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April 20, 2007

VIA HAND DELIVERY AND ELECTRONIC MAIL
Debra Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

RE: Docket No. 06-067, Bay Ring Petition for Investigation into Verizon New Hampshire's Practice of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, on Calls Which Originate on BayRing's Network and Terminate on Wireless Carriers' Networks

Dear Ms. Howland:

Enclosed for filing on behalf of AT&T Communications of New England, Inc., please find the following:

PANEL REBUTTAL TESTIMONY OF OLA A. OYEFUSI, CHRISTOPHER NURSE, AND PENN PFAUTZ

If you have any questions regarding this matter, please contact me at the address or e-mail above. Thank you.

Sincerely,

Jay E. Gruber

cc: Lynn Fabrizio, Esq.
Service List (*Electronic Only*)

Enclosure

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DT 06-067

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

Complaint Against Verizon, New Hampshire Re: Access Charges

PANEL REBUTTAL TESTIMONY OF OLA A. OYEFUSI, CHRISTOPHER NURSE, AND PENN PFAUTZ

On Behalf of AT&T

April 20, 2007

PANEL REBUTTAL TESTIMONY OF OLA A. OYEFUSI, CHRISTOPHER NURSE, AND PENN PFAUTZ

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PANEL REBUTTAL TESTIMONY OF OLA A. OYEFUSI, CHRISTOPHER NURSE, AND PENN PFAUTZ

I. INTRODUCTION

Q: DR. OYEFUSI, PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Dr. Ola A. Oyefusi and my business address is 7125 Columbia Gateway Drive, Columbia MD 21046.

Q: MR. NURSE, PLEASE STATE YOUR FULL NAME, ADDRESS AND CURRENT RESPONSIBILITIES.

A: My name is E. Christopher Nurse, and my business address is 1120 20th Street, N.W., Suite 1000, Washington, D.C. 20036.

Q. DR. PFAUTZ, PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Penn L. Pfautz and my business address is 200 South Laurel Avenue, Middletown, New Jersey 07748.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. Our purpose is to respond to the direct testimony of Verizon New Hampshire witness Peter Shepherd. Mr. Shepherd's testimony contains several inaccurate claims or statements that need to be corrected.

Q. PLEASE SUMMARIZE YOUR TESTIMONY

A. Our rebuttal testimony explains why Verizon is wrong in its claim that the CCL charge applies to calls that do not traverse a Verizon switch or common line (or "local loop"). First, we very briefly address, once again, the problems with Verizon's tariff interpretation argument. Our rebuttal is very brief because we anticipated and addressed most of Verizon's tariff interpretation arguments in our initial testimony.

Second, we address why Verizon is wrong in its argument that CCL is a contribution element intended to guarantee Verizon a particular revenue stream and not designed "to recover any cost related to use of end-user access lines or loop related costs." *See* Shepherd Testimony at 4. According to Verizon, it originally proposed CCL to maintain a prior level of toll revenue to help subsidize local exchange service as the industry transitioned to intraLATA toll competition. As we explain below, Verizon's second argument fails because the Commission never accepted Verizon's proposal and rejected the factual and policy propositions on which Verizon's proposal was based. Whatever Verizon wanted is irrelevant. The Commission's actions, recorded in its decisions on the public record, are what is relevant; and as we demonstrate below, the Commission's actions support AT&T's position.

We also refute Verizon's claim that nothing relevant to interpretation of this tariff has changed. In telecommunications, *everything* has changed over the last ten years. The telecommunications market is now competitive for local, for long distance, and across technology platforms. Verizon's tariff was developed at a time when it was the only local service provider in its territory. Now it is competing against (and losing traffic to) a host of other providers, and pursuant to decisions of this Commission and the FCC, Verizon is now competing with (and taking traffic *from*) interexchange carriers. Nothing in Verizon's tariff or this Commission's Orders insulated Verizon from CCL revenue losses any more than the Commission insulated IXCs from long distance losses, nor did anything in the tariff or from this Commission indicate that, in a competitive market, Verizon,

and Verizon alone, would be extended a "contribution guarantee." As we explain below, Verizon's position in this regard is completely indefensible.

II. VERIZON'S TARIFF INTERPRETATION IS INCORRECT

Q. VERIZON WITNESS SHEPHERD (AT PAGE 17) MADE REFERENCE TO SEVERAL SECTIONS OF TARIFF 85 TO SUPPORT VERIZON BILLING OF CCL FOR CALLS THAT DO NOT TRAVERSE A VERIZON END OFFICE SWITCH OR COMMON LINE. IS HE CORRECT?

