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April 20, 2007

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

Re: BayRing Complaint Against Verizon-NH (Access Charges), DT 06-067 – Prefiled Rebuttal Testimony of Darren Winslow and Trent Lebeck

Dear Ms. Howland:

On behalf of BayRing Communications, enclosed please find an original and seven copies of the prefiled rebuttal testimony of Darren Winslow and Trent Lebeck for filing in the above-captioned docket.

Please let me know if you have any questions. Thank you for your assistance.

Very truly yours,

Susan S. Geiger

Enclosure
cc: Service List
439647_1.DOC

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Docket No. DT 06-067

PETITION OF FREEDOM RING COMMUNICATIONS, LLC.

D/B/A BAYRING COMMUNICATIONS

V.

VERIZON NH

REGARDING ACCESS CHARGES

REBUTTAL TESTIMONY OF DARREN WINSLOW AND TRENT LEBECK

ON BEHALF OF

BAYRING COMMUNICATIONS

April 20, 2007

TABLE OF CONTENTS

Witnesses and Company Background

Q. Mr. Winslow, please state your name and business address and by whom you are employed.

A. My name is Darren Winslow, my business address is 7 Central Street, Farmington, NH 03835. I am employed by the Utel Companies which include BayRing Communications (BayRing). I am the Controller and am responsible for a significant amount of BayRing's accounting, including assisting the company with certain regulatory filings, Carrier Access Billings (CABs), and other general company matters.

Q. Mr. Lebeck, please state your name and business address and by whom you are employed.

A. My name is Trent Lebeck, my business address is 7 Central Street, Farmington, NH 03835. I am employed by Utel Companies and am the Traffic Manager. As such, I am responsible for preparation of the CABS billing for the UTEL companies and the review of all switched access CABS invoices received by the UTEL companies which include BayRing Communications. In addition, I assist the companies with other traffic issues, such as switching configurations and other regulatory matters.

Q. Have both of you previously testified in this proceeding?

A. Yes. We filed direct testimony on March 9, 2007. Our direct testimonies provided information to support BayRing's position that Verizon is improperly imposing certain access charges upon BayRing. The testimony included call flow diagrams developed in technical

sessions and it also discussed relevant portions of Verizon's tariffs which are on file with this Commission and other information in support of BayRing's claims.

Purpose of Rebuttal Testimony and Summary of BayRing's Position

Q. What is the purpose of your rebuttal testimony?

A. The purpose of this rebuttal testimony is to respond to the direct testimony of Peter Shepherd filed on March 9 , 2007 on behalf of Verizon in this Docket as well as to support the testimony filed by AT&T Communications. This rebuttal testimony will also present information obtained during the second round of the discovery phase in this case.

Q. Please summarize BayRing's position with respect to the testimony of Peter Shepherd filed on behalf of Verizon relating to access charges BayRing is disputing in this docket.

A. It is BayRing's position that Mr. Shepherd's direct testimony clearly fails to provide evidence that Verizon is authorized to charge BayRing certain access charges for services Verizon does not provide. Nor does Mr. Shepherd's testimony add any credence to Verizon's erroneous assertion that the New Hampshire Public Utilities Commission (NH PUC) , in Docket 90-002 authorized Verizon[1] to charge the fees that are the crux of this docket. In fact, the call flows that give rise to the charges that are disputed by BayRing here did not even exist in New Hampshire at the time when the Commission considered DE 90-002. Further, Verizon's own expert in DE 90-002 specifically stated that the access charges developed in that docket were not meant to address issues of separate competing networks or multiple exchange carriers within the same franchise area which is precisely the environment in which Verizon is now assessing these unauthorized charges to BayRing. Hence, Verizon's continued reliance on Docket DE 90-002 as

[1] Verizon's predecessor, New England Telephone, was a party to DE 90-002. References to Verizon in this prefiled rebuttal testimony are intended to mean New England Telephone where appropriate.

the basis for its practice of assessing the charges disputed in this docket is without merit. Also without merit is Verizon's contention that the wording of its switched access tariff permits it to impose the CCL charge even if no Verizon common line end user is involved in placing or receiving a toll call. Given the context within which the access tariff was adopted, and when all of the relevant tariff provisions are read together, Verizon's tariff interpretation must fail. Hence, BayRing stands firm that the imposition of the disputed access charges are not authorized.

