

# Orr&Reno

*Professional Association*

One Eagle Square, P.O. Box 3550, Concord, NH 03302-3550  
Telephone 603-224-2381 • Facsimile 603-224-2318  
www.orr-reno.com

Malcolm McLane  
(Retired)

January 22, 2007

**VIA HAND DELIVERY AND E-MAIL**

Ms. Debra A. Howland, Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

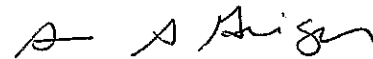
***Re: DT 06-067, Petition of Freedom Ring  
Communications, LLC d/b/a BayRing  
Communications v. Verizon NH  
Objection to Verizon's Motion to Compel***

Dear Ms. Howland:

Enclosed for filing with the Commission in the above-captioned matter, please find an original and 7 copies of BayRing's Objection to Verizon's Motion to Compel. Please do not hesitate to contact me if you have any questions.

Thank you for your attention to this matter.

Very truly yours,



Susan S. Geiger

Ronald L. Snow  
William L. Chapman  
George W. Roussos  
Howard M. Moffett  
James E. Morris  
John A. Malmberg  
Martha Van Oot  
Douglas L. Patch  
Connie L. Rakowsky  
Jill K. Blackmer  
James P. Bassett  
Emily Gray Rice  
Steven L. Winer  
Peter F. Burger  
Lisa Snow Wade  
Jennifer A. Eber  
Jeffrey C. Spear  
Connie Boyles Lane  
Todd C. Fahey  
Vera B. Buck  
James F. Laboe  
John M. Zarembo  
Maria M. Proulx  
Phillip Rakhunov  
Jessica E. Storey  
Justin M. Boothby  
Heidi S. Cole

Susan S. Geiger  
Judith A. Fairclough  
(Of Counsel)

Enclosures  
cc: Service List

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**THE STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

**DT 06-067**

**PETITION OF FREEDOM RING COMMUNICATIONS, LLC**

**d/b/a BAYRING COMMUNICATIONS**

**V.**

**VERIZON, NEW HAMPSHIRE**

**BAYRING'S OBJECTION TO VERIZON'S MOTION TO COMPEL**

NOW COMES Freedom Ring Communications, LLC d/b/a BayRing Communications ("BayRing"), by and through its undersigned counsel, and objects to Verizon New Hampshire's Motion to Compel Discovery Responses by stating as follows:

1. Verizon New Hampshire ("Verizon NH") has propounded 57 information requests to BayRing, AT&T Communications, Inc., One Communications, Otel Telekom Inc., segTEL, Inc. and RNK Inc.

2. BayRing has objected to the following information requests: 1-3, 8, 10-35 and 45-55.

3. Verizon has moved to compel responses to those information requests and asserts that information it "seeks is reasonably calculated to allow it to fully develop and present its case in this proceeding, and the carriers' failure to provide the information will result in a denial of due process unless the Commission takes corrective action." *Verizon New Hampshire's Motion to Compel Discovery Responses* ("Motion to Compel"), p. 2.

4. The scope of the “case” that Verizon and the other parties will be developing and presenting to the Commission during this phase of the proceeding in this docket has been limited to the issue of “tariff interpretation”. *See* DT 06-067, Procedural Order No. 24,705 (Nov. 29, 2006) p. 7. Other Commission orders regarding the scope of Phase I of this proceeding support the foregoing statement, to wit:

a. “[R]esolution of the dispute ultimately will turn on a determination of the proper tariff provision to apply in the particular factual scenarios raised by BayRing’s initial and amended complaints...”. DT 06-067, Procedural Order No. 24, 683 (Oct. 23, 2006), p. 8.

b. “[W]hether Verizon’s access tariff requires the payment of certain rate elements, including but not limited to CCL charges, for calls made or received by a CLEC customer to or from end-users not associated with Verizon or otherwise not involving a Verizon local loop.” *Id.*

c. “[W]hether calls made or received by end-users which do not employ a Verizon local loop involve Verizon switched access.” DT 06-067, Supplemental Order of Notice (October 23, 2006), p. 3.

d. If calls made or received by end-users which do not employ a Verizon local loop do involve Verizon switched access, does “Verizon’s access tariff require[s] the payment of certain rate elements, including, but not limited to CCL charges.” *Id.*

e. If calls made or received by end-users which do not employ a Verizon local loop do not involve Verizon switched access, are such services “more properly assessed under a different tariff provision.” *Id.* at 3-4.

