STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION OF NEW HAMPSHIRE

Complaint Against Verizon New Hampshire Re: Access Charges

INTERLOCUTORY TRANSFER WITHOUT RULING
STATEMENT OF THE CASE

On March 21, 2008, the Public Utilities Commission of New Hampshire (the "Commission") issued an order (the "CCL Order"), concluding that the carrier common line (CCL) charge contained in NHPUC Tariff No. 85 of Northern New England Telephone Operations LLC, d/b/a FairPoint Communications - NNE ("FairPoint") is properly imposed only when: (1) FairPoint provides the use of its common line and (2) it facilitates the transport of calls to a FairPoint end user. This Court reversed the Commission's decision, finding, based on a *de novo* review, that the plain language of the tariff did not comport with the Commission's interpretation of the language. Following issue of the Court's mandate, the Commission issued an Order *Nisi* directing FairPoint to modify its tariff to comport with the Commission's original finding that FairPoint's access tariff should permit the imposition of CCL charges only in those instances when a carrier uses FairPoint's common line and the common line facilitates the transport of calls to a FairPoint end-user. FairPoint timely sought hearing of the Order *Nisi.* Subsequently, the Commission issued a Procedural Order and Supplemental Order of Notice that, among other things, granted FairPoint's motion for hearing but declared that, based on the record of the proceeding and one of the findings in the CCL Order, the parties were estopped from litigating the issue of whether the CCL charge contributes to the joint and common costs of providing FairPoint's service. FairPoint has alleged that this declaration is nullified by the Court's reversal of the CCL Order and is unlawful in that deprives FairPoint of its right to be heard on an issue that is central to its case in opposition to the Order *Nisi.*

STATEMENT OF THE FACTS

For purposes of this proceeding, the following facts apply:

1. FairPoint provides telecommunications services in the state of New Hampshire.

2. One of the telecommunications services that FairPoint provides is switched access service, which allows long distance carriers access to FairPoint's network to receive or deliver long distance traffic.

3. Switched access service rates consist of several components, one of which is the CCL charge, which FairPoint charges for all switched access traffic, even that which does not originate or terminate to its own end user customers but instead associated with the end user customers of other telecommunications carriers who use FairPoint's network for indirect connection to long distance carriers.

4. On April 28, 2006, a complaint was filed with the Commission, requesting a ruling that Verizon, the predecessor to FairPoint, could not impose the CCL charge on calls that transited Verizon's network but did not terminate to a Verizon end user, *i.e.* did not use the end user loop, or "carrier common line." (Exhibit 1)

5. Verizon responded to the complaint, arguing then (and throughout the proceeding) that the services provided were switched access services, and that the plain language of Verizon's Tariff NPUC 85 provided that the CCL charge applied to *all* switched access services. Verizon supported this argument with testimony that the CCL charge, as originally designed, was a contribution element and was intended to recover more than just the costs of the common line. (Exhibit 2)

6. On November 29, 2006, the Commission issued a Procedural Order in which it determined to conduct the proceeding in two phases, first determining the proper interpretation of the relevant tariff or tariffs and then deciding to what extent, if any, reparations are due. It expressly stated that "the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary." (Exhibit 3)

7. On March 21, 2008, the Commission issued "the CCL Order" in which it ordered Verizon to cease billing CCL charges for calls that do not involve a Verizon end user or a Verizon-provided local loop. In the Order, the Commission also found that the CCL did recover costs of the common line and thus was not a contribution element. (Exhibit 4)

8. On May 7, 2009, the Court reversed this order based on the plain language of Tariff 85 and did "not look beyond it to determine its intent." In re Verizon New England, Inc., 158 N.H. 693, 697 (2009).

9. On August 11, 2009, the Commission issued an Order *Nisi* that FairPoint must file revisions to the service description of the CCL charge in Tariff 85 so as to effect the Commission's interpretation of the charge as dictated in the CCL Order. (Exhibit 5)

10. On August 28, 2009, FairPoint filed a Conditional Request for Rehearing of the Order *Nisi.*

11. On September 10, 2009, FairPoint filed revenue-neutral revisions to Tariff 85, revising the service description of the CCL and at that the same time reinstating the per-minute "Interconnection Charge," which was calculated to recover the CCL revenue that would be lost due to the Commission's directive to revise Tariff 85 consistent with the CCL Order. (Exhibit 6)

12. On September 23, 2009, the Commission issued Order No. 25,016, which concluded that a hearing was needed and which outlined the scope of the hearing.

13. On October 12, 2009, FairPoint filed a Motion for Rehearing of the Order *Nisi*, and withdrew the tariff filing, deeming it henceforth merely illustrative. (Exhibit 7)

14. On October 16, 2009, the Commission issued a letter suspending the procedural schedule. (Exhibit 8)

15. On May 4, 2011, the Commission issued a Procedural Order and Supplemental Order of Notice that, among other things, approved the withdrawal of the tariff filing, reiterated the grant FairPoint's motion for hearing on the issue of whether FairPoint's proposed tariff revisions are just and reasonable, but it also declared that, based on the record of the proceeding below and its finding in the reversed decision, the parties were estopped from litigating the issue of whether the CCL charge contributes to the joint and common costs of providing FairPoint's services. (Exhibit 9)

16. On May 24, 2011, FairPoint moved the Commission to permit this Interlocutory Transfer, alleging that the Commissions finding that the CCL charge is not a contribution element is unsupported in the record, is in any event nullified by the Court's reversal of the original Commission decision, and that estoppel on this issue is unlawful in that it deprives FairPoint of its right to be heard on an issue that is central to its case in opposition to the Order *Nisi*. (Exhibit 10)

QUESTIONS OF LAW

The following controlling questions of law are transferred in accordance with RSA 365:20.

A. ON *DE NOVO* REVIEW AND UNCONDITIONAL REVERSAL OF AN ORDER OF THE COMMISSION, DOES ANY FINDING OF THE COMMISSION CONTAINED IN SUCH ORDER REMAIN VALID?

B. ON THE BASIS OF ANY FINDING IN AN ORDER REVERSED BY THE COURT, CAN A PARTY BE ESTOPPED FROM BEING HEARD ON ANY ISSUE RELEVANT TO ITS CASE?

C. IS IT A SETTLED FINDING OF FACT THAT THE CCL CHARGE DOES NOT CONTRIBUTE TO THE JOINT AND COMMON COSTS OF FAIRPOINT'S SERVICE, OR IS THIS *DICTA* OF THE COMMISSION?

A substantial basis exists for a difference of opinion of the questions and an interlocutory transfer may materially advance the termination or clarify further proceedings of the litigation, protect a party from substantial and irreparable injury, or clarify an issue of general importance in the administration of justice for the following reasons:

A Substantial Basis Exists for a Difference of Opinion on the Questions of Law

There is a difference of opinion as to the effect of the Court's reversal decision. The Commission asserts that because the court did not address the Commission's finding in the CCL

Order regarding whether the CCL charge was a contribution element, then the Commission's finding stands and is, in effect, the law of the case. FairPoint disagrees, and asserts that the CCL Order and all its findings and conclusions are vacated as a result of the Court's *de novo* review and decision.

There is also a difference of opinion regarding the lawful effect of the Commission's finding that the CCL Charge is not a contribution element. The Commission asserts that there is support in the record for such a finding. FairPoint disagrees and asserts that the Commission's determination regarding whether the CCL Charge is a contribution element is dicta or, to the extent that it is a lawful finding, is not supported by any evidence contradicting FairPoint's testimony that the CCL charge is a contribution element.

An Interlocutory Transfer may Materially Advance the Termination or Clarify Further Proceedings

The issue of whether the CCL charge is a contribution element is central to FairPoint's case in determining whether its proposed tariff revisions are just and reasonable. If FairPoint is denied the ability to present this argument, it must appeal any eventual decision by the Commission in the proceeding, favorable or not, in order that this finding not be *res judicata* for any other proceeding or complaint on its tariff. Furthermore, if the Court were to grant such an appeal, it would be necessary to develop a substantially new record, adding to delay. Grant of this transfer will ensure that all of the justiciable issues are before the Commission from the beginning of the proceeding and will contribute to the efficient administration of justice.

An Interlocutory Transfer may Clarify an Issue of General Importance in the Administration of Justice

As noted, there is disagreement as to the validity of certain Commission findings that were not taken up by the Court. Grant of this transfer will clarify the extent to which findings of fact and conclusions of law are valid following *de novo* review of a Commission and subsequent reversal on narrow ground.

Copies of the pleadings and motions, and of the pertinent text of statutes, rules, regulations, orders, tariffs, and a list of the exhibits transferred, necessary for the determination of the questions of law transferred, are attached to this interlocutory transfer. A transcript will not be necessary.

COUNSEL

The name, address, and telephone number of each lawyer in the case and the name of the respective clients are:

LAWYER	ADDRESS	TELEPHONE NO.	CLIENT
James A. Huttenhower	225 West Randolph St., Floor 25D Chicago, IL 60606	(312) 727-1444	AT&T Corp.

Tina M. Bragdon	9000 Hammond St. Augusta, ME 04401	(207) 992-9920	CRC Communications of Maine, Inc., d/b/a OTT Communications
Paula Foley	5 Wall Street Burlington, MA 01803	(781) 362-5713	One Communications Corp.
Susan S. Geiger	Orr & Reno, P.A. One Eagle Square Concord, NH 03301	(603) 223-9154	Freedom Ring Communications LLC, d/b/a BayRing Communications
Benjamin J. Aron	2001 Edmund Halley Drive, Bldg. A Reston, VA 20191	(703) 592-7618	Sprint Nextel
R. Edward Price	225 Kenneth Drive Rochester, NY 14623	(585) 255-1227	Global Crossing Telecommunications, Inc.
Alan M. Shoer	Adler Pollock & Sheehan, PC One Citizens Plaza, 8th Floor Providence, RI 02903	(401) 274-7200	XO Communications, Inc.
Martin C. Rothfelder	Rothfelder Stern, L.L.C. 625 Central Ave. Westfield, NJ 07090	(908) 301-1211	Qwest Communications Company, LLC
Kath Mulholland	PO Box 610 Lebanon, NH 03766	(603) 676-8222	segTEL, Inc.
Lynn Fabrizio	21 S. Fruit St., Ste. 10 Concord, NH 03301	(603) 271-2431	NH Public Utilities Commission

LIST OF EXHIBITS

Exhibit 1	Complaint filed by Freedom Ring Communications, d/b/a BayRing Communications.
Exhibit 2	Answer by Verizon.
Exhibit 3	Procedural Order issued by the Commission.
Exhibit 4	CCL Order issued by the Commission.
Exhibit 5	Order *Nisi* issued by the Commission.
Exhibit 6	FairPoint's revenue-neutral revisions to Tariff 85.
Exhibit 7	FairPoint's Motion for Rehearing of the Order *Nisi* and withdrawal of tariff filing.
Exhibit 8	Secretarial Letter suspending procedural schedule.
Exhibit 9	Procedural Order and Supplemental Order of Notice issued by the Commission.
Exhibit 10	FairPoint's motion to permit Interlocutory Transfer.

Debra A. Howland
Executive Director and Secretary

EXHIBIT 1

THE STATE OF NEW HAMPSHIRE

BEFORE

THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

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

v.

VERIZON, NEW HAMPSHIRE

Re: Access Charges

Docket No._____

NOW COMES Freedom Ring Communications, LLC d/b/a BayRing Communications (BayRing) by and through its undersigned attorneys, and, pursuant to NH RSA 365:1, files this complaint with the New Hampshire Public Utilities (Commission) against Verizon, New Hampshire (Verizon) for its improper and unlawful access charges, including carrier common line (CCL) access charges, for calls originating on BayRing's telecommunications network and terminating on wireless carriers' networks. In support of this Complaint, BayRing states as follows:

1. At the outset, BayRing wishes to bring to the Commission's attention that it has made numerous attempts to resolve the issues giving rise to this Complaint by contacting and meeting with representatives of Verizon. *See* Attachment A. In addition, representatives of BayRing have met in a joint session with Commission Staff (Staff) and

representatives of Verizon in an attempt to resolve this dispute. Despite these efforts, Verizon has failed to provide BayRing with a satisfactory response to its claims. BayRing files this Complaint as a last resort.

2. Under RSA 365:1 any person may make a complaint by petition to the Commission against a public utility for the utility's conduct which the complainant believes is in violation of any provision of law, the terms and conditions of the utility's franchise or charter, or any order of the Commission. As set forth in more detail below, BayRing alleges that Verizon has violated its tariff provisions which have the force and effect of law. *See Pennichuck Water Works,* 120 N.H. 562, 566 (1980). Thus, the standards set forth in RSA 365:1 are met.

3. The essence of BayRing's complaint is that Verizon is improperly billing BayRing access charges, including carrier common line (CCL) charges, for calls that originate on BayRing's network and which terminate on the networks of wireless carriers. More specifically, Verizon is inappropriately collecting from BayRing intrastate access charges by including minutes of use (MOUs) for calls that are not routed to a Verizon end-user's local loop.

4. The diagram in Verizon's NH PUC Tariff No. 85, Section 6.1.2 depicts the portion of Verizon's network to which access charges properly apply, including the CCL. *See* Attachment B. As the Tariff diagram clearly illustrates, the CCL charge is associated with "access" to a Verizon end-user's local loop. Attachment C provides another illustration of the various components of switched access charges that properly apply when a call is placed by a BayRing customer to a Verizon end-user.