In addition, BayRing asserts that the disputed charges billed by Verizon are not just and reasonable and are extremely anti-competitive. The proceedings in the early 1990s to implement intrastate toll competition and to establish access charges were designed to promote competition by setting just and reasonable intrastate access rates. Verizon's practice of billing intrastate access charges for services that it does not provide clearly is inconsistent with the competitive spirit of those proceedings. As explained more fully below, neither the Commission's orders related those proceedings nor the tariffs developed from those proceedings authorize Verizon to bill the charges disputed in this docket.

NH PUC Docket DE 90-002 Does Not Support Verizon's Claim That CCL Charges May Be Imposed On CLECs For Calls That Do Not Involve A Verizon End Use Customer

Q. On page 28 of his prefiled direct testimony, Mr. Shepherd states that the language in Tariff 85 "is a product of the access charge structure determined in DE 90-002 and is clear in its application." He further states, "[n]othing has occurred over the course of time to alter these determinations and they are just as appropriate today as they were in 1993". Do you agree with these contentions?

A. Not completely. While we agree that Tariff 85 was produced as the result of DE 90-002, for the reasons discussed elsewhere in this rebuttal testimony, we do not agree that the tariff language is clear in its application. Nor do we agree with Verizon's contentions that nothing has changed since DE 90-002 was decided in 1993.

It is a well known fact that the New Hampshire toll and local exchange markets have experienced significant changes since the early 1990s. Tariff 85 stemmed from NH PUC Docket No. 90-002 which dealt with issues relating only to intraLATA toll competition at a time when Verizon controlled the vast majority of the local exchange market. Therefore, it is logical to assume that the access system and rates contained in Tariff 85 reflect the telecommunications market as it existed at that time i.e. one where either a Verizon or an Independent Telephone Company customer[2] was originating or receiving a phone call. As the information below indicates, that is no longer the case. Therefore, although the assumptions underlying Tariff 85 have changed, the tariff itself has not been altered to reflect the existence of CLECs and the role that they play in exchanging telecommunications traffic with Verizon.

According to Verizon's answer to AT&T's discovery request 2-19, there were no CLECs operating in NH in 1993, yet in 2006 there were 21 CLECs exchanging traffic with Verizon in the state. Similar market advances have occurred in wireless toll and local traffic, with wireless carriers having altered their interconnection methodologies with Verizon. BayRing, AT&T, and other carriers in this dispute have tried to obtain the wireless traffic and interconnection data from Verizon in order to demonstrate to the Commission the magnitude of the central issues in this case, i.e. the amount of traffic that is not traversing Verizon's local loop and the charges that Verizon is imposing despite the lack of physical access it is providing to its own end use

[2] Although wireless carriers were present in New Hampshire during this time period, it does not appear likely that they originated or terminated as many calls as did Verizon and the ITCs at that time.

customers. However, Verizon has refused to provide the number of type 1 or type 2 wireless connections Verizon had in 1993, the number of type 1 connections it had in 2006, or the number of minutes of use for each type by year. Although we do not have the data from Verizon, we feel it is well known that wireless carriers' traffic has grown tremendously and also that these carriers have switched from type 1 connections (where the wireless carrier buys a business access line that is connected to a Verizon end office) to type 2 connections(where a wireless carrier connects its switch to Verizon's tandem - similar to a CLEC via interexchange trunking). That information is significant for purposes of this case because, in the type 1 wireless connection scenario, Verizon is providing common line access to an end user (i.e. the wireless carrier is connected to an end office like most other non carrier businesses), whereas in the type 2 scenario, Verizon is merely providing transport facilities between its tandem and the wireless carriers' Mobile Telecommunications Switching Office (MTSO). Therefore, while specific information about the amount of wireless traffic and type of wireless interconnections are unknown at this time, what is known is that wireless traffic was not considered at the time of DE 90-002 and therefore charges relating to these types of calls as well as calls involving CLECs were not and could not have been taken into account in that docket.