5. While the Commission has determined that it wishes to give some consideration to the magnitude of the potential financial impact involved in this case, *see* DT 06-067, Procedural Order No. 24, 705 (Nov. 29, 2006), p. 6, the Commission has expressly ordered that “[t]here will be no discovery” on the estimated calculations of either the annual impact to Verizon if the disputed revenue is no longer collected nor on the estimated total amount of the charges at issue which have been billed to BayRing and each intervenor.” *Id.* at 7.

6. Because much of the information that is the subject of Verizon’s Motion to Compel is not relevant to the scope of Phase I of this proceeding, and because some of it is unduly repetitious (e.g. copies of 2 years of call records and numerous questions seeking similar information), it cannot reasonably be calculated to lead to the discovery of *admissible* evidence, which is the standard the Commission must apply in evaluating contested discovery requests. *See Pennichuck Water Works, Inc.*, DW 06-073, Order No. 24,725 (January 12, 2007), slip. op. at 6. Irrelevant, immaterial or unduly repetitious evidence is inadmissible at the hearing of this matter. *See* RSA 541-A:33, II. Therefore, such information is not discoverable. Moreover, as some of the information Verizon seeks would either be unduly burdensome to produce or is already in Verizon’s possession, Verizon should not be allowed to abuse the discovery process to compel the production of documents which, although arguably tangentially related to the issues in this docket, are not necessary for the adjudication of the issue of whether a proper interpretation of Verizon’s tariff provisions allows it to collect the charges disputed by BayRing and others. Accordingly, Verizon’s Motion to Compel should be denied.

7. BayRing further responds to Verizon's Motion by invoking all of the objections it made to the above-referenced information requests and by providing the following additional reasons/explanation for its objections:

a. **Verizon Information Request 1:** This question seeks copies of all documents referenced in Attachment A to BayRing's April 28, 2006 Petition. Said Attachment A is a chronology of the steps taken by BayRing to resolve its billing disputes regarding the access charges which are the subject of this docket. Said Attachment A was submitted to demonstrate to the Commission that BayRing had taken extensive and numerous steps to resolve its access charge complaints directly with Verizon prior to resorting to filing a formal complaint with the Commission. *See Petition of Freedom Ring Communications, LLC d/b/a BayRing Communications* (April 28, 2006), paragraph 1, pp. 1-2. Since representatives of Verizon were involved in all of the action steps mentioned in said Attachment A, Verizon is already in possession of any documents referenced in said Attachment A. Therefore, it is reasonable to conclude that Verizon has propounded this information request not, as it alleges, to help Verizon to develop its case, but rather to harass BayRing. Such abuse of the discovery process should not be condoned or tolerated by the Commission.

In addition to objecting to this information request on the ground that Verizon already has access to this information, BayRing has objected to this information request on the ground that is not relevant to the issue of tariff interpretation. Verizon's Motion to Compel argues otherwise by stating that the requested information may lead to the discovery of facts regarding how the Carriers acted in regards to the application of the tariff and whether the Carriers followed the dispute resolution provisions of Tariff No. 85

in informing Verizon of specific information regarding an alleged misapplication of tariff provisions and disputed matters. BayRing asserts that documents relating to how carriers reacted to Verizon's application of its tariff is not relevant to the issue of the proper application of the tariff, which is a matter for the Commission to decide. That decision can properly be made without the information Verizon seeks and can even be made without an evidentiary hearing because it involves interpretation of a tariff rather than an adjudication of fact. Accordingly, BayRing should not be compelled to provide the information sought by Verizon in information request no. 1.

b. **Verizon Information Request 2:** This question seeks copies or lists of call records over the past 2 years where BayRing alleges TTS rates as opposed to intrastate switched access rates should apply, not including "local" calls regarding which the parties have agreed to adjust and apply TTS rates. These records are to include: the calling party NPA-NXX, the called party NPA-NXX and, if the called party number is LNP ported, the ported NPA-NXX of the call. BayRing has objected to this question on the grounds that it is not relevant to the issue of tariff interpretation, that it would be unduly burdensome for BayRing to compile this information and that these records are in Verizon's possession, not BayRing's. In addition, BayRing asserts that 2 years of records constitutes unduly repetitious information. Verizon's Motion to Compel argues that the "requested information is relevant to (or reasonably calculated to lead to the discovery of admissible evidence regarding) whether the proper interpretation or application of the tariff is based on specific call records that only the carrier can identify, allegedly evidencing that access charges have not been imposed according to the tariff." *Motion to Compel*, p. 7. Without waiving its objection to providing all of the documents Verizon

seeks in this information request, BayRing has agreed to provide Verizon with illustrative examples of such records. Nothing further would be gained by compelling BayRing to provide all of the information Verizon seeks.