A. No. Mr. Shepherd references Section 5.1 which states that "carrier common line 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 Section 5.4.1A which states that "*except as set forth herein,* all switched access service provided to the customer will be subject to carrier common line access charges" (emphasis added). Just as Verizon did in its initial pleadings, Verizon witness Shepherd ignores the critical qualifiers which we emphasized in italics above. prerequisites of the referenced language. We responded to this same Verizon argument in our direct testimony (see AT&T Panel Direct at 11-15), and we will not reiterate here the demonstration we made there that the qualifying language italicized above requires that a call must traverse a Verizon common line before it can assess a CCL charge. The fundamental point is simply this – if the CCL is intended to offset a portion of Verizon's costs of providing a common line between its end office switch and its customer's premise, Verizon should not be imposing the CCL unless the call traverses the common line. It is what the tariff requires.

Q. AT 19, LINES 1 - 4, WITNESS SHEPHERD REFERENCED SECTION 4.1 AND ALLEGES THAT THIS LANGUAGE AUTHORIZES APPLICATION OF CCL TO "ALL INTRASTATE SWITCHED ACCESS PROVIDED." HOW DO YOU RESPOND?

A. Section 4.1.1A states that "the Telephone Company shall bill on a current basis all charges incurred by and credits due to the customer under this tariff attributable to services established or discontinued or provided during the preceding billing period." Mr. Shepherd is correct that this section generally pertains to billing matters, but that is not the point. The critical point, which he ignores, is that this section requires Verizon to have "*established* or *discontinued* or *provided*" a service before it can issue a bill. Accordingly, Verizon billing practice when it charges CCL without providing an associated end user line violates this section cited by Mr. Shepherd.

Q. AT 19, LINES 9 – 22, MR. SHEPHERD ALLEGES THAT SECTION 3.1.2D IS "INCLUDED IN THE TARIFF TO HIGHLIGHT THE REQUIREMENT THAT CARRIER COMMON LINE CHARGES APPLY TO ALL SWITCHED ACCESS SERVICE." HOW DO YOU RESPOND?

A. Section 3.1.2D states that "each exchange telephone company will provide the portion of the local transport element in its operating territory to an IP [Interconnection Point] with another exchange telephone company and will bill the charges in accordance with its access service tariff. The charges for the local transport element will be determined as described in Section 3.1.2K and 3.1.2L. **All other appropriate charges in each exchange telephone company tariff are applicable."** (Emphasis added). Mr. Shepherd claims that the bolded language somehow supports his notion that CCL charges are applicable.

Even a beginning student in Logic 101 recognizes that this argument assumes the proposition to be proven. The bolded language refers to CCL

charges only if CCL charges are among the "appropriate" charges. But this is precisely the issue presented by the case. Mr. Shepherd must assume that he is right in order to prove that he is right. The Commission can and should dismiss this argument out of hand.

III. VERIZON'S ASSERTION THAT CCL IS A CONTRIBUTION ELEMENT IS IRRELEVANT TO A DETERMINATION OF HOW THE CCL SHOULD PROPERLY BE APPLIED

Q. AT 20 – 28, MR. SHEPHERD CLAIMS THAT CCL WAS DESIGNED TO PROVIDE CONTRIBUTION AND NOT TO RECOVER LOOP COST. PLEASE RESPOND.

A. In the referenced passage, Mr. Shepherd goes on at length quoting from the testimony of numerous Verizon's witnesses regarding Verizon's proposal presented to the Commission in Docket No. 90-002 fifteen years ago. Our first response to Verizon's arcane dissertation on history is that it is not evidence of what the tariff means. It is the words in the tariff that tell us what the tariff means. But even assuming that a 15 year old history that does not appear in the tariff is somehow relevant, we are still puzzled by references to *Verizon's testimony* in that case. While at the time of that case Verizon may have wished its position to be true, Verizon's wishes are not controlling. Rather, what matters is what the Commission decided. On that score, Verizon's position cannot stand. In Docket No. 90-002, the Commission never accepted Verizon's proposal and, in fact, rejected all the propositions that it was based on, as we explain in detail below. Rather, the Commission's own words and conclusions expressly support AT&T's position.

