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

POST-HEARING BRIEF OF BAYRING COMMUNICATIONS

Susan S. Geiger, Esq.
ORR & RENO, P.A.
One Eagle Square
Concord, N.H. 03302-3550
Telephone: (603) 223-9154
sgeiger@orr-reno.com

Dated: September 10, 2007

TABLE OF CONTENTS

THE STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DT 06-067

COMPLAINT OF FREEDOM RING COMMUNICATIONS, LLC D/B/A BAYRING COMMUNICATIONS AGAINST VERIZON, NEW HAMPSHIRE RE: ACCESS CHARGES

POST-HEARING BRIEF OF BAYRING COMMUNICATIONS

I. Background and Procedural History

On April 28, 2006, Freedom Ring Communications, LLC d/b/a BayRing Communications ("BayRing") filed a Petition with the New Hampshire Public Utilities Commission ("PUC" or "the Commission") complaining that Verizon New Hampshire ("Verizon") was improperly assessing a carrier common line ("CCL") charge for calls from BayRing end use customers to wireless carriers' customers. The Petition noted that, in September, 2005, BayRing had brought the matter that forms the basis of BayRing's original complaint to Verizon's attention and that BayRing's steps to resolve this matter directly with Verizon had been unsuccessful. The Petition requested, *inter alia,* that the Commission order Verizon to cease collecting these charges and refund to BayRing all such improper charges collected by Verizon from BayRing in the past. Verizon filed a written Answer to BayRing's Petition on May 30, 2006 in which Verizon asserted, *inter alia*, that section 5.4.1 of its Tariff No. 85 authorizes the collection of the disputed charges even though the calls to which the disputed charges apply do not use a Verizon end-user's loop/common line.

The Commission issued an Order of Notice on June 23, 2006 in which it determined that further investigation of BayRing's complaint was merited and identified the following issues: 1) whether calls for which Verizon is billing BayRing involve switched access; 2) if so, whether Verizon's access tariff requires 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.

Pursuant to said Order of Notice, Petitions for Intervention were filed by RNK Telecom ("RNK"), AT&T Communications of New England ("AT&T"), One Communications, Otel Telekom, Inc. ("Otel) and segTEL, Inc. The Commission granted all of the aforementioned Petitions for Intervention at a prehearing conference held July 27, 2006. On August 11, 2006, the parties and Commission Staff ("Staff") met in a technical session. Thereafter, on October 6, 2006, BayRing filed a Motion to Amend its Petition to add an assertion that Verizon is improperly charging BayRing for calls that originate with a BayRing end use customer and that do not terminate at a Verizon end use customer. Similarly, on October 10, 2006, AT&T filed a Motion to Clarify or Amend the Scope of the Proceeding to ensure that the Commission include in its review certain types of calls which AT&T believed were improperly being assessed access charges by Verizon. The Commission granted both of the above-referenced motions in Order No. 24, 683 (October 23, 2006), established a procedural schedule and indicated that it would issue a Supplemental Order of Notice. On November 29, 2006, the Commission issued a Procedural Order (No. 24, 705) in which it noted that the scope of this docket had been expanded to include any other competitive local exchange carriers ("CLECs") or competitive toll providers ("CTPs") affected by the relevant tariff applications, and to review calls made or received by both wireless and wireline end-users. The Order also stated that the first phase of this proceeding would be limited to the proper interpretation of the relevant tariff or tariffs. The Commission held evidentiary hearings on July 10, 2007 and July 11, 2007 and indicated at the close of the hearings that the parties would be afforded the opportunity to file a single round of post-hearing briefs.

II. Statement of the Facts

The material facts necessary for interpreting Verizon's tariff in this case are not in dispute. Verizon admits that it is imposing a terminating CCL charge for calls that do not traverse a Verizon "common line" or end user loop. Tr. (Shepherd), Day II, p. 41, lines 4-18. It is undisputed that Verizon is billing BayRing a CCL charge for calls originating from a BayRing end use customer and terminating to a customer of a telecommunications carrier other than Verizon, even though Verizon is not providing CCL service for these calls. *Id.* Verizon also admits that for several years, neither it nor its billing agent, New York Access Billing LLC ("NYAB") imposed CCL charges for calls from CLECs to other CLECs or from CLECs to Independent Telephone Companies (ITCs). Tr. (Shepherd), Day II, p. 51, lines 7-9, and Lebeck Prefiled Direct, Exh. 1, p. 8. It was not until after BayRing filed its complaint against Verizon in the instant docket relative to calls from CLECs to wireless carriers that Verizon began imposing the additional disputed CCL charges for calls from BayRing end use customers to other CLECs and ITCs. Lebeck Prefiled Direct, Exh. 1, p. 6. Verizon did not amend its Tariff to reflect the imposition of the new CCL charges in 2006. These new CCL charges increased the dollar value of BayRing's initial dispute by approximately 400%. Lebeck Prefiled Direct, Exh. 1, p. 7.

It is undisputed that Verizon's Tariff No. 85 does not specifically mention CLECs. Tr. (Shepherd), Day II, p. 54, lines 1-3. It is also undisputed that there were no CLECs in existence in New Hampshire at the time Verizon's initial access charge tariff was filed. Tr. (Nurse), Day I, p. 153, lines 8-10; *see* Ex. 13 (Tariff No. 78 effective September 18, 1987). Verizon has never updated its Tariff No. 85 to expressly describe the charges and services that are involved when a CLEC customer places a call to another CLEC, wireless carrier or ITC. Tr. (Shepherd), Day II, p. 46 lines 11-24, p. 47, lines 1-6. Verizon is not imposing CCL charges – either similar to those disputed by BayRing and the other competitive carriers, or even at all - in any other New England state. Tr. (Shepherd), Day II, p. 43, lines 3-9. The CCL charge in all other New England states has either been rated as zero or it has been eliminated. Tr.(Shepherd), Day II, p. 43, lines 5-7.

III. Argument

A. Verizon's Tariff Does Not Authorize the CCL Charge When No CCL Service is Provided

1. Principles of Statutory and Contract Construction Should be Applied When Interpreting Verizon's Tariff

Tariffs define the terms of the contractual relationship between a utility and its customers; they also have the force and effect of law. *Appeal of Pennichuck Water Works,* 120 N.H. 562, 566 (1980). Therefore, when interpreting the provisions of a utility's tariff, it is appropriate for the Commission to apply principles of statutory construction and contract interpretation. *Re Public Service Company of New Hampshire,* 79 N.H. PUC 688, 689 (1994). Under the principles set forth below, the Commission must determine that Verizon's Tariff No. 85 does not permit it to charge the CCL rate when Verizon is not providing common line service i.e. access to a Verizon end-user's loop.

a. The plain and ordinary meaning of the terms used in Verizon's Switched Access Tariff reveal that the disputed CCL charges are not authorized.