5. In addition to the above-referenced Tariff diagram, the language in Verizon's Tariff No. 85 supports the position that CCL charges apply to the use of "common lines" which provide access to Verizon's end-users. Tariff No. 85 states that CCL access "provides for the use of **end users' Telephone Company** [i.e. Verizon] **provided common lines** by customers for **access to such end users** to furnish intrastate communications." (Emphasis added.) *See* Verizon New England Inc. NHPUC Tariff No. 85, Section 5.1.1 A. (Attachment D). "Common Line" is defined by Verizon's Tariff No. 85, 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 [Verizon], **terminated on a central office switch**." (Emphasis added.) *See* Attachment E.

6. In contrast to the above-described situation, the diagram in Attachment F illustrates that calls from BayRing's customers to wireless carriers do not utilize Verizon's "common lines" and do not terminate on a Verizon central office switch. Accordingly, BayRing should not be assessed access charges, including CCL charges, for calls that terminate on a wireless carrier's network.

7. Verizon has rejected BayRing's claims by asserting that Section 5.4.1. A. of its Tariff No. 85 allows it to charge CCL rates for "all switched access service provided to the customer..." and that there is no exclusion from these charges for tandem switched minutes of use (MOUs) or cellular tandem switched MOUs. *See* Attachment G. However, this argument fails to recognize that Tariff No. 85, Section 5.4.1. C. limits the application of CCL access rates and charges to switched access service "provided under this tariff..." (i.e. Tariff No. 85).

8. The service purchased from Verizon by BayRing in connection with BayRing's customers' calls that terminate on a wireless carrier's network is not switched access under Tariff No. 85, but rather, is Tandem Transit service purchased under Tariff No. 84. *See* Attachment H. Thus, it is improper for Verizon to bill BayRing for any access charge elements under Tariff No. 85 in connection with services that do not terminate on Verizon's network and that BayRing utilizes and pays for under Tariff No. 84.

9. Consistent with traditional industry practices relating to access charges, various tariff descriptions reveal that those charges are associated with services that utilize Verizon's common lines to provide other carriers with access to a Verizon end-user. The CCL rate element of access is designed to primarily recover the costs of a local loop. Since the calls that are the subject of this complaint neither terminate on Verizon's network nor utilize a Verizon end-user's local loop, Verizon should not be allowed to charge for services that it has not provided.

WHEREFORE, BayRing respectfully requests that this honorable Commission:

A. Pursuant to RSA 365:2, order that Verizon satisfy the matters complained of herein by ceasing to bill BayRing for access charges, including CCL charges, paid in connection with calls by BayRing customers that terminate on a wireless carrier's network and to refund to BayRing all such charges collected by Verizon in the past;

B. In the alternative, order Verizon to answer this complaint in writing as soon as possible;

C. Institute an investigation and hearing for the purpose of determining the amount of due reparations to be made by Verizon under the provisions of RSA 365:29; and

D. Grant such further relief as it deems appropriate.

Respectfully submitted,

Freedom Ring Communications, LLC
d/b/a BayRing Communications
By its attorneys,
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03302-3550
Telephone: 603-223-9154

By: _____
Susan S. Geiger

April 28, 2006

Certificate of Service

I hereby certify that a copy of the foregoing Petition has been sent by first class mail, postage prepaid to Victor Del Vecchio, counsel for Verizon, NH on this 28th day of April, 2006.

_____
Susan S. Geiger

Attachment A

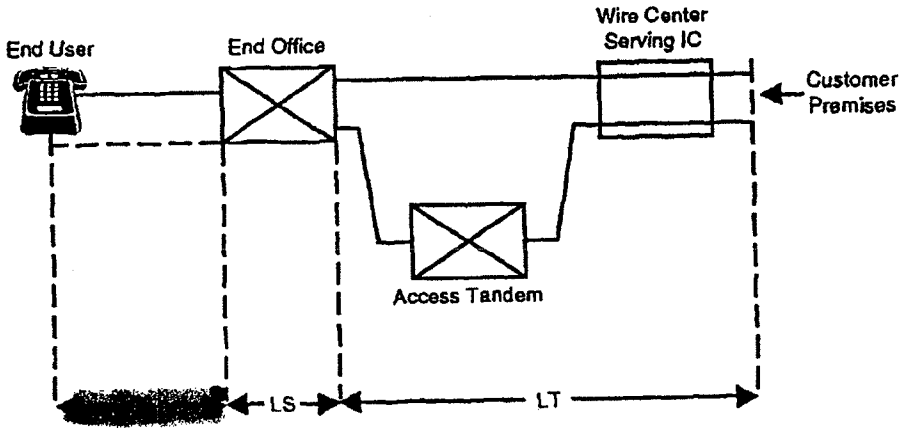
BayRing Dispute of New Hampshire CCL charges on Cellular traffic by Verizon
Time Line

09/07/05	BayRing disputes the 8/25/05 Verizon NH CABS invoice
10/06/05	8/25/06 Invoice Dispute is Denied by Verizon
10/12/05	BayRing disputes the 9/25/05 Verizon NH CABS invoice
11/09/05	9/25/06 Invoice Dispute is Denied by Verizon
11/16/05	BayRing sends 9/25/05 invoice dispute to 1st Escalation
11/16/05	BayRing disputes the 10/25/05 Verizon NH CABS invoice
12/08/05	BayRing disputes the 11/25/05 Verizon NH CABS invoice
12/14/05	10/25/06 Invoice Dispute is Denied by Verizon
12/20/05	BayRing sends 9/25/05 & 10/25/05 invoice disputes to 2nd Escalation (Christine Arruda)
01/04/06	11/25/06 Invoice Dispute is Denied by Verizon
01/04/06	9/25/05 & 10/25/05 2nd Escalation Denied by Verizon (Christine Arruda)
01/17/06	BayRing disputes the 12/25/05 Verizon NH CABS invoice
01/17/06	BayRing sends 9/25/05, 10/25/05 & 11/25/05 invoice disputes to 3rd Escalation (Kristover Lavalla)
01/31/06	12/25/05 Invoice Dispute is Denied by Verizon and added to Escalation
02/08/06	BayRing disputes the 1/25/06 Verizon NH CABS invoice
02/14/06	Conference call with Verizon (Kevin Shea, Regulatory Affairs Director)
02/17/06	1/25/06 Invoice Dispute is Denied by Verizon and added to Escalation
02/21/06	BayRing and Verizon have tech session with NHPUC staff
03/10/06	BayRing disputes the 2/25/06 Verizon NH CABS invoice
03/24/06	2/25/06 Invoice Dispute is Denied by Verizon and added to Escalation
04/10/06	BayRing disputes the 3/25/06 Verizon NH CABS invoice

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



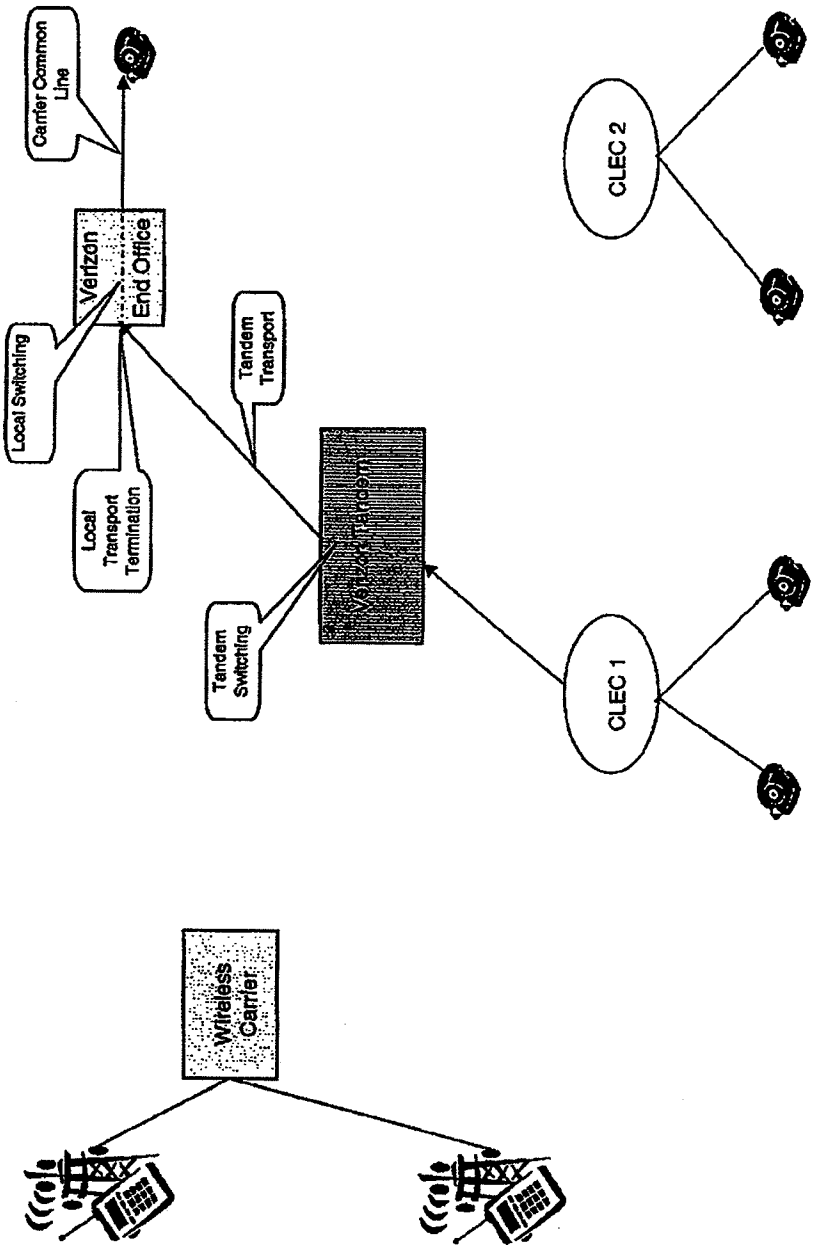
Local Transport (LT)
Local Switching (LS)
Common Line (CL)

Attachment C

CLEC to Verizon End User IntraLATA Call

Verizon bills CLEC carrier Reciprocal Compensation or IntraLata Access charges.

IntraLATA Access charge elements shown



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.

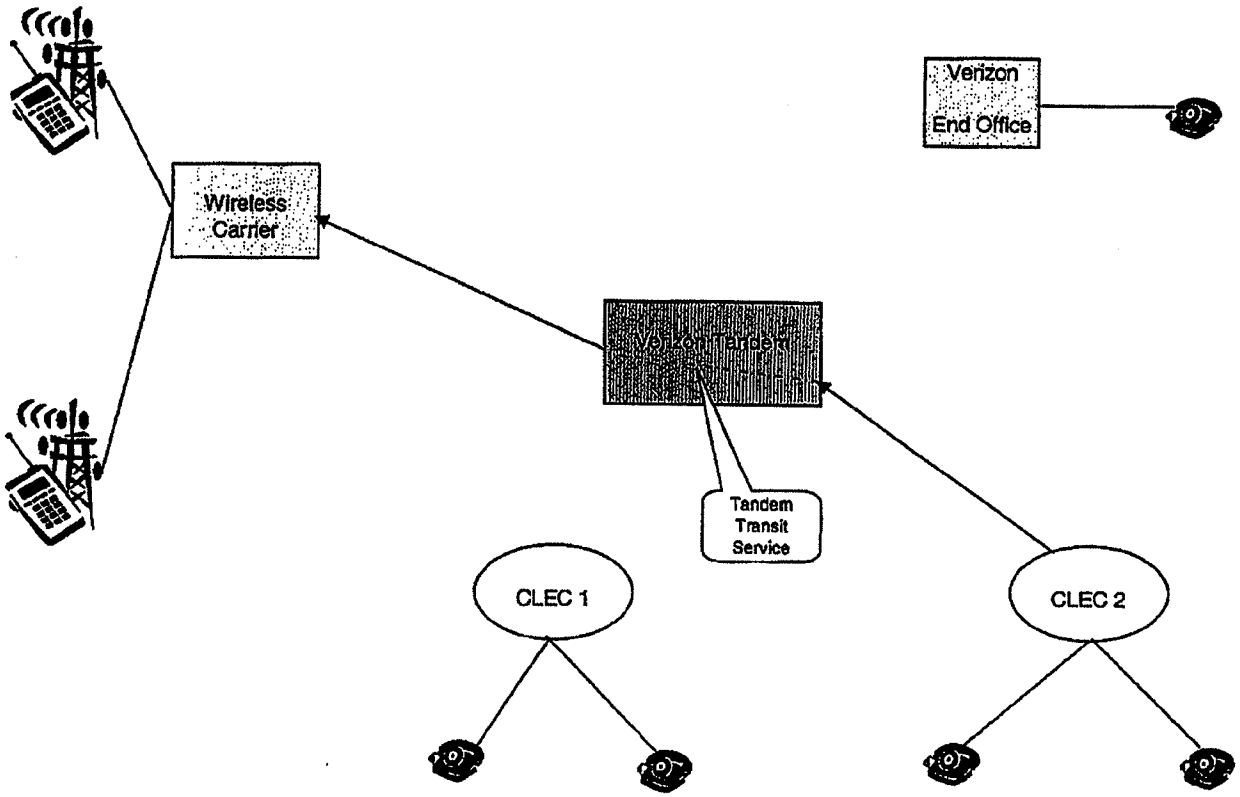
1. Tariff Information
1.3 Tariff Terminology

1.3.2 Definitions
Busy Hour Minutes of Capacity—The customer specified maximum amount of switched access service access minutes the customer expects to be handled in an end office switch during any hour in an 8AM to 11PM period for the feature group ordered. This customer furnished BHMC quantity is the input data the Telephone Company uses to determine the number of transmission paths for the feature group ordered.
Call—A customer attempt for which the complete address code (e.g., 0–, 911, or ten digits) is provided to the serving dial tone office.
Carrier or Common Carrier—See Interexchange Carrier.
CCS—A hundred call seconds, which is a standard unit of traffic load that is equal to one-hundred seconds of usage or capacity of a group of servers (e.g., Trunks).
Central Office—A local Telephone Company switching system where telephone exchange service customer station loops are terminated for purposes of interconnection to each other and to trunks.
Central Office Prefix—The first three digits (NXX) of the seven digit telephone number assigned to a customer's telephone exchange service when dialed on a local basis.
Channel(s)—An electrical (or photonic, in the case of fiberoptic based transmission systems), communications path between two or more points of termination.
Channelize—The process of multiplexing-demultiplexing wider bandwidth or higher speed channels into narrower bandwidth or lower speed channels.
Common Channel Signaling Access—The capability which allows customer access to the Telephone Company SS7 signaling network.
Common Line—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. A common line residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line business is a line provided under the business regulations of the general and/or local exchange service tariffs.
Common Transport—The use of circuits and equipment for transport by multiple customers.
Communications System—Channels and other facilities which are capable of communications between terminal equipment provided by other than the Telephone Company.
Conversation Minutes—The measurement of minutes beginning when either answer supervision or an off hook supervisory signal is received from the terminating end user's end office and ending when either disconnect supervision or an on hook supervisory signal is received from the terminating end user's end office, indicating the called party has disconnected.

