user or local loop was involved. Whether tariffs are quasi-legislative, contractual, or something else, the Commission performed a normal adjudicative function of interpreting the language that governs the relationship between the parties. That is not retroactive ratemaking.

Basically, FairPoint disagrees with the Commission's decision. It claims that the CCL charge "was based on a straightforward application of the Tariff . . . and is not illegal." Motion at 11. On this premise it sets forth arguments concerning the quasi-legislative status of tariffs and Verizon's entitlement to collect lawful rates until the Commission changes those rates. *Id.* at 10-11. Of course, the Commission found exactly the opposite — that Verizon's tariff did not permit imposition of the CCL charge when

no Verizon end-user was involved. Thus, FairPoint's arguments miss the point. That FairPoint disagrees with the result does not turn the Commission's act of interpretation into an instance of ratesetting.

FairPoint's position would eviscerate RSA 365:29. Section 365:29 expressly grants the Commission authority to order a public utility "to make due reparation to the person who has paid . . . an illegal or unjustly discriminatory rate, fare, charge or price." That is precisely what the Commission did in this case, by ordering Verizon to make reparation of charges that are illegal because they are not authorized by Verizon's tariff. If the Commission's ability to redress illegal charges were restricted to prospective adjustments to a utility's tariffs, the Legislature's grant of authority in RSA 365:29 would be meaningless surplusage. The Commission may not read the statute out of existence in that manner.

FairPoint's position also would lead to absurd results. According to FairPoint, the Commission cannot redress past overcharges at all. "[A]ny challenge by a customer [to FairPoint's rates] or action by the Commission on its own motion must address the issue through proceedings that are prospective only." Motion at 10. Thus, FairPoint would completely immunize utilities from liability for unlawful overcharges. It also would sanction unjust enrichment of utilities at the expense of consumers, whose only redress for illegal overcharges would be to seek prospective changes in the utility's tariff. Such results would be contrary to the public interest.

Finally, the weakness of FairPoint's position is underscored by the fact that Verizon, which, unlike FairPoint, *is* subject to making restitution under the Order, did not make a claim of retroactive ratemaking.

## V. FAIRPOINT'S MOTION IS UNTIMELY.

FairPoint filed its Motion on April 21, 2008, thirty-one days after the Commission issued the Order on March 21. FairPoint thus violated RSA 541:3, which requires that a motion for rehearing be filed "[w]ithin 30 days after any order or decision has been made by the commission." Since the Motion was filed after the statutory deadline, the Commission may not consider it.

That the thirtieth day after issuance of the Order — April 20, 2008 — fell on a Sunday does not serve to extend the statutory deadline in RSA 541:3. PUC Rule 202.03(b), which extends the time for taking action when the deadline falls on a day the Commission is closed, applies only to time periods specified in Commission rules and not to statutory time periods such as that in RSA 541:3.

The inapplicability of PUC rule 202.03(b) to statutory deadlines is plain from the wording of the rule itself.

> (a) Computation of any period of time *referred to in the Commission rules* shall begin with the first day following that on which the act which initiates such period of time occurs.
>
> (b) The last day of the period *so computed* shall be included unless it is a day on which the office of the commission is closed, in which event the period shall run until the end of the next following business day.

PUC Rule 202.03 (a)-(b). The extension of a deadline falling on a Sunday until the next business day, as provided in subsection (b), applies only to a time period "so computed" — that is, a "computation of [a] period of time referred to in the Commission's rules" as set forth in subsection (a). The Commission's rules do not specify the time within which a motion for rehearing must be filed; that time period is specified in the statute. Thus, by

its terms, PUC Rule 202.03(b) does not apply to the deadline in RSA 541:3 and does not serve to extend the time for filing a motion for reconsideration.[6]

There is no statutory equivalent to PUC Rule 202.03(b) that would extend the deadline in RSA 541:3 until the next business day if that deadline falls on a Sunday. The general New Hampshire law governing computation of time addresses only the beginning of a time period, not the end, and it does not provide for exclusion of non-business days from statutory time periods.

> **Time, How Reckoned; Days Included and Excluded.** – Except where specifically stated to the contrary, when a period or limit of time is to be reckoned from a day or date, that day or date shall be excluded from and the day on which an act should occur shall be included in the computation of the period or limit of time.

RSA 21:35.

Further, the Commission cannot assume that the Legislature implied either a general extension of statutory deadlines until the next business day when the deadline falls on a Sunday, or a specific extension in the case of motions for reconsideration under RSA 541:3. When the Legislature wanted to exclude Saturdays, Sundays, and legal holidays from a statutory time period, it has done so explicitly. For example:

> Whenever *the election laws* refer to a period or limit of time, Saturdays, Sundays, and holidays shall be included, except as provided in paragraph I. However, when the last day for performing any act *under the election laws* is a Saturday, Sunday or official state holiday, the act required shall be deemed to be duly performed if it is performed on the following business day.

RSA 652:18, II (emphasis added). In another example, the Legislature stated:

> Any probationer or parolee who is arrested under the authority of RSA 504-A:4 or RSA 651-A:25 shall be detained at the county jail closest to

[6] For the same reason, the Commission may not waive the deadline in RSA 541:3. PUC Rule 201.05 allows the Commission to waive its own rules, not statutory provisions.

> the location where he or she was arrested or any other suitable confinement facility in reasonable proximity to the location where he or she was arrested. Such probationer or parolee shall be detained there pending a preliminary hearing which shall be held within 72 hours from the time of arrest, excluding Saturdays, Sundays, and holidays . . . .

RSA 504-A:5. Similarly, the Legislature is familiar with the concept of "business days," and has used the term explicitly when it has wanted to set a time period based on business days rather than calendar days. For example:

> **Saturdays, Sundays, and Legal Holidays.** If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if performed on the next business day.

RSA 80:55, III.[7]

The Commission must assume that the Legislature meant what it said. When the Legislature wished to exclude Saturdays, Sundays, and legal holidays from a statutory time period, it has said so explicitly. The Legislature has not said so in the case of the time period for filing a motion for rehearing under 541:3. Therefore, the Commission cannot read such an extension into the statute. In addition, the Legislature last amended RSA 541:3 in 1994, by changing the deadline for filing a rehearing motion from 20 to 30 days. 1994 N.H. Stat. 54:1. Although the Legislature had the opportunity at that time to make the deadline the next business day after a weekend or holiday, it did not do so. This further shows the Legislature's intent not to exclude Saturdays, Sundays, and holidays from the calculation of the 30-day deadline for filing motions for rehearing.

[7] The phrase "any report, claim, tax return, statement, remittance, or other document" refers back to the introductory language in RSA 80:55, I: "Any report, claim, tax return, statement and other document, relative to tax matters, required or authorized to be filed with or any payment made to the state or to any political subdivision thereof . . . ." RSA 80:55, III, therefore, is confined to tax matters.

FairPoint's filing of its Motion on the thirty-first day after issuance of the Order was untimely. The Commission can and should reject FairPoint's motion on that basis alone.

**Conclusion**

For the foregoing reasons, the Commission should reject FairPoint's Motion as meritless, improper, and untimely.

Respectfully Submitted,

**AT&T CORP.**

By its attorney,

Jay E. Gruber
AT&T Services Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
617.574.3149 (voice)
218.664.9929 (fax)
jegruber@att.com

Of Counsel:

Mark A. Keffer
AT&T Services, Inc.
3033 Chain Bridge Rd
Oakton, VA 22185
703.691.6046
832.213.0131 (fax)
mkeffer@att.com

**ONE COMMUNICATIONS**

By its attorney,

Gregory M. Kennan
One Communications Corp.
220 Bear Hill Road
Waltham, MA 02451
781-622-2124 Tel.
781-522-8797 Fax
gkennan@onecommunications.com

**FREEDOM RING COMMUNICATIONS LLC D/B/A BAYRING COMMUNICATIONS**

By its attorney,

Susan S. Geiger
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com

Dated: April 28, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Joint Opposition has on this 28th day of April, 2008 been sent either by first class postage prepaid or by electronic mail to the parties named on the Service List in the above-captioned matter.

Susan S. Geiger

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

| | | |
|---|---|---|
| **Complaint of Freedom Ring Communications, LLC d/b/a BayRing Communications Against Verizon New Hampshire Regarding Access Charges** | ) | **Docket DT 06-067** |

**VERIZON NEW HAMPSHIRE'S REPLY TO FAIRPOINT COMMUNICATIONS-NNE'S MOTION FOR REHEARING AND/OR RECONSIDERATION OF COMMISSION ORDER 24,837**

Verizon New Hampshire ("Verizon") submits the following reply to FairPoint Communications-NNE's ("FairPoint") Motion for Rehearing and/or Reconsideration of Order No. 24,837. In support of its reply, Verizon states as follows:

1. On April 21, 2008, FairPoint filed a Petition to Intervene and a Motion for Rehearing and/or Reconsideration of Commission Order No. 24,837 (the "Order"). FairPoint's intervention is appropriate, as FairPoint has succeeded to Verizon's interest and is providing service to competitive carriers such as BayRing, AT&T and One Communications (the "Competitive Carriers") under Tariff 85 (the "Tariff"), which was the subject of the Order.[1] FairPoint has a legitimate interest in the interpretation of the Tariff and whether carrier common line charges can be assessed when switched access is

[1] On March 28, 2008, Verizon also filed a motion to reconsider or rehear Order No. 24,837 on grounds similar to those raised by FairPoint. On April 9, 2008, the Competitive Carriers then filed a joint opposition to Verizon's motion (the "Joint Opposition"). Verizon's comments on FairPoint's Motion require Verizon, in part, to address the Competitive Carriers' Joint Opposition to the extent relevant to FairPoint's Motion.

being provided on a stand-alone basis, *i.e.*, in the absence of a Verizon (now FairPoint) common line.

2. As FairPoint Motion's makes clear, the central issue in this docket is what constitutes "switched access" under the Tariff. The Supplemental Order of Notice plainly states that the primary issue in the docket is "whether calls made or received by end-users which do not employ a Verizon local loop involve Verizon switched access." Supplemental Order of Notice at 3. To answer the question, one must determine what constitutes "switched access" under the Tariff. For all of the reasons set forth in FairPoint's Motion, which Verizon incorporates by reference, the Commission erred when it concluded that carrier common line charges could not be charged where Verizon (and now FairPoint) provides switched access on a stand-alone basis.

3. It is undisputed that Verizon provided switched access to the Competitive Carriers, which they concede: "Verizon can, and does, provide a component of switched access (local transport) for which it is entitled to charge under Section 6 [of Tariff 85] when it transports a call over its facilities for delivery to another carrier." Joint Opposition at 7. The concession is significant because the Competitive Carriers have admitted that the local transport services they have been receiving are switched access and that the switched access is provided under the Tariff. The Competitive Carriers further admit that had the Commission reached the conclusion that the carrier common line charge does apply to any switched access under the Tariff, "it would have had to address the many provisions in the tariff that provide for the offer, use and payment for many services or service components that do not constitute a complete switched access

service." Joint Opposition at 13. This is, however, precisely what the Commission failed to do.

4. To avoid the application of the carrier common line charge to the provision of *any* switched access service – as the Tariff clearly provides – the Competitive Carriers and the Commission have adopted a contorted reading of the Tariff. Most telling is the Competitive Carriers' repeated reference to the need to read the Commission's finding "*in context*" to support the Commission's conclusion that the carrier common line charge applies only when "complete" switched access is provided. *See* Joint Opposition at 5 ("The correctness of the Commission's statement ... becomes apparent when it is placed in the context of the Commission's *Order*;" "In that context, the Commission understood Section 5.4.1.A," *id*; "The Commission's statement ... was – in context – referring to the *switched access service to which Section 5 refers*" at 6 (emphasis in original); "When the Commission's statement is properly understood in context, it becomes evident that there is nothing inconsistent with the second statement cited by Verizon" at 7).

5. The Competitive Carriers' insistence that the Commission's finding must be read "in context" is an admission that the plain meaning of the Tariff supports FairPoint's and Verizon's position. There is no language in the Tariff limiting the carrier common line charges to instances where "complete" switched access is provided. In fact, the only place where the term "complete switched access" even appears is in Section 6.1.2.D, which states that "[l]ocal transport, local switching and carrier common line when combined to provide a complete switched access service is as illustrated in Exhibit 6.1.2-1." The Tariff then includes a diagram of what end-to-end switched access service looks like, but does not limit the definition of switched access service solely to that illustrated

in the end-to-end configuration. Stated differently, the record evidence is undisputed that carriers are in no way limited to purchasing the "complete" access service depicted in the diagram. In fact, the prior language in Section 6.1.2, which enumerates the variety of switched access services provided under the Tariff, could not be clearer about what is switched access.

6. Adopting the Commission's position – that local transport services when provided on a stand-alone basis without the use of a Verizon (now FairPoint) common line are not switched access – raises a host of questions. If local transport without the use of the common line is not switched access, what are the services that the Competitive Carriers concede are being provided under Section 6 of Tariff 85? If those services are not switched access under Tariff 85, does FairPoint have any obligation to provide them to the Competitive Carriers? How can FairPoint lawfully impose any charge for them if they are not services available under the Tariff? If the services are not subject to the Tariff, then must they be provided free of charge, since there is no tariffed rate for them? But if provided free of charge, wouldn't FairPoint be violating RSA 378:21 (barring "deviations" from tariffed rates)? Each of these questions reveals the fallacy of the Commission's decision and the Competitive Carriers' position that the use of switched access services on a stand-alone basis does not constitute "switched access" under Tariff 85.

7. It also becomes clear that the Commission's interpretation of the Tariff should more aptly be characterized as *editing* the Tariff to inject words where they do not exist. As described in FairPoint's Motion, the Commission compounds this initial error by then requiring Verizon to pay restitution to the Competitive Carriers, thereby applying its

revisionist view of the Tariff to historical billing. This is retrospective ratemaking, plain and simple.

8. As FairPoint's Motion points out, the Public Utilities Commission is authorized to fix rates on a prospective basis only. FairPoint Motion at 10; *see also* RSA 378:7. RSA 378:7, which grants the Commission the authority to set rates on a forward-looking basis, closely parallels 16 U.S.C. § 824(e), which states in relevant part:

> Whenever the [Federal Energy Regulatory Commission] . . . shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission . . . is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

(Emphasis added).