Under well-established principles of statutory construction, the Commission must examine the language found in the tariff "...and ascribe the plain and ordinary meanings to the words used." *City of Rochester v. Corpening,* 153 N.H. 571, 573 (2006) *citing Carignan v. N.H. Int'l Speedway*, 151 N.H. 409, 419 (2004). Although Verizon's Tariff No. 85 contains a section devoted to definitions of tariff terminology, that section does not contain a definition of "switched access" or "carrier common line charge". *See* NHPUC No. 85, Access Service, Section 1, Pages 5 – 13, Original. The term "switched access" is, however, defined in Verizon's FCC Tariff No. 11 which is incorporated by reference into Tariff No. 85.[1] Thus, the FCC definition is operative here. Under the FCC tariff, "Switched Access Service... provides a two-point electrical communications path between a customer's premises...and an end user's premises. It provides for the use of common terminating, switching and trunking facilities, and common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's[2] premises, multiplexing node or virtual collocation arrangement and to terminate calls from a customer's premises, multiplexing node or virtual collocation arrangement to an end user's premises in the LATA where it is provided." Exh. 2, p. 24.

Section 6.1.2 D. of Tariff No. 85 provides that, when combined, local transport, local switching and carrier common line services provide a "complete switched access service" and further states that such "complete switched access service is as illustrated in Exhibit 6.1. 2-1". When the plain meaning of the term switched access service is compared with the diagram contained in Tariff No. 85, Section 6.1.2, it is apparent that under Verizon's tariff, a Verizon end user must be involved in the call (i.e. common line service must be provided) in order for the service to be considered "switched access". However, even if the Commission concludes that any single service or element (e.g. a tandem switching-like function) constitutes "switched access" within the meaning of

[1] Section 6.1.1 A of Verizon's NHPUC Tariff No. 85 expressly provides that other regulations pertinent to switched access services are specified in Tariff FCC No. 11 and apply as appropriate for services specified in section 6.1.2 of said Tariff No. 85. Among the services specified in said section 6.1.2 are: local transport, local switching and carrier common line.
[2] The "customer" referred to in this provision is another telecommunications carrier, not a retail customer.

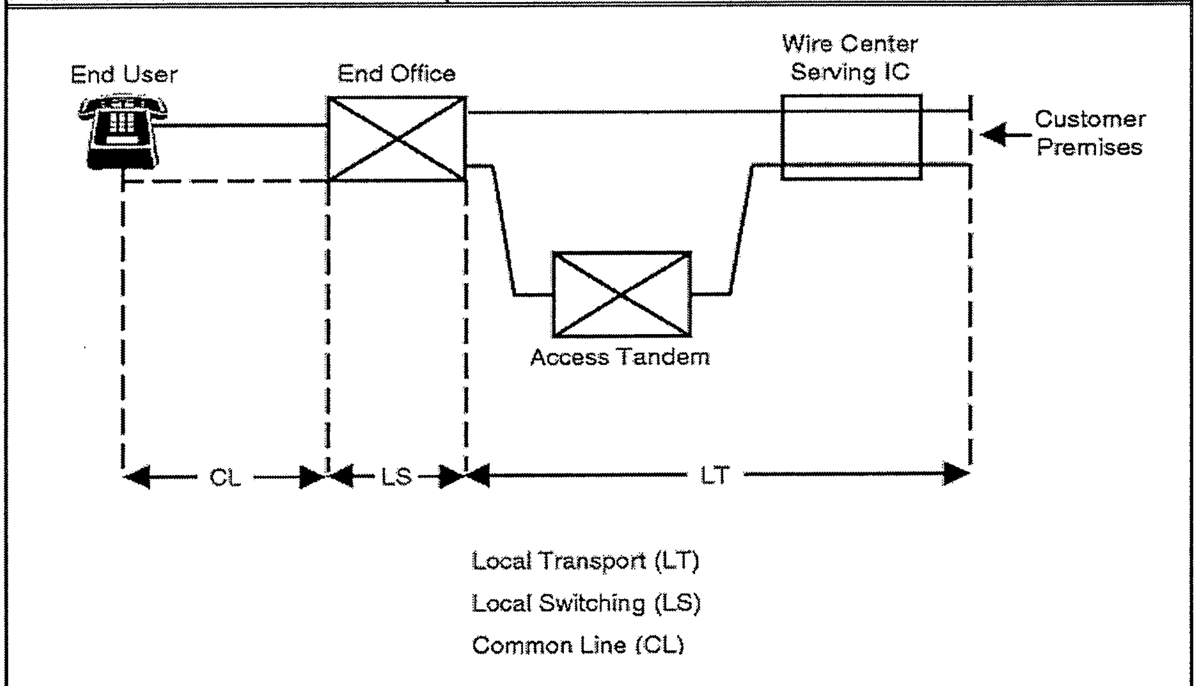
Verizon's tariff, the tariff does not permit Verizon to impose the CCL charge when it provides just the single (tandem switching-like function) service or element. This conclusion is supported by the tariff's depiction and definition of "common line", as well as the plain meaning of the term "CCL charge".

Exhibit 6.1.2-1 is reproduced below.

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



Verizon's tariff diagram depicting common line service shows that Verizon is providing the "common line" between its own end user and its own end office switch[3].

---

[3] "End Office Switch" is defined in section 1.3.2 of Tariff No. 85, Page 8, Original, as Telephone Company's (i.e. Verizon's) switching system where telephone exchange service customer station loops are terminated. (It is important to note that the CCL charges in the instant action are being levied on calls that do not in any way involve a Verizon end office switch.)

The plain meaning of "carrier common line charge" (again, a term that Verizon has not defined in the definition section of its tariff) is that the charge must be for the **use** of Verizon's "common line". As discussed more fully below, the definitions of "common line" appearing in Tariff No. 85 and in *Newton's Telecom Dictionary*, Ex. 21, both support such a plain and ordinary interpretation.

Tariff No. 85 defines "Common Line" as "[a] line, trunk or other facility provided under general and/or local exchange service tariffs of the Telephone Company[4], **terminated on a central office switch.**"[5] (emphasis added). "Carrier Common Line Charge" is defined in *Newton's Telecom Dictionary* as "[t]he charge which IXCs (IntereXchange Carriers) pay to LECs (Local Exchange Carriers) (sic) for the privilege of connecting to the end user **through the LEC local loop facilities**. The CCL is a charge to cover a portion of the costs associated with the local loop, which is used for origination of local, intraLATA long distance...and interLATA long distance calls." Ex. 21 (*Newton's Telecom Dictionary,* pp. 152-153) (emphasis added).

Thus, when applying the plain and ordinary meanings to the words and provisions of the tariff relating to the common line, the only logical, reasonable and fair interpretation of Verizon's tariff is that the CCL charge may only be imposed when Verizon is providing CCL service which entails the use of a Verizon common line.

b. Tariff provisions should be read as a whole and not in isolation.