Q. PLEASE EXPLAIN WHAT VERIZON PROPOSED IN DOCKET 90-002 AND HOW THE COMMISSION RESPONDED.

A. In order to understand Verizon's proposal in Docket 90-002 to recover "residual" costs through a "contribution" charge, it is necessary to understand the background, *i.e*., what had happened in Docket 89-010. This is because it was the ruling of the Commission in Docket 89-010 that gave rise to certain costs (which Verizon calls a "residual" amount or simply costs for which "contribution" is required) that Verizon wanted to recover in its access charge proposal in Docket 90-002.

Q. WHAT HAPPENED IN DOCKET NO. 89-010?

A. Docket 89-010 was a general rate case. In that case, Verizon had proposed to recover unseparated non-traffic sensitive costs (primarily loop costs) in basic exchange rates. The Commission, however, rejected Verizon's proposal. The Commission ruled that Verizon already recovers approximately 25% of non-traffic sensitive costs under its federal tariff and removed that amount from Verizon's allowed revenue requirement. More importantly for this case, it also ruled that some portion of the loop costs must be recovered in rates for other services, including toll services. *See* Docket No. 89-010, Order No. 20,082; 76 N.H. P.U.C. 150, at 166. The Commission also found that when a portion of the loop costs are recovered in the rates for toll and other services, basic exchange rates were compensatory. *See*, Order No. 20,082; 76 N.H. P.U.C. 150, at *166-167.[1] As a result, when the dust settled from Docket No. 89-010, the

[1] *See also*, Docket No. 90-002, Order No. 20,864, 1993 WL 475294, at *3 ("When [non-traffic sensitive] costs were appropriately allocated among all services utilizing loop facilities, and therefore causing loop costs, including toll, it was clear that basic exchange services were not being subsidized by toll or any other service.")

Commission had approved rates that produced Verizon's revenue requirement, and those rates included (a) toll rates that recovered a portion of the loop costs and (b) basic exchange rates the Commission found to be compensatory.

Q. WHAT DOES THAT HAVE TO DO WITH VERIZON'S PROPOSAL FOR THE CCL CHARGE IN DOCKET NO. 90-002 AND ITS ARGUMENT THAT THE CCL CHARGE IS A "CONTRIBUTION" RATE ELEMENT THAT DOES NOT RECOVER THE COST OF THE LOOP?

A. Docket No. 90-002 was opened to establish the conditions for introducing competition into the intraLATA toll market, including the rates that Verizon could charge to its new intraLATA toll competitors. Verizon's principal objective in that docket was to ensure that it would be able to continue to recover the same net revenues from toll related services (toll and access) that were allowed in Docket 89-010, even as it lost toll customers to its new intraLATA toll competitors. *See,* Shepherd Testimony, p. 21, lines 12-15. Accordingly, Verizon proposed a CCL charge that, if approved, would have produced the same net revenues from toll related services that Verizon would have enjoyed if it had maintained its single provider position in the intraLATA toll market.[2]

Q. DID THE FACT THAT VERIZON PROPOSED THE CCL CHARGE AS A "CONTRIBUTION" RATE ELEMENT MEAN THAT VERZION WAS GUARANTEED A LEVEL OF CCL REVENUES?

A. No, of course not. Although Mr. Shepherd now claims that the purpose of this "contribution" rate element was to "support" basic exchange service with toll related rates designed to maintain that support after the introduction of toll

[2] Verizon thus proposed the CCL rate to generate additional revenue needed to cover the shortfall in its revenue requirement created as a result unassigned loop cost. The unassigned loop costs are thus what Mr. Shepherd now refers to as contribution.

competition, the Commission ruled otherwise. In Docket No. 90-002, the Commission ruled that it is not appropriate to set rates in a competitive marketplace to guarantee revenues at any particular level.[3] As a result, whatever Verizon's hopes may have been in proposing the charge, the Commission did not consider it as guaranteed contribution towards the cost of basic exchange service.

Q. ON WHAT BASIS WAS THE CCL CHARGE SET?

A. First, one thing is clear: it was ***not*** set on the basis of Verizon's proposal. The Commission never accepted the proposal that Verizon continuously references in this case. After months of litigation, Verizon entered into a settlement stipulation under which it agreed to access rate elements that, when combined, produced a total access rates per minute of about 12 cents, considerably below the effective access rates in Verizon's discarded proposal. The Commission, however, rejected even that rate in the Stipulation and ordered Verizon to reduce its access rates to interstate levels, approximately 8 cents per minute in total, over a four year transition period. Order No. 20,864, at *11.