CLEC to Wireless End User IntraLATA Call

Verizon should bill Originating CLEC Tandem Transit Services

Verizon should not bill access as Verizon end user is not involved.



Attachment F

Attachment G

Verizon Wholesale Billing Claims Center
Christine.Arruda@verizon.com

01/04/2006

Trent Lebeck
Freedom Ring Communications

Dear Trent Lebeck,

This letter serves as notice to Freedom Ring Communications of the results of Verizon's investigation into Freedom Ring Communications escalated claims, Tracking Numbers; C051012000512 and C0511160004222. The disputes filed on BAN (Billing Account Number) 603 Y55 0046 806 surrounding the calculation of Common Carrier Line (CCL) charges in the state of New Hampshire for the October 2005 ($2,852.03) and November 2005 ($11,660.70) invoices are denied.

The basis of your escalation is outlined below:

1."As noted in the original dispute BayRing feels that Verizon is charging improperly for Intrastate Carrier Common Line (CCL) charges by including minutes of use (MOU) that are **tandem switched** and do not traverse the End Users (EU) loop and the disputed MOU are the minutes that are not contained in the Local Switching (LS) MOU."

2."NHPUC NO 85 and section 5.4.2 determination of charges states nothing to the matter that **tandem switched** MOU is to have the CCL rate applied. Our dispute is based on the fact that Intrastate CCL or any CCL charges are for the use of the EU loop and MOU that dose not route through the local switch can not have the CCL charges applied."

3. "Upon analysis of the MOU being billed it appears that **Cellular Tandem Switched** Terminating traffic is being assessed CCL charges, BayRing's position is that if the MOU is tandem switched to a Cellular carrier the MOU dose not use the Verizon EU loop and should not have CCL charges assessed."

While you are disputing that these types of MOUs should be excluded, New Hampshire state tariff does not list these as being exempt from CCL.

The NHPUC85, Section 5.4.1. A " General: Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges." The tariff does not exclude Tandem switched MOUs or Cellular Tandem switched MOUs.

Therefore it is our determination that the CCL charges were billed correctly. The disputes are denied.

Disputed amounts specified as "DENIED" indicate that Verizon has investigated the claim, disagrees with Freedom Ring Communication's assertion that the charges were billed in error, and considers the

claim closed and the underlying dispute resolved without any adjustment to Freedom Ring Communications account(s).

Freedom Ring Communications must remit payment to Verizon on all "DENIED" line-items included in the Claims Spreadsheet according to the following payment schedule (assuming that Freedom Ring Communications has not already rendered payment):

PAYMENT DUE DATE	AMOUNT DUE
1/18/2006	$14,512.73

If Freedom Ring Communications disagrees with the results of Verizon's claim investigation, Freedom Ring Communications must appeal this decision within ten (10) business days of the date of this letter by explaining the basis for the disagreement with Verizon's denial, and/or providing additional information to support Freedom Ring Communication's rationale for disputing such charges. Freedom Ring Communication's response should include the BAN, (Verizon [or Hawaiian Telcom] or Freedom Ring Communications) tracking number, and the dollar amount. All responses should be sent to Verizon Wholesale Billing Claims via email to the email address on this letterhead.

Please note that if the item referenced on the Claims Spreadsheet is designated in the "Source of Payment Terms" column as tariff or N/A, the charges in the "Denied Amount" column will be referred to Verizon's Collection Department thirty (30) business days after the date of this letter.

If you have any questions, please call us at (617) 743-7678.

Sincerely,

Christine Arruda
Billing Specialist
Verizon Wholesale Billing Claims Center

1. Tariff Information and General Regulations
1.3 Tariff Terminology

1.3.2 Definitions

Tandem—The customer designated location, in the same LATA as the Telephone Company STP, where SS7 signaling information is exchanged between the Telephone Company and the telecommunications carrier. Tandem switches are Class 4 switches which provide interconnection between other switches in the network. While the physical switch(es) may serve an end office function, the tandem functionality is strictly that which provides interconnection between end offices. It does so in cases where direct trunk groups are not economically justified, or when the network configuration indicates alternate routing is economically justified. (Ref: BCR SR-TSV-002275, BOC Notes on the LEC Networks). (C) (C)

Tandem Signaling—All the signaling and data elements necessary for identifying by FGD switched access customer or a TC, each access or TC call in the routing of multi-FGD traffic via common transport to an access tandem. (N)

Tandem Transit Service—An offering provided by the Telephone Company to requesting competitive LECs that enables the TC whose customer originated an intraLATA call destined for a customer of another LEC (not a customer of the Telephone Company) to utilize a Telephone Company tandem switch as a means of establishing connectivity with the terminating competitive LEC. Tandem transit service is not applicable to calls that utilize an interexchange carrier for which interconnection with either the originating and/or terminating LEC(s) are provided pursuant to meet point billing, while service to the interexchange carrier is provided pursuant to switched exchange access service tariffs or other applicable contract arrangements. (N)

Technically Feasible Points—Points at which it is technically or operationally feasible or possible to interconnect with or access the Telephone Company network without either creating a legitimate threat to the reliability or security of the Telephone Company's network or precluding the Telephone Company from maintaining responsibility for the management, control, and performance of its network.

Telecommunications—As defined in the Telecommunications Act of 1996, the transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Carrier or TC—A common carrier that meets the following criteria: (1) has been authorized by the Commission to provide local exchange services as a facilities-based carrier, (2) provides dial tone and local exchange service under tariff within the State of New Hampshire, (3) provides reciprocal interconnection arrangements under contract to all local exchange carriers upon request, (4) provides access to E-911 services and statewide relay service, (5) complies with industry standards on all matters such as technical interconnection standards and billing standards, (6) participates in intercarrier compensation arrangements and provides data for such arrangements required according to industry standards and practices, and (7) complies with other applicable requirements set forth in PUC 1300 Local Telecommunications Competition Rules or any other applicable Commission rules. Such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. Synonymous with the term CLEC. (N) (N)

EXHIBIT 2

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Petition of Freedom Rings Communications, LLC, d/b/a BayRing Communications re Access Charges	Docket No. DT 06-067

ANSWER OF VERIZON NEW HAMPSHIRE

Pursuant to NH RSA 365:2, Verizon New England Inc., d/b/a Verizon New Hampshire ("Verizon NH") hereby responds to the Petition filed by Freedom Ring Communication LLC d/b/a BayRing Communication ("BayRing") with the Commission on April 28, 2006 ("Complaint"). BayRing alleges that Verizon NH is improperly billing BayRing access charges, including carrier common line ("CCL") charges for calls which originate on BayRing's network, route through Verizon NH's network and terminate to a wireless service provider. BayRing is wrong. Verizon NH's bills to BayRing for CCL and other access charges are proper, and BayRing is required to pay those charges, in accordance with Verizon NH's PUC-approved tariff, (NH PUC Tariff No. 85 ("the Tariff"). More specifically, Section 5.4.1.A of the Tariff provides that all switched access services will be subject to carrier common line access charges. Contrary to BayRing's assertion, the services at issue in this case are switched access services governed by the Tariff. There is no valid legal or policy basis for BayRing's Complaint, and the Commission should dismiss it.

Simply put, § 5.4.1.A of the Tariff, entitled "Application of Rates and Charges," states in clear and unequivocal terms that, "Except as set forth herein, ***all switched access service provided to the customer will be subject to carrier common line access***

charges."[1] (Emphasis added.) Further, the two exceptions provided in the Tariff, set forth in § 5.1.1.B, do not exempt from CCL charges calls terminated to customers of wireless carriers or calls that do not travel over a "common line." The clear terms of the Tariff thus require BayRing to pay CCL charges on the switched access services it purchases from Verizon NH, even for calls that terminate on a wireless carrier's network.

BayRing points to various portions of the Tariff regarding the term "common line" in support of its claim that the CCL charges apply only when a CLEC uses a Verizon NH end-user customer's loop. *See* Complaint, ¶¶ 4-7, citing Tariff §§ 1.3.2 (definition of "common line"), 5.1.1.A (description of carrier common line access) and 6.1.2 (diagram of complete switched access service). This is a red herring. First, Tariff §§ 1.3.2 and 5.1.1.A discuss common line access; they do not purport to address the scope or application of CCL *charges*, which is addressed in § 5.4.1, as noted above.

Moreover, the diagram referenced in Tariff § 6.1.2 is intended to provide a general service description, in a conceptual fashion. The diagram and the description of carrier common line access in Tariff § 5.1.1 were adopted from the FCC switched access tariff in 1993 when Verizon NH first introduced its intrastate switched access tariffs in New Hampshire and has been carried forward ever since. The assignment of CCL to the end-user loop had relevance in the federal jurisdiction, as the CCL was a cost recovery element, at that time, for a portion of the end-user loop. From the very beginning, however, in New Hampshire the CCL element was strictly intended as a contribution element and was never associated with any network functionality. *See* Direct Testimony

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[1] Likewise, Tariff § 5.4.1.C provides in part that, "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." (Emphasis added.)

of Michael J. McClusky, Generic Competition Docket 90-002, at pages 12-13, filed May 1, 1992. Mr. McClusky testified as follows:

> Q. Earlier in your testimony you said that the Company's proposal for switched access would include local transport and local switching rates which are set at their incremental costs. Since toll rates today are much higher than their incremental costs, how does the proposal succeed in creating an end-to-end access rate which differs from retail rates only by incremental cost and retail overhead?
>
> A. In addition to the local transport and local switching element, the Company is introducing originating and terminating carrier common line elements which reflect contribution. The sum of the cost-based local transport and local switching rate elements which would apply on an end-to-end basis would fall far below the retail rates, since the a [sic] sum would contain no contribution beyond incremental cost. ***The sole purpose of the carrier common line rate elements 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....***

(Emphasis added.) BayRing is thus flatly wrong in claiming that, "The CCL rate element of access is designed to primarily recover the costs of a local loop." *See* Complaint, ¶ 9.

Ultimately, the Commission approved the rate structure, including the CCL, without limitation in its Order in Docket 90-002. The parties to the original intraLATA competition proceeding were well aware of this fact and have not challenged this practice for nearly thirteen years. Thus, the express terms of § 5.4.1 of the Tariff applying CCL charges to all switched access services (and not merely to the use of an end-user's loop) are not a technical aberration of language but are consistent with the pricing policy underlying the CCL charges.

It is worth noting that carriers purchase switched access service from Verizon NH at their own discretion, and pursuant and subject to the terms stated in the Tariff. Carriers are not required to purchase such services from Verizon NH to complete their calls but are free to make other arrangements, either with competitive access providers or through

a direct connection with the wireless provider. Verizon NH is simply billing its PUC-approved rates for services purchased by BayRing and rendered by Verizon NH.

BayRing also claims that the access services it purchases from Verizon NH in connection with calls that terminate on a wireless carrier's network are not switched access services at all (and thus are not purchased under the Tariff and subject to CCL charges) but instead are Tandem Transit Services (TTS) purchased under a different tariff, NH PUC Tariff No. 84. *See* Complaint, ¶ 8. Once again, BayRing is incorrect. First, BayRing's reliance on the definition of Tandem Transit Service in Tariff No. 84, § 1.3 is misplaced. That provision is simply a general description and is not the appropriate tariff reference for the terms and conditions of this service. A review of the more relevant sections of Tariff No. 84, including the actual Tandem Transit Service (TTS) description, demonstrates that TTS is not available to BayRing for the application at issue here. *See* Attachment A.

Tariff No. 84, Part C, Section 1.3.3 states that TTS provides for the exchange of traffic between two telecommunications carriers ("TC"s) or between a TC and another carrier purchasing Meet Point B arrangements. Wireless providers are not "TCs" under the approved tariff definition of a TC. Tariff No. 84, Part A, Section 1.3.2, P. 10, defines a Telecommunications Carrier or TC as a common carrier that, among other criteria:

> (1) has been authorized by the Commission to provide local exchange services as a facilities-based carrier, [and] (2) provides dial tone and local exchange services under tariff within the State of New Hampshire ....