Q. Why is the introduction of local competition in New Hampshire relevant to the issues at dispute in this docket?

A. Prior to the introduction of local competition in New Hampshire in the late 1990s, Verizon and a limited number of wireless carriers originated and terminated all intrastate traffic within Verizon's monopoly franchise territory. As a result of DE-90-002, intrastate toll carriers such as AT&T were allowed to provide intrastate toll services in Verizon's territory, but all landline calls within Verizon's service territory continued to originate or terminate at a Verizon

end user on Verizon's network. Verizon at that time correctly charged carriers such as AT&T to originate and terminate calls on Verizon's network. However, with the advent of competition in the local market in the late 1990s, intrastate calls also began to originate and terminate to and from CLEC end users on the CLEC networks. Verizon, in apparent disregard for these changes, believes it can charge intrastate toll carriers and CLECs for calls that do not traverse Verizon's local facilities. In essence, Verizon bills for these calls as if it were still the monopoly provider of local services, and ignores the fact that these calls use networks owned by other carriers.

Q. Mr. Shepherd's prefiled direct testimony in this docket refers to DE 90-002 as the basis for Verizon's authority to impose upon CLECs and other carriers local access charges when Verizon's local network is not used to transport these calls. Is this assertion consistent with Verizon's expert testimony in that docket?

A. No. In fact, Mr. Shepherd's position is in direct contradiction to Verizon expert Michael McCluskey's testimony in DE 90-002. In describing the parameters of his testimony, Mr. McCluskey specifically said: "This testimony is not intended to address issues of separate competing networks or multiple exchange carriers in the same franchise territory. These issues may ultimately require extensive policy decisions on the part of the Commission should this form of competition become a reality in New Hampshire. However, the current state of competition does not require resolution of those issues at this time and is not included in the list of items to be litigated in this docket." (*See* excerpt submitted as Exhibit G with prefiled direct testimony of Darren Winslow in the instant docket.) Thus Verizon's own expert in DE 90-002 clearly establishes that the access rate structure developed in DE 90-002 does not apply to the local competitive market that exists today. This is logical for two reasons: first, a competitive local market did not exist during the DE 90-002 process, and second, the scope of that docket

was restricted to rate restructuring for intrastate toll competition. Therefore, for Verizon to now assert that its current method of billing CLECs is authorized as a result of DE 90-002 is not credible.

Verizon's NH Access Tariff Does Not Authorize Verizon to Charge CCL on All Switched Access Service

Q. On page 17 of Mr. Shepherd's testimony he provides several tariff excerpts to support Verizon's position that CCL should be billed to all switched access services. Do these statements negate BayRing's position?

A. No. Verizon erroneously relies on generic sentences within its NHPUC Tariff No. 85 for its argument that the CCL charge applies whenever Verizon provides any switched access service. As stated in our direct testimony, Section 5.1.1 A. of Verizon's Tariff No. 85 states "The Telephone Company (Verizon) will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6". The word "conjunction" is defined in the Merriam-Webster Online Dictionary as "occurrence together in time or space" and "concurrence". Therefore, the word "conjunction" as used in Verizon's tariff means that Verizon will be providing CCL concurrently with the provision of switched access service to its end user. As highlighted in BayRing's and AT&T's direct testimonies, other sections of Verizon's access tariff discuss that CCL is a usage based rate element which should only be charged when the service is actually provided.

Q. Are there excerpts of Mr. Shepherd's direct testimony that discuss and support BayRing's position that the CCL charge is only applicable when a Verizon end use customer is involved?

A. On page 25, lines 20 through 23, Mr. Shepherd highlighted the following statement made in his cross examination in the DE 90-002 proceedings:*"The carrier common line element is an element that applies on both an originating and a terminating basis to the extent that the carrier uses the local exchange carrier switched network." [12/3/1992 Day XIV, Shepherd Cross-Examination at 86.]* In his direct testimony (at pages 25-26) he also clarified the above statement to mean the following:

> *" Specific language was included in the proposed switched access tariff which was also carried forward to the tariff ultimately approved by this Commission and its successor tariffs, specifying that carrier common line applies to all switched access for a carrier's* ***use*** *of NET's* ***local exchange switched network****, supporting the rate design objectives"*