Q. WHAT DOES ALL THIS MEAN AS IT RELATES TO THE ISSUE IN THIS CASE, WHETHER VERZION CAN CHARGE THE CCL RATE ON CALLS THAT NO NOT TRAVERSE ITS END OFFICE SWITCH AND COMMON LINE?

A. First, it means that the Commission can easily dismiss one of the principal grounds that Verizon relies on in support of its claim that it can charge the CCL when there is no Verizon end user involved (that the CCL is somehow a rate element that operates like a tax, permitting Verizon to recover guaranteed

[3] *See*, Order No. 20,864, at *7 ("An effectively competitive marketplace is totally at odds with any notion that NET's total revenues can be 'guaranteed' to remain at any particular level.").

"contribution" to achieve a predetermined revenue requirement without regard to whether it actually provides a service). It is clear that the Commission did not intend that result.

Second, it adds support to AT&T's position that the CCL rate is tied to whether the common line, or "local loop" is actually being used to complete the call.

Q. HOW DO THE COMMISSION'S ACTIONS IN DOCKETS 89-010 AND 90-002 SUPPORT AT&T'S POSITION?

A. In two different ways. First, the objective of the Commission in establishing access rates for the introduction of intraLATA toll competition was to establish the conditions for robust, economically efficient competition in the intraLATA toll market and for that reason determined that intrastate access rates that mirror interstate levels are most appropriate. In rejecting Verizon's proposals, the Commission stated:

> We believe that the proposed reductions are insufficient. Access charges above interstate levels threaten to deprive New Hampshire ratepayers of the reduced toll prices which have characterized competition in the interstate jurisdiction. Access charges should also be set at levels which will enhance New Hampshire's ability to maintain a telecommunications infrastructure that will attract new businesses to the State and will encourage existing businesses to remain here. Moving our access charges from the second highest levels in the nation to the fourth or fifth highest is inconsistent with this goal.
>
> A low-cost, efficient, state of the art telecommunications infrastructure is vital to New Hampshire's economy and its long run ability to create jobs and to compete in a regional, national and international marketplace. Telecommunications infrastructure is particularly important to a state like New Hampshire which depends heavily on its small business and service sector for job creation. Indeed, the service sector accounts for over half of the employment in the State, and small businesses account for virtually all new jobs in New Hampshire.

Permitting the incumbent toll provider to assess charges on its competitors for traffic that does not traverse Verizon's facilities, and which would guarantee Verizon a particular revenue stream (something none of Verizon's competitors enjoy) is directly contrary to the Commission's objective of encouraging robust and efficient competition and lower prices.[4] The Commission had observed the effect of access prices in the interstate arena and wanted the same pro-competitive result, a result that did not guarantee a revenue stream for one competitor at the expense of all others.

Q. WHAT IS THE SECOND WAY IN WHICH THE COMMISSION'S ACTIONS IN DOCKETS 89-010 AND 90-002 SUPPORT AT&T'S POSITION?

A. The Commission's actions in Dockets 89-010 and 90-002 show that the costs that Verizon's so called "guaranteed contribution" rate recovers are actually the portion of loop costs allocated to toll related services rather than basic exchange rates. Recall that, in Docket 89-010, Verizon had been ordered to recover a portion of its loop costs from toll service, among others, and Verizon was allowed to adjust its toll rates accordingly. Thus, Verizon's proposal in Docket 90-002 to maintain its net toll related revenues in access rates through use of the CCL was actually a proposal to recover the portion of loop costs assigned to toll related services.[5] While the Commission did not permit Verizon to charge the full

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[4] We described some of the adverse effects on competition of Verizon's tariff interpretation in our March 9, 2007 Panel Testimony, at pages 24-25.

[5] The basis of Verizon's CCL rate development in Docket 90-002 is the toll rate that was set in Docket 89-010. See Verizon Response to AT&T 2-3 (Workpaper 1 to Workpaper 7). In that exhibit, Verizon developed the CCL as follows: Verizon, 1) calculates a differential between the costs of access and toll service; 2) subtracts that cost differential from the tariffed retail rate of toll services (i.e.

amount it sought, it is apparent that the CCL, to the extent that it recovers "contribution" is, in fact, recovering the portion of loop costs allocated to toll related services. In shortThus, contrary to Verizon's claim, the CCL is, in fact, linked to the recovery of loop costs and, therefore, is to be assessed only on calls that traverse the Verizon loop. Conversely, the CCL should not be assessed, and is not applicable to, calls that do not traverse the Verizon loop.