Clearly, wireless providers do not meet these criteria and therefore are not TCs under the terms of Tariff No. 84. Since TTS does not provide for the exchange of traffic between a TC such as BayRing and wireless providers, the service BayRing is purchasing from

Verizon NH is not TTS under Tariff No. 84. Thus, the tariffed services Verizon NH is providing to BayRing to exchange traffic with wireless carriers are switched access services provided under NH PUC Tariff No. 85, and which are subject to CCL charges.

Verizon NH has discussed the issues raised in the Complaint with BayRing on multiple occasions and has attempted to resolve them through a business-to-business resolution. BayRing, however, has been unwilling to accept anything but a complete amnesty from intrastate access charges.

Verizon NH asks that the Commission recognize the Complaint for what it is, an attempt by BayRing to circumvent an approved tariff and avoid paying authorized tariff charges.

WHEREFORE, Verizon NH requests that the Commission dismiss the Complaint and order such other relief to Verizon NH as it deems just.

Respectfully submitted,

Verizon New England Inc.,
d/b/a Verizon New Hampshire

By its attorney

Alexander W. Moore
ave.

Alexander W. Moore
185 Franklin Street – 13th Floor
Boston, Massachusetts 02110
(617) 743-2265

May 30, 2006

1. Switched Interconnection Services (N)
1.3 Meet Point B

1.3.1	Tandem Meet Point (Meet Point B) Arrangement
A.	This arrangement provides a TC with a trunk side point of interconnection at 1.544 Mbps (DS1 rate) (24 voice grade equivalent channels) on the Telephone Company's access tandem switch for access only to the Telephone Company's end offices subtending that tandem switch. The end offices subtending tandem switches are listed in the Local Exchange Routing Guide (LERG) published by Bellcore.
1.	In addition, a TC can utilize this arrangement for the exchange of traffic with other TCs or an ITC through the use of Tandem Transit Service as set forth in Section 1.3.3.

1.3.2	Two Way Meet Point B Reciprocal Traffic Exchange Trunk (RTET) Arrangement
A.	This arrangement provides a TC with a trunk side connection at 1.544 Mbps (DS1 rate) or 44.736 Mbps (DS3 rate with CCSA/SS7 protocol to a point of termination located at the same V&H coordinates as that of the end office of the Telephone Company's access tandem switch for access only to the Telephone Company's end offices subtending that tandem switch. The end offices subtending tandem switches are published in the LERG. 64 Clear Channel Capability is an available option with this arrangement.
1.	Two-Way Meet Point B RTET provides for the following terminations: (1) TC termination of its traffic from its point of termination to a Telephone Company access tandem; and (2) The Telephone Company termination of traffic from its access tandem to a TC's point of interconnection over the same trunk group.

1.3.3	Tandem Transit Service (TTS)
A.	TTS provides for the exchange of POTS traffic between two TCs where the two TCs purchase a meet point B arrangement under this tariff from the same Telephone Company access tandem switch, or between TCs utilizing Dedicated Transport and unbundled local switching through a Telephone Company access tandem switch. TTS also provides for the exchange of local traffic between a TC and an ITC, or other carrier where the TC purchases a meet point B arrangement and the ITC is also connected to the same Telephone Company access tandem switch.
B.	When such calls are terminated to another TC, ITC or other carrier, the Telephone Company will record and transmit call details to the terminating TC, ITC or other carrier and will provide tandem switching and transport on these calls.
C.	Payment of terminating access charges and associated record processing charges for TTS calls are the responsibility of the originating TC. The Telephone Company and the terminating TC, ITC or other carrier will each bill its appropriate charges to the originating TC. (N)

1. Tariff Information and General Regulations
1.3 Tariff Terminology

1.3.2 Definitions	
Tandem—The customer designated location, in the same LATA as the Telephone Company STP, where SS7 signaling information is exchanged between the Telephone Company and the telecommunications carrier. Tandem switches are Class 4 switches which provide interconnection between other switches in the network. While the physical switch(es) may serve an end office function, the tandem functionality is strictly that which provides interconnection between end offices. It does so in cases where direct trunk groups are not economically justified, or when the network configuration indicates alternate routing is economically justified. (Ref: BCR SR-TSV-002275, BOC Notes on the LEC Networks).	(C) (C)
Tandem Signaling—All the signaling and data elements necessary for identifying by FGD switched access customer or a TC, each access or TC call in the routing of multi-FGD traffic via common transport to an access tandem.	(N)
Tandem Transit Service—An offering provided by the Telephone Company to requesting competitive LECs that enables the TC whose customer originated an intraLATA call destined for a customer of another LEC (not a customer of the Telephone Company) to utilize a Telephone Company tandem switch as a means of establishing connectivity with the terminating competitive LEC. Tandem transit service is not applicable to calls that utilize an interexchange carrier for which interconnection with either the originating and/or terminating LEC(s) are provided pursuant to meet point billing, while service to the interexchange carrier is provided pursuant to switched exchange access service tariffs or other applicable contract arrangements.	(N)
Technically Feasible Points—Points at which it is technically or operationally feasible or possible to interconnect with or access the Telephone Company network without either creating a legitimate threat to the reliability or security of the Telephone Company's network or precluding the Telephone Company from maintaining responsibility for the management, control, and performance of its network.	
Telecommunications—As defined in the Telecommunications Act of 1996, the transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.	
Telecommunications Carrier or TC—A common carrier that meets the following criteria: (1) has been authorized by the Commission to provide local exchange services as a facilities-based carrier, (2) provides dial tone and local exchange service under tariff within the State of New Hampshire, (3) provides reciprocal interconnection arrangements under contract to all local exchange carriers upon request, (4) provides access to E-911 services and statewide relay service, (5) complies with industry standards on all matters such as technical interconnection standards and billing standards, (6) participates in intercarrier compensation arrangements and provides data for such arrangements required according to industry standards and practices, and (7) complies with other applicable requirements set forth in PUC 1300 Local Telecommunications Competition Rules or any other applicable Commission rules. Such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. Synonymous with the term CLEC.	(N) (N)

EXHIBIT 3

DT 06-067

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

Complaint Against Verizon, New Hampshire Re: Access Charges

Procedural Order

ORDER NO. 24,705

November 29, 2006

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; Mary E. Burgess, Esq. on behalf of AT&T Communications of New England, Inc.; Devine Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. on behalf of the New Hampshire Telephone Association; 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, Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting that the Commission investigate Verizon New Hampshire's (Verizon's) practice of imposing switched access charges, including carrier common line (CCL) access charges, on calls that originate on BayRing's network and terminate on a wireless carrier's network. BayRing took the position that calls between carriers using Verizon as an interim carrier do not involve switched access, and that, in any event, CCL charges are associated with "access" to a Verizon end-user via Verizon's local loop. However, 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 in its filing that if the Commission determines that a charge should apply to such a transaction, it should be deemed chargeable as tandem transit service under 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 with instructions to file a 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, and 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 under the provisions of RSA 365:29; and (5) in the event Verizon's interpretation of the current tariffs is reasonable, whether any prospective modifications to the tariffs are appropriate.

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) on July 26, 2006, and by segTEL, Inc. on July 28, 2006.

A prehearing conference was held 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. In response to 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 end-user (as well as wireless) 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 technical session held via conference call on September 29, 2006. In its report, Staff recommended alternate schedules for proceeding to an evidentiary hearing or, in the alternative, for proceeding to briefings and a decision on the papers.

On October 23, 2006, the Commission issued Order No. 24,683, which expanded the scope of this investigation and adopting a schedule for proceeding to discovery, testimony and an evidentiary hearing. The scope was expanded to include any other CLEC or CTP carriers 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 now includes calls made or received by either wireless or wireline end-users of carriers other than Verizon, which do not employ a Verizon local loop. The Commission 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 filed a petition to intervene.

The prehearing conference took place as scheduled on November 3, 2006. At 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) in this proceeding. 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 with respect to bifurcation and asking the Commission to push back the approved procedural schedule two weeks upon the issuance of a decision on bifurcation. On November 17, 2006, AT&T filed a letter stating its support for bifurcation. On November 20, 2006, Verizon filed a response to AT&T's letter with comments in opposition of bifurcation. On November 21, 2006, BayRing filed comments reiterating its arguments for bifurcation.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

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

BayRing recommends this proceeding be divided into two phases in the interest of judicial economy. Under this proposal, a first phase would concern the proper interpretation of Verizon's tariff, with inquiry limited to the question of whether refunds should be allowed, with

a second phase conducted to determine the exact amount of such refunds. According to BayRing, it would be inefficient to calculate, with specificity, the charges it believes are owed by Verizon, if the Commission decides the charges are not owed at all.

B. Verizon

Verizon opposes bifurcation, characterizing the CLECs' position with regard to the tariff interpretation and application as a significant rate design change. According to Verizon, reparations on the scale contemplated by BayRing could cost the company many millions of dollars. According to Verizon, data regarding the revenue generated by the current application of the tariff is necessary for the Commission's full understanding of why Verizon has applied the particular charges as it has. Verizon further asks the Commission to keep in mind the magnitude of the financial impact of both the proposed application change(s) and any ultimately required reparations as the Commission considers the proper interpretation and application of the tariff language in question.

C. AT&T Communications of New England, Inc.

In its November 17, 2006 letter, AT&T supported BayRing's recommendation for bifurcation of the proceeding. According to AT&T, at issue is the alleged misapplication of a single, existing tariffed rate; that the question before the Commission is what the tariff has required since it was adopted and what it continues to require today. AT&T does not support the consideration of damages in the first phase of this docket. AT&T stated that due process requires a fair adjudication of whether the language in the tariff allows Verizon to apply CCL charges in the manner it is applying them.

Further, AT&T disagreed with Verizon's statement that the issues in this case constitute tariff changes or rate redesign. According to AT&T, none of the parties have proposed a tariff

change but, rather, the Commission is being asked to determine whether the existing tariff is being properly applied. AT&T suggested that the charges in question are a relatively recent development that are not based on historical revenue requirement considerations, and that to review the issue of tariff interpretation in concert with a consideration of the financial implications of the tariff's application would amount to single-issue ratemaking.

D. NHTA

The NHTA took no position regarding bifurcation of the proceeding.

III. COMMISSION ANALYSIS

In light of the expanded scope of this investigation and the intervention of several additional carriers, we agree with BayRing and AT&T that, in the interest of judicial efficiency, it is appropriate to bifurcate the issues of tariff interpretation and reparations. We thus will conduct the proceeding in two phases, first determining the proper interpretation of the relevant tariff or tariffs and then deciding to what extent, if any, reparations are due. For purposes of Phase II, we will treat petitions for intervention in this docket as petitions for reparation under RSA 365:29, upon request of the intervenor. We further find that the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary.

However, as Verizon has noted, a fair assessment of the interests implicated in a proceeding of this nature warrants some consideration of the magnitude of the potential financial impact involved. We therefore direct each party that seeks reparations pursuant to RSA 365:29 to submit an estimate of the general order of magnitude of the disputed charges. We also direct Verizon to provide an estimate of the potential financial impact to it, if it were ultimately decided that Verizon had not properly applied the tariff. That estimate should include a total amount, and

to the extent practicable, individual calculations of the charges at issue which have been billed to BayRing and each intervenor. Finally, we require Verizon to provide an estimate of the annual impact to Verizon if the disputed revenue is no longer collected.

The required estimates may be submitted in the form of a range of dollar values and should include (1) a description of the methodology used in calculating the estimate, (2) an explanation of any assumptions made in the calculations, and (3) worksheets that illustrate how the calculations were made. There will be no discovery on those estimate calculations during Phase I of the proceeding, which will be limited to tariff interpretation. Finally, we adopt a revised schedule for this proceeding as requested in Staff's November 16, 2006 report.

Accordingly, we revise the procedural schedule as follows, so as to provide for the conduct of Phase I:

Dec. 15, 2006	Discovery served on all parties
Jan 12, 2007	Discovery responses due from all parties
Feb 9, 2007	Prefiled testimony from all parties due
Feb. 23, 2007	Discovery served on all parties
Mar. 9, 2007	Discovery responses due from all parties
Mar. 23, 2007	Rebuttal testimony due from all parties
Apr. 6, 2007	Discovery served on all parties
Apr 20, 2007	Discovery responses due from all parties

We will schedule a merits hearing on Phase I, as well as Phase II as necessary, at a later date.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as set forth above is APPROVED; and it is

FURTHER ORDERED, that each party that intends to seek reparations pursuant to RSA 365:29 submit a calculation of the estimated financial impact of the disputed charges on or before January 12, 2007. Such calculations should include a description of the calculation methodology used, an explanation of any assumptions made, and worksheets illustrating how the calculation was determined; and it is

FURTHER ORDERED, that on or before January 12, 2007, Verizon 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 billed to BayRing and any intervenors, and (3) an estimate of the annual impact on Verizon if the disputed revenue is no longer collected, as set forth more fully above. By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Lori A. Normand
Assistant Secretary

EXHIBIT 4

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

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.

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[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
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director

EXHIBIT 5

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 *Nisi* Directing FairPoint to Revise Tariff

O R D E R N O. 25,002

August 11, 2009

On March 21, 2008, the Commission issued Order No. 24,837, concluding that the carrier common line (CCL) charge contained in NHPUC Tariff No. 85 of Northern New England Telephone Operations LLC, d/b/a FairPoint Communications – NNE (FairPoint) is properly imposed when: (1) Verizon[1] provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. Based on the evidence, the Commission further decided 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. Order No. 24,837 at 27. As previously stated, the tariff provisions are complex and understanding them requires a sophisticated understanding of the telecommunications industry and the history of such charges. *Id.* The Commission's interpretation of the tariff was based on the evidence presented at hearing combined with its understanding of the industry and the purpose of the tariff charges.