c. **Verizon Information Request 3:** This question seeks copies of all bills rendered to BayRing in instances where BayRing claims that it has been billed TTS rates for some calls to wireless customers in the past. BayRing has objected to this question on the grounds that it is irrelevant to the issue of tariff interpretation and that Verizon has access to these records via its internal documentation. Verizon's Motion to Compel asserts the same argument here as asserted with regarding to information request number 2. Without waiving its objection to providing all of the records Verizon seeks, BayRing has agreed to provide illustrative examples of these types of bills. Nothing further would be gained by compelling BayRing to provide all of the records Verizon seeks.

d. **Verizon Information Requests 8 & 54:** These questions seek information about interconnection agreements (i.e. past practice of how wireless calls were rated thereunder, and questions about direct trunking, routing and transport). BayRing has objected to these questions on the ground of relevance and by stating that interconnection agreements are a matter of public record. In addition, BayRing asserts that because these questions ask about interconnection agreements to which Verizon is a party, this information is already in Verizon's possession, or should be. Verizon's Motion to Compel asserts, *inter alia*, that the information is relevant to whether the disputed call types have been properly billed under the interconnection agreements as well as the tariff. Verizon also asserts that it is seeking this information to understand the parties' position regarding their interpretation of the terms and conditions that apply to the disputed call

types. *Motion to Compel*, p. 7. BayRing's position in this case is not based on its interpretation of any interconnection agreement that any carrier has with Verizon. Accordingly, Verizon's asserted reason for seeking this information from BayRing is without merit.

e. **Verizon Information Requests 10-35:** These questions relate to whether a CLEC or IXC makes use of direct trunk groups and what factors a CLEC and IXC takes into consideration for deciding whether to establish trunking directly to another provider's end-office, IXC POP or other provider's network for the exchange of traffic. BayRing has objected to these questions on the ground of relevance because the extent of BayRing's direct trunking arrangements has no bearing on the question of whether Verizon is properly interpreting its Tariff in assessing the disputed charges. Verizon asserts that the "questions have bearing on whether tariff-purchasing CLECs of Verizon access services are harmed by the recovery of CCL, given the availability of competitive alternatives." *Motion to Compel*, pp. 7- 8. BayRing asserts that the existence of competitive alternatives is totally irrelevant to the issue of whether Verizon is properly assessing the disputed charges. Verizon, on the other hand, argues that it is relevant to look at whether CLECs that "do not want to pay CCL charges" can avoid them by purchasing alternative means of routing exchange access and exchanging local traffic with other carriers that do not involve Verizon NH's switched network. Neither this argument nor the information that Verizon seeks from BayRing to support it are relevant to the issue of whether Verizon's assessment of CCL charges to BayRing is correct. Verizon has a responsibility to provide service according to its tariffs. Arguing that CLECs can go elsewhere for these services if they do not agree with Verizon's



interpretation of its tariff does not relieve Verizon of its responsibility to follow its tariff. Thus, the Commission should not allow Verizon to shift the focus of this case from the issue of tariff interpretation to the issue of competitive alternatives. Lastly, given the similarity in questions 10 through 25 and the similarity in questions 27 through 34, it is apparent that Verizon is seeking unduly repetitious information which is excludable from the hearing. *See* RSA 541-A:33, II. This information, therefore, should not be discoverable as it is not reasonably calculated to lead to the discovery of *admissible evidence*. *See Pennichuck Water Works, Inc.*, DW 06-073, Order No. 24,725 (January 12, 2007), slip. op. at 6.

f. **Verizon Information Requests 45 & 50:** These questions ask whether BayRing or any of its predecessors, affiliates, LLC member entities, member individuals (including LLC management team or members who may be affiliated with or have an ownership interest in another entity that was a party) were a party to NH PUC Docket DE 90-002. BayRing has objected to this question on the ground of relevance and has asserted that information about parties to DE 90-002 is a matter of public record. Verizon nonetheless is persisting in compelling BayRing to supply this public information because participation in 90-002 “may shed light on whether the parties’ claims are based on a complete understanding of how the access charge structure and policies were determined and how the resulting compliance tariff implementing those policies came to be.” *Motion to Compel*, p. 8. BayRing’s response to this is that the parties’ claims are what they are; any information about whether BayRing or anyone one affiliated with it was a participant in docket DE 90-002, or whether its understanding of the history of access charges is “complete”, is totally irrelevant to whether Verizon’s

tariff, as currently written, can be properly interpreted as authorizing Verizon to collect the disputed charges.