9. While the New Hampshire Supreme Court has never considered whether RSA 378:7 precludes the ordering of refunds if a previously approved rate is found to be unjust or unreasonable, the United States Court of Appeals for the First Circuit has addressed the issue under the federal statute, holding that changes may be made "only prospectively even if existing rates are determined to be unreasonable or unjust." *Boston Edison Co. v. FERC*, 856 F.2d 361, 369 (1st 1988). In *Boston Edison Co.*, the First Circuit further noted the "settled" principle that the Federal Energy Regulatory Commission "lacks power to order 'reparations' in compensation even for unjust or unreasonable past rates." *Id.*; *see also Maine Pub. Serv. Co. v. FPC*, 579 F.2d 659, 667 (1st Cir. 1978) (*citing FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 618 (1944)). Other jurisdictions recognize the same prohibition. *See, e.g., Dist. of Columbia v. Dist. of Columbia Pub. Serv. Comm'n*, 905 A.2d. 249, 257 (D.C. App. 2006) ("A regulatory agency may not order reparations.").

This prohibition comes under the umbrella of a broader principle commonly known as the "rule against retroactive ratemaking." *See, e.g., Appeal of Pennichuck Water Works,* 120 N.H. 562, 566 (1980); *Maine Pub. Serv.*, 579 F.2d at 667; *see also So. Central Bell Telephone Co. v. Louisiana Pub. Serv. Comm'n*, 594 So.2d 357, 359 (La. 1992) ("Generally, retroactive rate making occurs when . . . a utility is required to refund revenues collected pursuant to its lawfully established rates."); *Public Advocate v. Pub. Util. Comm'n*, 718 A.2d 201, 204 (Me. 1998) ("The rule [against retroactive ratemaking] prohibits a utility commission from making a retrospective inquiry to determine whether a prior rate was reasonable and imposing . . . a refund when rates were too high.") (citation omitted).

10. The rule against retroactive ratemaking generally prohibits the ordering of refunds or rebates to account for an error made in the rate review and approval process. The U.S. Supreme Court first articulated this prohibition in the seminal case *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370 (1932). In *Arizona Grocery*, "the Supreme Court held that the Interstate Commerce Commission could not order a common carrier to pay reparations for charging a rate that the agency had explicitly approved at the time it was collected, but subsequently determined to have been unreasonable." *Verizon Telephone Co., Inc. v. FCC*, 269 F.3d 1098, 1106 (D.C. Cir. 2001). Specifically, the Supreme Court held:

> Where the Commission has, upon complaint and after hearing, declared what is the maximum reasonable rate to be charged by a carrier, it may not at a later time, and upon the same or additional evidence as to the fact situation arising when its previous order was promulgated, by declaring its own findings as to reasonableness erroneous, subject a carrier which conformed thereto to the payment of reparation measured by what the Commission now holds it should have decided in the earlier proceeding.

*Arizona Grocery Co.*, 284 U.S. at 390.[2] Thus, the holding of *Arizona Grocery* has subsequently been understood to be "a proscription against the retroactive revision of established rates through ex post reparations." *Verizon Telephone Co., Inc.* 269 F.3d at 1106 (*citing Alabama Power Co. v. ICC*, 852 F.2d 1361, 1373 (D.C. Cir. 1988); *AT&T v. FCC*, 836 F.2d 1386, 1394-5 (D.C. Cir. 1988); *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 189 n. 7 (D.C. Cir. 1986)); *see also Dist. of Columbia*, 905 A.2d. at 257; *cf. Appeal of Granite State Elec. Co.*, 120 N.H. 536, 538 (1980) (agreeing with appellant utility that "absent statutory authority, final rates cannot be retroactively adjusted." (*citing Arizona Grocery Co.*, 284 U.S. at 383-90)).

11. Based on these well-established principles, the Commission cannot reach back in time and change the rates charged by Verizon under a legally enforceable tariff. The Commission can effect that change only on a *prospective* basis. Further, as FairPoint's Motion establishes, the Commission has very limited authority to grant reparations at all – only for "an illegal or unjustly discriminatory rate, fare, charge or price." FairPoint Motion at 12. The carrier common line charge is not illegal; it was established in 1993 (*see* Order 20,980) and has been in effect ever since. The undisputed evidence demonstrates that Verizon billed the carrier common line charge since at least 2001, and the Competitive Carriers paid those charges without quarrel. That cannot be the hallmark of an illegal rate. Similarly, there is no evidence that Verizon has ever applied the carrier common line charge in a discriminatory manner.

---

[2] The Supreme Court explained that "[a]ll the reported court decisions declare and sustain the proposition that a regulatory tribunal . . . cannot award reparation for the charging of rates which such tribunal has itself prescribed or approved." *Arizona Grocery Co.*, 284 U.S. at 377.

12. As FairPoint's Motion makes clear, the issue of confiscation is far from moot. FairPoint has succeeded to Verizon's interest and is now providing switched access service under the Tariff. *See* FairPoint's Petition to Intervene at 1-2. FairPoint will be providing utility service without just compensation if it is forced to provide switched access "components" under Tariff 85 but is not authorized to bill for them, given the strained interpretation the Commission adopted to reach its conclusion that carrier common line charges do not apply. FairPoint Motion at 9.

13. In this case, permanent rates were set when Tariff 85 was adopted, and those rates have remained in effect for many years. The rates, which included charges for switched access and the carrier common line charge, were within the constitutionally required zone of reasonableness when set. *See Appeal of Campaign for Ratepayer Rights*, 145 N.H. 671, 676 (2001). To now go back and retrospectively revise one of those rates to zero and allow no compensation for it would violate the prescribed zone of reasonableness. Moreover, to readjust downward only one element of tariffed rates without consideration of the impact of that action on all other rates in their totality results in the type of single-issue ratemaking that the Competitive Carriers claim the Commission cannot do.

14. In addition, 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. Tr. Day II at 11; *see also*, Verizon's September 10, 2007 Post-Hearing Brief at 18–25. Prior to DE 90-002, the carrier common line access charge did not exist, and contribution was obtained directly from local transport and local switching rate categories. *Id.* As a result of DE 90-002, the carrier common line rate element was

established to provide contribution[3] 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 (attached to the Pre-filed Direct Testimony of Peter Shepherd). In ordering restitution without allowing Verizon an opportunity to recover the contribution associated with the switched access services that the Competitive Carriers were using, the Commission is engaging in retroactive ratemaking that further violates the prescribed zone of reasonableness.

15. The Competitive Carriers also mischaracterize the record evidence in asserting that Verizon did not bill carrier common line charges until 2005. To the contrary, there is substantial, undisputed evidence that Verizon billed the carrier common line charge prior to 2005 when individual components of switched access were provided. At the July 11, 2007 hearing, Verizon's witness testified that:

> There was traffic that was billed on Verizon CABS that terminated to non-Verizon providers and non-Verizon end-users that used switched access to which the carrier common line would have been charged. This is evidenced by the financial analysis itself, if you go into the level of detail of the months that occurred during the year 2005, before the billing was taken back from the New York Access Billing Corporation or LLC. There are differences between the carrier common line minutes and the local switching minutes, which would show that there are common line minutes being billed that are not associated with a Verizon end office switch. That's a fact. That was probably and most likely would have been calls terminated to wireless carriers.

Tr. Day II at 36. Additional evidence on this point was then provided later that same day:

---

[3] 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.

Q. There are other types of calls similarly involving CCL that are disputed in this case that Verizon did bill, because they had not been handed over to a billing agent, is that correct?

A. That's correct. That would be the calls we discussed this morning, where a call either originated from a CLEC and terminated to a wireless provider or the call originated – terminated from an IXC to a wireless provider, where Verizon was providing the switched access functions, including the tandem switching.

Q. And that covers a period prior to the 2005 period, which triggered the complaint or complaints filed by the various parties in this docket?

A. Yes. Verizon has consistently applied the carrier common line charge on calls that terminate to a wireless provider for either an IXC's toll traffic or a CLEC's toll traffic.

*Id.* at 126-27.

16. Not only do the Competitive Carriers ignore this evidence – that prior to 2005, Verizon billed the carrier common line charge when individual components of switched access were provided – they never refuted it. In fact, Verizon also provided post-hearing documentary evidence (in accordance with Puc 203.09(k)) that the carrier common line charge had been applied prior to 2005. For example, Verizon'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's carrier access billing system from 2001 through 2004. Yet the Competitive Carriers, which bear the burden of proof as the petitioners in this case, *see* Puc 203.25, never refuted this evidence, and thus have never met their evidentiary burden.

17. Further, the Competitive Carriers claim that Verizon's third party billing agent's failure to bill the carrier common line charge for a period of time supports the Competitive Carriers' interpretation of the Tariff. But they introduced no evidence at the hearing about *why* the third party billing agent did not bill the carrier common line charges. To conclude that it was because of its interpretation of the Tariff is pure speculation and completely unsupported by the record.

18. For the reasons stated above and in Verizon's and FairPoint's Motions, the Commission should reverse its decision in Order No. 24,837.

WHEREFORE, Verizon respectfully requests that the Commission:

A. Grant Verizon's and FairPoint's Motions for Rehearing and/or Reconsideration; and

B. Grant such other and further relief as the Commission deems necessary and just.

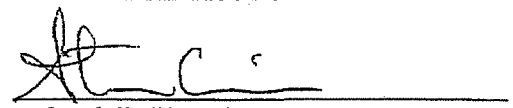
Respectfully submitted,

VERIZON NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

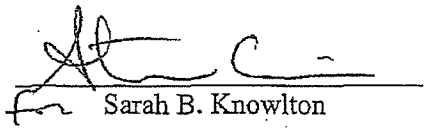
Date: April 28, 2008

By: 
for Sarah B. Knowlton
100 Market Street, P.O. Box 459
Portsmouth, New Hampshire 03802
Telephone (603) 334-6928

Victor D. Del Vecchio, Esquire
Verizon New England Inc.
d/b/a Verizon New Hampshire
185 Franklin Street
Boston, MA 02110-1585

Certificate of Service

I hereby certify that on April 28, 2008, a copy of the foregoing Reply has been forwarded to the parties listed on the Commission's service list in this docket.



Sarah B. Knowlton

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 06-067

FREEDOM RING COMMUNICATIONS, LLC d/b/a BAYRING COMMUNICATIONS

**Complaint Against Verizon New Hampshire Re: Access Charges**

**Order on Motions for Rehearing and Motion to Intervene**

**ORDER NO. 24,886**

**August 8, 2008**

## I. INTRODUCTION

Incumbent local exchange carrier (ILEC) Verizon New Hampshire (Verizon) and the successor to its utility franchise, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) seek rehearing of Order No. 24,837, entered in this docket on March 21, 2008. In Order No. 24,837, the Commission determined that Verizon was not authorized under its wholesale tariff to bill competitive local exchange carriers (CLECs) for certain switched access charges, referred to in the tariff as "carrier common line" (CCL) charges, for calls that involve neither a Verizon customer as the end-user nor a Verizon-provided local loop.

The proceeding commenced on April 28, 2006 upon the petition of CLEC Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing), seeking an investigation. At issue were switched access charges imposed by Verizon on calls that originated on BayRing's network and terminated on the network of a wireless carrier and not Verizon.

In the course of the proceeding, the Commission granted interventions to RNK Inc. d/b/a RNK Telecom (RNK), AT&T Communications of New England, Inc., One Communications, Otel Telekom, Inc., segTEL, the New Hampshire Telephone Association, and two affiliates,

Sprint Communications Company and Sprint Spectrum. RNK ultimately withdrew its intervention. Subsequent to the pre-hearing conference, BayRing sought to amend its initial petition by adding the assertion that Verizon was improperly assessing access charges to BayRing for calls originated by BayRing end user customers and terminating at wireline (as opposed to wireless) end user customers served by carriers other than Verizon. AT&T filed a motion to clarify or amend the scope of the proceeding, outlining various call scenarios and corresponding charges levied by Verizon warranting review in this docket and not yet covered in BayRing's initial and amended complaints.

On October 23, 2006, the Commission issued Order No. 24,683, expanding the scope of the investigation and adopting a schedule for discovery, testimony and evidentiary hearings. The Commission also issued a supplemental order of notice on October 23, 2006, scheduling a second prehearing conference to consider the expanded scope of the proceeding.

The second prehearing conference took place as scheduled on November 3, 2006. BayRing asked the Commission to bifurcate the issues of "liability" (*i.e.,* the proper interpretation and application of the Verizon tariffs) and "damages" (*i.e.*, the calculation of any refunds and/or reparations due from Verizon). Verizon opposed BayRing's request. An ensuing technical session among the parties and Staff did not resolve the disagreement.

On November 29, 2006, the Commission issued Order No. 24,705, revising the procedural schedule to provide for an initial phase to determine tariff interpretation issues. The Commission directed each party intending to seek reparations pursuant to RSA 365:29 to submit calculations of the estimated financial impact of the disputed charges, and to include a description of the calculation method used, an explanation of any assumptions made, and worksheets illustrating how the calculation was determined. The Commission also directed

Verizon to submit (1) an estimate of the total financial impact on Verizon of the charges at issue in this proceeding, (2) to the extent practicable, individual estimates of the disputed charge totals Verizon had billed to BayRing and any intervenors, and (3) an estimate of the annual impact on Verizon if the disputed revenue is no longer collected. One Communications, BayRing, AT&T, Sprint/Nextel and Verizon each filed pleadings in response to Order No. 24,705.

Following the submission of pre-filed direct testimony and pre-filed rebuttal testimony, as well as the exchange of discovery materials, a hearing took place on July 10 and 11, 2007. SegTel, AT&T, One Communications, BayRing, and Verizon filed post-hearing briefs. Order No. 24,837 followed.

On March 28, 2008, Verizon submitted its timely motion for rehearing. Thereafter, BayRing, AT&T and One Communications filed a joint opposition to the Verizon motion; FairPoint filed a motion to intervene and for rehearing. Verizon submitted a pleading on April 28, 2008 that it captioned as a "reply" to the FairPoint rehearing motion. On the same date, BayRing, AT&T and One Communications filed a joint opposition to FairPoint's motion, to which FairPoint responded on April 29, 2008. On May 15, 2008, BayRing, AT&T and One Communications filed a joint motion to strike Verizon's April 28, 2008 submission. On May 27, 2008, Verizon and FairPoint each responded to the joint motion to strike.