The language in Verizon's tariff must be interpreted in the context of the overall scheme of the tariff and should not be interpreted in isolation. *See City of Rochester v.*

[4] Telephone Company" is defined in Tariff No. 85 as "Verizon New England, Inc. unless otherwise stated." Tariff No. 85, Section 1.3.2, Page 12 (Original).
[5] The definition of "Central Office" in section 1.3.2 of Tariff No. 85 (page 6- Original) refers to the Telephone Company's switching system. "

Corpening, supra. The tariff interpretation must lead to a reasonable result and should entail a review of a particular provision, not in isolation, "but together with all associated sections." *Weare Land Use Assoc. v. Town of Weare,* 153 N.H. 510, 511 (2006). An examination of the overall scheme of Verizon's Tariff No. 85 and the interplay between Sections 5 and 6 associated with the disputed charges, clearly indicate that the CCL charge only applies when another carrier makes use of Verizon's carrier common line to reach a Verizon end-use customer and that, when a carrier uses the CCL service, it must also use the switching service in Section 6 in order for Verizon to apply the usage-based CCL charge. And, as we show below, because the CCL charge is identified in the tariff as a usage based rate, it may *only* be imposed when Verizon actually provides the CCL network element.

The interplay between sections 5 and 6 of Tariff No. 85 was accurately described by AT&T at the hearing. As Mr. Nurse logically explained:

> The simple way to look at it for the Tariff 85, so that the record will be clear as to the wording, you can buy the Section 6 tariff items, and you can buy those on a standalone basis. You don't have to buy the common carrier line, Section 5, to buy Section 6. But it's not true in the other direction. You cannot buy Section 5, Common Carrier Line Service, on a stand-alone basis.

As the foregoing testimony makes clear, the most reasonable and harmonious interpretation of both sections 5 and 6 of the tariff is that when a customer such as BayRing orders the rate elements in section 6 of the tariff it may, if it needs to, also purchase the section 5 CCL service. However, if BayRing wants to simply purchase Section 5 CCL service, it cannot do so unless it also purchases switched access under Section 6. This is so because section 5.1.1. A. 1. states, Verizon "will provide carrier common line access service in conjunction with switched access service provided in

Section 6." Thus, the wording and structure of the tariff shows that the section 5 CCL service is distinct from Section 6 switched access service, but is only provided by Verizon in conjunction with switched access rather than on a standalone basis. Section 6 elements can, however, be purchased on a stand-alone basis.

Carriers such as BayRing, who are originating and terminating calls that do not utilize a Verizon end-user's common line, and who are ordering elements under section 6 of the tariff, would have no reason to look at section 5 ("Common Line Access Service") of the tariff.[6] Tr. (Oyefussi), Day I, pp. 194-195. It is therefore unreasonable for Verizon to rely on a narrow reading of section 5 of its tariff as authority for the imposition of charges on section 6 services.

In any event, even if carriers were to look at Section 5 before ordering stand-alone Section 6 services, they would conclude that Section 5 does not apply. Section 5 of Verizon's Tariff No. 85 is entitled "Carrier Common Line Access Service". Verizon argues that under section 5.1 and section 5.4.1 A. it is authorized to impose the CCL charge on switched access service. However, Verizon's argument falls short because it erroneously and improperly focuses only upon isolated language in sections 5.1 and 5.4.1. and ignores all of the other associated provisions of Section 5 that relate to common line service and common line charges. Verizon's interpretation therefore is erroneous as a matter of law because it requires that sections 5.1 and 5.4.1 be read in isolation and without regard to other relevant tariff provisions.

---

[6] Although section 6.1.2.B.3. refers to section 5, it does so only obliquely by saying that carrier common line is "described in Section 5". Therefore, if a carrier such as BayRing has no need for CCL, it would have no reason to refer to section 5.

The language upon which Verizon relies in section 5.1 of its tariff appears under the heading "General" and states that "[c]arrier common line access service[7] is billed to each switched access service provided under this tariff…". For statutory construction purposes, it is significant to note that the more specific provisions of section 5.1.1.A. which follow the above-referenced "general" section clearly indicate that "[c]ommon line access provides **for the use of end-user's Telephone Company[8] provided common lines**…"(emphasis added).

Well-established principles of construction require that when more specific tariff provisions appear to conflict with the general provisions, the more specific provisions will govern. In other words, where one provision of the tariff deals with a subject in general terms and other portions of the tariff deal with the same subject in a more detailed way, then the more detailed provisions will be regarded as an exception to the general terms where the two conflict. *See State v. Farrow*, 140 N.H. 473, 476 (1995). Thus, under the foregoing principle of construction, the more specific provisions of section 5.1.1.A. govern and yield the inescapable conclusion that the common line access service for which Verizon alleges it is entitled to bill under section 5.1 *only* relates to service involving the use of Verizon's common lines by another carrier to reach Verizon's end use customers.

It is also noteworthy that section 5.4.1 A. of the tariff (the other section upon which Verizon relies in support of its interpretation of the tariff) begins with "exception" language. That section reads as follows: "Except as set forth herein, all switched access

[7] By its very terms, this general section talks about a CCL "service" rather than a "charge". Thus, Verizon's reliance on this section of the tariff to support its argument about the CCL *charge* is misplaced.
[8] Telephone Company is defined in Tariff No. 85, section 1.3.2 as "Verizon New England Inc., unless otherwise stated."

service provided to the customer will be subject to carrier common line access charges." Thus it is clear from this tariff provision that, even if it were somehow possible to read Section 5 as providing Verizon with authority to apply the disputed CCL charges, there are exceptions to Verizon's alleged general rule that the CCL charge applies whenever it provides any service under its switched access tariff. In light of all of the other provisions in Tariff No. 85 that indicate that the CCL charge is associated with CCL service and therefore only applies when CCL service is provided by Verizon, the "exception" language in section 5.4.1 A. is entirely appropriate and must be given meaning when interpreting the tariff. *See Merrill v. Great Bay Disposal Service, Inc.*, 125 N.H. 540, 543 (1984).

Examples of the "exceptions" to which section 5.4.1 A. refers may be found in the many tariff provisions which, when considered with all of the other relevant tariff provisions, can only lead to the logical and rational conclusion that the CCL charge should not be imposed unless the CCL service is actually provided by Verizon. Indeed, one need look no further than section 5.4.1.C. which states in relevant part: "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...". Section 4.1. requires that Verizon billing shall be issued only for "services *established* or *discontinued* or *provided* during the preceding billing period." Section 4.1.1.A. (emphasis added). If service is established or discontinued during the preceding billing month, then it must have been provided during at least some portion of the period. Thus, this language means that Verizon must have actually provided the CCL service during the preceding period in order to be able to bill for it.

