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November 17, 2006

VIA ELECTRONIC AND OVERNIGHT MAIL
Deborah Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 Fruit Street, Suite 10
Concord, New Hampshire 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:

At the technical session of November 14, 2006, the parties were offered an opportunity to file comments on the issue of whether the Commission should bifurcate this proceeding into two phases: an initial phase to determine "liability," *i.e.*, whether Verizon's tariff permits it to apply the carrier common line ("CCL") charges under Section 5 of Verizon's Tariff 85 in circumstances where Verizon does not provide access to Verizon end users; and a second phase to determine "damages," *i.e.*, the amount Verizon must refund to carriers from whom it has collected such charges, if the Commission determines that Verizon's application of the rate is not permitted by its tariff.

Verizon's argument for considering the two issues in tandem is an implicit argument that this proceeding is a "mini-rate case." In Verizon's view, if the Commission were to find that Verizon has misapplied its tariff and collected CCL revenues to which it was not entitled, then, in Verizon's view, the Commission has some sort of obligation to permit Verizon to collect those revenues elsewhere.

There are two major problems with Verizon's position. First, Verizon is mistaken as to the scope of this proceeding. The question before the Commission is whether Verizon has properly applied its CCL tariff, nothing more. Second, Verizon is, in effect, asking the Commission to engage in single-issue rate-making, something the Commission frowns upon.[1] If, after the Commission finds that Verizon has misapplied its CCL tariff and must refund amounts improperly collected from AT&T, Verizon

[1] *Re Connecticut Valley Electric Company Inc.*, DE 01-224, Order No. 23, 887 (December 31, 2001), 2001 WL 1914370 at *7 - *8 (by focusing on a change in only one rate, it is not possible to determine the reasonableness of an overall rate of return due to the failure to take into account changes in other revenues and costs).

believes that it is experiencing an overall revenue or earnings shortfall, it can make an appropriate filing with the Commission.

Verizon attempts to obfuscate the issue that is before the Commission, *i.e.*, ***tariff interpretation***. It claimed in the November 3 prehearing conference that "[t]his is a very significant rate design *change*";[2] that "this [is a] tariff *change*";[3] and that this is a "midcourse correction."[4] Such language, however, begs the question. The question that the Commission must decide is: what has the tariff always required since it was adopted in 1993 and, until changed, will continue to require.

The issue has arisen now, rather than in 1993, because Verizon has only recently begun applying the CCL rate to substantial volumes of traffic that terminate to wireless carriers and other non-Verizon carriers. Although not entirely clear, it appears that in the fall of 2005, Verizon moved responsibility for billing this type of traffic from a third party vendor to its internal operations and, at that time, began for the first time to apply the CCL rate to substantial volumes of traffic delivered to wireless carriers and CLECs for termination to their customers. Certainly, AT&T began to see dramatic increases in Verizon CCL charges during the fall of 2005. Contrary to Verizon's assertions, therefore, these are "new" revenues to Verizon that were not taken into account when the Commission set Verizon's rates in 1993. Nor could they have been, given the absence of any substantial volumes of wireless or CLEC traffic at that time.

The fact that these are new revenues only highlights the problem of trying to determine what a tariff means based on the amount of revenue generated by that determination. Much has changed since 1993, and it would be surprising indeed if rates set in 1993 properly applied to traffic in 2006 produce precisely Verizon's revenue requirement for 1993, or for 2006 for that matter. The full panoply of Verizon's existing rates may produce more, or less, than Verizon's revenue requirement. But this is not a revenue requirement case. BayRing has brought a complaint charging that Verizon is misapplying a single, existing tariffed rate; and AT&T, as well as other carriers, has joined in that challenge. The challenging carriers are entitled to a fair adjudication of whether the language in Verizon's tariff permits it to apply CCL rates to the carriers' traffic in the circumstances described. Due process requires it.

In conclusion, Verizon's opposition to bifurcation is an attempt to convert a narrow tariff interpretation case into a rate case. If Verizon believes that its full panoply of rates is not sufficient to meet its "revenue requirement," it is always free to obtain higher rates the old fashioned way: to prove it. In the meantime, for the reasons of judicial economy fully vetted at the November 3 prehearing conference, the Commission should bifurcate this proceeding and consider, in the first phase, whether the language in

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[2] 11/3/06 Tr., p. 15, line 18 (emphasis added).

[3] 11/3/06 Tr., p. 16, lines 7-8 (emphasis added).

[4] 11/3/06 Tr., p. 13, line 24.

Verizon's tariff permits it to charge the CCL rate when it does not provide the CCL service. Calculation of Verizon's overcharges is not necessary for this purpose.

Respectfully submitted,

/s/

Jay E. Gruber

cc: Service List