In the above statement, Mr. Shepherd is clarifying that CCL applies to the "use" of "local exchange switched network". This statement is also supported by the definition of CCL contained in Verizon's tariff which specifies that CCL is "*for the use of end users' Telephone Company (Verizon) provided common lines".* Thus, it is clear that unless Verizon is providing access to its own end users' common lines, it cannot impose the CCL charge. It is important to note that the charges which BayRing disputes involve calls that utilize interexchange network trunking facilities, and do not involve Verizon provided common lines. In the disputed call scenarios it is a CLEC, ITC, or other carrier that is providing the end user common line, not Verizon.

Verizon's argument that the CCL rate element was meant to apply to the disputed call flows as a contribution element is not supported by any Commission Order or Tariff Provision

Q. Is CCL a "contribution element" as Verizon alleges, and therefore appropriately charged even when there is no usage of Verizon's common line plant?

A. No. Verizon has craftily used the word "contribution" in a way that is unreasonable in its application to its tariff and access billing. Verizon's interpretation is that because CCL is a contribution element, the charge can be billed even though the service is not provided. Under Verizon's interpretation, the CCL operates as a type of tax or a fee. However, nowhere in Verizon's tariff or in the Commission's orders was the word "contribution" used to describe a scenario where Verizon would bill carriers CCL when the access service did not terminate to a Verizon end user. Although Verizon asserts that the Commission approved its CCL rate element as a mere contribution to revenues which is not linked to any cost or service, the Commission did not state in any order that the CCL charge was not intended to recover costs assigned to the local loop, nor does the tariff in any way indicate that. On the contrary, in Docket DR 89-010, the Commission determined that non traffic sensitive (NTS) costs are "common costs" that 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) (emphasis added). Thus, it is clear that the Commission intended that NTS costs "be allocated amongst all services utilizing the distribution system... based on the proportional *use of the network by each service...*" . *Id.* (emphasis added) Thus, it is more reasonable to consider the CCL element as being a "contribution element" that contributes to the recovery of the cost of Verizon's end user loops on a usage basis. This is a proper interpretation that is reflected in Verizon's tariff NHPUC No. 85 Section 5.1.1.A which states:

*"Carrier Common Line access provides for the use of end users' Telephone Company (Verizon) provided common lines by customers for access to such end users to furnish intrastate communications".*Section 1.3.2 defines Common Line as follows:

*"**Common Line**—A line, trunk or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch. A common line residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line business is a line provided under the business regulations of the general and/or local exchange service tariffs."*

It is unreasonable to interpret the foregoing language to mean anything other than CCL is to be charged only when a Verizon end user originates or terminates a call on Verizon common lines. Carriers and other Verizon customers must rely on the wording of Verizon's tariffs in order to understand their rights and responsibilities. Therefore, tariffs must be clear and unambiguous. In this case, however, Verizon implies that in addition to reviewing its tariff provisions, carriers must also read pages and pages of testimony from approximately 15 years ago to determine Verizon's rationale for collecting the CCL charges. Even if a carrier did resort to reading the testimony from 15 years ago, it would never arrive at a definition of "contribution element" as meaning CCL is charged when no corresponding use of the local loop is provided.

Also, Section 6.1.2 of Verizon's tariff NHPUC No. 85 depicts graphically the portion of the network that the Common Line ("CL") charge is recovering i.e. the facilities from the Verizon End Office to the Verizon End User. This illustration clearly supports and clarifies the tariff wording above. Thus, when the tariff wording and related tariff diagram are reviewed together and along with relevant Commission orders, one can only conclude that CCL should be charged only when a Verizon end user is on the end of a call flow.

Q. Does the fact that CCL "contributes" to the cost recovery of a fixed cost loop enable Verizon to charge CCL on the disputed call flows? If not, for which call flows does it make sense that Verizon should charge the CCL rate element as a contribution element?

A. No. Verizon should not charge the CCL rate element for the disputed call flows under the guise of a "contribution element". The appropriate application of CCL should only occur when Verizon actually provides the service for which CCL was designed, i.e. a call flow that includes a Verizon end user on the originating, terminating or both ends of the call. If there is a Verizon end user on an end of a call flow, then the CCL rate element should be charged and the charge would then "contribute" to the non traffic sensitive cost of a Verizon end user's loop plant by design.