On May 7, 2009, the New Hampshire Supreme Court reversed the Commission's decision in Order No. 24,837, finding, based on a *de novo* review, that the plain language of the tariff did not comport with the Commission's interpretation of the language. *Appeal of Verizon New England*, No. 2008-0645, slip op (N.H. May 7, 2009). With regard to the Commission's

[1] Verizon was authorized to transfer its assets to FairPoint by Order No. 24,823, dated February 25, 2008, and FairPoint adopted the former Verizon tariff on April 1, 2008.

interpretation of the tariff in light of the evolution of the telephone industry since the tariff was first adopted, the Court stated "[w]ere we to review the PUC's tariff interpretation deferentially for mere reasonableness or rationality, we might find this argument persuasive." *Id.* at 7.

The order of notice in this proceeding established that in the event Verizon's interpretation of the current tariffs was found to be reasonable, the Commission would decide whether any prospective modifications to the tariffs are appropriate. Based upon the record developed in this proceeding, the Commission found that FairPoint's access tariff should permit the imposition of CCL charges only in those instances when a carrier uses FairPoint's common line and the common line facilitates the transport of calls to a FairPoint end-user. Order No. 24,837 at 27. Because the language of the tariff does not clearly reflect this finding, we direct FairPoint, pursuant to RSA 378:1 and 378:3, to modify its tariff to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services. Such modifications shall include at a minimum, revisions to, or removal of, the following tariff provisions:

> Section 5: "Carrier common line access service is billed to each switched access service provided under this tariff in accordance with the regulations set forth herein and in Section 4.1, and at the rates and charges contained in Section 30.5."
>
> Section 5.4. 1.A: "General - Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges."
>
> Section 5.4. 1.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."

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, FairPoint file revisions to its NHPUC Tariff No. 85 as outlined above, within 30 days from the date of this order; and it is

FURTHER ORDERED, that the Executive Director shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 21, 2009 and to be documented by affidavit filed with this office on or before September 11, 2009; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 28, 2009 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 4, 2009; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 10, 2009, the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of August, 2009.

Thomas B. Getz
Chairman

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary

EXHIBIT 6

Kevin M. Shea
Vice President Government Relations - NH
900 Elm Street, Suite 1922
Manchester, NH 03101

- *RECEIPT* -

September 10, 2009

Ms. Debra Howland
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

NHPUC SEP10'09 PM 4:01

RE: NHPUC 85 – Access Service – Carrier Common Line Access Services and Switched Access Services.

Dear Executive Director Howland:

We are filing the following tariff material for effect October 10, 2009 consisting of:

NHPUC No. 85

Section	Revision of Pages
5	First Revision of Pages 1 and 4
6	First Revision of Page 5
30	Second Revision of Page 8

In compliance with the New Hampshire Public Utility Commission Order Nisi in DT 06-067 dated August 8, 2009, FairPoint files revised terms and conditions to eliminate the application of the Carrier Common Line (CCL) charge to access traffic which does not originate or terminate to a FairPoint end user.

In conjunction with this filing, FairPoint is filing schedule sheets reflecting a revenue neutral adjustment to its switched access rates and is doing so by increasing the Interconnection Charge from $.00000 to $.010164 per minute. This rate will apply equally to all switched access with the same rate used for both originating and terminating traffic.

The revenue neutral rate changes were calculated by analyzing three months' of intrastate switched access usage, including May, June and July of 2009. Switched access usage was summarized for FairPoint end offices and for non-FairPoint end offices. The reduction in CCL revenue for the test period was calculated by multiplying the usage for the non-FairPoint end offices times the CCL rate. The subsequent reduction in revenue for the test period was calculated as shown in Attachment One. This amount was then divided by the total originating and terminating traffic, including traffic to FairPoint end offices and to non-FairPoint end offices. These calculations are provided in the proprietary Attachment One. Page One of this Attachment shows the test period minutes, the lost CCL revenue and the required Interconnection Charge rate to recover the lost CCL revenue. Page Two of this Attachment provides detailed support of the originating and terminating minutes, by traffic type, for each of the test period months.

The test period was selected using recent usage information. The use of a test period is reasonable because the primary driver of the revenue neutral calculation is the relative amounts of usage to FairPoint end offices, usage to non-FairPoint end offices and total usage.

Sincerely,

Kevin M. Shea

5. Carrier Common Line Access Service

5.1 General

Carrier common line access service is billed to each switched access service in those instances when a carrier uses the Telephone Company's common line and the common line facilitates the transport of calls which originate and terminate with a Telephone Company's end-user. This service is 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. (C) (C)

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
5.4 Rate Regulations

5.4.1	Application of Rates and Charges	
A.	**General—** Except as set forth herein, switched access service provided in those instances where a carrier uses the Telephone Company's common line and the common line facilitates the transport of calls which originate and terminate with a Telephone Company end-user will be subject to carrier common line access charges.	(C) (C)
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 intrastate communications. The carrier common line access rates and charges will be billed to each switched access service as described in Section 5.4.1.A in accordance with Section 4.1 and Section 5.4.2.	(C) (C)
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.

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 FairPoint FCC Tariff No.1. Telephone Company facilities or services will not be provided to connect collocated premises in different serving wire centers.	
2.	**Interconnection Charge**— The Interconnection Charge is applied to all local transport access minutes based upon the directionality of the traffic carried over the Switched Access Service and regardless of whether the customer is collocated (provided an Expanded Interconnection arrangement at an end office). The originating Interconnection Charge rate will apply to all originating access minutes of use except those associated with calls placed to 700, 800 and 900 numbers. The terminating Interconnection Charge rate will apply to all terminating access minutes of use and all originating access minutes of use associated with calls placed to 700, 800 and 900 numbers.	(C) (C)
	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.	

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	0.010164		(I)
		Terminating - Per access minute	0.010164		
	800 Database Access Service	Originating - Per access minute	0.010164		
		Terminating - Per access minute	0.010164		(I)

30.6.7 Local Transport–Other

ID	Service Category	Rate Element	Rate	USOC
	Operator Passthrough	Per Call	0.322665	
	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	

EXHIBIT 7

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 by
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE and
Conditional Withdrawal of Tariff Filing

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") and moves for rehearing with respect to Order No. 25,002 (the "Order Nisi") and Order No. 25,016 (the "Scheduling Order") and, to the extent set forth below, conditionally withdraws the tariff pages submitted by FairPoint on September 10, 2009, in response to the Order Nisi. In support, FairPoint states as follows:

I. INTRODUCTION AND BACKGROUND

On March 21, 2008, the Commission issued its Order No. 24,837 in Docket DT 06-067 (this "Docket") determining that the carrier common line charge ("CCL") contained in NHPUC Tariff No. 85 of Verizon New England Inc., d/b/a Verizon New Hampshire ("Verizon") is chargeable only when Verizon provides the use of its common line (loop) facilities to provide access to or from a Verizon end user. *Id.*, pp. 31-32. On March 31, 2008, FairPoint acquired the New Hampshire landline properties and business of Verizon and assumed Verizon Tariff

NHPUC No. 85. This acquisition was effected pursuant to and in accordance with the Commission's Order Approving Settlement Agreement with Conditions, Order No. 24,823 in Docket DT 07-011 (the "Merger Order").

After the issuance of the Merger Order, FairPoint filed a motion to intervene in this Docket, along with a motion for rehearing. Shortly prior to FairPoint's intervention, Verizon had moved for rehearing. While the Commission granted FairPoint's motion to intervene, the Commission denied the motions for rehearing. *See* Order No. 24,886, at ps. 7 and 11. Verizon and FairPoint thereafter appealed the Commission's Order No. 24,837 regarding CCL charges to the New Hampshire Supreme Court. On May 7, 2009, the New Hampshire Supreme Court issued its unanimous decision reversing this Commission, holding that based on the plain language of Tariff NHPUC No. 85, CCL access charges are properly chargeable to all switched-access services, not solely those services for which FairPoint provides loop facilities for access to or from a FairPoint end user. *Appeal of Verizon New England*, 158 N.H. 693 (2009) ("*Verizon*"). Motions for Reconsideration followed. The New Hampshire Supreme Court denied the motions via its order dated June 24, 2009.

On August 11, 2009, the Commission issued its Order Nisi directing FairPoint to file tariff pages revising Tariff NHPUC No. 85 with respect to switched-access charges "to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services." *Id.*, p. 2. On August 28, 2009, FairPoint filed its "Comments and Conditional Request for Hearing...", which pointed out, among other things, that the Commission had expressly removed the issue of prospective tariff changes from this proceeding in its Order dated November 29, 2006 (Order No. 24,705). In Order No. 24,705, the Commission had ruled:

> In light of the expanded scope of this investigation and the intervention of several additional carriers, we agree with BayRing and AT&T that, in the interest of

> judicial efficiency, it is appropriate to bifurcate the issues of tariff interpretation and reparations. We thus will conduct the proceeding in two phases, first determining the proper interpretation of the relevant tariff or tariffs and then deciding to what extent, if any, reparations are due. For purposes of Phase II, we will treat petitions for intervention in this docket as petitions for reparation under RSA 365:29, upon request of the intervenor. We further find that the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary.

Id., p. 6. The Order Nisi makes no reference to this ruling.

In the comments filed on August 28, 2009, FairPoint further asserted that its current CCL charges were lawful and that the applicable tariff provisions were clear and unambiguous. FairPoint further asserted that an order directing FairPoint to reduce access rates without any offset to recover lost revenues would be in violation of the settlement agreement approved in the Merger Order and would be confiscatory in contravention of the New Hampshire and Federal constitutions. However, in an effort to comply with the Order Nisi in a way that would be lawful, FairPoint stated that it would make a tariff filing making the changes directed in CCL rates in a revenue neutral manner.

On September 10, 2009, the Order Nisi became effective in accordance with its terms. Also on that date, in compliance with the Order Nisi, FairPoint filed revised, revenue neutral tariff pages removing CCL charges from certain switched access traffic and replacing the lost revenue by implementing changes to the Interconnection Charge switched access rate element contained in NHPUC 85.

On September 23, 2009, the Commission issued the Scheduling Order again characterizing Order No. 24,837 as follows:

> Based on the evidence, the Commission further decided that when the use of Verizon's common line does not involve a Verizon end user, the CCL charge may not be imposed. *Id.* at 27.

The Scheduling Order further raised the issue of whether the FairPoint tariff filing was subject to RSA 378:6, IV.

II. MOTION FOR REHEARING

FairPoint respectfully moves for rehearing with respect to the Order Nisi[1] and the Scheduling Order on the grounds that they are unlawful and unreasonable in that (i) prospective tariff revisions were excluded from this proceeding and the record developed therein by Order No. 24,705; (ii) it is an error of law to characterize the proposed revisions to Tariff NHPUC No. 85 as "clarifications"; (iii) the conduct of further proceedings pursuant to the Order Nisi contravenes the mandate issued by the Supreme Court in *Verizon*; (iv) the modification of Tariff NHPUC No. 85 on other than a revenue neutral basis contravenes the settlement agreement approved as part of Docket DT 07-011; and (v) the schedule established by the Commission in the Scheduling Order is unjust and unreasonable and deprives FairPoint of its due process right to a fair hearing.

A. Prospective Tariff Revisions Were Excluded From This Proceeding By Order No. 24,705 And Are Not Properly Before This Commission.

As noted above, the Commission ruled in Order No. 24,705 the "[w]e further find that the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary." The record in this Docket was developed on that basis. The inclusion now of prospective tariff modifications in this proceeding constitutes a modification of Order No.

[1] FairPoint notes that it was not afforded a hearing and opportunity to be heard prior to the issuance of the Order Nisi. FairPoint respectfully submits that the findings and rulings contained in the Order Nisi were unlawful and unreasonable in that the Commission did not afford FairPoint with prior notice and an opportunity to be heard.

24,705. While the Commission has the authority to amend orders under RSA 365:28, doing so requires notice, hearing and the development of an appropriate evidentiary record, none of which has occurred. Proceeding on this basis constitutes an error of law.

B. The Changes to Tariff NHPUC No. 85 Order by the Commission in the Order Nisi Do Not Constitute Clarifications.

Respectfully, it is an error of law to characterize such a change in Tariff NHPUC No. 85 as a "clarification". The New Hampshire Supreme Court unequivocally held that CCL charges apply to all switched access traffic. *Verizon* at 697. The Supreme Court stated that "[w]e are obliged to give effect to the plain language used in the tariff." *Id.*, p. 700. "If the tariff should be amended, it should be amended as a result of regulatory process, and not by a decision of this court." *Id.* A Commission order directing the removal of CCL charges from certain switched access services constitutes an amendment to, not a clarification of, NHPUC No. 85 and must be effected by the exercise of the rate fixing authority of the Commission under RSA 378:7 following the conduct of the necessary attendant procedures, including notice and hearing. Failure to do so is unlawful and unreasonable.

C. The Conduct of Further Proceedings Pursuant to the Order Nisi Contravenes the Mandate Issued by the Supreme Court in *Verizon*.

As the basis for its ruling in the Order Nisi, the Commission stated as follows:

> On March 21, 2008, the Commission issued Order No. 24,837, concluding that the carrier common line (CCL) charge contained in NHPUC Tariff No. 85 of Northern New England Telephone Operations LLC, d/b/a FairPoint Communications-NNE (FairPoint) is properly imposed when: (1) Verizon[2] provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. Based on the evidence, the Commission further decided 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.