IV. EVIDENCE OF HISTORICAL CHANGES

Q. AT 28, LINES 12-13, MR. SHEPHERD STATED THAT NOTHING HAS OCCURRED HISTORICALLY TO AFFECT THE RELEVANCE OF THE TARIFF LANGUAGE ADOPTED ALMOST 15 YEARS AGO PURSUANT TO DOCKET 90-002. DO YOU AGREE?

A. No. We are tempted to ask Mr. Shepherd where he has been in the last fifteen years. The passage of time and subsequent legal and industry developments completely contradict this Verizon statement. In considering the issue of whether Verizon today is entitled to charge for the loop for traffic that does not traverse a Verzion loop, but which instead is being routed to a competitor's customer, the biggest single change is the appearance of carriers providing an alternative to Verizon's access to the customer, i.e., the loop. The current tariff was approved at a time when IXCs, as a practical matter, could only purchase switched access from either Verizon or the Independent companies, both of whom maintained exclusive operations in their franchised territories. The issue at the time was introduction of a multi-carrier environment *to the intraLATA toll market* and

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Retail MTS rate) - the result is an End-to-End access target; 3) subtract local switching and local transport - the result equals total common line. Therefore, to the extent the Commission allocated loop cost to toll rates in Docket 89-010, that cost was included (through the Retail MTS rate) in the development of CCL as described above.

Verizon's tariff was designed for that purpose. Indeed, Verizon's own witness stated that the issues before the Commission in Docket 90-002 did ***not*** include "issues of separate competing networks or multiple exchange carriers in the same franchise territory." *See*, McCluskey Testimony, at 3, in Docket 90-002 (Attachment 2-20(a) to Verizon's response to AT&T 2-20). Now, with the presence of competing multi-modal networks, the world has fundamentally changed in a way that affects the relevance and meaning of this fifteen year old tariff.

Q. CAN YOU BE MORE SPECIFIC?

A. Yes. First, the passage of 1996 Act allowed entry into the local exchange market and created a multiple carrier environment. In the post-1996 Act era, CLECs were allowed to interconnect their facilities to NET's (Verizon's predecessor) network and provide access service in competition with NET. According to Verizon's response to discovery, the number of CLECs operating in New Hampshire has grown from zero in 1993 to 21 in December 2006. *See* VZ Response to AT&T 2-19a and 2-19b.

Second, the proliferation of wireless services coupled with the disparate regulatory regimes between the wireless and wireline industry segments has caused a significant substitution of wireless minutes (and revenue) for wireline minutes (and revenue). From 1993 to 2006, nationwide wireless usage exploded from 30 billion million to 1.8 *trillion minutes*, and wireless subscribership became

virtually universal, growing from 16 million users to 233 million.[6] According to the FCC, by 2003 wireless MOUs and revenue had grown from a mere 5% of *total industry* revenue and minutes in 1996 to a whopping 30% of the *industry's total* revenue and minutes by year end 2002, and, as we all know, that growth is continuing.[7] New Hampshire has been part of that growth. New Hampshire wireless penetration has climbed steadily from approximately 22% in 1999 to approximately 75% as of year end 2005.[8] Not surprisingly, intrastate toll revenue in New Hampshire has declined significantly as wireless revenue has advanced.[9]

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[6] See, CTIA's *2006 Semi-Annual Wireless Industry Survey*. In 1993, wireless interconnection was still evolving from the original Type 1 form to Type 2. In Type 1, the wireless switch connects to the LEC end office (rather than a tandem) via a facility described as "Trunk with Line Treatment" just as would a PBX. Further, wireless numbers were shown in the Local Exchange Routing Guide as assigned to the LEC end office rather than to the wireless switch. In this situation it might have been logical to think of Verizon as providing end office switching and CCL on wireless calls, in effect complete switched access service. As Verizon's response to discovery [AT&T/BayRing 1-37] indicates, little if any Type 1 interconnection remains and in Type 2 interconnection Verizon can in no way be construed as providing these elements. The FCC [see AT&T Direct, March 9, 2007, p. 20ff] recognized this change in prohibiting LECs from assessing CCL charges on interstate wireless calls.