The Commission statements discussed above in Order No.20,082 clearly indicate that charges shall be assessed when services are actually rendered, e.g. "**utilization**" of the system and "**proportional use** of the network by each service". Thus, the Commission intends and Verizon's tariff reflects that CCL is a service rate element which recovers costs assignable to that rate element. It is not, as Verizon argues, a "contribution element" that is charged when no common line usage occurs.

Q. Does Verizon's tariff contain a provision that expressly states that CCL is a contribution element that is charged irrespective of whether the common line rate element is provided by Verizon?

A. No, nor should it. Verizon's tariff was produced in response to DE 90-002. Verizon's testimony in DE 90-002 reflects the reality of that time which is that calls within Verizon's service territories were "end-to-end" Verizon calls, i.e. the caller at both ends was a Verizon

customer. This means that Verizon would, at that time, always have been supplying a toll provider with access to a Verizon end use customer through the use of a Verizon loop. References to "end-to-end" calls were numerous throughout Verizon's testimony at that time. When discussing the CCL rates in his direct testimony in the DE 90-002 matter, Mr. Shepherd stated on page 12 :

"The result of this second deduction produces the total overall Carrier Common Line charge which would be required on an end-to-end, conversation minute….."

Mr. Shepherd referred in his direct testimony in this dispute, to the following two pieces of testimony of two Verizon experts during the 90-002 docket:

"The sum of the cost-based local transport and local switching rate elements which would apply on an end-to-end basis would fall far below the retail rates, since the sum would contain no contribution beyond incremental cost. The sole purpose of the carrier common line rate element is to bring the end-to-end access rate from the incremental costs…." [McCluskey Testimony at 12-13]

"The advantage of isolating the required contribution into charges for interconnection (at the originating and terminating ends) is that it minimizes the distortion caused by pricing carrier access above incremental cost." [Taylor Testimony at 4]

In the first statement Mr. McCluskey highlights the fact that the access rate he was talking about was the end-to-end access rate. Dr. Taylor further confirmed this thinking by highlighting that the charges were placed on "*the originating and terminating ends*" of a call. This confirms that if Verizon does not provide one or both ends of a call, then it would not charge Verizon's "contribution" rate element. The facts are clear that the charge was developed as a charge for toll providers to interconnect to the originating

and terminating ends on Verizon's Network. It is apparent that when a toll provider does not connect to an end (or end use customer of Verizon) then CCL charges do not apply. Again, for all the call flows in dispute, Verizon does not provide an end-to-end access service that was the focus of DE 90-002.

Thus the tariff as written then, and that applies today, contemplates a Verizon end user at least on one end of a call. Therefore charges such as the CCL rate element were introduced, presented to the Commission, and written into tariffs as usage-based rates designed to be billed when the rate elements (as described in Verizon's tariff) were provided to and used by a toll provider to reach a Verizon end-use customer.

Q. If Verizon's statements about its original intentions are correct, then Verizon would have contemplated billing CCL (thus receiving the same "contribution" before and after competition) for calls that either originated or terminated to ITC end users. Do you believe Verizon contemplated billing in this manner?

A. No. Verizon did not address this issue during the DE 90-002 proceedings. This is supported by the fact that Verizon did not bill CCL for calls originating or terminating to ITCs until *after* BayRing's Complaint was filed with the Commission, an oversight that had existed for approximately 15 years. If the tariff was as clear as Verizon claims, an oversight of this "billing error" should not have occurred for such a prolonged period of time or perhaps even at all.

Q. Please explain how Verizon's CCL "billing error" i.e. its failure to bill CCL for several years supports BayRing's argument that CCL was not and is not intended to be billed when it is not provided.

A. As Mr. Shepherd states on page 21 of his direct testimony the purpose of the rate structure in DE 90-002 "was to provide equivalent levels of contribution that would otherwise be provided

by NET toll services in the absence of competition." Thus, if Verizon was entitled to collect the CCL charge to keep its revenues at pre-toll competition levels, its failure to recover the CCL charge for so many years must have adversely impacted the company's revenues. Yet, Verizon did not seek rate relief from the Commission for any revenue deficiency caused by the "billing error". Therefore it is reasonable to infer that Verizon did not expect or need to receive CCL revenues when no CCL rate element was being provided by it.