There are other provisions in the tariff that make clear that Verizon may bill the CCL charge only if the CCL service is used. As discussed above, carriers that purchase the Section 5 CCL service must also purchase the Section 6 rate elements both of which are billed on a usage basis (and measured at the switch). Section 6 services can be purchased without Section 5 services, though. Thus, given the asymmetric interplay between Sections 5 and 6, it is appropriate to look to the usage requirements of Section 6 that are necessarily applicable to the billing of Section 5 CCL services. Section 6.6.3 A. states that "[u]sage rates apply only when a ***specific*** **rate element is used**." (emphasis added). The structure of section 6.1.2.B.3 clearly indicates that CCL is a specific and separate rate element or category. Thus, it is clear from section 6 that the CCL charge should only be applied when the CCL service is used.

For all of the foregoing reasons, the Commission must read all of the relevant tariff provisions together and, in so doing, must conclude that they do not permit Verizon to impose the disputed CCL charges.

c. Verizon's Tariff should not be interpreted to lead to an absurd, unjust and illogical result.

The Commission should interpret Verizon's tariff to lead to a reasonable rather than an absurd result. *See Weare Land Use Assoc. v. Town of Weare,* 153 N.H. 510, 511 (2006). The tariff should not be construed in a manner that produces "'an unjust and seemingly illogical result.'" *State v. Farrow,* 140 N.H. 473, 476 (2005) *quoting State v. Roger M.,* 121 N.H. 19, 22 (1981). Verizon's interpretation of its tariff leads to an unreasonable, absurd, unjust and illogical result which should not be permitted. 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 (i.e. common line service) is being provided by Verizon.

In addition, Verizon's argument that it is entitled to impose the CCL charge as a contribution rate element must also fail as illogical and unreasonable. Verizon alleges that the CCL charge was originally intended to be imposed as a revenue contribution element (to compensate Verizon for revenue lost as the result of intra-LATA toll competition) irrespective of whether Verizon provides the CCL service. Verizon makes this claim despite the facts that the Commission's orders in DE 90-002 make no provision for the CCL charge as such a contribution element and that for approximately 10 years, Verizon's own hired billing agent never collected this revenue and Verizon never sought a rate increase to address any revenue deficiency occasioned by its agent's failure to collect the CCL charge for calls from CLECs to other CLECs and to ITCs. Tr. (Shepherd), Day II, p. 52, lines 4-8. Thus, 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 end-user's loop/common line.

Moreover, even if Verizon's claim is correct about the origination of the CCL charge (i.e. that it is a contribution rate that is imposed irrespective of CCL usage), it is simply unreasonable and illogical to assume that Verizon is still entitled to impose the CCL charge as a contribution toward some particular revenue level 14 years after the onset of in-state toll competition in New Hampshire. Verizon's own witness has characterized the access rate structure it proposed in docket DE 90-002 as "a transitional type structure, lowering access rates over a four year period." Tr. (Shepherd), Day II, p. 16, lines 18-19. Thus, it is illogical and unreasonable to conclude that a CCL contribution rate continues to be necessary or appropriate some 10 years after the above-referenced transition period. Furthermore, because the New Hampshire toll market has been and continues to be competitive, *see* NYNEX *Long Distance Company d/b/a Verizon Enterprise Solutions, et al.,* DT 02-171, Order No. 24, 066 (October 11, 2002), p. 6, it is unjust and unreasonable that Verizon should be charging or should have ever charged any type of "contribution" rate at all. For all of the foregoing reasons, the Commission should reject Verizon's interpretation of Tariff No. 85 because it leads to an absurd, illogical, unjust and unreasonable result.

d. Any ambiguity in the Tariff should be resolved against the drafter, i.e. Verizon.

As indicated in section IV. A. 1. above, in addition to principles of statutory construction, contract interpretation principles should also be applied by the Commission when analyzing tariffs because tariffs establish the contractual relationship between a utility and its customers. In *Trombly v. Blue Cross/Blue Shield of New Hampshire-Vermont,* 120 N.H. 764 (1980), the New Hampshire Supreme Court recognized, in connection with its analysis of an insurance contract[9], the "fundamental principle of contract law that 'doubtful language is to be construed most strongly against the party who used it in drafting the contract.'" *Trombly, supra* at 771 *quoting Couch, Cyclopedia of Insurance Law, §15.77*. In the *Trombly* case, the New Hampshire Supreme Court was called upon to interpret an insurance policy which the insurance company itself had

[9] The New Hampshire Supreme Court has not applied the *Trombly* holding to all contracts. *See Centronics Data Computer Corp. v. Salzman*, 129 N.H. 692 (1987). However, given that a tariff is more akin to an insurance policy (an insurance policy, like a tariff, is drafted by the company not the customer) rather than a contract (a tariff is not negotiated or executed by the utility's customers), it is therefore appropriate to apply the *Trombly* holding in the instant action, especially given Verizon's obligation to file tariff language that is clear and explicit. *See* RSA 378:2 and 47 C.F.R. § 61.2(a).

interpreted differently at different times. Although the company's interpretation of its policy had changed over time, the company never changed the wording of the policy. *Trombly, supra* at 767. The Court found that such changed interpretation without a change in the policy's wording was the best indication that the contract/insurance policy was ambiguous. *Trombly, supra* at 769.

In the instant proceeding, Verizon's position is strikingly similar to that of the insurance company in *Trombly.* For many years Verizon's agent (NYAB) did not interpret Verizon's tariff to apply the CCL charge to calls from CLEC end use customers to other CLEC end use customers or to ITCs. When Verizon took over the billing function for these calls from its agent in 2006, and after BayRing filed its complaint in this proceeding, Verizon began imposing the disputed CCL charges but did not change the wording of its tariff to authorize these charges or to reflect Verizon's new position with respect to the imposition of these charges. Thus, it is arguable that, as in *Trombly,* the company's changed interpretation of its tariff/contract without a concomitant change in tariff wording, may give the Commission reason to find that the tariff is ambiguous. Further evidence of such ambiguity lies with the fact that when BayRing initially questioned the access charges that are disputed in this case, BayRing's reading of Verizon's various tariff provisions led BayRing to conclude that Verizon was not billing for any service provided under its NHPUC Tariff No. 85, but was instead providing and billing tandem transit service ("TTS") under its NHPUC Tariff No. 84. *See Petition of Freedom Ring Communications, Inc. d/b/a BayRing Communications*, Page 4, Paragraph 8 (April 28, 2006) and *Prefiled Testimony of Darren Winslow, Exhibit 2*, p. 8. Therefore, if the Commission determines that the tariff is ambiguous, the Commission should construe the tariff against the drafter, i.e. Verizon.