[7] See In the Matter of Implementation of Section 60029b) of the Omnibus Budget and reconciliation Act of 1993. Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. WT Docket No. 02-379 *Eight Report*, rel., July 14, 2003 ¶103-105.

[8] Wireless penetration is a function of POPs or population. Thus, penetration is calculated as population / number of subscribers. Data sources employed are the FCC's *Local Competition Report* , July 2006, Table 14 for year-over-year wireless subscribers in New Hampshire and Dept. of Commerece Quick Facts for New Hampshire's population trends available at http://www.quickfacts.census.gov/qfd/states/33000.html

[9] See, for example, FCC's *Trends in Telephone Service*, Table 15.7, (Feb., 2007; April 2005; May, 2004; and May, 2002).

Third, pursuant to Section 271 of the 1996 Act, Verizon obtained approval for in-region interLATA toll competition, further changing the telecommunications landscape. It was clear that as Verizon began providing interLATA long distance services for the first time that its interLATA revenues would grow (an inescapable fact, given that Verizon started with a zero market share), but at the same time Verizon would continue to face competition from other carriers, including in the intrastate intraLATA toll market. Verizon can hardly claim that when this Commission and the FCC approved Verizon's application to compete in the interLATA long distance market that Verizon would be guaranteed any particular level of revenues. That statement is equally true with regard to Verizon's CCL revenues. With the advent of competition, everyone – regulators, competitors and Verizon – understood quite clearly that in some instances Verizon's revenues were going to increase (*e.g.*, interLATA long distance) and in some instances they could decrease, such as, relevant here, when traffic is completed to a competing carrier rather than Verizon. Nowhere in the pro-competitive scheme established by the Telecommunications Act of 1996 was Verizon, or any other carrier for that matter, given a revenue guarantee. Verizon's claim that this Commission gave it such a guarantee, and that the guarantee has survived all of the pro-competitive changes we have seen in the telecommunications landscape, should be dismissed as nothing more than Verizon wishful thinking.

Q. WHAT IS THE SIGNIFICANCE OF THESE CHANGES FOR THIS CASE?

As noted above, Mr. Shepherd's statement that nothing has changed over fifteen years is so far from current reality as to be incredulous, and should be rejected. In fact, his statement is contradicted by the profound difference between today's reality and Verizon witness McCauskey's description of the reality that existed (and did not exist) when the access tariff was developed. Indeed, it is clear that Verizon understood that the access structure at issue in Docket 90-002 was not designed for a multiple network world and that Verizon contemplated the need for further adjustments when that world was to arrive. *See*, McCluskey Testimony, at 3, in Docket 90-002 (Attachment 2-20(a) to Verizon's response to AT&T 2-20).

The competitive world Mr. McCluskey predicted in his 1992 testimony arrived more than a decade ago, yet Verizon has not presented any filing with the Commission to request a review of its tariff as suggested by its expert witness. Rather, Verizon has chosen to stretch the meaning of a tariff not designed to accommodate a fully competitive, multiple network environment to try to obtain "guaranteed" revenues from calls completed over competitors' networks

V. VERIZON'S ALLEGATIONS REGARDING FINANCIAL IMPACT ARE COMPLETELY IRRELEVANT

Q. AT 29-30, MR. SHEPHERD EXPLAINED THAT VERIZON WOULD SUFFER SOME FINANCIAL HARM IF THE COMMISSION WERE TO RULE THAT IT CANNOT CHARGE CCL IF IT DOES NOT PROVIDE COMMON LINE. HOW DO YOU RESPOND?

A. The tariff means what the words in the tariff say it means. Who wins and who loses and by how much should not determine what the words mean. So, at the outset, we say that the financial impact is irrelevant to the interpretation of the tariff. As we noted above, the market has changed to become fully competitive,

both for local and long distance traffic. Verizon's entry into the long distance market meant that AT&T and other IXCs would lose traffic and revenues to Verizon. Likewise, the emergence of CLECs and wireless carriers in the local market meant that Verizon would lose traffic and revenues to those other carriers, including, relevant to this case, CCL revenues when calls were completed to other carriers and not to a Verizon customer. Both of those shifts have been predictable outcomes from the emergence of competition. Here, however, Verizon is trying to argue that notwithstanding the gains it has make in the interLATA and wireless markets, this Commission somehow insulated it from any potential CCL revenues losses in the local market. That is not what this Commission intended, nor is it what this Commission has done.