## II. SUMMARY OF MOTIONS AND OBJECTIONS

### A. Verizon Motion for Rehearing

#### 1. Verizon

In its motion for rehearing, Verizon contends that wholesale Tariff No. 85 clearly sets forth the right to impose carrier common line charges for all switched access, and that Order No. 24,837 reaches an erroneous conclusion that is contrary to the plain meaning of the tariff

language. Verizon also argues that the order, in effect, results in the unconstitutional confiscation of its property by precluding compensation for a service Verizon provides. Verizon further contends that the Commission's decision is internally inconsistent and contradictory by referring to Verizon "providing a component of switched access service" but denying the applicability of CCL charges when Verizon provides switched access.

**2. AT&T, BayRing and One Communications**

The three jointly appearing CLECs (AT&T, BayRing and One Communications) contend that Verizon's motion misstates the central issue decided in the Commission's order and challenges a decision the Commission never made, further veering away from the central issue by arguing a property confiscation claim. According to the CLECs, the only issue decided was whether Verizon can charge for a service it does not provide. It is the position of the three CLECs that even if one assumes the applicable tariff language is ambiguous, because Verizon is the author of that language it should not be permitted to exploit the ambiguity to its advantage. The CLECs further contend that Verizon should have modified its tariff if it wanted to assert an entitlement to CCL charges for calls that neither involves a Verizon end-use customer or a Verizon local loop.

According to the CLECs, Verizon's confiscation claim is without merit because it assumes a decision the Commission did not make and a confiscation that has not happened. Moreover, the CLECs contend, Verizon attributes a loss to government action when Verizon itself is responsible. The CLECs also take the position that Verizon no longer has any property to be confiscated because it has sold the underlying assets to FairPoint. Finally, the CLECs contend that the ratemaking issues Verizon raises in its discussion of confiscation are not applicable because this case involves neither the setting nor the rejection of rates.

### B. FairPoint Petition to Intervene and Motion for Rehearing

#### 1. FairPoint

FairPoint seeks to intervene as a party whose interests are directly affected by the Commission's order. FairPoint further moves for rehearing, adopting Verizon's position that the plain meaning of the tariff permits the imposition of CCL charges in the circumstances of the case and that the Commission's order amounts to an unlawful taking by ordering the cessation of billing for services provided absent compensation. FairPoint further contends that any change in an existing tariff rate should be prospective only, and that the Commission's order constitutes retroactive ratemaking to the extent that the order determined that application of the CCL charge to service rendered in the past was not just and reasonable.

#### 2. AT&T, BayRing and One Communications

The three jointly appearing CLECs object to FairPoint's petition to intervene, arguing that FairPoint lacks standing. The CLECs assert that FairPoint's rehearing motion merely reiterates Verizon's arguments, reflecting the same flawed interpretation of the Commission's order and misconception of the scope of the underlying case. The CLECs further argue that the order does not constitute retroactive ratemaking; rather, it interprets an existing tariff to reach a conclusion about the appropriate application of previously approved tariff rates.

#### 3. Verizon

Verizon filed a response to FairPoint's motions, supporting FairPoint's intervention as a successor-in-interest to Verizon. Verizon further concurred with FairPoint's arguments for rehearing, incorporating them by reference. Verizon elaborated on its support for FairPoint's contention that the Commission's order constitutes retroactive ratemaking, noting that the tariff

had been investigated and approved in a prior proceeding and, therefore, should not be interpreted as to require any refunds.

### C. Motion to Strike Verizon Reply of AT&T, BayRing and One Communications

#### 1. AT&T, BayRing and One Communications

The three jointly appearing CLECs filed a motion to strike Verizon's reply to FairPoint's motion for rehearing. The CLECs contend that Verizon unlawfully raised the issue of retroactive ratemaking for the first time in its reply. According to the CLECs, RSA 541:4 requires a motion for rehearing to state every ground for appeal, and that New Hampshire law bars new arguments raised for the first time in a reply to another party's filing. The CLECs assert that Verizon's reply is an unauthorized attempt to respond to the CLECs outside of the procedural framework permitted by applicable statute and rules. The CLECs further contend that, in the event the Commission does consider Verizon's claims, the Commission should accept for consideration the CLECs' arguments as set forth in their joint opposition to FairPoint's rehearing motion.

#### 2. Verizon

Verizon contends there is no legal basis for the relief sought by the three jointly appearing CLECs, and that N.H. Code Admin. Rules Puc 203.07 does not define parameters for permissible pleadings or prohibit responsive comments to other parties' pleadings. Verizon points out that the objective of the rehearing process is to provide an opportunity to review and correct any errors in a decision before appeal. Verizon asserts that its contentions about retroactive ratemaking do not comprise a new argument but were integral to its previous assertions concerning Commission changes to existing tariff provisions that had been approved in a fully litigated proceeding. Verizon contends that the Commission cannot reach back in time and change the rates charged by Verizon under a legally enforceable tariff. Finally, Verizon

contends that this case does not involve the appropriate circumstances for reparations under RSA 365:29.

**3. FairPoint**

FairPoint objected to the CLECs' motion to strike as an untimely supplementation of their filings. FairPoint asserted that it has standing to file its motion for rehearing as the successor-in-interest to Verizon with a legal nexus to the outcome of the proceeding. FairPoint further contended that the Commission's order requiring FairPoint to provide a service absent a corresponding fee amounts to injury in fact. Accordingly, FairPoint concludes that the Commission should address the issues raised in its motion, including the retroactive ratemaking claim.

## III. COMMISSION ANALYSIS

RSA 541:3 permits the Commission to grant rehearing of an order when a petitioner's motion states good reason for such relief. Good reason may be shown by identifying specific matters that the Commission "overlooked or mistakenly conceived" in rendering its decision. *Dumais v. State,* 118 N.H. 309, 386 A.2d 1269 (1978). A successful motion does not merely reassert prior arguments and request a different outcome. *Connecticut Valley Electric Co.*, 88 NH PUC 355, 356 (2003).

A careful review of the Verizon and FairPoint motions leads us to conclude that the arguments raised in support of rehearing and reconsideration have been previously raised and addressed in Order No. 24,837, or are mere reformulations of previous arguments with no new, previously unavailable evidence proffered.

**A. Interpretation of Tariff No. 85**

In their arguments that the tariff language is clear and that the Commission reached an erroneous conclusion in its interpretation of that language, Verizon and FairPoint merely repeat arguments raised and addressed in the underlying proceeding and Order No. 24,837. We find that the scope of the underlying proceeding focused on the proper interpretation and application of the tariff language at issue. Verizon and FairPoint have simply reformulated the arguments set forth in that proceeding in an effort to seek a different outcome. As a result, we conclude that rehearing or reconsideration on that point is not warranted.

Verizon contends in its rehearing motion that extrinsic evidence supports its interpretation of Tariff 85. We did not consider extrinsic evidence in Order No. 24,837 because we concluded that the tariff is unambiguous. Nothing presented on rehearing causes us to change this determination. *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 566 (1980) (noting that tariffs "define the terms of the contractual relationship between a utility and its customers" while enjoying "the force and effect of law"), and *In re Town of Durham*, 149 N.H. 486, 487 (2003) (noting that recourse to extrinsic evidence in contract interpretation is inappropriate absent "fraud, duress, mutual mistake, or ambiguity"). Moreover, even if we were to consider the extrinsic evidence proffered by Verizon, it would buttress rather than undermine our interpretation of the tariff language. As noted by the jointly appearing CLECs, Verizon did not impose the charges at issue in this proceeding from the inception of local competition in 1996 until 2001 and Verizon's billing agent did likewise through 2006. Such a course of performance is "indicative of the terms to which they believed themselves bound." *Kentucky Fried Chicken Corp. v. Collectramatic, Inc.*, 130 N.H. 680, 687 (1988). As we explained in our previous order, what occurred thereafter is that the course of performance changed unilaterally in

circumstances where it was incumbent on Verizon to modify its tariff if the existing language left it uncompensated for some portion of the services it was rendering to wholesale customers.[1]

**B. Confiscation of Property**

The confiscation-of-property argument that both Verizon and FairPoint make boils down to a contention that because Tariff 85 has the force and effect of law, *see Appeal of Pennichuck Water Works, supra*, it cannot be read to deprive Verizon (or FairPoint) of payment for a service provided without running afoul of the constitutional protection against uncompensated takings. In the realm of utility regulation the relevant takings jurisprudence stresses that "a regulated utility has no abstract constitutional right to make a profit" and the requirement of just and reasonable rates therefore does not equate to "plenary indemnification" to insulate investor-owned companies from business risk. *Appeal of Public Service Co. of N.H.*, 130 N.H. 748, 755 (1988). Therefore, the takings clauses of the state and federal constitutions do not require us to indemnify Verizon for failing to revise its tariff to the extent this was necessary to compensate the company for certain wholesale services provided in connection with calls that involve neither a Verizon end-user nor a Verizon local loop.

C. Retroactive Ratemaking

We begin our discussion of retroactive ratemaking by resolving a procedural issue. In its initial rehearing motion, Verizon did not raise the issue of retroactive ratemaking; asserting it thereafter was not an effective means for Verizon to resurrect this ground for rehearing and, ultimately, appeal. *See Petition of Ellis*, 138 N.H. 159, 161 (1993) (noting that RSA 541:3

[1] In its brief, Verizon makes a factual contention to the contrary. *See* Verizon Brief of March 28, 2008 at 10 n. 5 ("Verizon never believed that it was necessary to change the Tariff because it has always understood that switched access included local transport and that as a result, the carrier common line charge must be charged to recipients of that service under its existing, legally effective Tariff"). This assertion is not of record and is itself ambiguous on the question of what Verizon understood. Moreover, there is no dispute that switched access includes local transport. The relevant question, which we answered in the negative at page 31 of Order No. 24,837, is whether local transport, standing alone, is sufficient to qualify as switched access service for purposes of the tariff. We remain convinced that it does not, based on the unambiguous language in the tariff.

authorizes only one rehearing motion and RSA 541:4 specifies that such motion must contain "every ground" on which movant claims the underlying order was unjust or unreasonable). Thus, if the issue is validly before us on rehearing, it is because FairPoint raised it. The three jointly appearing CLECs contend that FairPoint lacked standing to assert this ground for rehearing because, having only succeeded to Verizon's utility franchise well after this proceeding commenced, FairPoint cannot have suffered any injury from what it and Verizon deem to have been retroactive ratemaking. The flaw in this argument is that RSA 541:3 imposes no such issue-specific injury-in-fact requirement. Rather, the statute authorizes a party, or any person directly affected by the decision, to seek rehearing "in respect to *any* matter determined in the action or proceeding" (emphasis added).

The retroactive ratemaking argument is really just the mirror image of the uncompensated taking argument we have already rejected. As we noted in our discussion of the latter issue, the *Pennichuck* case makes plain that tariffs have the force and effect of law and also state the terms of the contract between utility and customer. The Court went on to note that, because of these dual attributes, retroactively altering the terms of a tariff would run afoul of both Part 1, Article 23 of the New Hampshire Constitution (enjoining "[r]etrospective laws") and the Contract Clause of the U.S. Constitution (precluding laws that have the effect of "impairing the obligation of contracts"). *Appeal of Pennichuck Water Works*, 120 N.H. at 566. But construing an unambiguous tariff unfavorably to a utility does not amount to making a retroactive change to the tariff. In other words, if a utility collects charges that are not authorized by and in fact are inconsistent with its tariff, any monetary relief awarded to aggrieved customers amounts to rate enforcement rather than ratemaking.

**D. FairPoint's Petition to Intervene**

We find that FairPoint has an interest at stake in the outcome and proper implementation of Order No. 24,837 as successor in interest to Verizon to the extent that billing for CCL where CCL is not, in fact, provided must cease, and that any payment received for CCL where CCL was not provided must be refunded. FairPoint's petition for intervention is therefore granted. In addition, we will permit and consider the various filings made subsequent to Fairpoint's petition to intervene and thus we deny the CLECs' motion to strike.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion of Verizon New Hampshire for rehearing of Order No. 24,837, and the motions of Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE for rehearing of Order No. 24,837 are DENIED; and it is

**FURTHER ORDERED,** that Fairpoint's petition to intervene is GRANTED; and it is

**FURTHER ORDERED**, that the CLECs' motion to strike is DENIED; and it is

**FURTHER ORDERED,** that a prehearing conference will be held on October 1, 2008 at 10:00 am to establish procedures for the conduct of Phase 2 of this proceeding.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 2008.

| Thomas B. Getz | Graham J. Morrison | Clifton C. Below |
|---|---|---|
| Chairman | Commissioner | Commissioner |

Attested by:

Debra A. Howland
Executive Director

## United States Constitution

Article I, Section 10

Clause 1

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

## New Hampshire Constitution

Part First

Article 23

Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.

# TITLE XXXIV
# PUBLIC UTILITIES

## CHAPTER 378
## RATES AND CHARGES

### Schedules, etc., Generally

#### Section 378:1

**378:1 Schedules.** – Every public utility shall file with the public utilities commission, and shall print and keep open to public inspection, schedules showing the rates, fares, charges and prices for any service rendered or to be rendered in accordance with the rules adopted by the commission pursuant to RSA 541-A; provided, however, that public utilities which serve as seasonal tourist attractions only, as determined in accordance with rules adopted by the commission pursuant to RSA 541-A, shall be exempt from the provisions of this chapter.

**Source.** 1911, 164:7. PL 242:1. RL 292:1. 1951, 203:46 par. 1. RSA 378:1. 1983, 115:1, eff. July 24, 1983.

# TITLE XXXIV
# PUBLIC UTILITIES

## CHAPTER 378
## RATES AND CHARGES

### Schedules, etc., Generally

#### Section 378:3

**378:3 Change.** – Unless the commission otherwise orders, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after 30 days' notice to the commission and such notice to the public as the commission shall direct.