> Order No. 24,837 at 27. As previously stated, the tariff provisions are complex and understanding them requires a sophisticated understanding of the telecommunications industry and the history of such charges. *Id.* The Commission's interpretation of the tariff was based on the evidence presented at hearing combined with its understanding of the industry and the purpose of the tariff charges.

Order Nisi, p. 1.

Respectfully, any reliance on the foregoing paragraph as the basis for further action in this proceeding constitutes an error of law. The Commission references page 27 of Order No. 24,837. The entirety of that page consists of a discussion of provisions within Tariff NHPUC No. 85 and concludes with the statement that "we make our findings based on the language within the four corners of the Tariff." Therefore, the language referenced does not consist of factual findings by the Commission based on evidence but instead is part of the Commission's interpretation of the tariff language relating to CCL charges – the very interpretation that was reversed by the New Hampshire Supreme Court as contrary to the plain meaning of the tariff.

Rule 24 of the Rules of the Supreme Court of the State of New Hampshire addresses the Court's mandate that follows the issuance of an order. *N.H. Sup. Ct. R. 24.* The Court's mandate is the order that gives authoritative notice to the trial court or administrative agency that the judgment appealed from has been reversed or affirmed, as the case may be. *State v. Gubitosi*, 153 N.H. 79, 82 (2005). The mandate is the official notice of action of the appellate court, directed to the court or agency below, and directing the lower court or agency to have the appellate court's judgment duly recognized, obeyed, and executed. *Auger v. Town of Strafford*, 158 N.H. 609, 612-613 (2009). (quotations omitted). It also bars a trial court from acting beyond the scope of the mandate, varying it, or judicially examining it for any purpose other than execution. *Id.* (quotations omitted). The conduct of further proceedings on this basis would be in contravention of the mandate issued by the Supreme Court and would constitute an error of law. In other words, this Docket should be closed.

D. The Modification of Tariff NHPUC No. 85 to Remove CCL Charges from Certain Traffic on Other Than a Revenue Neutral Basis Contravenes the Settlement Agreement Approved in the Merger Order.

FairPoint raised the issue related to the Settlement Agreement among the Joint Petitioners and Staff dated January 23, 2008 (the "Settlement Agreement") in order to advise the Commission of a potential conflict between the Order Nisi and the Settlement Agreement. *See* FairPoint's Comments and Conditional Request for a Hearing, at p.6 (August 28, 2009). Given that Order Nisi essentially compels FairPoint to file revised tariff pages which leads to a reduction in wholesale rates charged to CLECs, FairPoint thought it must advise the Commission of the terms of the Settlement Agreement in order for FairPoint to protect its rights.

Section 9.1 of the Settlement Agreement provides as follows:

> For a period of three years following the Closing Date, FairPoint shall continue providing the wholesale services offered by Verizon as of the Closing Date. FairPoint will not seek to increase wholesale rates to take effect during the three years following the Closing Date. The Commission shall not seek to decrease such rates for effect during the three-year period following the Closing Date.

Action by the Commission prospectively to reduce wholesale access rates by removing CCL charges from certain switched access traffic, if done on a basis that is not revenue neutral, appears to contravene the Settlement Agreement approved in the Merger Order. If, in fact, the Commission seeks to decrease FairPoint's wholesale rates, then such actions should be considered in the context of other provisions of the Settlement Agreement. For example, in Section 3.7 of the Settlement Agreement FairPoint promised not to increase prices for broadband services for a period of two years following the merger closing "...provided that the Commission *does not seek* to alter, amend or reduce any of FairPoint's prices for services that are subject to the Commission's regulation." Settlement Agreement, Section 3.7 (emphasis added).

FairPoint respectfully submits that this Docket's expedited schedule does not afford sufficient opportunity for FairPoint or the Commission to consider the full implications of a required wholesale rate reduction via the required tariff filing. This is especially true considering the fact the underlying record in this Docket was not developed for the purpose of determining or considering prospective changes to Tariff NHPUC No. 85. FairPoint therefore respectfully submits that the Order Nisi is unlawful and unreasonable.

E. The Schedule Established by the Commission in the Scheduling Order is Unjust and Unreasonable and Deprives FairPoint of its Due Process Right to a Fair Hearing.

FairPoint has attempted to comply with the Commission's Order *Nisi* by filing revised tariff pages as instructed. In doing so, FairPoint attempted in good faith to comply fully with the applicable tariff filing requirements. This was not a voluntary filing by FairPoint; it was a response to the Commission's Order Nisi directing the filing. Following the filing, the Commission, without conducting a hearing, technical session or other typical process, issued the Scheduling Order establishing a procedural schedule that commenced with a requirement for FairPoint to file prefiled testimony within three business days, the last of which was a major religious holiday. The Order further established a highly expedited discovery and hearing schedule, including a due date of Columbus Day for FairPoint responses to multiple data requests (essentially affording FairPoint with four (4) business days to complete responses to said data requests), and made findings with regard to the completeness of FairPoint's filing.

The highly expedited procedural schedule was not developed through collaboration, as is typically the case or with regard to the unfair burden placed upon FairPoint. While FairPoint will endeavor in good faith to comply with this schedule, there is a substantial risk that FairPoint will not fairly be able to present its position. To understand FairPoint's concern, the Commission only needs to review the onerous data requests propounded by AT&T in response to

Commission Order No. 25,016 (said data requests being attached hereto and incorporated herein by reference as Attachment 1). AT&T's data requests (among other things) are overbroad and abusive, especially considering the fact that FairPoint only had four (4) business days prior to the Columbus Day Holiday to develop responses. It is apparent to FairPoint that AT&T propounded such onerous discovery requests knowing full well that FairPoint would have little time to respond. For these reasons, and the reasons hereinbefore stated, the schedule is unjust, unreasonable and in violation of FairPoint's due process rights.

III. CONDITIONAL WITHDRAWAL OF TARIFF PAGES

To the extent that the procedural schedule has been developed on the basis that the timeframe specified in RSA 378:6, IV may apply, FairPoint respectfully submits that that statute is not applicable to the issues presently before the Commission. This tariff filing was made pursuant to the Order Nisi. The tariff filing *was not a voluntary filing* under RSA 378:6, IV; instead, it is a response by FairPoint to comply lawfully to the exercise by the Commission of its ratemaking authority under 378:7. To the extent that the Commission is treating the tariff page filing as having been voluntarily made pursuant to RSA 378:6, IV, FairPoint hereby withdraws the filing and requests that the filing be treated as illustrative. To the extent that the Commission conducts further proceedings in this Docket - which should not be the case - and deems a tariff filing as having been ordered by the Order Nisi, FairPoint affirms and reserves all of its rights with respect to the tariff filing made on September 10, 2009. However, FairPoint respectfully submits that the procedural schedule should accord FairPoint the protections contained in RSA 378:7, as well as those provided by RSA 541-A, and the due process of law protections provided by the New Hampshire Constitution (Part I, Article 15) and United States Constitution (Amendment XIV).

WHEREFORE, FairPoint respectfully requests that this Commission:

a. Grant this Motion for Rehearing;

b. Rescind the Order Nisi and the Scheduling Order; and

c. Close this Docket in compliance with the Supreme Court's mandate in *Verizon*, since the sole issues before the Commission as set forth in Order No. 24,705 have been fully adjudicated; and

d. Grant such other relief as will be just and reasonable.

Respectfully submitted,

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

By Its Attorneys,

DEVINE, MILLIMET & BRANCH, PROFESSIONAL ASSOCIATION

Dated: October 12, 2009

By: _____

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

CERTIFICATE OF SERVICE

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

Dated: October 12, 2009

By: _____
Patrick C. McHugh, Esq.

ATTACHMENT 1

DATA REQUESTS PROPOUNDED BY AT&T

THE STATE OF NEW HAMPSHIRE
BEFORE THE
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

AT&T's DATA REQUESTS TO FAIRPOINT COMMUNICATIONS, NNE

AT&T Corp. ("AT&T") serves these data requests upon Northern New England Telephone Operations LLC, d/b/a FairPoint Communications – NNE ("FairPoint").

INSTRUCTIONS

A. If you object to any part of an Interrogatory, answer all parts of such Interrogatories to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

B. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to an Interrogatory contained in a non-written communication, state the following with respect to the nonwritten communication:

1. the date thereof;

2. the identity of each of the participants in the non-written communication;

3. the identity of each person present during all or any part of the non-written communication;

4. a description of the non-written communication which is sufficient to identify the particular communication without revealing the information for which a privilege or protection from non-disclosure is claimed;

5. the nature of your claim of non-discoverability (e.g. attorney-client privilege); and

6. each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit AT&T to make a full determination as to whether your claim is valid.

C. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to an Interrogatory contained in a document, set forth with respect to the document:

1. the date and number of pages;

2. the identity of the author(s) or preparer(s);

3. the identity of the addressee, if any;

4. the title;

5. the type of tangible thing (e.g. letter, memorandum, telegram, chart, report, recording disc);

6. the subject matter (without revealing the information as to which privilege or protection from non-disclosure is claimed);

7. the identity of each person who has received the document or to whom knowledge of the contents of the document was communicated;

8. the identity of the present custodian(s);

9. the nature of your claim of non-discoverability (e.g. attorney-client privilege); and

10. each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit AT&T to make a full determination as to whether your claim is valid.

D. If you claim any form of privilege or other protection from disclosure, otherwise than as set forth in Instructions B and C, as a ground for not answering any interrogatory, set forth:

1. the nature of your claim as to non-discoverability; and

2. each and every fact on which you rest your claim or privilege or other protection from disclosure, stating such facts with sufficient specificity to permit AT&T to make a full determination as to whether your claim is valid.

E. If you know of any document, communication or information but cannot give the specific information or the full information called for by a particular Interrogatory, so state and give the best information you have on the subject and identify every person you believe to have the required information.

F. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; the masculine form of a pronoun shall be considered to include also within its meaning the feminine and neuter forms of the pronoun, and vice versa; and the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb. In each instance, the Interrogatory shall be construed so as to require the most inclusive answer or production.

G. Please attach written material to any answer for which written material is requested and/or available. If such written material is not available, state where it may be obtained. Label the written material with the number of the Interrogatory to which it pertains.

H. On each Interrogatory response, list the name and title of the person or persons who prepared the response or who is responsible for the information contained therein.

DEFINITIONS

As used in these Interrogatories, the following terms have the meaning as set forth below:

A. The terms "Fairpoint" or "you" or "your company" shall include the named entities and all of their subsidiaries and affiliates, the respondent's former and present officers, attorneys, employees, servants, agents and representatives, and any person acting on the respondent's behalf for any purpose.

B. The terms "relates to" or "relating to" mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

C. The term "including" means "including, but not limited to."

D. "List", "describe", "explain", "specify" or "state" shall mean to set forth fully, in detail, and unambiguously each and every fact of which the respondent or its agents or representatives have knowledge which is relevant to the answer called for by the Interrogatory.

E. The terms "document" or "documents" as used herein shall include, without limitation, any writings and documentary material of any kind whatsoever, both originals and copies (regardless of origin and whether or not including additional writing thereon or attached thereto), and any and all drafts, preliminary versions, alterations, modifications, revisions, changes and written comments of and concerning such material, including but not limited to: correspondence, letters, memoranda, notes, reports, directions, studies, investigations, questionnaires and surveys, inspections, permits, citizen complaints, papers, files, books, manuals, instructions, records, pamphlets, forms, contracts, contract amendments or supplements, contract offers, tenders, acceptances, counteroffers or negotiating agreements, notices, confirmations, telegrams, communications sent or received, print-outs, diary entries, calendars, tables, compilations, tabulations, charts, graphs, maps, recommendations,

ledgers, accounts, worksheets, photographs, tape recordings, movie pictures, videotapes, transcripts, logs, workpapers, minutes, summaries, notations and records of any sort (printed, recorded or otherwise) of any oral communication whether sent or received or neither, and other written records or recordings, in whatever form, stored or contained in or on whatever medium including computerized or digital memory or magnetic media that:

1. are now or were formerly in your possession, custody or control; or

2. are known or believed to be responsive to these Interrogatories, regardless of who has or formerly had custody, possession or control.

F. The term "date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof, including relationship to other events.

G. The term "person" or "persons" means and includes any individual, committee, task force, division, department, company, contractor, state, federal or local government agency, corporation, firm, association, partnership, joint venture or any other business or legal entity.

H. The terms "identify" and "identity" when used with reference to a natural person mean to state his or her full name, present or last known address, present or last known telephone number, present or last known place of employment, position or business affiliation, his or her position or business affiliation at the time in question, and a general description of the business in which he or she is engaged.

I. The terms "identify" and "identity" when used with respect to any other entity means to state its full name, the address of its principal place of business and the name of its chief executive officers.

J. The terms "identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and its present custodian. If any such document was but is no longer in the possession of the respondent or subject to its control, state what disposition was made of it and explain the circumstances surrounding, and the authorization, for such disposition, and state the date or approximate date thereof.

K. The terms "identify" and "identity" with respect to any non-written communication means to state the identity of the natural person(s) making and receiving the communication, their respective principals or employers at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.

L. The term "oral communication" means any utterance heard, whether in person, by telephone, or otherwise.

M. The term "identify the sources" means to identify and specify all documents and non-written communications upon which you rely in support of the allegation, contention, conclusion, position or answer in question, to state the references drawn from each such source upon which you rely in support of such allegation, contention, conclusion, position or answer and to identify all individuals whom you know to be knowledgeable with respect to the subject matter of such allegation, contention, conclusion, position or answer. Where a source is a public record (e.g., a newspaper, trade journal, judicial or administrative opinion), a quotation and page reference of the material relied upon shall be supplied.