In addition to the foregoing rule of law, principles of fundamental fairness dictate that Verizon should not be rewarded financially or otherwise for tariff language that is unclear. Assuming, *arguendo*, that Verizon's tortured reading of its tariff is correct, it is extremely misleading for Verizon to label the disputed charges as "CCL" charges. The testimony in this docket clearly reveals that industry participants have come to recognize the CCL charge as associated with a service provided by an incumbent local exchange carrier ("ILEC") such as Verizon which permits access to an ILEC's end-use customer via the ILEC's common line or loop. *See, e.g.* Tr. (Lebeck), Day I, p. 21, lines 1-4. *See also* Ex. 21 (Newton's Telecom Dictionary definition of Carrier Common Line Charge.) Accordingly, Verizon should not be allowed to use the label "CCL charge" nor should it be imposing a "CCL charge" when no Verizon end-use customer is involved in the call.

Lastly, Verizon should not be rewarded for its failure to take steps to amend its access tariff when CLECs commenced operations in New Hampshire. Verizon has never modified its access tariff to include a clear and specific diagram or description of the services and access charges that apply when CLECs and wireless carriers are involved in originating and terminating calls that do not involve a Verizon end-use customer. Staff's Exhibit 23 reveals that Verizon recently had the opportunity to do this, but did not. Verizon's tariffs should be written in a clear and unambiguous manner so that telecommunications carriers such as BayRing are able to understand the services that Verizon is providing and the charges that Verizon is authorized to impose for the corresponding service. *See* 47 C.F.R. §61.2 (a) (FCC requires that, "[i]n order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rate and regulations.") For all of the reasons discussed above, the tariff should be construed against Verizon.

e. If the Commission finds the tariff is ambiguous, the Commission should examine the history surrounding the tariff and the changes in the telecommunications industry since the tariff was filed, and must determine that the tariff was not intended to address the charges imposed on calls involving CLECs.

In construing statutes, the Court will resort to an examination of legislative history only if the statutory language is ambiguous, *see Lamy v. New Hampshire Public Utilities Commission,* 152 N.H. 106, 108 (2005) or "[w]here more than one reasonable interpretation of the statutory language exists…". *Petition of the State of New Hampshire,* 152 N.H. 185, 187 (2005). While BayRing believes that the language and structure of Tariff No. 85 can readily be interpreted as prohibiting Verizon from imposing the disputed CCL charges when no CCL service is provided, it may be arguable that Tariff No. 85 is ambiguous and therefore it would be appropriate for the Commission to examine the history and circumstances surrounding the adoption of the tariff. In so doing, it is also appropriate to consider the changes that have occurred in the intervening years. *See State v. Millette,* 112 N.H. 458, 464 (1972).

Verizon admits that the genesis of Tariff No. 85 is docket DE 90-002 and that the scope of that docket was "limited to the introduction of intra-LATA toll competition" and that "at that time, it was not explicitly envisioned that CLECs would be involved in the exchange of toll traffic. Tr. (Shepherd), Day II, p.43, lines 23-24 and p. 44, lines 2-4. The history of Verizon's Tariff No. 85 further reveals that in docket DE 90-002, Verizon did not intend to address charges for calls from CLECs to other CLECs, wireless carriers or ITCs. *See* Ex. 2, p. 56.[10] In fact, at the time the tariff was developed, CLECs did not exist and were not even contemplated. Tr. (Nurse), Day I, p. 153, lines 8-10 and line 20. CLECs did not come into existence until several years later when they were authorized by the Telecommunications Act of 1996. Thus, it is apparent that when the CCL charge was instituted, it could not have been intended to apply in the competitive local exchange market, i.e. a market in which CLECs such as BayRing do not use Verizon's common line to originate or terminate calls to non-Verizon end-use customers.

As the historical record clearly indicates, Verizon's Tariff No. 85 and its predecessor Tariff No. 78 were adopted for the express purpose of dealing with intra-LATA toll competition and the provision of access services by Verizon to enable other carriers to provide toll service. And at the time that Tariff No. 78 was adopted, because there were no CLECs, such toll traffic would have been exchanged between Verizon originating end-users (or ITC end-users) and Verizon terminating end-users (or ITC end-users) and therefore would have, in the majority of instances, involved the use of a Verizon common line. *See* Tr. (Shepherd), Day II, p. 45, lines 4-13. Therefore, it made sense to interpret Verizon's tariff as allowing the CCL charge because the Verizon common line was being used to complete those toll calls. Verizon's monopoly status as the provider of originating and terminating loop facilities or CCL has not continued into the present, however. Significant regulatory changes in the telecommunications industry

[10]Michael J. McCluskey, Verizon's witness in docket DE 90-002, expressly stated that his "testimony is not intended to address the 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." Ex. 2, Ex. G, p. 56.

and physical changes in the telecommunications network have occurred since docket DE 90-002 was decided. As the call flows in Exhibits 4 and 5 demonstrate, CLECs and wireless carriers are now operating in New Hampshire and are using their own end-use facilities to originate and terminate calls. Yet, despite this change in the state's telecommunications landscape, Verizon did not change its tariff to reflect the entry of CLECs or wireless carriers in the New Hampshire telecommunications market or the access charges that expressly apply to CLECs when they originate calls using their own facilities (or via UNE loops leased from Verizon) and terminate calls to non-Verizon end users on facilities of other CLECs or wireless carriers. Verizon's argument that its tariff language (which was developed prior to the existence of CLECs) covers those situations and need not be changed is completely undermined by the factual circumstances of this case as well as by a review of the tariff language itself, which is discussed below. In addition, Verizon's argument that the CCL charge was intended as a "contribution element" (to be imposed irrespective of loop usage) as opposed as a charge to recover the cost of the local loop is also without merit.

AT&T Witness Nurse, who was an advisor to the New Hampshire Commission when it decided Docket DE 90-002, provided testimony regarding the genesis of Verizon's access charges. Tr. (Nurse) Day I, pp. 155 – 157. Mr. Nurse's testimony rebuts Verizon's claim that the CCL charge is to be imposed even when no common line is provided by Verizon. Overall, AT&T's testimony establishes that the CCL charge that appears in Tariff No. 85 is a cost-based rate and therefore should be related to the use of the local loop. The words "contribution element" do not appear in Verizon's tariff to describe the CCL rate nor do they appear in any of the Commission's orders establishing

Verizon's access rate structure. The Commission has never issued a ruling that Verizon is entitled to charge the CCL rate as a tax or contribution element whenever any switched access element is provided. Nor has the Commission ever stated that the CCL charge is not intended to recover the cost of Verizon's common lines. Such a ruling would be antithetical to the regulatory notion that common costs must be fairly and appropriately allocated "among all of the services which utilize the distribution system." *Re New England Telephone and Telegraph Company,* DR 89-010, Order No. 20, 082, 76 N.H. P.U.C. 150, 166 (1991).