**Source.** 1911, 164:7. 1913, 145:7. PL 242:3. RL 292:3. 1951, 203:46 par. 3, eff. Sept. 1, 1951.

# TITLE XXXIV
# PUBLIC UTILITIES

## CHAPTER 378
## RATES AND CHARGES

### Schedules, etc., Generally

#### Section 378:7

**378:7 Fixing of Rates by Commission.** – Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. The commission shall be under no obligation to investigate any rate matter which it has investigated within a period of 2 years, but may do so within said period at its discretion.

**Source.** 1913, 145:10. PL 242:7. RL 292:7. 1951, 203:46 par. 7, eff. Sept. 1, 1951.

# TITLE LV
# PROCEEDINGS IN SPECIAL CASES

## CHAPTER 541
## REHEARINGS AND APPEALS IN CERTAIN CASES

### Section 541:2

**541:2 Uniform Procedure.** – When so authorized by law, any order or decision of the commission may be the subject of a motion for rehearing or of an appeal in the manner prescribed by the following sections.

**Source.** RL 414:2.

# TITLE LV
# PROCEEDINGS IN SPECIAL CASES

## CHAPTER 541
## REHEARINGS AND APPEALS IN CERTAIN CASES

### Section 541:6

**541:6 Appeal.** – Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

**Source.** 1913, 145:18. PL 239:4. 1937, 107:17; 133:78. RL 414:6.

## New Hampshire Administrative Rules

Part Puc 402.10

Puc 402.10 "Competitive intraLATA toll provider (CTP)" means any carrier authorized to provide intraLATA toll service, except for an ILEC that provides toll service exclusively to its local service customers in New Hampshire.

Source. #8348, eff 5-10-05 (See Revision Note at chapter heading for Puc 400)

0306

ATTACHMENT
ITEM One Comm 1-1(e)
VZ #_____



# VERIZON NEW ENGLAND INC.

## Rates and Charges Effective In

## THE STATE OF NEW HAMSPHIRE

## NHPUC No. 85

Issued: March 07, 2001
Effective: March 07, 2001

J. Michael Hickey
President-NH

# 2. General Regulations
## 2.1 Application of Tariff

| 2.1.1 | Scope |
|---|---|
| A. | This tariff contains regulations, rates and charges applicable to switched access services and other miscellaneous services, hereinafter referred to collectively as service(s), provided by Verizon New England Inc., hereinafter referred to as the Telephone Company, to interexchange carriers and wireless carriers, including resellers or other entities engaged in the provision of public utility common carrier services which utilize the network of the Telephone Company, who are certified to provide such services by the PUC. |
| B. | For purposes of administering this tariff, such interexchange carriers and wireless carriers, including resellers or other entities engaged in the provision of public utility common carrier services which utilize the network of the Telephone Company, who are certified to provide such services by the PUC, are hereinafter referred to as customers. |

# 5. Carrier Common Line Access Service

## 5.1 General

Carrier 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, and at the rates and charges contained in Section 30.5.

| 5.1.1 | Description |
|---|---|
| A. | Carrier common line access provides for the use of end users' Telephone Company provided common lines by customers for access to such end users to furnish intrastate communications. Carrier common line access also provides for the use of switched access service terminating in 800 database access line service. |
| 1. | The Telephone Company will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6. |
| B. | The CCSA STP link termination and STP port, as set forth in Section 6, are not subject to a carrier common line charge. |

| 5.1.2 | Limitations |
|---|---|
| A. | A telephone number is not provided with carrier common line access. |
| B. | Detail billing is not provided for carrier common line access. |
| C. | Directory listings are not included in the rates and charges for carrier common line access. |
| D. | Intercept arrangements are not included in the rates and charges for carrier common line access. |
| E. | All trunkside connections provided in the same access group will be limited to the same features and operating characteristics. |
| F. | All lineside connections provided in the same access group will be limited to the same features and operating characteristics. |

# 5. Carrier Common Line Access Service
## 5.2 Undertaking of the Telephone Company

| 5.2.1 | Scope |
|---|---|
| A. | Where the customer is provided with switched access service under this tariff, the Telephone Company will provide the use of Telephone Company common lines by a customer for access to end user. |
| B. | When the customer reports interstate and intrastate use of switched access service, the associated carrier common line access used by the customer for both interstate and intrastate will be apportioned as set forth in Section 5.4.2C. |

# 5. Carrier Common Line Access Service
## 5.3 Obligations of the Customer

### 5.3.1 Reselling MTS/MTS Type Service

A. Where the customer is reselling MTS and/or MTS type service(s) on which the carrier common line access and switched access charges have been assessed, the customer will obtain FGA, FGB or FGD switched access service under this tariff (refer to Section 6) for originating and/or terminating access in the local exchange.

1. Such access group arrangements whether single trunks or trunk groups will have carrier common line access charges applied.

### 5.3.2 Customer Facilities

A. The customer facilities at the premises of the ordering customer shall provide the necessary on hook and off hook supervision.

# 5. Carrier Common Line Access Service
## 5.4 Rate Regulations

| 5.4.1 Application of Rates and Charges | |
|---|---|
| A. | General—Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges. |
| B. | When access to the local exchange is required to provide a customer service (e.g., MTS type, Telex, Data, etc.) that uses resold IC's private line service, switched access service rates and regulations as set forth in Section 6 will apply except when such access to the local exchange is required for the provision of an enhanced service. Carrier common line access rates and charges apply. |
| C. | The switched access service provided by the Telephone Company 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. |
| D. | Where switched access services connect with private line type services at Telephone Company designated WSOs for provision of WATS or WATS type services, switched access service minutes which are carried on that end of the service (i.e., originating minutes for outward WATS and WATS type services) will be assessed carrier common line access per minute charges. |

| 5.4.2 Determination of Charges | |
|---|---|
| A. | When carrier common line access is provided in association with FGA or FGB switched access service in Telephone Company offices that are not equipped for measurement capabilities, assumed average intrastate access minutes will be used to determine carrier common line access charges. The assumed access minutes are as set forth in Section 6.4.4. |
| B. | When access minutes are used to determine carrier common line access charges, they will be accumulated using call detail recorded by Telephone Company equipment. |
| 1. | The Telephone Company measuring and recording equipment will be associated with end office or local tandem switching equipment and will record originating access minutes and terminating access minutes where answer supervision is received. |
| 2. | The accumulated access minutes will be summed on a line by line basis, by line group or end office, whichever type of account is used by the Telephone Company, for each customer and then rounded to the nearest minute. |
| C. | When the customer reports interstate and intrastate use of switched access service, the carrier common line access minutes developed by the Telephone Company, will be multiplied by percentages reported by the customer (refer to Section 2.5.10). The result will then be used to determine the carrier common line charges. The charges for the involved customer account will be determined as follows. |
| 1. | The access minutes for all switched access service subject to carrier common line charges will be multiplied by the per minute rate. |

# 5. Carrier Common Line Access Service
## 5.4 Rate Regulations

| 5.4.2 | Determination of Charges |
|---|---|
| C. | (Continued) |
| 2. | The terminating switched access per minute charge applies to all non 800 access terminating access minutes of use. The terminating switched access per minute charge also applies to all terminating 800 access minutes of use which terminate on a common line. The number of such minutes will be obtained from reports furnished by the customer (refer to Section 2.5.10). |
| 3. | The terminating 800 database access service per minute charge applies to all 800 terminating usage which terminates in a WAL service as provided from Bell Atlantic Telephone Companies Tariff FCC No. 11. The number of such minutes will be obtained from reports furnished by the customer (refer to Section 2.5.10). |
| 4. | The originating switched access per minute charge applies to all non 800 originating access minutes of use less those originating access minutes of use associated with FGA access services where the off hook supervisory signaling is forwarded by the customer's equipment when the called party answers. |
| 5. | The originating 800 database access specific per minute charge applies to all originating access minutes of use associated with calls placed to 800 numbers. The originating 800 specific access per minute charge also applies to all originating usage which terminates in a WAL service as provided from Bell Atlantic Telephone Companies Tariff FCC No. 11. The number of such minutes will be obtained from reports furnished by the customer (refer to Section 2.5.10). |

| 5.4.3 | One Time Credit |
|---|---|
| A. | The Telephone Company will provide a one time credit based on applying a credit amount to each customer's carrier common line usage from April 15, 1997 through full billing periods beginning October 15, 1997 through November 14, 1997. |

# 6. Switched Access Service
## 6.1 General

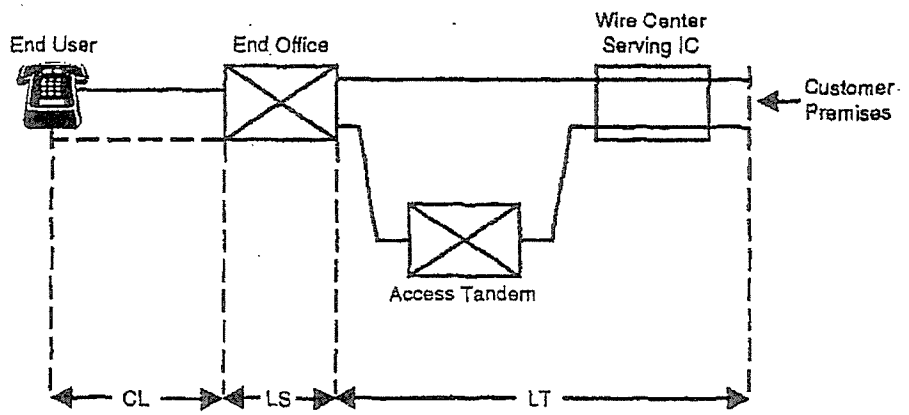
| 6.1.1 | Reference to Tariff Provisions |
|---|---|
| A. | Switched access service is ordered under the access order provisions set forth in Section 3 and billed at the rates and charges set forth in Section 30. In addition to regulations which are contained within this tariff, other regulations pertinent to these services are specified in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6 apply as appropriate (unless otherwise stated in this tariff) for the services specified in Section 6.1.2 of this tariff. |

| 6.1.2 | Service Structure |
|---|---|
| A. | The switched access services provided under this tariff are: originating, terminating, or two way FGA, FGB, FGD and FG2A, and 800 database access. |
| B. | The rate categories which apply to switched access service are as follows. |
| 1. | Local transport (described in Section 6.2.1) |
| 2. | Local switching (described in Sections 6.2.2 and 6.2.3) |
| 3. | Carrier common line (described in Section 5). |
| C. | WAL service is a type of special access service that is provided for use with FGB and/or FGD. WAL service connects an end user premises with a WATS or WSO. This service is ordered and provisioned under Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 7. |
| D. | Local transport, local switching and carrier common line when combined to provide a complete switched access service is as illustrated in Exhibit 6.1.2-1. |

# 6. Switched Access Service
## 6.1 General

### 6.1.2 Service Structure

Exhibit 6.1.2-1
Local Transport, Local Switching and Carrier Common Line when Combined to Provide a Complete Switched Access Service




Local Transport (LT)
Local Switching (LS)
Common Line (CL)

# 6. Switched Access Service
## 6.1 General

| 6.1.3 Manner of Provision | |
|---|---|
| A. | Regulations pertaining to the provision of switched access feature groups provided under this tariff are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.2, except for FG2A which is detailed in Section 6.3.2. In addition to those regulations, the following apply. |
| B. | At the request of the customer, the Telephone Company will provide to the customer the makeup of the facilities and services provided from the customer's premises to the first point of switching. This information will be provided in the form of a design layout report. The design layout report will be provided to the customer at no charge, and will be reissued or updated whenever these facilities are materially changed. |
| C. | At no additional charge, the Telephone Company will, at the customer's request, cooperatively test, at the time of installation, the following parameters. |
| 1. | Loss |
| 2. | C Message Noise |
| 3. | 3 Tone Slope |
| 4. | dc Continuity |
| 5. | Operational Signaling |
| 6. | When the local transport is provided with interface groups 2, 6, 7 and 9 and the local transport termination is two wire (there is a four wire to two wire conversion in local transport), balance parameters (equal level echo path loss) may also be tested. |
| D. | When CCSA and/or the SS7 signaling option with FGD or FG2A is ordered, network compatibility and other operational tests will be performed cooperatively by the Telephone Company and the customer. These tests will verify the capabilities as set forth in TR-TSV-000905 and, in addition for FG2A, as set forth in GR-1434-CORE and TR-NPL-000145. |
| E. | Any customer may request that the facilities used to provide switched access service be specially routed as set forth in Section 11. |