N. The term to "state the basis" for an allegation, contention, conclusion, position or answer means (a) to identify and specify the sources therefore, and (b) to identify and specify all facts on which you rely or intend to rely in support of the allegation, contention, conclusion, position or answer, and (c) to set forth and explain the nature and application to the relevant facts of all pertinent legal theories upon which you rely for your knowledge, information and/or belief that there are good grounds to support such allegation, contention, conclusion, position or answer.

O. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of the Interrogatories and request any information or documents that might otherwise be construed to be outside their scope; "all" and "any" mean both "each" and "every".

DATA REQUESTS

1) Please state and describe what role Mr. Skrivan played in developing the tariff filing described at page 5, lines 1-5 of his testimony.

2) Please state when Mr. Skrivan began that role, and whether that role changed over time.

3) Please identify all other persons who were involved in developing that tariff filing.

4) Please provide all work papers that Mr. Skrivan or any of the other persons identified in response to request number 4 prepared, reviewed, or considered in preparing the tariff filing described at page 5 lines 1-5 of Mr. Skrivan's testimony,

5) When were "the supporting schedules associated with that filing" first developed?

   i) If they were developed when the tariff was filed, why were they not supplied then?

   ii) If they were developed in preparation for Mr. Skrivan's testimony, what was the basis for the earlier "recent tariff" was filed? (See, pp. 3-4 of direct testimony).

6) Please provide all documents reflecting or relating to communications between Verizon and FairPoint regarding the CCL issue, Tariff NHPUC No. 85, or the tariff changes described at page 5, lines 1-5 of Mr. Skrivan's direct testimony.

7) Please provide all documents relating to the CCL issue, Tariff NHPUC No. 85, or the tariff changes described at page 5, lines 1-5 of Mr. Skrivan's direct testimony, including but not limited to financial accruals, allowances, reserves, or other arrangements made to reflect, treat or account for the CCL issue in NH.

8) Please describe when and how Mr. Skrivan obtained knowledge of Verizon's resolution of its CCL charges subsequent to the Supreme Court decision? Provide the entirety of Mr. Skrivan knowledge of Verizon's resolution.

9) The testimony at p. 5 indicates that: "[t]he tariff that was filed, under your [Mr. Skrivan's] direction, in response to the Order *Nisi*." And further asserts that: "In compliance with the Order *Nisi*, FairPoint filed revised tariff pages to eliminate the application of the CCL charge to access traffic which does not originate or terminate to a F*airP*oint end user on a revenue neutral basis." (emphasis added)

   a) Provide all legal *aut*horities and all bases in the Order *Nisi* which you contend directed or entitled FairPoint to make a compliance filing "on a revenue neutral basis."

   b) Provide all legal authorities and all bases in any other Order which you contend directed or entitled FairPoint to make a compliance filing "on a revenue neutral basis"

10) The testimony at p. 5 states: Revenue neutrality was accomplished by using an existing switched access rate element called the Interconnection Charge. This rate, previously set at $.0000 per minute, has been increased to $.010164 per minute.

   a) When was the Interconnection Charge rate set at zero, $.0000 per minute?

   b) In Mr. Skrivan's understanding, why was the Interconnection Charge set at zero.

   c) Please provide all legal authorities and all bases in the Order *Nisi* which you contend directed or entitled FairPoint to change the rate for the Interconnection Charge, of which Mr. Skrivan is aware.

   d) Please provide all legal authorities and all bases in any other Order which you contend directed or entitled FairPoint to change the rate for the Interconnection Charge, of which Mr. Skrivan is aware.

   e) Please provide all citations and references in the Order *Nisi* to the Interconnection Charge, of which Mr. Skrivan is aware.

   f) Please provide all citations and references in any Order to the Interconnection Charge, of which Mr. Skrivan is aware.

g) Please describe all network function or functions performed by FairPoint, if any, that the newly introduced interconnection charge is designed to recover.

11) The testimony at 5 states: "This [Interconnection Charge] rate will apply equally to all intrastate switched access usage, with the same rate applicable to all categories of traffic and applicable equally to originating and terminating traffic.

a) On a call with a FairPoint common line and a CLEC common line, how many FairPoint Interconnection Charges apply? Please explain why that number applies.

b) On a call, with no FairPoint common line and two CLEC common lines, how many FairPoint Interconnection Charges apply? Please explain why that number applies.

c) On a call with two FairPoint common lines and no CLEC common line, how many FairPoint Interconnection Charges apply? Please explain why that number applies.

12) The testimony at p. 5 states: "Since the development of the Interconnection Charge was intended to be revenue neutral..."

a) Define the term "revenue neutral" as used by Mr., Skrivan in his testimony.

b) Please provide all legal authorities and all bases on which Mr. Skrivan relies for his position that the development of the Interconnection Charge was intended to be "revenue neutral."

13) The testimony states at p. 5. "We reviewed the history of access charges and selected the months of May, June and July 2009, as the test period for this calculation." Identify by name, title and affiliation all persons or entities included within the referenced "we."

14) The testimony at p. 6 states: Immediately upon FairPoint assuming control of the New Hampshire operations, at my direction, Verizon was instructed to discontinue billing the CCL charge on switched access traffic that does not originate from or terminate to a FairPoint end user."

a) Provide all documents and describe all communications by which Verizon was instructed to discontinue billing the CCL charge on switched access traffic that does not originate from or terminate to a FairPoint end user.

b) Identify whether this instruction was written or verbal, or both.

c) If verbal, identify who at FairPoint delivered the instruction to Verizon.

d) If verbal, identify who at Verizon received such instruction.

e) Provide any confirmation or response provided by Verizon (or its agents) related to the instructions provided to it to discontinue billing the CCL charge on switched access traffic that does not originate from or terminate to a FairPoint end user.

15) The testimony at p. 6 states: "However, this change took a few months to accomplish, during which time we instructed interexchange carriers not to pay that portion of their bills." Provide all documents reflecting such instruction to interexchange carriers, and describe all verbal communications of such instruction, stating who at FairPoint delivered the instruction, which carriers received that instruction, which persons received that instruction, and when.

16) The testimony at p. 6 states: "In approximately June of 2008 the CCL charge was eliminated from bills for switched access traffic that does not originate from or terminate to a FairPoint end user, and credits were applied retroactively to April 1, 2008. Thus, during the second half of 2008 and the first quarter of 2009, no relevant billing was done for this service, and Verizon did not provide us with the usage data to calculate exactly the CCL charges for this period.

a) Define the term "In approximately June of 2008".

b) Define the term "no relevant billing" and contrast to "no billing".

c) Is it FairPoint's view that no CCL charges were billed for switched access traffic that does not originate from or terminate to a FairPoint end user, for usage on or after June 1, 2008?

d) Quantify all CCL charges that were billed for switched access traffic that does not originate from or terminate to a FairPoint end user, for usage on or after June 1, 2008?

17) The testimony at 6. States: "When the Supreme Court's decision on appeal became final, these CCL charges were reinstated for the entire period based on actual and estimated data."

a) When does Mr. Skrivan believe that the Supreme Court's decision on appeal became final?

i) Include the date on which Mr. Skrivan believes it became final?

ii) What is the basis for Mr. Skrivan's belief that the Supreme Court's decision became final on that date?

iii) Explain why charges were reinstated based on "estimated data."

iv) Provide all disclosure that FairPoint made to access customers that these charges were being billed based in whole or in part on estimated data.

v) Identify or provide all provisions in FairPoint tariffs that authorize FairPoint to utilize "estimated data" to produce access bills.

vi) Identify and describe the period, amount, volume of minutes, and dollars for the CCL charge that was reinstated based on actual data.

vii) Identify and describe the period, amount, volume of minutes, and dollars for the CCL charge that was reinstated based on estimated data.

viii) What is the basis for Mr. Skrivan's understanding that estimated data was used for this back billing purpose?

ix) Who at FairPoint approved the use of estimated data for such billing? Please provide all associated documents.

18) The testimony states at p. 6 "We chose to use the May, June and July bill periods, which were billed under our wholesale billing system following the cutover transition." Did the NH intrastate switched access bill period May, June and July, include:

a) any bill credits,

b) any adjustments of any kind,

c) any corrections,

d) any settlements,

e) any uncollectible amounts,

f) any out-of-period usage,,

g) any errors, or omission of any kind, and/or

h) any downward or other trends in volume?

i) Separately described, quantify, and identify all such:

i) bill credits

ii) adjustments

iii) corrections

iv) settlements

v) uncollectible amounts

vi) out-of-period usage

vii) errors, or omission of any kind

viii) any trends

19) The testimony states at p. 6: Our objective was to calculate the loss of CCL revenues reflecting the CCL charge changes specified in the Order *Nisi* and to calculate a replacement charge to restore the lost revenue.

a) Indentify all persons comprising the "our" referenced.

b) Who established the objective?

c) When was the objective established?

d) Provide all documentation of the objective, including its development, author, and approval.

e) Please "Admit" or "Deny" that the Order *Nisi* No. 25002 referenced did not explicitly require or authorize FairPoint to introduce a replacement charge to restore or recover any lost revenue.

f) If "Deny" in (e) above, specifically cite and provide the actual language from the order that directed that as FairPoint eliminates the application of the CCL charge when FairPoint does not perform common line function it should simultaneously introduce an interconnection charge to restore any lost revenue.

g) Explain how FairPoint could have lost any revenue, to which it is purportedly entitled to recover, when the Order *Nisi* directed the application of the CCLC rate only to instances when FairPoint actually provided the CCLC.

h) Since the CCLC has traditionally been used to recover common line, *e.g.*, loop costs, to the extent FairPoint did not perform any common line function, why is it reasonable that FairPoint should be paid as if it had provided a common line function?

i) Why does Mr. Skrivan believe that it is not anticompetitive for FairPoint to propose that it be compensation in it s access rates for CCLC or loop costs in instances when competitors are supplying those loops and FairPoint is not supplying those loops?

i) Provide Mr. Skrivan's understanding of the purpose Order *Nisi* and in particular the Commission specific directive to file *verbatim* tariff language changes, and the Commission's intended purpose in doing so.

20) Reference Skrivan Testimony at p.10, lines 6-9: Please cite and provide the specific language in the Order *Nisi* that suggested any wholesale rates would change, other than to ensure that

existing rates are applied only when FairPoint actually performs the function for which those rates exist.

21) At p. 10 the testimony states: "I would also point out that in Section 9.3 of the Settlement Agreement, the parties agreed to adopt the provisions of the settlement agreement between FairPoint Communications, Inc. and certain CLECs attached as Exhibit 2 to the Settlement Agreement (the "CLEC Settlement"). Section 4(h) of the CLEC Settlement provides: "Notwithstanding anything herein to the contrary, FairPoint shall have the same rights and obligations as Verizon in connection with and arising out of any final order which may be issued with NHPUC Docket 06-067."

Please provide a copy of the referenced Settlement Agreement, including Exhibit 2 ("The CLEC Settlement")

22) At p. 10 the testimony states: "While I will leave the legal analysis to the attorneys, my understanding is that the Settlement Agreement among Verizon, FairPoint Communications, Inc. and the Commission Staff contemplated that wholesale rates would remain in place for three years. Given the terms of the Order *Nisi*, which directed changes in access rates, maintaining revenue neutrality best reflects the intent of the paragraph. A non-revenue neutral decrease in wholesale rates does not appear to be consistent with the last sentence of Section 9.1 of the Settlement Agreement, which states: "The Commission shall not seek to decrease such rates for effect during the three-year period following the Closing Date."

a) When did Mr. Skrivan first read the Settlement Agreement?

b) When did Mr. Skrivan develop the referenced understanding?

c) Provide all cites in the docket 06-67 briefs by Verizon and FairPoint where they made the argument that the Commission was barred from ordered a change in the application of the NH PUC No. 85 tariff to CCL charges because of the reference Settlement.

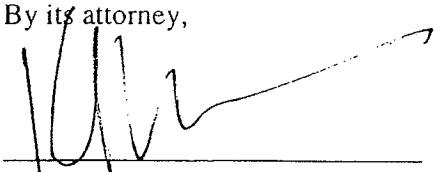
d) Please provide citations and references to any statement in any NH PUC Order that you contend support the argument that under the Settlement Agreement, the Commission was barred from ordered a change in the application of the NH PUC No. 85 tariff to CCL charges

e) Please provide citations and references to any statement by the Commission, the Supreme Court, or by any party in any document filed in the Supreme Court or the Commission where Verizon and FairPoint took the position that the Commission was barred from ordering a change in the application of the NH PUC # 85 tariff to CCL charges because of the referenced Settlement, or that you contend constitutes support for that position.

f) If the Order *Nisi* ordered a change in wholesale rates which purportedly violated the referenced Settlement Agreement and the Settlement Agreement and the order approving it controlled, please explain why FairPoint did not raise any objection to that effect during the *Nisi* comment period.

Date: October 5, 2009

By its attorney,



Kimberly J. Gold
AT&T Services, Inc.
675 West Peachtree Street
Suite 4300
Atlanta, GA 30375
(404) 927-3990 (voice)
(214) 486-8065 (fax)
kg2143@att.com

EXHIBIT 8

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

October 16, 2009

Re: DT 06-067, Freedom Ring Communications, LLC d/b/a BayRing Communications
Complaint Against Verizon, New Hampshire Regarding Access Charges
Suspension of Proceedings

To the Parties:

On August 11, 2009, the Commission issued Order No. 25,002 directing FairPoint to modify its tariff to clarify that FairPoint shall charge a carrier common line access charge (CCL) only when a FairPoint common line is used in the provision of switched access services, pursuant to RSA 378:1 and 378.3. On August 28, 2009, in response to the Order *Nisi*, FairPoint filed its comments and a conditional request for hearing. Global Crossing, AT&T and BayRing filed responses on September 4, 2009.