Tandem Transit Service

Q. Verizon states that BayRing alleges that the disputed charges are not switched access and that the charges are switched interconnection tandem transit service (TTS). Is this BayRing's position?

A. No. As BayRing has pointed out on numerous occasions in this docket,. BayRing's initial complaint suggested that TTS might be the appropriate charge as it most closely reflected the actual basic routing service Verizon provides on the calls with disputed charges. Again as BayRing pointed out in earlier testimony in this docket, as a result of information gleaned from technical sessions, BayRing now believes that Verizon does not have a charge for this routing function in its tariff. That said, BayRing has maintained throughout this docket, that Verizon should be compensated when its network is utilized to route or transport calls and at such time that Verizon's tariff reflects proper charges, BayRing would pay for services it uses.

Q. Verizon contends (on page 8 of Mr. Shepherd's testimony) that BayRing's willingness to supply percentage of use factors between local and toll is evidence that BayRing's knowledge of the tariff requirements to properly report the nature of the types of traffic somehow contradicts BayRing's dispute. Is the accusation correct?

A. No. BayRing has supplied Verizon with usage factors to allow Verizon to differentiate between the local and toll traffic that terminates to Verizon end users, not for traffic terminating to other carriers. Verizon did not provide BayRing with information as to how these factors were being applied by Verizon. Per our initial testimony, the Commission should note that Verizon only billed BayRing for a small amount of terminating wireless carrier traffic prior to this dispute and even then the wireless traffic was commingled with traffic terminating to Verizon end users at Verizon central officers, not a wireless carrier's MTSO. Verizon just recently began billing and using usage factors for a large part of the disputed call flows related to traffic terminating to CLECs and ITCs.

Verizon Receives Cost Recovery from CLECs for Loops and Other Services in Other Ways; the CCL Billing Results in Double Recovery

Q. Is Verizon appropriately compensated for the UNE Loops that CLECs purchase from Verizon to provide service to an end user customer?

A. Yes. Based on NH PUC approved rates, CLECs purchase the rights to end user loops from Verizon. Therefore, Verizon receives the appropriate compensation for the service provided and the CLEC then has the right to bill its own access charges to toll carriers for their ability to access end users served by the loop that the CLEC has purchased from Verizon. In other words,

the purchase of UNE Loops from Verizon works the same way as if a carrier built its own facilities directly to a customer.

Q. Does Verizon's billing practices of charging CCL access charges, when a Verizon end user is not involved, provide double recovery to Verizon for the same loop?

A. Yes. The Verizon access tariff for the CCL rate element is defined as

> *"Carrier Common Line access provides for the use of end users' Telephone Company (Verizon) provided common lines by customers for access to such end users to furnish intrastate communications".*

Therefore if Verizon imposes upon other carriers CCL charges for the same loop that it is collecting UNE loop charges from a CLEC, then Verizon is double recovering for this end user loop. Principles of fairness dictate that only the carrier that owns the rights to a loop should bill CCL charges. Charging CCL on a loop that a carrier does not own the rights to is completely irrational and in Verizon's case is not authorized under its access tariff.

<u>Verizon Reliance on Verizon's Tariff in Another State Does Not Support Its Position</u>

Q. Does Verizon rely on its tariff in any other jurisdiction in an attempt to validate its actions in New Hampshire? If so, is such reliance appropriate to support Verizon's position in this case?

A. Verizon does rely on a single New York tariff with significantly different language than the tariff Verizon is using as a basis for assessing the disputed charges in New Hampshire. However, such reliance is misplaced for the reasons discussed below. On page 28 and 29 of Mr. Shepherd's testimony, Verizon references a case in New York in which WilTel Communications

filed a complaint with the New York Public Service Commission. However, Verizon provides statements in its testimony that might mislead this Commission to believe that the facts surrounding BayRing's complaint here and the complaint in the state of New York (NY) are the same. They are not. The NYPSC case does not support Verizon's position in the instant case as the NY tariff wording at issue in the NYPSC case applies only to Wireless Carriers and discusses tariff language that is completely different from the wording in Verizon's NHPUC intrastate access tariff. The NY tariff wording specific to CCL charges states:

"For traffic which originates or terminates at RTU Interconnections, Carrier Common Line Service and Switched Access Service Local Switching rates and charges as specified in Sections 3.9 and 6.8 following respectively, will apply".