Based on the foregoing, if the Commission finds it necessary to resort to a review of the history and circumstances surrounding the development of Tariff No. 85, it must reasonably conclude that Verizon's tariff does not permit it to impose the CCL charge in situations where it does not provide its common line.

2. Verizon May Not Impose the Disputed CCL Charges Because the Tariff Language Does Not Specifically Define the CCL Charge Nor Describe or Address Charges Associated With Calls From CLECs To Non-Verizon End Users.

RSA 378:1 requires that every public utility file with the Commission "schedules showing the rates, fares, charges and prices for any service rendered or to be rendered in accordance with the rules adopted by the commission...". Commission rules require that "[a] utility shall provide with each tariff **a full description of the rates and terms** under which service shall be provided." N.H. Admin. Rule PART Puc 1603.02 (m) (emphasis added). It is logical that the foregoing regulatory requirement that a tariff contain a full description of a utility's rates and charges implicitly carries with it an obligation on the part of the tariff filer to provide clear and unambiguous information so that a utility's customers (both wholesale and retail) can readily understand their rights and responsibilities under the tariff. However, Verizon's tariff does not meet these requirements.

First, and perhaps most importantly, the definition section of Verizon's Tariff No. 85 does not contain a definition of "Carrier Common Line Charge." In addition, the tariff does not clearly and unambiguously reflect the "intermediate carrier" function Verizon provides as depicted in the call flows that give rise to the disputed CCL charges in this docket (e.g. call flows # 13 and #15 contained in Exhibits 4 and 5, respectively). The Tariff does not contain a diagram (similar to the "Complete Switched Access Service" diagram found in section 6.2.1.2) that depicts the access rate elements that apply when Verizon is the intermediate or "middleman" carrier for calls that originate with a CLEC customer and terminate with end users of another CLEC or a wireless carrier. Nor does the tariff contain any narrative language or any express terms and conditions that address these scenarios or that support Verizon's claim that the CCL charge is a contribution element that is to be applied even when no CCL service is provided. There simply is no full description of the "disputed" call flows nor the rate elements that apply to them. In fact, Verizon admits that CLECs are not even mentioned in Tariff No. 85. Tr., Day II, (Shepherd) p. 54, lines 1-3.

The lack of specificity in Verizon's tariff is both troublesome and improper in light of the fact that Verizon's federal tariff responsibilities include the requirement that all of its "tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations" "[i]n order remove all doubt as to their proper application". 47 C.F.R. § 61.2 (a). This federal requirement regarding tariff clarity is made applicable to Verizon at the state level through RSA 378:2 which requires that public utilities subject to federal regulatory authority must conform their state tariffs "as nearly as may be to the requirements of said federal authority." Therefore, under RSA 378:2, the Commission must require that Verizon's state access tariff conform to the federal requirement that the tariff contain clear and explanatory statements so that there is no doubt as to the tariff's proper interpretation.

In view of the tariff's deficiencies discussed above, the Commission must determine that Verizon lacks the authority to collect the disputed CCL charges. This conclusion is further supported by common sense as well as the case law discussed below.

3. Case Law Supports a Determination in Favor of BayRing and the Other Competitive Carriers.

Ironically, Verizon's affiliate, MCI, instituted a federal court action against Paetec Communications, Inc. in which MCI successfully argued that Paetec's interstate and intrastate access tariffs did not specifically describe the "middleman" service Paetec was providing and therefore did not permit Paetec to impose originating access charges upon MCI for calls that originated with a wireless carrier. *See MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc.*, Not Reported in F. Supp. 2d, 2005 WL 2145499 (E.D. Va.) (2005), *affirmed in MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc.*, 2006 WL 3026293 (C.A. 4 [Va.]) (2006). MCI prevailed on a summary judgment motion at the federal district court level and the decision was affirmed by the United States Court of Appeals for the Fourth Circuit (without additional discussion or analysis) in an unpublished *per curiam* opinion. *Id.*

The facts, tariff provisions and issues of the *MCI v. Paetec* case are very similar to those in the instant docket, therefore the analysis and holding are instructive. Paetec was imposing originating access charges on MCI for calls that did not originate with a Paetec customer but which, instead, originated with a wireless carrier's customer. MCI filed a federal court action against Paetec alleging that Paetec was illegally charging MCI for telecommunications services that were not within Paetec's interstate tariff and that Paetec was violating its intrastate tariffs. The United Stated District Court for the Eastern District of Virginia applied the federal "filed tariff doctrine" (i.e. "the rule establishing that a carrier can only charge its customers according to the services and rates set forth in its tariff"[11]) and found that the service that Paetec was performing for MCI was not within its federal tariff and therefore Paetec could not impose the disputed originating access charges. The Court further held that the principles of the federal filed tariff doctrine that applied to Paetec's federal tariff apply with equal force to its intrastate tariffs and, because Paetec's intrastate tariffs did not include the service which Paetec was providing, MCI was entitled to summary judgment. *MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc., supra at* 4.

More specifically, the Court found that Paetec was charging MCI based on Paetec's switched access tariff which defines switched access as providing "'a two-point electrical communications path between a Customer's premises and an End User's premises.'" *Id.* (Note the similarity between Paetec's tariff definition of switched access and Verizon's Tariff No. 11). The Court found that Paetec was not providing MCI with switched access because "the communications path was between MCI and the switching

[11] *MCI WorldCom Network Services, Onc. (sic) v. Paetec Communications, Inc.*, Not Reported in F. Supp. 2d, 2005 WL 2145499 (E.D. Va.) (2005) at 3.

facility of other telecommunications carriers that are not within the tariff's definition of end-users. Therefore, the services that Paetec performed for MCI were outside the scope of Paetec's tariff and MCI is entitled to summary judgment." *Id.* Significantly, Paetec's tariff definition of "end user" (i.e. "'[a]ny customer of an interstate telecommunications service that is not a Carrier or Common Carrier'" *Id.)* is very similar to Verizon's Tariff No. 85 definition (i.e. "[a]ny customer of an intrastate telecommunications service that is not a carrier…"). In view of all of the similarities between the instant action and the *MCI v. Paetec* case, this Commission should apply the analysis and holding of that case and find in favor of BayRing and the other competitive carriers.

Further support for the position that Verizon may not impose access charges upon calls from CLECs to wireless carriers is found in a recent decision issued by the United States Court of Appeals for the Eighth Circuit. *In Alma Communications Company, et al. v. Missouri Public Service Commission,* 490 F. 3d 619 (C.A. 8) (2007), the Eighth Circuit Court of Appeals held that calls from a land-line to a cell phone placed and received within the same major trading area are local calls, subject to reciprocal compensation arrangements. Therefore, because calls from a New Hampshire CLEC customer to a New Hampshire wireless customer are within the same major trading area, *see Tr. (Winslow)* Day I, pp. 50-51), those calls are considered local calls. As such, switched access charges under Tariff No. 85 are inapplicable to these calls, because Tariff No. 85 compensates Verizon for "the carrying of toll traffic." *Tr.* (Shepherd), Day II, p. 46, line 21.