Q. ASSUMING FOR THE SAKE OF DISCUSSION, AND WITHOUT CONCEDING THAT THE FINANCIAL IMPACT IS RELEVANT, DO YOU AGREE WITH THE WAY IN WHICH VERIZON HAS CALCULATED IT?

A. No. Verizon's calculation of financial impact figure is severely flawed. Verizon has not presented any direct measure of any lost revenue for most of the period affected. In fact, for at least ten years since the rate structure was effective (1996 to 2006), Verizon has admitted[10] that it did not charge a CCL on calls that did not involve its end users.[11] Verizon cannot now claim that it would lose some

[10] Although Verizon claims that, prior to 1996, it had billed the CCL on calls that terminated to non-Verizon end users, it has failed to provide a single piece of documentary evidence to support that claim.

[11] Although Verizon contends that the failure to bill was a "mistake," it has presented no evidence of that. The failure to bill the CCL during this period is evidence that the people responsible for doing so did not believe that it was appropriate.

revenue or under-earn by extrapolating its estimates to cover periods when it was not collecting that revenue.

Q. SHOULD THE COMMISSION GIVE ANY WEIGHT TO VERIZON'S THREAT THAT A LOSS OF CCL REVENUES COULD RESULT IN AN INCREASE IN BASIC EXCHANGE RATES?

A. No, any such assertions are not relevant here. Just like any other competitor in today's market, if Verizon's revenues decline for one of its services, it will need to find ways to become more efficient, to introduce new services that its customers want, or to generate new revenues. That is the way competitive markets operate, and that is the way every other firm competing in New Hampshire today is required to manage its business. Verizon should not receive an special protection from this Commission, nor should it be treated any differently than any other competitor.

Even assuming that all these market changes had not occurred, Verizon's behavior over the ten year period it was not collecting these revenues demonstrates that the CCL revenues at issue in this case are not causing any undearnings. For ten years, when Verizon was not collecting most of the money at issue, it never sought rate increases to defray any claimed underearnings. If Verizon had been underearning during the ten year period in which it did not collect the disputed CCL charges, it had the option to file for a rate review as allowed under its rate of return regulation. Yet, during that period, Verizon presented no such filing perhaps because Verizon found new sources of revenue, or perhaps because Verizon found ways to offer services more efficiently. Whatever the case, Verizon's behavior belies its claim of underearings.

VI. CONCLUSION

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. This rebuttal testimony refutes several contentions that Verizon made in its initial testimony. *First*, we showed how Verizon's tariff interpretation is flawed because it ignores the qualifying language that requires that Verizon's loop be involved in the transmission to or from the end user before Verizon can charge for it. *Second*, we refuted Verizon's argument that it could charge the CCL because the rate was a "guranteed contribution" not related to the recovery of loop cost. With respect to Verizon's "contribution" argument, we showed

(a) that the Commission never accepted Verizon's "guaranteed contribution" position and firmly rejected all claims that such position was based on (including Verizon's claim that basic exchange somehow did not recover its incremental costs and thus required "support", and including Verizon's claim that it was entitled to made whole from losses resulting from intraLATA toll competition);

(b) that the principal basis for the CCL as allowed by the Commission was the Commission's desire to match the more economically efficient interstate rate levels in order to encourage robust intrastate toll competition – a basis entirely at odds with Verizon's claim that it can charge its new competitors for services that it does not provide to them; and

(c) that, to the extent the Commission permitted Verizon to charge CCL, the CCL rate recovers the portion of Verizon's loop costs assigned to toll related services, and thus should only be assessed for traffic that actually traverses a Verizon loop.

Third, we showed that the world has changed, and dramatically so, since the Commission approved Verizon's CC tariff. Today multiple carriers compete in an environment of multiple and multi-modal carrier networks not contemplated when the tariff was developed. Verizon cannot claim that, with all of the advances in long distance and local competition, that its CCL tariff can now be read as a revenue "guarantee," and that Verizon enjoys revenue protections to which no other competititve carrier in the marketplace is entitled.

Fourth, we showed that Verizon's claims of financial impact are irrelevant and, in any event, without basis.

Q. WHAT CONCLUSION SHOULD THE COMMISSION DERIVE FROM THE EVIDENCE YOU HAVE PROVIDED IN THIS REBUTTAL TESTIMONY?

A. The Commission should conclude that Verizon's arguments are baseless and rule that Verizon's tariff should be interpreted in a manner that does not allow Verizon to charge CCL unless its loop is involved in the transmission to the end user.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.