# 6. Switched Access Service
## 6.2 Rate Categories

| | |
|---|---|
| 6.2.1 | Local Transport |
| A. | Local transport provides the transmission facilities between the customer's premises and the end office switch(es) where the customer's traffic is switched to originate or terminate its communications. |
| B. | Local transport is a two way voice frequency transmission path composed of facilities specified by the customer or, for tandem switched transport, determined by the Telephone Company. |
| 1. | The two way voice frequency transmission path permits the transport of calls in the originating direction (from the end user end office switch to the customer's premises) and in the terminating direction (from the customer's premises to the end office switch), but not simultaneously. |
| 2. | The voice frequency transmission path may be comprised of any form or configuration of plant capable of and typically used in the telecommunications industry for the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz. |
| 3. | The circuits and equipment used for local transport may be dedicated to a single customer (direct trunked transport), used in common by multiple customers (tandem switched transport) or a combination of the two. |
| 4. | The customer has the option of a 2-wire voice grade, 4-wire voice grade, DS1 or DS3 entrance facility for local transport from the customer designated premises to the serving wire center of such customer designated premises. For collocation, the customer has the option of a DS1 or DS3 entrance facility for local transport from the customer's collocated premises to the serving wire center of such collocated premises. |
| 5. | The customer has the option of voice grade, DS1 or DS3 direct trunked transport from the customer's serving wire center to designated end offices or access tandems. |
| 6. | The local transport rate category provides for DS3 to DS1 or DS1 to voice grade multiplexing optional features. |
| 7. | At the customer's option, multiplexing functions may be performed at the serving wire center of the customer premises, at a terminus, intermediate or super intermediate hub, at end offices or at Telephone Company access tandems. Channel mileage rates and a mid-link NRC will apply if multiplexing functions are performed between two Telephone Company hubs located in different wire centers. |
| 8. | DS1 to voice grade multiplexing is not available at end offices. |
| C. | The Telephone Company will work cooperatively with the customer in determining the following. |
| 1. | Whether the service is to be directly routed to an end office switch or through an access tandem switch. |
| 2. | Whether the service is to be routed through a traffic operator position system tandem switch. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.1 | Local Transport |
|---|---|
| C. | (Continued) |
| 3. | The directionality of the service. |
| D. | The local transport mileage for access minutes which originate (i.e., FGD) from or terminate (i.e., FGB and FGD) to a WAL service will be calculated on an airline basis, using the V&H coordinates method as set forth in NECA Tariff FCC No. 4 for wire center interconnection information, between the WSO at which the WAL service terminates and the customer premises serving wire center for the FGB or FGD service provided. |
| 1. | For purposes of determining local transport mileage, distance will be measured from the wire center that normally serves the customer to the end office switch(es). Exceptions to the mileage measurement rules are set forth in Section 6.4.5. |
| 2. | When FGB usage originating from or terminating to a WAL service is transported over a FGB trunk for which assumed minutes of use are billed, the local transport mileage for such usage will be calculated in accordance with the V&H coordinates method. |
| E. | The local transport rate category is comprised of the following. |
| 1. | **Entrance Facility**—Comprised of a standard channel termination rate for that portion of the voice frequency transmission path from the customer premises to the serving wire center of the customer premises. |
| a. | The customer must order or have in place an entrance facility from the customer premises to the serving wire center of the customer premises for direct trunked transport or tandem switched transport. |
| b. | An office channel termination rate will apply in lieu of the standard channel termination for each local transport entrance facility terminated at a customer's collocated premises as referenced in Bell Atlantic Telephone Companies Tariff FCC No. 11. Telephone Company facilities or services will not be provided to connect collocated premises in different serving wire centers. |
| 2. | **Interconnection Charge**—Provides for interconnection with the Telephone Company switched access network. |
| F. | **Direct Trunked Transport**—The local transport rate category, when provided as direct trunked transport, is comprised of a channel mileage rate which provides for that portion of the voice frequency transmission path from the serving wire center of the customer premises directly to an end office or an access tandem. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.1 | Local Transport |
|---|---|
| G. | The local transport rate category, when provide as tandem switched transport, is comprised of the following. |
| 1. | **Local Transport Termination**—Provides for that portion of the voice frequency transmission path at either the serving wire center of the customer premises or at the access tandem and the end office switch for traffic that is switched at an access tandem. Local transport termination provides for that portion of the voice frequency transmission path at a host end office and an RSS or an RSM. |
| 2. | **Local Transport Facility**—Provides for that portion of the voice frequency transmission path from either the serving wire center of the customer premises or the access tandem to an end office for traffic that is switched at an access tandem. Local transport facility provides for that portion of the voice frequency transmission path from the host end office to an RSS and an RSM. |
| 3. | **Local Transport Tandem Switching**—Provides for the use of the Telephone Company tandem switching facilities. An operator passthrough charge and multiplexer charge will apply as appropriate. |
| H. | The Telephone Company will provide end users with access to the operators of a customer for operator assisted call completion as desired. If the customer provides operator services for its end users for calls originating from within the LATA and is capable of receiving calls passed through to it in the LATA by the Telephone Company, the customer will be assessed an operator passthrough charge that will include the costs associated with handling the operator services traffic. |
| I. | CCSA provides for interconnection to the Telephone Company common channel signaling network using dedicated STP links and STP ports. |
| J. | **Interface Groups**—Descriptions as well as regulations pertaining to interface groups which are applicable to the switched access feature groups, with the exception of FG2A, offered under this tariff are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11. FG2A is provided with interface groups as detailed in Exhibits 6.2.1-1 through 6.2.1-4. |
| K. | **Non-Chargeable Optional Features**—Where transmission facilities and/or parameters permit, and where signaling conversion is required by the customer to meet its signaling capability, the Telephone Company will provide the customer supervisory signaling arrangement for each transmission path, or other optional features, as follows. |
| 1. | **Interface Groups 1 and 2**—DX supervisory signaling, E&M Type 1 supervisory signaling, E&M Type 2 supervisory signaling, or E&M Type 3 supervisory signaling. |
| 2. | Interface Group 2—SF supervisory signaling or tandem supervisory signaling. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.1 Local Transport | |
|---|---|
| K. | (Continued) |
| 3. | **Interface Groups 6, 7 and 9**—These interface groups, at the option of the customer, may be provided with individual transmission path SF supervisory signaling where such signaling is available in Telephone Company central offices. Generally such signaling is available only where the entry switch provides an analog, (i.e., non digital), interface to the transport termination and a portion of the facility between the analog entry switch and the customer's premises is analog. |
| 4. | **Customer Specified Entry Switch Receive Level**—Allows the customer to specify the receive transmission level at the first point of switching. The range of transmission levels which may be specified is described in TR-NWT-000334. This is available with interface groups 2, 6, 7 and 9 for FGA and FGB. |
| 5. | **Customer Specification of Local Transport Termination**—Allows the customer to specify, for FGB routed directly to an end office or access tandem, a four wire termination of the local transport at the entry switch in lieu of a Telephone Company selected two wire termination. This is available only when the FGB arrangement is provided with Type B transmission specifications. |
| 6. | **SS7 Signaling**—Provided with FGD or FG2A. These trunks may be provided using interface groups 1, 2, 6 and 9. Premises interface codes 04DS9-1S, 04DS9-15 and 04DS6-44 are available for signaling connections as a function of CCSA level (DS1) of digital transmission. |
| a. | The SS7 option allows the customer to receive signals for call setup out of band. This option is available with FGD or FG2A. The option is provided with calling party number, charge number, and carrier selection parameter. In addition, carrier identification parameter is available as a chargeable optional feature. |
| L. | **Chargeable Optional Features** |
| 1. | CCSA provides interconnection to the Telephone Company common channel signaling network using a dedicated STP link and a dedicated STP port. The STP link provides the connection from the customer designated premises to the Telephone Company STP. The STP port provides the customer access to the Telephone Company SS7 network. The STP links and the STP port are dedicated to the customer. |
| a. | Each CCSA STP link provides for two-way digital transmission at a speed of 56 kbps. The connection to the Telephone Company STP can be made from either the customer's SP which requires two 56 kbps circuits or from the customer's STP which requires four 56 kbps circuits. The design requirements for CCSA STP links are described in TR-TSV-000905. |
| b. | The STP locations are set forth in NECA Tariff FCC No. 4. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.1 Local Transport | |
|---|---|
| L.1. | (Continued) |
| c. | Where multiple STP pairs are deployed in a LATA, Telephone Company end offices or tandems are interconnected to only one STP pair. The customer must route terminating traffic to the STP pair that serves the end office or tandem switch where the call is terminated. The customer may request that all of its terminating traffic in a LATA be routed to a single STP pair, using the Telephone Company's SS7 signaling network to provide the connection to the other STP pair in the LATA. If available capacity exists within the Telephone Company SS7 signaling network and where technically feasible, the Telephone Company and the customer will mutually agree to the customer's use of a single STP pair in the LATA. In the event that the Telephone Company SS7 signaling network may be impaired as a result of changes in traffic requirements, the customer will then be notified that its use of a single STP pair in the LATA is no longer permitted and that it must order CCSA links to each STP pair in the LATA. |

# 6. Switched Access Service
## 6.2 Rate Categories

### 6.2.1 Local Transport

Exhibit 6.2.1-1
Premises Interface Codes-Interface Group 1 (USOC TTP1X)

| Telephone Company Switch Supervisory Signaling | | | | Premises Interface Code | Feature Group | | | |
|---|---|---|---|---|---|---|---|---|
| CCS | | | | 2N02 | | | 2A | |

# 6. Switched Access Service
## 6.2 Rate Categories

6.2.1 Local Transport

Exhibit 6.2.1-2
Premises Interface Codes–Interface Group 2 (USOC TTP2X)

| Telephone Company Switch Supervisory Signaling | | | | Premises Interface Code | Feature Group | | | |
|---|---|---|---|---|---|---|---|---|
| | EA | EB | EC | 4SF2 | | | 2A | |
| | EA | EB | EC | 4SF3 | | | 2A | |
| | EA | EB | EC | 4DX2 | | | 2A | |
| CCS | | | | 4N02 | | | 2A | |

# 6. Switched Access Service
## 6.2 Rate Categories

### 6.2.1 Local Transport

Exhibit 6.2.1-3
Premises Interface Codes-Interface Group 6 (USOC TTP6X)

| Telephone Company Switch Supervisory Signaling | | | | Premises Interface Code | Feature Group | | | |
|---|---|---|---|---|---|---|---|---|
| | EA | EB | EC | 4DS9-15 | | | 2A | |
| CCS | | | | 4DS9-15 | | | 2A | |
| CCS | | | | 4DS9-15B | | | 2A | |
| CCS | | | | 4DS9-1S | | | 2A | |
| CCS | | | | 4DS9-15K | | | 2A | |
| CCS | | | | 4DS9-15S | | | 2A | |

# 6. Switched Access Service
## 6.2 Rate Categories

6.2.1 Local Transport

Exhibit 6.2.1-4
Premises Interface Codes–Interface Group 9 (USOC TTP9X)

| Telephone Company Switch Supervisory Signaling | | | | Premises Interface Code | Feature Group | | | |
|---|---|---|---|---|---|---|---|---|
| CCS | | | | 4DS6-44 | | | 2A | |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.2 | Local Switching |
|---|---|
| A. | Local switching provides for the use of common lines and the local end office switching and end user termination functions necessary to complete the transmission of switched access communications to the end users served by the local end office. The local switching functions are as follows. |
| 1. | **Local Access** provides for the use of end office switching equipment. Following are the two local access functions. |
| a. | **Common Switching** provides the local end office switching functions associated with the various feature group switching arrangements. The common switching arrangements provide for originating, terminating or two way FGA, FGB, and FGD. Included as part of common switching are optional features which the customer can order to meet the customer's specific communications requirements. |
| b. | **Transport Termination** provides for the line or trunkside arrangements which terminate the local transport facilities. Included as part of transport termination are various nonchargeable optional termination arrangements. The number of transport terminations provided will be determined by the Telephone Company as set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.5.6. |
| 2. | **Line Termination** provides the terminations for the end user lines terminating in the local end office. |
| 3. | **Intercept** provides for the termination of a call at a Telephone Company intercept operator or recording. The operator or recording tells a caller why a call, as dialed, could not be completed, and if possible, provides the correct number. |