On September 10, 2009, FairPoint filed a tariff to eliminate the application of CCL and to increase the interconnection charge. The Commission issued Order No. 25,016 (September 23, 2009) scheduling a hearing and, in response, Fairpoint filed the testimony of Michael Skrivan on September 28. BayRing and AT&T filed a joint motion for clarification and expedited relief on October 2, 2009. On October 12, 2009, FairPoint filed an objection to AT&T and BayRing's joint motion for clarification and expedited relief as well as a motion for rehearing of Order Nisi No. 25,002 and conditional withdrawal of its tariff filing.

The Commission has suspended the procedural schedule established in Order No. 25,016 while it considers the arguments raised in the various parties' motions.

Sincerely,

ChristiAne G. Mason
Assistant Executive Director

cc: Service List

EXHIBIT 9

EXHIBIT 10

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 06-067

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

Complaint Against Verizon New Hampshire Regarding Access Charges

Procedural Order and Supplemental Order of Notice

O R D E R N O. 25,219

May 4, 2011

I. PROCEDURAL HISTORY

This docket involves the propriety of Verizon New Hampshire (Verizon) billing for carrier common line (CCL) charges that do not involve a Verizon end user or a Verizon-provided local loop. On March 21, 2008, the Commission issued Order No. 24,837 directing Verizon to cease billing for CCL under those circumstances.[1] *See Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order 24,837 (Mar. 21, 2008) at 33. Following the denial of a motion for rehearing, *see Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 24,886 (August 8, 2008), FairPoint appealed the Commission's order to the New Hampshire Supreme Court.

On May 7, 2009, the New Hampshire Supreme Court released its opinion in *In re Verizon New England, Inc.*, 153 N.H. 693, 697-98 (2009), where it held that under the terms of its tariff FairPoint could assess CCL charges even when a FairPoint end user was not involved or a FairPoint-provided common line was not used. Accordingly, the New Hampshire Supreme

[1] Northern New England Telephone Operations LLC d/b/a FairPoint Communications NNE (FairPoint) is the successor to Verizon's utility franchise and for simplicity further references in this order shall solely be to FairPoint.

Court reversed the Commission's decision regarding FairPoint's tariff. The Supreme Court further concluded:

> The petitioners urge us to uphold the PUC's interpretation of Tariff No. 85 because, they contend, it is reasonable in light of the evolution of the telephone industry since the tariff was first adopted. Were we to review the PUC's tariff interpretation deferentially for mere reasonableness or rationality, we might find this argument persuasive. We review the PUC's tariff interpretation *de novo*, however, and although we approach the task of examining some of the complex scientific issues presented in cases of this sort with some diffidence, we are obliged to give effect to the plain language used in the tariff. . . . If the tariff should be amended, it should be amended as a result of regulatory process, and not by a decision of this court.

Id. at 700 (quotations and citations omitted).

Following the issuance of the Supreme Court's opinion, on a *nisi* basis the Commission issued Order No. 25,002, which stated "The Commission's interpretation of the tariff was based on the evidence presented at hearing combined with its understanding of the industry and the purpose of the tariff charges." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,002 (Aug. 11, 2009) at 1. Further, the Commission stated:

> Based upon the record developed in this proceeding, the Commission found that FairPoint's access tariff should permit the imposition of CCL charges only in those instances when a carrier uses FairPoint's common line and the common line facilitates the transport of the calls to a FairPoint end-user. Order No. 24,837 at 27. Because the language of the tariff does not clearly reflect this finding, we direct FairPoint, pursuant to RSA 378:1 and 378:3, to modify its tariff to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services.

Id. at 2. Accordingly, the Commission ordered FairPoint to modify its tariff to comport with the Commission's finding.

On August 28, 2009, FairPoint filed comments and conditional request for rehearing. In that filing, FairPoint maintained its position on the purpose and propriety of the CCL charges and

argued that there was no basis to revise the tariff. Further, FairPoint contended that if the Commission still intended for the tariff to be revised, any revisions must be made in a "revenue neutral" manner. FairPoint's contention was that not allowing a "revenue neutral" revision would deprive it of substantial money to which it is entitled and would be a breach of the agreement that allowed FairPoint to acquire its New Hampshire business, or would raise constitutional concerns. FairPoint concluded by stating, "[t]o ensure a just and reasonable result in such a situation, FairPoint respectfully requests that if the Commission does not intend for FairPoint to recover its costs through other means, that it conduct a hearing in accordance with RSA 378:7 so that FairPoint may be properly heard on this issue." Comments and Conditional Request for Rehearing of FairPoint at 6.

On September 3, 2009, Global Crossing responded to FairPoint's comments and on September 4, 2009 BayRing and AT&T jointly responded to FairPoint's comments. Each of these responses contended, among other things, that FairPoint was required to revise its tariff and that it was not permitted to do so in a "revenue neutral" manner. On September 10, 2009, FairPoint filed new tariff pages which amended the CCL charge as directed by the Commission. In addition, to achieve "revenue neutrality," FairPoint's proposed new tariff pages also increased interconnection charges.

On September 23, 2009, the Commission issued Order No. 25,016, wherein the Commission concluded that, "an evidentiary hearing is necessary to address the issues raised by FairPoint's August 28 and September 10 filings as well as the issues raised by the competitive local exchange carriers' September 4 filings." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,016 (Sept. 23, 2009) at 3. That order noted that the

issues raised by the parties' filings included: "whether FairPoint's proposed tariff revisions are just and reasonable; whether the proposed interconnection charge is consistent with paragraph 9.1 of the Settlement Agreement in DT 07-011 approved by Order No. 24,823 (Feb. 25, 2008); whether the filing is properly considered under RSA 378:6, I or IV; and whether RSA 378:17-a III applies." *Id.* at 3-4. The order then set a schedule for testimony and discovery and a hearing for November 4, 2009.

On October 2, 2009, BayRing and AT&T filed a joint motion to clarify Order No. 25,016. In that motion, BayRing and AT&T sought clarification that the proposed changes to the CCL charge would be effective immediately, and that the schedule set by the Commission applied only to the interconnection charge filing. On October 12, 2009, FairPoint filed a motion for rehearing and for conditional withdrawal of its new tariff pages and sought rehearing of Order No. 25,002, as well as Order No. 25,016. FairPoint also requested that its new tariff pages be formally withdrawn and treated as "illustrative." On October 12, 2009, FairPoint objected to the joint motion to clarify and on October 19, 2009, BayRing, AT&T, One Communications, and Global Crossing all objected to FairPoint's October 12, 2009 motion for rehearing.

On October 16, 2009, the Commission issued a Secretarial Letter suspending the schedule as set in Order No. 25,016 while it considered the parties' motions. On November 2, 2009, Staff filed a memorandum recommending that action on various dockets, including the instant docket, be suspended for a period to permit FairPoint to focus on its bankruptcy restructuring. On November 6, 2009, Staff filed a new recommendation to extend the stay in this and other dockets. On November 10, 2009, the Commission issued a Secretarial Letter partially granting a stay and stating that an extension of the stay would be taken up at a later date. No

further Commission action occurred in this docket during the pendency of FairPoint's bankruptcy, from which it emerged on January 24, 2011.

On March 10, 2011, FairPoint filed a letter requesting that the Commission reactivate this proceeding and set a scheduling conference. According to FairPoint the following items are outstanding: (1) FairPoint's motion for rehearing of Order No. 25,002; (2) the suspended revised tariff; and (3) BayRing and AT&T's motion for clarification. On April 25, 2011, AT&T filed a letter requesting that the Commission rule on the two pending motions prior to scheduling further activity in the docket.

II. COMMISSION ANALYSIS

We begin by addressing FairPoint's August 28, 2009 comments and conditional request for rehearing and its October12, 2009 motion for rehearing and conditional withdrawal of its tariff pages. As noted above, on August 11, 2009, the Commission issued Order No. 25,002 as a *nisi* order requiring FairPoint to revise its tariff to comport with the Commission's understanding of the purpose of the CCL charge and, on August 28, 2009, FairPoint requested that a hearing be held on the need for a "revenue neutral" change. On September 23, 2009, the Commission issued Order No. 25,016, which concluded that a hearing was needed and which outlined the scope of the hearing. Because Order No. 25,002 was issued on a *nisi* basis, it permitted FairPoint, or others, the opportunity to request that a hearing be held. On August 28, 2009, FairPoint made such a request. By issuing Order No. 25,016, the Commission concluded that a hearing was needed. In effect, therefore, FairPoint's motion for a hearing was granted, though a hearing was never held due to FairPoint's bankruptcy filing. We conclude that there is no basis

to grant rehearing of Order No. 25,002 because Order No. 25,016 already granted the relief sought by FairPoint relative to Order 25,002.

As to FairPoint's additional request that it be permitted to withdraw its tariff pages, we note that FairPoint disputes the applicability of certain statutory timing requirements concerning its tariff filing. We also note that by Secretarial Letter on October 16, 2009, the Commission suspended the procedural schedule established in Order No. 25,016. That suspension continues and therefore the tariff filing never went into effect. As a result, FairPoint's concerns about the statutory timing requirements are moot. We now grant FairPoint's request to withdraw its tariff pages and have them treated as illustrative so that they may form the basis for further investigation and proceedings without invoking the statutory timing constraints of RSA 378:6.

As to BayRing and AT&T's motion to clarify, Order No. 25,016 granted FairPoint's request for a hearing on its tariff filing and, given the time that has elapsed since this order, we cannot now say that a portion of the tariff ought to have been in effect at some prior date. Accordingly, we deny BayRing and AT&T's motion for clarification.

Going forward, we find it necessary to establish a new procedural schedule to govern the remainder of this proceeding. Accordingly, we shall set a prehearing conference and technical session to permit the parties the opportunity to present proposals for a procedural schedule for the remainder of the docket.

We do not intend to expand the scope of the docket or to re-litigate any of the issues that have already been decided. To that end, any procedural schedule will address the submission of and discovery regarding new information. By "new" information we mean any information that would have been filed relative to FairPoint's new tariff pages under the scope of the proceeding

as established in Order No. 25,016. Specifically, the scope shall include whether FairPoint's proposed tariff revisions are just and reasonable, to what degree the new tariff filing is affected by the settlement agreement in DT 07-011, and what statutory requirements cover the filing. *See Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,016 (Sept. 23, 2009) at 3-4. In addition, as was noted in Order No. 25,016:

> Pursuant to NH Admin. Code Puc 1605, FairPoint is required to file supporting documents with a proposed tariff change. FairPoint did not file the required information and, therefore, the filing is not complete. In addition, in order to properly evaluate the proposed change in [its] tariff, pursuant to 1605.02(c), we will require FairPoint to file the information required in Puc 1604.08(c)(9).

Id. at 4. Though we are treating the tariff filing as illustrative, we still require that FairPoint submit the required supporting information set forth in Puc 1604.08(c)(9) on or before the date of the prehearing conference.

We will not re-litigate the purpose or propriety of the CCL charge. Apart from any conclusion about the words in the tariff itself, in Order No. 24,837 we specifically found that:

> 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.

Freedom Ring Communications, LLC d/b/a BayRing Communications, Order No. 24,837 (March 21, 2008) at 31. That conclusion was not addressed or overturned by the Supreme Court, which based its analysis on the terms of the tariff alone. The Commission will not entertain further argument about this conclusion.

A new procedural schedule will comport with the intent of the Supreme Court when it stated that: "If the tariff should be amended, it should be amended as a result of regulatory process, and not by a decision of this court." *In re Verizon New England, Inc.*, 153 N.H. at 700. Moreover, in November 2006 the Commission found that "the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 24,705 (Nov. 29, 2006) at 6. We implement here the substantive goal of that finding but, for administrative convenience, we will not assign a separate docket number to the proceeding. Accordingly, we will undertake an examination of the proposed modifications to FairPoint's tariff, including the propriety of increased interconnection charges.

Based upon the foregoing, it is hereby

ORDERED, that FairPoint's August 28, 2009 comments and conditional request for rehearing and October12, 2009 motion for rehearing and conditional withdrawal of its tariff pages are granted in part and denied in part as set forth above; and it is

FURTHER ORDERED, that BayRing and AT&T's October 2, 2009 motion to clarify is denied; and it is

FURTHER ORDERED, that FairPoint submit the appropriate supporting information for its illustrative tariff filing on or before the date of the prehearing conference; and it is

FURTHER ORDERED, that a prehearing conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on May 25, 2011 at 10:00 a.m., at which each party will provide a preliminary

statement of its position with regard to the petition and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the prehearing conference, FairPoint, the Staff of the Commission and any Intervenors hold a Technical Session to review FairPoint's filing and allow FairPoint to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that the Commission shall notify all persons desiring to be heard at this hearing by publishing a copy of this Supplemental Order of Notice no later than May 11, 2011, by publication on the Commission's website and through electronic distribution to all carriers operating in New Hampshire; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to the Commission and the Office of the Consumer Advocate on or before May 20, 2011, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before May 25, 2011.

By order of the Public Utilities Commission of New Hampshire this fourth day of May, 2011.

Thomas B. Getz
Chairman

Clifton C. Below
Commissioner

Amy L. Ignatius
Commissioner

Attested by:

Debra A. Howland
Executive Director