The holdings of the above-cited cases should be applied to the facts of the instant docket and therefore warrant, as a matter of law, that the Commission find that Verizon is improperly applying the disputed CCL charges.

4. Verizon's Interpretation is Unjust and Unreasonable Because it is Inconsistent With Industry Practice.

The practice within the telecommunications industry is that a CCL charge is only imposed when the billing carrier is actually providing access to its common line or loop. The definition of CCL charge contained in *Newton's Telecom Dictionary* (Ex. 21) confirms this, i.e. the CCL charge is paid to local exchange carriers "for the privilege of connecting to the end user through the LEC local loop facilities." In addition, Mr. Lebeck testified that based on his experience and training in Carrier Access Billing ("CABs"), the "CCL charge is normally associated with provisioning of a specific network element, namely, the local facilities that connect the local switch to the end-user." Tr. (Lebeck), Day I, p. 21, lines 1-4. In fact, Verizon's own billing agent acted consistently with this industry practice by not billing these charges for about 10 years. Tr. (Shepherd), Day II, p. 125. This pattern of conduct on the part of the industry billing experts who were hired and trusted by Verizon is significant evidence that the telecommunications industry participants find it improper to bill the CCL charge when no CCL service is provided.

Additional evidence about the industry's practice (of not billing a CCL charge unless a common line is actually provided) has been supplied by AT&T, whose witnesses testified that AT&T does not impose the CCL charge (in those jurisdictions where it provides ILEC functions) when AT&T does not provide common line service. Tr.

(Pfautz) Day I, p. 154 and (Nurse) p. 174. In fact, no carrier other than Verizon bills this way, Tr. (Lebeck) Day I, p. 22, and even Verizon doesn't bill the CCL charge in this fashion in any New England state other than New Hampshire. [12] Tr. (Shepherd), Day II, p. 43, lines 3-9.

Further evidence that Verizon's CCL billing practice in New Hampshire is inconsistent with industry practice is supported by Verizon's own interstate access tariff, FCC Tariff No. 11, which is very similar in form and substance to its New Hampshire access tariff, as it must be. *See* RSA 378:2 (utilities such as Verizon that are subject to federal regulation should conform their state tariff filings "as nearly as may be" to the requirements of the federal authority). Section 3.5 of Verizon's interstate access tariff, FCC No. 11 (Ex. 20) is worded identically to section 5.4.1. A of Verizon's NH PUC Tariff No. 85, one of the tariff sections that Verizon relies upon to support its position in this case. Those two identically-worded sections state "Except as set forth herein, all Switched Access Service provided to the customer will be subject to Carrier Common Line Access charges." Ex. 20. Notwithstanding its contrary position in this case regarding its state tariff, Verizon concedes that under its federal tariff, it is not permitted to impose the CCL charge if the billed carrier merely uses Verizon's tandem switching without using an end-user common line. Tr. (Shepherd), Day II, pp. 94-95. It is thus

[12] The Commission should not be swayed by Verizon's improper characterization of the New York Public Service Commission's WilTel decision which is referred to in Mr. Shepherd's prefiled direct testimony as having the "same factors" as the instant case. Ex. 15, p. 29, line 10. A careful reading of Verizon's New York tariff shows that it is worded completely differently than Verizon's New Hampshire tariff: "2.4.8 ...For traffic which originates or terminates at RTU [Radio Telecommunications Utility] Interconnections, Carrier Common Line Service and Switched Access Service Local Switching rates and charges as specified in Section 3.9 and 6.8 following respectively, will apply." Ex. 17, Verizon response to BayRing 2-9 (PSC NY No. 11 – Communications, Section 2, Original Page 53). That tariff factor, notwithstanding Mr. Shepherd's allegation to the contrary, is not present here. Thus, the NYPSC's decision in WilTel is inapposite.

totally inappropriate for Verizon to interpret a section of its state tariff differently from its identically-worded federal tariff, and the Commission should not accept such differing interpretations here. When interpreting two statutes that deal with the same subject matter, the courts construe them so that they do not contract each other. *See Soraghan v. Mt. Cranmore Ski Resort*, 152 N.H. 399, 405 (2005). Thus, the Commission must construe Verizon's state access tariff consistently with the interpretation of Verizon's federal access tariff, which Verizon admits does not permit the imposition of CCL charges when no common line is provided.

Lastly, perhaps the most persuasive evidence of industry practice regarding the proper application of the CCL charge is the Federal Communications Commission's ("FCC") decision in *AT&T Corporation, MCI Telecommunications Corporation, et al. v. Bell Atlantic Pennsylvania,* FCC 98-321 (Released Dec. 9, 1998). In the *AT&T* case, 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." *AT&T, supra at* p. 15, ¶ 28. The FCC "has explicitly stated that, '[c]ommon [l]ine usage charges obviously should reflect common line usage.'" *AT&T, supra at* p. 15, ¶ 29, *quoting Access Charge Reconsideration Order,* 97 F.C.C. 2d at 709. The FCC has also rejected Verizon's notion that CCL charges may be imposed if only one component of a switched access service is provided by the LEC. *AT&T, supra at* p. 15, ¶ 30. The FCC has recognized "that access service consists of several elements, such as common line, local switching and local transport, and that costs of each component are recovered through separate charges, triggered by different conditions. In the case of common line, the CCL charge pursuant to [47 C.F.R.] Section 69.105(a) is expressly conditioned on actual common line use, and the presence of associated switching is immaterial to that determination." *AT&T, supra at* p. 16, ¶ 32. The FCC has also concluded that "a CCL charge is generally appropriate only at points where an interexchange call originates or terminates over a common line, and intermediate 'uses' do not constitute chargeable common line usage." *AT&T, supra at* p. 17, ¶ 34.

In view of the overwhelming evidence of the telecommunications industry's practice of not imposing the CCL charge unless the common line service is actually provided, Verizon's contrary position, which is at odds with industry practice, is unreasonable and therefore should not be adopted.

B. The Disputed CCL Charges in This Case are Not Authorized Because They Are Anti-Competitive and Therefore are Unjust and Unreasonable.

RSA 374:2 requires that all charges made or demanded by a public utility for any service rendered by it, shall be just and reasonable. RSA 378:10 states a public utility cannot give undue or unreasonable preference or advantage to any person or corporation or any undue or unreasonable disadvantage or prejudice "in any respect whatever." As discussed more fully below, the evidence in this case establishes that Verizon and wireless carriers obtain an undue preference and advantage over the competitive carriers from Verizon's unlawful CCL billing scheme. The record demonstrates that Verizon charges wireless carriers a lesser rate than it charges CLECs for the same type of call. *See* Ex. 5 and Tr.(Shepherd), Day II, p. 118. The record also demonstrates that the application of the disputed CCL charges are inconsistent with a competitive telecommunications market. As such, the charges are unjust and unreasonable and therefore not authorized.