| 6.2.3 | Local Switching Optional Features |
|---|---|
| A. | Optional Features as described herein are available in lieu of, or in addition to the features provided with the feature groups. Optional features are provided as common switching, transport termination or WAL service terminations. |
| B. | Alternate Traffic Routing–End Office Alternate Routing When Ordered in Trunks—A common switching feature that provides an alternate routing arrangement for customers who order in trunks and have access for a particular feature group to an end office via two routes: one route via an access tandem and one direct route. The feature allows the customer's originating traffic from the end office to be offered first to the direct trunk group and then overflow to the access tandem group. It is provided in suitably equipped end offices and is available as a nonchargeable option with FGB and FGD. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.3 | Local Switching Optional Features |
|---|---|
| C. | **Alternate Traffic Routing–Multiple Customer Premises**—A common switching feature that provides the capability of directing originating traffic from an end office (or appropriately equipped access tandem) to a trunk group (the high usage group) to a customer designated premises until that group is fully loaded, and then delivering additional originating traffic (the overflowing traffic) from the same end office or access tandem to a different trunk group (the final group) to a second customer designated premises. The customer shall specify the last trunk CCS desired for the high usage group. It is provided in suitably equipped end office or access tandem switches and is available as a nonchargeable option with FGB and FGD. |
| D. | ANI—A common switching feature that provides the automatic transmission of a seven or ten digit number and information digits to the customer's premises for calls originating in the LATA, to identify the calling station. The ANI feature is an end office software function which is associated on a call by call basis with all individual transmission paths in a trunk group routed directly between an end office and a customer's premises, or where technically feasible, with all individual transmission paths in a trunk group between an end office and an access tandem, and a trunk group between an access tandem and a customer's premises. |
| 1. | Where ANI cannot be provided, (e.g., on calls from four and eight party services), information digits will be provided to the customer. |
| 2. | The seven digit ANI telephone number is available with FGB. With this feature group, technical limitations may exist in Telephone Company switching facilities which require ANI to be provided only on a directly trunked basis. ANI will be transmitted on all calls except those originating from multiparty lines and public telephone service lines using FGB or when an ANI failure has occurred. |
| 3. | The ten digit ANI telephone number is only available with FGD with multifrequency address signaling. The ten digit ANI telephone number consists of the NPA plus the seven digit ANI telephone number. The ten digit ANI telephone number will be transmitted on all calls except those identified as multi-party line or ANI failure, in which case only the NPA will be transmitted (in addition to the information digit described below). The information digits identify the following information. |
| a. | Telephone number is the station billing number–no special treatment required |
| b. | Multiparty line–telephone number is a four or eight party line and cannot be identified–number must be obtained via an operator or in some other manner |
| c. | ANI failure has occurred in the end office switch which prevents identification of calling telephone number–must be obtained by operator or in some other manner |
| d. | Hotel/motel originated call which requires room number identification |
| e. | Coinless station, hospital, inmate, etc. call which requires special screening or handling by the customer |
| f. | Call is an Automatic Identified Outward Dialed (AIOD) call from customer premises equipment. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.3 Local Switching Optional Features | |
|---|---|
| D. | (Continued) |
| 4. | The ANI telephone number is the listed telephone number of the customer and is not the telephone number of the calling party. These ANI information digits are available with FGB and FGD. |
| 5. | The following additional ANI information digits are available with FGD only and will be transmitted as agreed to by the customer and the Telephone Company. |
| a. | InterLATA restricted telephone number is identified line |
| b. | InterLATA restricted hotel/motel line |
| c. | InterLATA restricted coinless, hospital, inmate, etc., line. |
| 6. | ANI is provided as a nonchargeable option with FGB and FGD. |
| 7. | When the SS7 signaling option is specified, the customer will be provided an ANI equivalent, the charge number feature. |
| E. | **Band Advance Arrangement for Use With WAL Service**—A common switching feature that provided in association with two or more WAL service groups, provides for the automatic overflow of terminating calls to a WAL service group, when that group has exceeded its call capacity, to another WAL service group with a band designation equal to or greater than that of the overflowing WAL service group. This arrangement does not provide for call overflow from a group with a higher band designation to one with a lower one. This option is available as a nonchargeable option with FGD. |
| F. | **Call Denial on Line or Hunt Group**—A common switching feature that allows for the screening of terminating calls within the LATA, and for the completion only of calls to 411, 911, 800, 555–1212 and a Telephone Company specified set of NXXs within the Telephone Company local exchange calling area of the dial tone office in which the arrangement is provided. All other toll calls are routed to a reorder tone or recorded announcement. This feature is provided in all Telephone Company end offices. It is available with FGA. |
| G. | **Calling Party Number**—An SS7 signaling option that provides for the automatic transmission of the calling party's ten digit telephone number to the customer's premises for calls originating in the LATA or from the customer's premises for calls terminating in the LATA. The ten digit telephone number consists of the NPA plus the seven digit telephone number, which may or may not be the same number as the calling station's charge number. This feature is provided with FGD and FG2A when ordered with the SS7 signaling option. The specific protocols are contained in TR–TSV–000905. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.3 | Local Switching Optional Features |
|---|---|
| H. | **Carrier Identification Parameter**—An SS7 signaling option that provides for the transmission of CIC information to customers on originating FGD service. CIP is available from suitably equipped end offices and access tandems, when the SS7 signaling option is specified. When CIP is provided, the switch will transmit, to the customer premises, the 3 or 4 digit CIC of the presubscribed line, or the CIC selected when the end user places a call using 10XXX or 101XXXX dialing. CIP is available on an originating basis as a chargeable optional feature with originating or two-way FGD trunk groups. |
| I. | **Carrier Selection Parameter**—An SS7 signaling option that provides for the automatic transmission of a signaling indicator which signifies to the customer whether the call being processed originated from a presubscribed end user of that customer. This feature is provided with FGD and FG2A when ordered with the SS7 signaling option. |
| J. | **Charge Number**—An SS7 signaling option that provides for the automatic transmission of the ten digit billing number of the calling station number and originating line information. This feature is provided with FGD and FG2A when ordered with the SS7 signaling option. The specific protocols are contained in TR-TSV-000905. The information digits shall only be used for billing and collection, routing screening, and completion of the originating subscriber's call or transaction or for services directly related to the originating subscriber's call or transaction. The information provided shall not be reused or resold without first notifying the originating telephone subscriber and obtaining affirmative consent of the subscriber for reuse or resale. Unless the originating subscriber has given consent for the reuse or resale, any information provided shall not be used for any purpose other than those specified in Section 6.2.3V1 thru 6.2.3V4. The restrictions contained herein shall not prevent the subscriber to the CN feature from using information acquired from a CN feature, such as the telephone number and billing information or information derived from analysis of the characteristics of calls received through the CN feature, to offer a product or service that is directly related to the products or services previously purchased by a customer of the CN feature subscriber. |
| 1. | Performing the services or transactions that are the subject of the originating subscriber's call |
| 2. | Ensuring network performance security, and the effectiveness of call delivery |
| 3. | Compiling, using and disclosing aggregate information |
| 4. | Complying with applicable laws |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.3 Local Switching Optional Features | |
|---|---|
| K. | **End Office End User Line Service Screening for Use With WAL Service**—A common switching feature that provides the ability to verify that a customer has dialed a called party address (by screening the called NPA and/or NXX on the basis of geographical bands selected by the Telephone Company) which is in accordance with that end user's service agreement with the customer, (i.e., WATS). This option is provided in all Telephone Company end offices in which WAL service is provided. It is available as a nonchargeable option with FGD. |
| L. | **Hunt Group Arrangement**—A common switching feature that provides the ability to sequentially access one of two or more line side connections in the originating direction, when the access code of the line group is dialed. This feature is provided in all Telephone Company end offices. It is available with FGA. FGA services provided by multiple customers to the same end user may not be combined in a single hunt group unless the local transport facility mileage is the same for each customer (i.e., the distance between each customer's serving wire center and the first point of switching (dial tone office), to which the FGA services are ordered) is the same. |
| M. | **Hunt Group Arrangement for Use With WAL Service**—A common switching feature that provides the ability to sequentially access one of two or more WAL services (i.e. 800 service access lines) in the terminating direction, when the hunting number of the WAL service group is forwarded from the customer to the Telephone Company. This feature is provided in all Telephone Company end offices in which WAL service is provided. It is available as a nonchargeable option with FGB and FGD. |
| N. | **Nonhunting Number for Use With Hunt Group Arrangement or Uniform Call Distribution Arrangement for Use With WAL Service**—A common switching feature that provides an arrangement for an individual WAL service within a multiline hunt or uniform call distribution group that provides access to those WAL services within the hunt or uniform call distribution group when it is idle or provides busy tone when it is busy, when the nonhunting number is dialed. Where available, this feature is only provided in Telephone Company electronic end offices in which WAL service is provided. It is available as a nonchargeable option with FGB and FGD. |
| O. | **Nonhunting Number for Use With Hunt Group or Uniform Call Distribution Arrangement**—A common switching feature that provides an arrangement for an individual line within a multiline hunt or uniform call distribution group that provides access to that line within the hunt or uniform call distribution group when it is idle or provides busy tone when it is busy, when the nonhunting number is dialed. Where available, this feature is provided in Telephone Company electronic end offices only. It is available with FGA. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.3 | Local Switching Optional Features |
|---|---|
| P. | **Operator Trunk Assist Feature**—A transport termination feature that provides the operator functions available in the end office to the customer's operator. These functions are operator released and operator attached. It is available with FGD and is provided as a trunk type of transport termination. This option is not available in combination with the SS7 signaling option. |
| Q. | **Operator Trunk Full Feature**—A transport termination feature that provides the operator functions available in the end office to the customer's operator for interLATA use. These functions are operator released, operator attached, coin collect, coin return and ringback. It is available with FGD and is provided as a trunk type of transport termination. This option is not available in combination with the SS7 signaling option. |
| R. | **Rotary Dial Station Signaling**—A transport termination feature that provides for the transmission of called party addresses signaling from rotary dial stations to the customer's premises for originating calls. This option is provided in the form of a specific type of transport termination. It is available as a nonchargeable option with FGB, only on a directly trunked basis. |
| S. | **Routing of IntraLATA Calls to the Telephone Company for Use With WAL Service**—A common switching feature that is available with either, originating only WAL service not equipped with the end office end user line service screening optional feature, or with two way WAL service, provides that intraLATA calls originating over such services by the end users dialing valid NXX codes in the LATA, time or weather announcement services of the Telephone Company, community information services of an information service provider, local operator assistance (0– and 0+), service codes (611, 911), and directory assistance (411, 555–1212 and NPA+555–1212) will be routed to the facilities of the Telephone Company for completion. Calls placed by the end user's dialing the 950–0XXX or 950–1XXX will be directed to the FGB customer. Additionally, this option provides that interLATA calls originating from such services by the end user's dialing 0– will be directed to the FGD switched access service of the customer providing the interLATA operator services. This option is available as a nonchargeable option with FGD. |
| T. | **Service Class Routing**—A common switching feature that provides the capability of directing originating traffic from an end office to a trunk group to a customer designated premises, based on the line class of service (e.g., coin, multiparty or hotel/motel), service prefix indicator (e.g., 0– or 0+) or service access code (e.g., 800). It is provided in suitably equipped end office or access tandem switches and is available as a nonchargeable option with FGD. |
| U. | **Service Code Denial on Line or Hunt Group**—A common switching feature that allows for the screening of terminating calls within the LATA, and for disallowing completion of calls to 0– and N11. This feature, where available, is provided in all Telephone Company end offices. It is available with FGA. |

# 6. Switched Access Service
## 6.2 Rate Categories

| 6.2.3 Local Switching Optional Features | |
|---|---|
| V. | **Uniform Call Distribution Arrangement**—A common switching feature that provides a type of multiline hunting arrangement which provides for an even distribution of calls among the available lines in a hunt group. Where available, this feature is provided in Telephone Company electronic end offices only. It is available with FGA. |
| W. | **Uniform Call Distribution Arrangement for Use With WAL Service**—A common switching feature that provides a type of multiline hunting arrangement which provides for an even distribution of terminating calls among the available WAL services in the hunt group. Where available, this feature is only provided in Telephone Company electronic end offices in which WAL service is provided. It is available as a nonchargeable option with FGB and FGD. |
| X. | **Up to Seven Digit Outpulsing of Access Digits To Customer**—A common switching feature that provides for the end office capability of providing up to seven digits of the uniform access code (950-0XXX or 950-1XXX) to the customer premises. The customer can request that only some of the digits in the access code be forwarded. The access code digits would be provided to the customer's premises using multifrequency signaling, and transmission of the digits would precede the forwarding of ANI if that feature were provided. It is available as a nonchargeable option with FGB. |
| Y. | **WAL Service Terminations**—Available only in end offices designated as WSOs. |
| 1. | E&M Supervisory Signaling provides for E&M Type 1, Type 2 or Type 3 supervisory signaling. When E&M supervisory signaling is provided, answer supervision is also provided for originating traffic. This option is available with four wire originating, terminating and two way only WAL service, for use with FGB and FGD. |
| 2. | **Answer Supervision** provides for equipment at the end user premises that indicates that the called end user has answered, when such indication is provided by the IC. When answer supervision is provided with two wire WAL service, reverse battery type supervisory signaling is also provided. This option is available with originating only two wire WAL service for use with FGB and FGD. |

# 6. Switched Access Service
## 6.3 Description of Switched Access Services

| 6.3.1 | General |
|---|---|
| A. | Descriptions of the switched access feature groups provided under this tariff are the same as those described in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.3. In addition, a WAL service when ordered from Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 7 may at the option of the customer be provided for use with FGB and FGD. |

| 6.3.2 | Feature Group 2A (FG2A) | |
|---|---|---|
| A. | FG2A is available to wireless carriers exclusively, and provides trunk side access to Telephone Company end office switches and local service providers end office switches with an associated seven or ten digit access code for the wireless carrier's use in originating and terminating intraLATA communications. | |
| 1. | FG2A is provided at appropriately equipped Telephone Company designated electronic access tandems. | |
| 2. | For FG2A with the SS7 signaling option, the CCSA signaling connection is provided to Telephone Company designated STPs. | |
| B. | FG2A may have access to a trunk group or groups at an access tandem switch, designated by the Telephone Company, where switching is provided. | |
| C. | **Billing Options**— The following billing option is available to the FG2A wireless carrier(s). | (C) |
| 1. | Charges are billed to the FG2A wireless carrier and end user. | |
| a. | For calls in the terminating direction, the wireless carrier will be billed all terminating access charges in accordance with the tariff. | |
| b. | For calls in the originating direction, the end user will be billed applicable local or MTS usage charges from NHPUC No. 83. | (D) (D) |

# 6. Switched Access Service
## 6.3 Description of Switched Access Services

| 6.3.2 | Feature Group 2A (FG2A) |
|---|---|
| D. | **Terminating Access**—FG2A switching, when used in the terminating direction, may be used to access valid NXXs in the LATA served by the end offices subtending the access tandems. Calls in the terminating direction will not be completed to local operator service (0- and 0+), directory assistance service, 911 emergency reporting service, exchange telephone repair, time or weather announcement services, 800 database and 900 services and community information services of an information service provider. |
| 1. | FG2A may not be switched in the terminating direction to switched access FGB. |
| 2. | FG2A intraLATA usage will not be switched by the Telephone Company in the terminating direction to FGD. |
| E. | **Originating Access**—At the option of the wireless carrier, a group of seven digit numbers assigned by the Telephone Company is provided for LATA access to FG2A in the originating direction. |
| F. | **Signaling**—FG2A provides trunk side switching through the use of access tandem switch trunk equipment. The switch trunk equipment is provided with multifrequency address signaling. FG2A may be provided, at the customer's option, with multifrequency address signaling in both the originating and terminating directions as specified in technical reference TR-NPL-000145 or common channel signaling utilizing the SS7 protocol. |
| 1. | With common channel signaling, up to 12 digits of the called party number dialed by the customer's end user using dual tone multifrequency or dial pulse address signals will be provided by Telephone Company equipment to the customer's designated premises via a CCSA connection. The SS7 signaling option requires the customer to order CCSA links (refer to Section 6.2.1). |
| G. | **Intercept Announcement**—When all FG2A switching arrangements are discontinued in a LATA, an intercept announcement is provided for a limited period of time. This arrangement provides an announcement that the service associated with the numbers dialed has been disconnected. |

| 6.3.3 | 800 Data Base Access Service |
|---|---|
| A. | **General**—For purposes of administering the rules and regulations set forth in this tariff regarding the provisions of 800 database access service, except where otherwise specified, the term 800 database access service shall include any of the following NPAs as they become available to the industry. |
| 1. | 800 |
| 2. | 822 |
| 3. | 833 |
| 4. | 844 |

# 6. Switched Access Service
## 6.3 Description of Switched Access Services

| 6.3.5 | 800 Data Base Access Service |
|---|---|
| A. | (Continued) |
| 5. | 855 |
| 6. | 866 |
| 7. | 877 |
| 8. | 888 |
| B. | 800 database access service is a LATA-wide offering utilizing originating trunk side switched access service. The service provides for the forwarding of end user dialed 800+NXX-XXXX calls to a Telephone Company switching point which will initiate a query to the database to perform the carrier identification function. The customer has the option of having the dialed 800 number (i.e., 800-NXX-XXXX) or if the 800 to POTS number translation feature is specified, a translated ten digit POTS number (i.e., NPA-NXX-XXXX) is delivered to the customer premises switch capable of performing the carrier identification function. Based on the NXX, the call is forwarded to the appropriate IC. |
| 1. | An 800 carrier identification charge (described in Section 6.6.2), applies to customers who obtain 800 database access service. |
| C. | No access code is required for 800 database access service. When a 1+800+NXX-XXXX call is originated by an end user, the Telephone Company will perform the carrier identification function based on the dialed digits to determine the IC location to which the call is to be routed. The carrier identification function will be available at suitably equipped end offices or access tandem switches. If the call originates from an end office switch not equipped to provide the carrier identification function, the call will be routed to the nearest office at which the function is available. Once carrier identification has been established, the call will be routed to the IC. Calls originating from an end office to which the IC has not ordered 800 database access service, will not be completed. |
| D. | The provision of 800 database access service requires direct access by the customer or other authorized party, to the 800 SMS. |
| E. | The manner in which 800 database access service is provisioned is dependent on the status of the end office from which the service is provided, and/or the status of the customer (i.e., MTS/WATS provider or MTS/WATS type provider). 800 database access service is provisioned as FGD. |
| 1. | Unless prohibited by technical limitations (e.g., different dialing plans), the IC's 800 database access service traffic may, at the option of the IC, be combined in the same trunk group arrangement with the IC's non-800 access service traffic. When required by technical limitations, a separate trunk group must be established for 800 database access service. |