**g. Verizon Information Requests 46-49 & 51:** These questions seek information about when BayRing or any affiliates or predecessors began purchasing intrastate switched access service in New Hampshire, when they became an intrastate toll providers in New Hampshire and when they became a local exchange service provider in New Hampshire. BayRing has objected to these information requests as none of this information is relevant to the issue of tariff interpretation and has stated that, in any event, such information is a matter of public record. Verizon has moved to compel answers to these questions on the ground that “[i]nformation concerning when a party first began operating in NH is relevant to the meaning and application of the tariff as it is a clear indicator of when the party first began purchasing access services under the tariff and became subject to the disputed tariff terms and conditions, and the time period, if any, during which the application of the tariff was never an issue of contention for the carrier.” *Id.* Verizon is apparently claiming that because a carrier has operated in New Hampshire for a period of time without complaining about access charges it is now estopped from doing so even if Verizon’s tariff does not permit the disputed charges to be levied. This argument totally ignores that complaints brought under RSA 365:1 are not subject to any time limitation. This argument, therefore, does not provide Verizon with a valid basis for seeking the information requested here.

**h. Verizon Information Requests 52 & 53:** These questions ask whether BayRing has been a party to or is aware of any other state proceeding involving a challenge to CCL charges. BayRing objected to these information requests on the ground

that they are irrelevant to the extent that they seek information relating to access tariffs in other states that is different from the tariff that is the subject of this case. Verizon's Motion to Compel asserts that the requested information is relevant to the meaning and application of the tariff and it may be useful for the Commission to have insight into the parties' participation in such proceeding and how other jurisdictions have addressed the same or similar issue. This claim of relevance by Verizon is totally without merit. Even if Verizon can demonstrate that BayRing participated in or knew of a proceeding dealing with another state's access tariff, and if Verizon could further prove that the tariff provisions in that other state's docket were identical to those at issue in this proceeding, that information proves nothing. This Commission is free to make its own interpretation of tariff provisions that may be similar to those found in other jurisdictions and is not bound to follow the decision of any other state commission.

i. **Verizon Information Request 55:** This question seeks copies of all bills received from Verizon NH showing the "disputed charges and call details" for "Cellular Tandem Switched" access calls terminating to a Type 2 interconnection in which BayRing alleges two segments of tandem switched local transport (tandem to host and host to remote) have been billed. Bay Ring has objected to this information request on the ground that it would be unduly burdensome to provide copies of all of the bills and because it does not possess all of the call details requested (such call details are in Verizon's possession). BayRing has also objected because this question seeks data that is not relevant to the issue of tariff interpretation. Without waiving this objection, BayRing has agreed to provide illustrative examples of bills regarding these disputed charges. Verizon's Motion to Compel argues that the requested information is relevant to the

meaning and application of the tariff as BayRing has identified this type of call as an issue involving improper application of the tariff but has not provided any substantiating facts. Verizon concludes its comments on this information request by stating that “actual copies of a sampling of bills would be sufficient to serve as examples.” *Motion to Compel*, p. 9. Since BayRing has already indicated to Verizon that it would provide such a sampling, this portion of Verizon’s Motion to Compel was unnecessary.

8. Verizon NH’s Motion to Compel asserts, *inter alia*, that unless it obtains the information to which BayRing has objected, Verizon’s ability to understand the bases for the other carriers’ positions, and its preparation for hearing and presentation of evidence will be undermined. This argument is unpersuasive because it ignores that the procedural schedule in this case affords Verizon the opportunity to conduct additional discovery after BayRing and others have prefiled their direct testimony. Once prefiled testimony has been submitted, Verizon will be able to probe, through additional discovery, the bases for the parties’ positions, if that is necessary. Thus, it is premature for Verizon to declare that it will be denied a meaningful opportunity to conduct cross examination, to present testimony or otherwise prepare and fully present its case without access at this juncture to the information to which BayRing has objected.

WHEREFORE, BayRing respectfully requests that this honorable Commission:

- A. Deny the Motion to Compel filed by Verizon NH; and
- B. Grant such further relief as it deems appropriate.

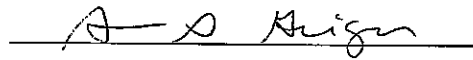
Respectfully submitted

Freedom Ring Communications, LLC  
d/b/a BayRing Communications

By their attorneys,  
ORR & RENO, P.A.  
One Eagle Square  
Concord, NH 03302-3550  
Telephone: (603) 223-9154

By:

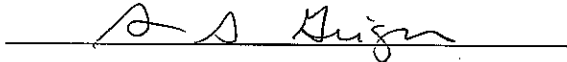
January 22, 2007



Susan S. Geiger

Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 22nd day of  
January, 2007 been mailed first class postage prepaid and by e-mail to the parties on the  
Service List in the above-captioned matter.



Susan S. Geiger

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