Exhibit 4 reveals that Verizon only pays 3 cents ($.03) per minute in terminating access charges for a call from one of its customers to a CLEC customer, but BayRing pays 5.6 cents ($.056) per minute in terminating access charges for a call from one if its customers to the customer of another CLEC. BayRing pays two terminating access charges for these calls (i.e. one to the terminating CLEC and one to Verizon for a service that Verizon is not providing). Exhibit 5 shows that Verizon has a significant cost advantage over BayRing in terms of terminating access charges that each of those carriers pays for calls to the same wireless carrier customer. That is, Verizon only pays the wireless carrier .2 cents ($.002) per minute to terminate the call and, when a BayRing customer calls the same wireless end user, Verizon **alone** charges BayRing a whopping 2.8 cents ($.028) per minute for terminating charges, which is in addition to what BayRing may pay the wireless carrier to terminate the call to its end user. Again, in this call scenario, BayRing is paying two "CCL" (or termination) charges and Verizon is only paying one. This cost differential is huge (BayRing's cost may be as much as 1,775% higher than Verizon's, *see* Ex. 2, p. 18) and therefore clearly anti-competitive, unjust and unreasonable.

With the proliferation of wireless traffic in New Hampshire over the past few years, *see* Exh. 12, p. 97, the imposition of a CCL charge for calls to wireless carriers (where Verizon provides no common line) undoubtedly provides Verizon with a vast and growing revenue stream which could not have been reasonably foreseen or even considered when Verizon's access tariff was instituted in New Hampshire. This evidence seriously undercuts Verizon's position that the CCL charge was instituted in 1993 as a contribution rate element. Moreover, it is significant, that at the time Verizon's access charges were adopted, the Commission found that it would be inappropriate to set rates in a competitive marketplace to guarantee any particular revenue level because the Commission recognized that "[a]n effectively competitive marketplace is totally at odds with any notion that NET's total revenues can be 'guaranteed' to remain at any particular level." Ex. 18, p, 6 (Order No. 20, 864, p. 7). This reasoning supports the competitive carriers' position in this case and totally undermines Verizon's claim that it can assess the CCL charge as a contribution element even when no common line service is provided.

Even if Verizon is somehow entitled to a contribution charge ancillary to its usage based access rates (which it is not), the amount of the CCL charge at issue in the instant docket is unjust and unreasonable. The CCL charge comprises 90% of the access charges that BayRing pays to Verizon. *Tr.* (Winslow), Day I, p. 26, lines 21-24. It is simply unjust and unreasonable that this charge should be imposed when no corresponding common line service is being provided. Moreover, given that the CCL charge has been phased out in other New England states (*see Tr. (*Shepherd), Day II, p. 43), its alleged necessity as a "contribution element" in New Hampshire is unreasonable, especially in a competitive telecommunications market. Significantly, Verizon's own witness admits, that "New Hampshire just has not moved that far along in restructuring access." *Tr.* (Shepherd), Day II, p. 43. This testimony plainly reveals that even Verizon realizes that New Hampshire's current access structure is not appropriate and needs to be "moved along". Accordingly, it is unjust and unreasonable that Verizon should be allowed to charge any sort of "contribution" rate element in connection with the calls that give rise to the disputed charges.

The unjustness and unreasonableness of Verizon's position in light of today's competitive telecommunications market is highlighted in the scenario posited by Mr. Pfautz as follows:

> The gist of the dispute is really the extreme interpretation of the tariff language that Verizon is propounding. We believe that, if you apply this, you get crazy results that it's hard to believe the Commission or any Commission would intend. So, that, when Verizon loses a customer, they still get revenue for that loop for the carrier common line that they are no longer providing....to extrapolate that, if they were to lose all their customers, but still supply tandem switching, they would get loop revenue from all their customers.

Tr. (Pfaust), Day I, p. 117. As Mr. Pfaust's point illustrates, it is illogical and absurd that Verizon would be entitled to continue to collect common line revenues even if it were to lose all of its end use landline customers to CLECs and therefore had no common line or local loop linking those customers to its end office switches.

For all of the reasons discussed above, the Commission should acknowledge that from the inception of local competition, it has been and continues to be unjust, unreasonable and anti-competitive for Verizon to impose any sort of CCL contribution rate element (which essentially operates as an unfair tax) in connection with the access services it provides to competitive carriers and when no Verizon CCL service is provided.

IV. CONCLUSION

The Commission's procedural orders in this case essentially established the following questions for resolution during this phase of the proceeding: 1) whether the disputed charges for which Verizon is billing BayRing and other carriers involve switched access; 2) if so, whether Verizon's access tariff requires payment of certain rate elements, including but not limited to CCL charges, for calls made by a CLEC , wireless or IXC customer to end-users not associated with Verizon or otherwise involving a Verizon local loop; and 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.

As the discussion set forth above indicates, calls from CLECs to wireless carriers are local calls and therefore do not involve switched access. Because Verizon's tariff does not describe CLEC to CLEC or CLEC to ITC calls, it is at best unclear whether the disputed charges in this case involve switched access within the meaning of Verizon's tariffs. However, assuming for the sake of argument only that the disputed charges do involve switched access, nothing in Verizon's tariff expressly permits it to collect CCL charges when it does not provide CCL service, nor should the Commission allow such an absurd, unjust and unreasonable interpretation of the tariff which produces anti-competitive effects. The Commission should therefore find that Verizon is not and has never been authorized to collect the disputed CCL charges. The Commission should also exercise its inherent and statutory authority to require Verizon to refund the disputed charges to carriers who have paid them and to credit the accounts of carriers who have disputed these charges but who have not yet paid them. *See Appeal of Granite State Electric Company,* 120 N.H. 536 (1980); *see also* and RSA 378: 7 (which permits the PUC to remedy an unjust and unreasonable rate by fixing the same after hearing) and RSA 365:29 (which authorizes reparations for an illegal or unjustly discriminatory rate, fare or charge).

Respectfully submitted,

FreedomRing Communications, LLC d/b/aBayRing Communications

By its attorneys,
ORR & RENO, P.A.
One Eagle Square
Concord, NH 03302-3550
Telephone: (603) 223-9154
sgeiger@orr-reno.com

By:

September 10, 2007

Susan S. Geiger

Certificate of Service

I hereby certify that a copy of the foregoing Post-Hearing Brief has on this 10th day of September, 2007 been sent either by first class postage prepaid or by e-mail to the parties on the Service List in the above-captioned matter.

Susan S. Geiger

448198_1.DOC