# 6. Switched Access Service
## 6.3 Description of Switched Access Services

| 6.3.3 | 800 Data Base Access Service |
|---|---|
| F. | 800 traffic carried over direct end office routed trunks is available only at end offices equipped with 800 access SSP functionality. 888 traffic carried over direct end office routed trunks is available only at end offices equipped with 888 access SSP functionality. All such traffic originating from end offices not equipped with the appropriate SSP function must be routed via an access tandem at which the function is available and the 800 access service must be ordered accordingly. SSP locations are identified in the NECA Tariff FCC No. 4. |
| G. | **Optional Features** |
| 1. | **Call Handling and Destination Feature**—Allows the IC to create call processing logic for 800–NXX–XXXX dialed calls. In this manner the 800 database access service can be customized to meet individual requirements. The feature may be used in combination with one or more routing options based upon IC specification and technical switch limitations. The IC may segment the 800 calls based on the following options to choose different terminating destinations and/or multiple carriers. |
| a. | NPA/NXX or specific telephone number of the calling party based on the ANI associated with the call or based on the specific telephone number of the calling party (the availability this feature is subject to the Telephone Company's ability to obtain full ten-digit ANI of the calling party). |
| b. | Time of Day |
| c. | Day of Week |
| d. | Specific days of the year (e.g., December 25) |
| e. | Percentage of traffic (in 1% increments) |
| f. | **800 to POTS Translation** which allows ICs to designate a ten digit POTS telephone number to be translated from a specific 800 number to be delivered to the ICs premises. If the POTS number translation feature is ordered, the IC will be unable to determine that such calls originated as 800 dialed calls unless the IC also orders the ANI optional feature. |

# 6. Switched Access Service
## 6.4 Responsibility of the Telephone Company

| 6.4.1 General | |
|---|---|
| A. | In addition to the obligations in Section 2, the Telephone Company has certain other obligations pertaining only to the provision of switched access service. Those regulations are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.5. |

| 6.4.2 Transmission Specifications | |
|---|---|
| A. | The available transmission specifications for switched access service arrangements offered under this tariff are the same as those stated in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.4. |
| B. | Data transmission parameters are not provided with FG2A. |
| C. | The transmission specifications for FG2A are in TR-EOP-000352. |
| D. | Transmission specifications for CCSA signaling connections are set forth in TR-TSV-000905. |
| E. | FG2A is provided with Type B transmission specification only. Type B is provided with interface group 2. |

| 6.4.3 Excessive Trunk Group Blocking | |
|---|---|
| A. | Regulations for network blocking for FGD are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.7.7. |

| 6.4.4 Measuring Access Minutes | |
|---|---|
| A. | Regulations for measuring access minutes for originating, terminating or two way FGA, FGB, FGD and FG2A are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.7.6 except as detailed in Section 6.4.4B. |
| B. | **Feature Group 2A Usage Measurement** |
| 1. | For originating calls over FG2A, except for FG2A with the SS7 signaling option, usage measurement begins when the originating FG2A entry switch receives answer supervision from the customer's point of termination, indicating the called party has answered. |
| 2. | The measurement of originating call usage over FG2A ends when the originating FG2A entry switch receives disconnect supervision from either the originating end user's end office, indicating the originating end user has disconnected or the customer's point of termination, whichever is recognized first by the entry switch. |
| 3. | For terminating calls over FG2A, the measurement of access minutes begins when the terminating FG2A entry switch receives answer supervision from the terminating end user's end office, indicating the terminating end user has answered. |

# 6. Switched Access Service
## 6.4 Responsibility of the Telephone Company

### 6.4.4 Measuring Access Minutes

B. (Continued)

4. The measurement of terminating call usage over FG2A ends when the terminating FG2A entry switch receives disconnect supervision from either the terminating end user's end office, indicating the terminating end user has disconnected, or the customer's point of termination, whichever is recognized first by the entry switch.

5. For originating calls over FGD with the SS7 signaling option, usage measurement for direct trunks begins when the FGD entry switch sends an initial address message. For originating calls over FGD or FG2A with the SS7 signaling option, usage measurement for tandem trunks begins when the FGD or FG2A entry switch receives an exit message.

### 6.4.5 Determining Local Transport Facility Mileage

A. Regulations pertaining to mileage measurement and exceptions to the mileage measurement rules are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.7.11.

### 6.4.6 Determination of Number of Transmission Paths

A. Regulations pertaining to determination of number of transmission paths are the same as those set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.6.2.

# 6. Switched Access Service
## 6.5 Responsibility of The Customer

| 6.5.1 General | |
|---|---|
| A. | In addition to the customer obligations set forth in Section 2, the customer has certain specific obligations pertaining to the use of the switched access service arrangements offered under this tariff as follows. |

| 6.5.2 Facility Requirements | |
|---|---|
| A. | When ordering switched access service, the customer must, at a minimum, specify the local transport entrance facility, either existing or new, to be used and whether direct trunked transport or tandem switched transport is to be furnished. When direct trunked transport is to be furnished, the customer must also specify the direct trunked transport to be used, either existing or new. |

| 6.5.3 Report Requirements | |
|---|---|
| A. | Customers are responsible for providing the following reports or notification to the Telephone Company, when applicable. |
| 1. | **Jurisdictional Reports**—Refer to Section 2.5.10. |
| 2. | **Usage Data–Meet Point Billing**—Refer to Section 3.1.1A. |
| 3. | **Code Screening Reports**—When a customer orders service class routing it will report the number of trunks and/or the appropriate codes to be instituted in each end office or access tandem switch, for each of the arrangements ordered. |
| 4. | **Trunk Group Measurement Reports**—With the agreement of the customer, trunk group data in the form of usage in CCS, peg count and overflow for its end of all access trunk groups, where technologically feasible, will be made available to the Telephone Company. These data will be used to monitor trunk group utilization and service performance and will be based on previously arranged intervals and format. |

| 6.5.4 Supervisory Signaling | |
|---|---|
| A. | The customer's facilities will provide the necessary on hook, off hook, answer and disconnect supervision. |

| 6.5.5 Design of Switched Access Services | |
|---|---|
| A. | When a customer orders switched access service on a per trunk basis, the customer will take reasonable steps to assure that sufficient access services have been ordered to handle its traffic. |

# 6. Switched Access Service
## 6.6 Rate Regulations

| 6.6.1 General | |
|---|---|
| A. | The types of rates and charges that apply to switched access service are monthly rates, usage rates and NRCs. |
| B. | Rates and charges for switched access service provided under this tariff apply to originating, terminating and two way FGB, FGD, FG2A and 800 database access service. |

| 6.6.2 Monthly Rates | |
|---|---|
| A. | Monthly rates are flat recurring rates that apply each month or fraction thereof that an entrance facility, a direct trunked transport switched access service, chargeable optional feature or specific rate elements are provided. For billing purposes, each month is considered to have 30 days. |

| 6.6.3 Usage Rates | |
|---|---|
| A. | Usage rates apply only when a specific rate element is used. They are applied on a per access minute basis or a per call basis. Usage rates are accumulated over a monthly period. Usage rates applied on a per access minute basis are applied differently to the various rate elements as set forth in Section 6.6.2. |

| 6.6.4 Nonrecurring Charges | |
|---|---|
| A. | NRCs are one time charges that apply for a specific work activity (i.e., installation or change to an existing service). The types of NRCs that apply for switched access service are as described herein. |
| B. | Installation of Service—Local transport and local switching NRCs apply to each switched access service installed. |
| 1. | Switched Access Service Ordered on a Per Line or Trunk Basis—The local switching NRC is applied per line or trunk. |
| 2. | Switched Access Service Ordered on a BHMC Basis—The local switching NRC is also applied on a per trunk basis but the charge applies only when the capacity ordered requires the installation of an additional trunk(s). |
| 3. | CCSA STP Links—The NRC is applied per link connection. |
| 4. | NRCs will apply for the initial installation of entrance facility and, if applicable, the initial installation of channel mileage mid-link and mulitiplexer. For each entrance facility of the same type (i.e. voice grade, DS1, DS3) ordered at the same time, for the same date and from the same customer premises to the same serving wire center, the channel termination NRC will apply on a first and additional basis. |

# 6. Switched Access Service
## 6.6 Rate Regulations

| 6.6.4 | Nonrecurring Charges |
|---|---|
| C. | **Installation of Optional Features or BSEs**—If a separate NRC applies for the installation of an optional feature, the charge applies whether the feature is installed coincident with the initial installation of service or at any time subsequent to the initial installation of service. For optional features without separate NRCs, the local switching NRC will apply when the optional features are ordered subsequent to the installation. |
| D. | **Service Rearrangements**—Changes to existing services (installed) which do not result in either a change in the minimum period requirements as set forth in Section 2.2.5 or a change in the physical location of the POT at the customer's premises or the customer's end user's premises are considered service rearrangements. Service rearrangements which are considered to result in a change in the minimum service period are as set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 5. Changes which result in the establishment of new minimum period obligations are treated as discontinuances of existing service, and installations of new service. Changes in the physical location of the POT are treated as moves. The charge to the customer for the service rearrangement is dependent on whether the change is administrative only or involved an actual physical change to the service. |
| 1. | The following administrative changes will be made without charge to the customer. |
| a. | Change of customer name |
| b. | Change of customer or customer's end user premises address when the change of address is not a result of a physical relocation of equipment |
| c. | Change in billing data [name, address or contact name or telephone number] |
| d. | Change of agency authorization |
| e. | Change of customer circuit identification |
| f. | Change of billing account number |
| g. | Change of customer test line number |
| h. | Change of customer or customer's end user contact name or telephone number |
| i. | Change of jurisdiction |
| j. | Change in billing option within the same access tandem from tandem switched transport to direct trunked transport or vice versa. |
| 2. | If, due to network considerations of the Telephone Company, it was impossible to combine 800 database access services traffic with a customer's other trunkside switched access services, no charge shall be applied to combine the trunk groups when it becomes possible. |

# 6. Switched Access Service
## 6.6 Rate Regulations

| 6.6.4 Nonrecurring Charges | |
|---|---|
| D. | (Continued) |
| 3. | To redirect traffic from direct routed to tandem routed for 800 database service, where the service is initially available only at the tandem will not be assessed an NRC. In addition, when 800 database service becomes available at end offices subtending a tandem to which customers have redirected their 800 traffic, customers will be allowed to rearrange their 800 traffic from tandem routed to direct routed at no charge provided the same customer premises is maintained. |
| E. | **Trunk Rearrangements and Rearrangements of Switched Access Services onto an Existing Switched Access DS3 or DS1 Facility**—The regulations contained in Section 6.6.4E will apply for six months from August 30, 1996 for rerouting of trunks from end office to access tandem or from access tandem to end office. In addition, customers who wish to rearrange switched access services from one switched access facility onto a different existing or new switched access facility will be subject to the following regulations. Installation of new switched access facilities for rearrangements will not be subject to an NRC. The Telephone Company guarantees to provide these rearrangements on orders due dated no later than six months from August 30, 1996. These regulations apply to switched access services only and will not include special access services provided on a shared use facility as set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11. |
| 1. | **Trunk Rearrangements**—If the change involves rearrangement of a customer's trunkside switched access service arrangement from direct routed to tandem routed, or from tandem routed to direct routed, a charge shall apply for the customer requested rearrangement, provided all the following conditions are met. |
| a. | The same customer premises is maintained. |
| b. | The direct routed end office must subtend the tandem which service is being rearranged to or from. |
| c. | The Telephone Company will work cooperatively with the customer to determine the equivalent basis for the trunk rearrangements based on industry accepted engineering standards. |
| d. | The orders to connect at the tandem or end office must be placed at the same time as the orders to disconnect from the end office or tandem. The due date for the disconnect may not be more than 90 days after the due date for the connect order. |
| 2. | Rearrangements of a switched access services onto an existing switched access DS3 or DS1 facility will be subject to the rearrangement charge provided the same customer designated premises and end points of the underlying switched access services remain the same. |
| F. | **All Other Service Rearrangements** will be charged for as follows. |
| 1. | If the change involves the addition of an optional feature which has a separate NRC, that NRC will apply. |

# 6. Switched Access Service
## 6.6 Rate Regulations

| 6.6.4 | Nonrecurring Charges |
|---|---|
| F. | (Continued) |
| 2. | If the change involves rearrangement of a customer's FGD access service from direct routed to tandem routed, no charge shall apply for the customer requested rearrangement as long as the following conditions are met. |
| a. | Tandem routed access was not available to the end office at the time the end office was converted to an equal access office. |
| b. | The customer was providing service in the relevant area prior to the availability of tandem routed access. |
| c. | The customer requested the rearrangement of its trunks from direct routed access to tandem routed access within six months of the first availability of tandem routed access in that area. |
| d. | The customer orders, as tandem routed, the equivalent capacity to replace the direct routed trunks. |
| 3. | If the change involves the rearrangement of existing switched access services from a digital interface group to another capable of a higher bit rate), a digital-to-digital rearrangement charge will apply per interface group with the lower bit rate capability. The charge is the same as that set forth in Bell Atlantic Telephone Companies Tariff FCC No. 11. No charge applies to the individual switched services provided within the interface group unless the customer changes the service type or changes only a portion of the individual services from one interface group to another, in which case, the appropriate NRC for each change will apply. |
| 4. | For all other changes, including the addition of, or modifications to, optional features without separate NRCs the local switching NRC will apply. When an optional feature is not required on each transmission path, but rather on an entire transmission path group, an end office or an access tandem switch, only one such charge will apply (i.e., it will not apply per transmission path). |
| 5. | If the change involves a modification to FGD to include the initial provision of 800 database access service in addition to non 800 access service traffic, the local switching installation NRC will apply for service rearrangements on the existing trunks. |
| 6. | If the change involves the conversion of existing FGD or FG2A services with multi-frequency address signaling to FGD with the SS7 signaling option, a rearrangement charge will apply for the first trunk converted and an additional trunk rearrangement charge for each additional trunk ordered and converted at the same time. |
| 7. | If the change involves a change of point code on FGD or FG2A with the SS7 signaling option, a rearrangement charge will apply on a first and additional basis for all orders placed at the same time, between the same two points and for the same due date. |

# 6. Switched Access Service
## 6.6 Rate Regulations

| 6.6.4 Nonrecurring Charges | |
|---|---|
| G. | Moves |
| 1. | A move involves a change in the physical location of one of the following. |
| a. | The POT at the customer's or the customer's end user's premises. |
| b. | The customer's premises. |
| 2. | The charges for the move are dependent on whether the move is to a new location within the same building or to a different building. |
| a. | **Moves Within the Same Building**—When the move is to a new location within the same building, the charge for the move will be the local switching NRC for the capacity affected. There will be no change in the minimum period requirements. |
| b. | **Moves to a Different Building** will be treated as a discontinuance and start of service and all associated NRCs will apply. New minimum period requirements will also be established for the new service. The customer will also remain responsible for satisfying all outstanding minimum period charges for the discontinued service. |
| H. | **Upgrades**—When a customer upgrades a FGA or FGB service to a FGD service, the NRCs will not apply if the following conditions are met. |
| 1. | The same customer premises is maintained. |
| 2. | The orders for the disconnect of the FGA or FGB service and the start of the FGD service are placed with the Telephone Company at the same time. |
| 3. | The customer requests the same effective date for both the disconnect of service and start of service orders. |

# 6. Switched Access Service
## 6.7 Application of Rates and Charges

| 6.7.1 General | |
|---|---|
| A. | Local transport termination, local transport facility, tandem switching, interconnection charge and local switching rates are applied to all minutes of use measured as specified in Section 6.4.4. |
| B. | As specified in the PUC's Order No. 20,077, switched access originating and/or terminating charges apply to all intrastate messages which make use of switched access subject to this tariff. |

| 6.7.2 CCSA Rates | |
|---|---|
| A. | CCSA rates are applied as detailed in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.1.3. |

| 6.7.3 800 Database Access Service Carrier Identification Charge | |
|---|---|
| A. | In addition to the rates and charges associated with the rate categories described in Section 6.2 which are applicable to all switched access service, the 800 database access service carrier identification charge, applies for the identification of the appropriate customer for 800 database access service. The charge is assessed to the IC on a per query basis. |

| 6.7.4 Local Transport Rates | |
|---|---|
| A. | Rate regulations for DS3 switched access entrance facilities are specified in Bell Atlantic Telephone Companies Tariff FCC No. 11, Section 6.7.1. For all other switched access entrance facilities, the rate applies on a recurring monthly basis for the capacity of the entrance facility (i.e., DS1, VG) ordered. |
| B. | The local transport termination rate is applied per minute of use. |
| C. | The local transport facility rate is applied per mile, per minute of use. When the local transport facility mileage is zero (i.e., the end office switch or WSO, as appropriate, and the customer's serving wire center are collocated), the local transport facility rate does not apply. |
| D. | The tandem switching rate is applied per minute of use. |
| E. | The interconnection charge is applied per minute of use. |
| F. | For direct trunked transport, the channel mileage applies on a fixed and per mile monthly basis. When the channel mileage is zero (i.e., the end office switch or WSO, as appropriate, and the customer's serving wire center are located in the same building) the channel mileage rates do not apply. |

# 6. Switched Access Service
## 6.7 Application of Rates and Charges

| 6.7.4 | Local Transport Rates |
|---|---|
| G. | When direct trunked transport is provided to an end office which is a host office, in addition to the appropriate channel mileage monthly rate, the customer will be billed the local transport termination rate on a per minute of use basis and the local transport facility rate on a per mile per minute basis for the transport of the call to of from a RSS or a RSM. The mileage for the local transport facility rate element will be measured from the host office to the RSS or RSM. |
| H. | For direct trunked transport provided to an access tandem, the channel mileage applies on a fixed and per mile basis between the serving wire center and access tandem. The per mile per minute local transport facility and the per minute local transport termination rates apply for the transport from the access tandem to the end office. The per minute tandem switching rate applies to all minutes of use switched at the access tandem. |
| I. | For tandem switched transport, the local transport termination rate, the tandem switching rate and the interconnection charge apply per access minute. The local transport facility rate applies per mile per access minute. |
| J. | When tandem switched transport is provided to an end office which is a host office, in addition to the rates set forth in Section 6.7.4E, the customer will be billed the local transport termination rate per minute of use and the local transport facility rate per mile per minute for the transport of the call to or from a RSS or RSM. |
| K. | For FGA services when the off-hook supervisory signaling is forwarded by the customer's equipment when the called party answers, the local transport termination rate per minute of use and the local transport facility rate per mile per minute will apply for the transport of the call from the dialtone office to the end office to which the traffic terminates or from which the traffic originates. The mileage for the local transport facility will be measured from the dialtone office to the end office. |

# 30. Rates and Charges
## 30.5 Carrier Common Line Access Service

| 30.5.1 Carrier Common Line | | | | |
|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC |
| | Switched Access Service | Terminating - Per access minute | 0.026494 | |
| | | Originating - Per access minute | 0.026494 | |
| | | One Time Credit - Terminating - Per access minute | 0.001593 | |
| | | One Time Credit - Originating - Per access minute | 0.001593 | |
| | 800 Database Access Service | Terminating - Per access minute | 0.026494 | |
| | | Originating - Per access minute | 0.026494 | |
| | | One Time Credit - Terminating - Per access minute | 0.001593 | |
| | | One Time Credit - Originating - Per access minute | 0.001593 | |

# 30. Rates and Charges
## 30.6 Switched Access

| 30.6.1 Entrance Facility | | | | | |
|---|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC | |
| | Standard Channel Termination | VG 2W - Monthly | 36.14 | EFG2X | |
| | | VG 2W - First Channel - NRC | 263.85 | EFG2X | |
| | | VG 2W - Additional Channels - NRC | 179.85 | EFG2X | |
| | | VG 4W - Monthly | 59.00 | EFG4X | |
| | | VG 4W - First Channel - NRC | 375.68 | EFG4X | |
| | | VG 4W - Additional Channels - NRC | 251.11 | EFG4X | |
| | | DS1 - Monthly | 221.48 | EFGDX | |
| | | DS1 - First Channel - NRC | 618.09 | EFGDX | |
| | | DS1 - Additional Channels - NRC | 353.52 | EFGDX | |
| | | DS3 - Electrical - Monthly | 1,893.00 | TYFAX/TYFBX | (T) |
| | | DS3 - Electrical - NRC | 0.00 | TYFAX/TYFBX | |
| | | DS3 - Optical - Monthly - 135 Mbps | 1,054.00 | TYFCX/TYFDX | |
| | | DS3 - Optical - NRC - 135 Mbps | 0.00 | TYFCX/TYFDX | |
| | | DS3 - Optical - Monthly - 560 Mbps | 1,054.00 | TYFGX/TYFHX | |
| | | DS3 - Optical - NRC - 560 Mbps | 0.00 | TYFGX/TYFHX | |
| | | DS3 - Optical - Monthly - 2.488 Gbps | 1,054.00 | TYFJX/TYFKX | |
| | | DS3 - Optical - NRC - 2.488 Gbps | 0.00 | TYFJX/TYFKX | (T) |
| | Office Channel Termination | DS1 - NRC | 270.66 | EFWDX | |
| | | DS1 - Monthly | 5.31 | EFWDX | |
| | | DS3 - NRC | 393.44 | EFW3X | |
| | | DS3 - Monthly | 66.38 | EFW3X | |

J. Michael Hickey
President-NH

Issued: August 22, 2003
Effective: September 21, 2003

Admin Filing

# 30. Rates and Charges
## 30.6 Switched Access

| 30.6.2 Direct Trunked Transport | | | | | |
|---|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC | |
| | Channel Mileage | VG 2W - Fixed - Monthly | 33.39 | 1YTES | |
| | | VG 2W - Per Mile - Monthly | 3.89 | 1YTES | |
| | | VG 4W - Fixed - Monthly | 33.39 | 1YTES | |
| | | VG 4W - Per Mile - Monthly | 3.89 | 1YTES | |
| | | DS1 - Fixed - Monthly | 66.00 | 1YTCS | |
| | | DS1 - Per Mile - Monthly | 21.25 | 1YTCS | |
| | | DS3 - Fixed - Monthly | 702.00 | 1YTDS/1YTOS | (T) |
| | | DS3 - Per Mile - Monthly | 120.00 | 1YTDS/1YTOS | (T) |
| | Mid-Link | DS1 - NRC | 526.52 | NRBL1 | |
| | | DS3 - NRC | 0.00 | NRBL3 | |

| 30.6.3 Tandem Switched Transport–Local Transport Termination | | | | |
|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC |
| | Switched Access Service | Originating - Per access minute | 0.000716 | |
| | | Terminating - Per access minute | 0.000716 | |
| | 800 Database Access Service | Originating - Per access minute | 0.000716 | |
| | | Terminating - Per access minute | 0.000716 | |

| 30.6.4 Tandem Switched Transport–Local Transport Facility | | | | |
|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC |
| | Switched Access Service | Originating - Per mile - Per access minute | 0.000004 | |
| | | Terminating - Per mile - Per access minute | 0.000004 | |
| | 800 Database Access Service | Originating - Per mile - Per access minute | 0.000004 | |
| | | Terminating - Per mile - Per access minute | 0.000004 | |

# 30. Rates and Charges
## 30.6 Switched Access

### 30.6.5 Tandem Switched Transport–Tandem Switching

| ID | Service Category | Rate Element | Rate | USOC |
|---|---|---|---|---|
| | Switched Access Service | Originating - Per access minute | 0.000503 | |
| | | Terminating - Per access minute | 0.000503 | |
| | 800 Database Access Service | Originating - Per access minute | 0.000503 | |
| | | Terminating - Per access minute | 0.000503 | |

### 30.6.6 Interconnection Charge

| ID | Service Category | Rate Element | Rate | USOC |
|---|---|---|---|---|
| | Switched Access Service | Originating - Per access minute | 0.000000 | |
| | | Terminating - Per access minute | 0.000000 | |
| | 800 Database Access Service | Originating - Per access minute | 0.000000 | |
| | | Terminating - Per access minute | 0.000000 | |

### 30.6.7 Local Transport–Other

| ID | Service Category | Rate Element | Rate | USOC | |
|---|---|---|---|---|---|
| | Operator Passthrough | Per Call | 0.322665 | | (N) |
| | Installation | NRC - Per line or trunk | 95.00 | | |
| | Service Rearrangement | 0- Passthrough - Change in Operator Service Traffic Arrangement - NRC - Per 1st TOPS office rearranged | 169.82 | | |
| | | 0- Passthrough - Change in Operator Service Traffic Arrangement – NRC - Per additional TOPS office rearranged | 108.98 | | |
| | | SS7 Signaling Option Conversion – First trunk converted | 0.00 | NRBOA | |
| | | SS7 Signaling Option Conversion – Per additional trunk converted | 0.00 | NRBOB | |
| | Common Channel Signaling Access | STP Link Termination – NRC | 155.00 | | |
| | | STP Link Termination – Monthly | 71.48 | | |
| | | STP Link Transport - Fixed Monthly | 30.12 | | |

# 30. Rates and Charges
## 30.6 Switched Access

### 30.6.7 Local Transport–Other

| ID | Service Category | Rate Element | Rate | USOC | |
|---|---|---|---|---|---|
| | Common Channel Signaling Access | STP Link Transport - Per Mile Monthly | 1.98 | | |
| | | STP Port - Monthly | 450.00 | | |
| | SS7 Point Code Change Charge | Initial - NRC | 136.87 | | |
| | | Additional - Each - NRC | 15.80 | | |
| | DS1 to Voice Multiplexing | Per Arrangement - NRC | 0.00 | MKW1X | |
| | | Per Arrangement - Monthly | 291.38 | MKW1X | |
| | DS3 to DS1 Multiplexing | Per Arrangement - NRC | 0.00 | MKW3X/MJW3X | (T) |
| | | Per Arrangement - Monthly | 950.00 | MKW3X/MJW3X | (T) |

### 30.6.8 Local Switching

| ID | Service Category | Rate Element | Rate | USOC |
|---|---|---|---|---|
| | Switched Access Service | Originating - Per access minute | 0.001934 | |
| | | Terminating - Per access minute | 0.001934 | |
| | 800 Database Access Service | Originating - Per access minute | 0.001934 | |
| | | Terminating - Per access minute | 0.001934 | |
| | Installation | NRC - Per line or trunk | 60.00 | |
| | Carrier Identification Parameter | NRC - Per trunk group | 70.00 | U7CPG |
| | | Monthly - Per trunk group | 60.00 | U7CPG |

### 30.6.9 Feature Group 2A

| ID | Service Category | Rate Element | Rate | USOC |
|---|---|---|---|---|
| | Activation of NXX Code | NRC - Per cellular provider - Per NXX code | 4,500.00 | CUZ-X |
| | Contour Establishment | NRC - Per Contour - Per CGSA | 32,500.00 | C251X |
| | Contour Modifications | NRC - Per modification | 150.00 | C252X |

# 30. Rates and Charges
## 30.6 Switched Access

| 30.6.10 800 Database Access Service | | | | |
|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC |
| | Carrier Identification Charge | Per Query | .003981 | |
| | 800 to POTS Number Translation | Per Query | .001580 | |
| | Call Handling and Destination Feature | Per Query | .003466 | |

| 30.6.11 Shared Billing Arrangement | | | | |
|---|---|---|---|---|
| ID | Service Category | Rate Element | Rate | USOC |
| | Processing Charge | NRC - Per service order | 26.00 | CF3SA |