Verizon confirmed (in its discovery responses to BayRing) that in NY, Verizon only charges CCL rates for calls originating or terminating to non- Verizon end users when the end user is served by a wireless carrier. This billing practice difference and the difference in the NY tariff wording compared to NH's tariff makes it clear the dispute in New York is irrelevant to BayRing's dispute in New Hampshire.

Q. Does Verizon bill CCL charges in any other states in a similar manner as it does in NH for calls that do not traverse a Verizon end user ?

A. Other than the CCL charges imposed when a call originates or terminates to a wireless end user in NY, Verizon confirmed (in its discovery responses to BayRing) that it does not charge CCL in any of the call flows in dispute in this docket in any other state.

Other Observations Regarding Verizon's Categorizing of the CCL Element as a Contribution Element that is Applicable Even When it No Verizon End Use Customer is Involved in a Call

Q. Were Verizon's revenue streams guaranteed by the NHPUC when the access charges were established in DE 90-002?

A. No. In fact the Commission on page 7 of Order 20,864 (6/10/1993) specifically stated:

> *"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"*
>
> *"The Commission also believes that NET has, or should have, implemented the necessary structural and organizational changes to respond effectively to competition, given the lengthy period that the Company has had to plan for the arrival of competition."*
>
> *"The Commission is also persuaded, however, based on the record to date, that the pace and reduction of access charges contained in the Stipulation are inadequate…..we believe that access charges should eventually reach interstate levels…"*

The above statements confirm the Commission would not have approved the type of subsidy that Verizon contends is contained in its CCL rate element which would permit the CCL charge to be applied even when the CCL rate element is not used. In fact the Commission mandated that the initial stipulation agreed upon by all parties be modified to reduce access charges further to interstate levels to promote competition. The Commission used the interstate tariff as a guideline and suggested that intrastate rates should reduce to interstate levels. Thus the Commission concurred with the interstate tariff model which used CCL to recover loop costs based on usage as opposed to Verizon's current methodology in which the CCL rate element is imposed upon unrelated network usage like some sort of tax. It is not reasonable, based on the

views expressed by the NHPUC in its orders , that the Commission ever approved the billing of CCL in the manner Verizon bills today for calls that do not connect a Verizon end user.

Q. Did the Commission provide Verizon and ITCs with other explicit protection mechanisms to allow their transition to a competitive market in a reasonable timeframe?

A. Yes. The Commission approved a plan called the Local Rate Protection Mechanism (LRPM) which allowed local exchange carriers, including Verizon, to obtain funds for loss of revenues based on a LEC's reliance on access charges. Additionally the Commission approved a phase- in approach (over 4 years) for lowering access rates to allow Verizon more time to adjust its business practices for competition. BayRing believes these two decisions were the only "guarantees" approved by the Commission to protect Verizon revenue streams from competition. The Commission never approved or mentioned any other subsidy allowing Verizon to charge for rate elements it did not provide.

Q. Does BayRing believe the Commission considered how much "contribution" to overheads should exist in Verizon's access rates to make ensure that at the end of the transition period, the access rates would be more in line with interstate rates?

A. Yes. The Commission as discussed above mandated that rates be more in line with interstate access rates at the end of the transition period. In fact the Commission approved the terminating rate to be set immediately in line with interstate rate levels and then most of the "contribution" was set in the originated rate so. This rate design makes sense because if Verizon lost a toll customer then the competitor would pay a higher originating rate. To allow Verizon time to transition to a competitive world, the originating rates were set higher in year 1 and then were phased down to much lower interstate rates.

This is an example of a reasonable approach to rate making in a competitive environment versus an approach (as alleged by Verizon) that hides some sort of guaranteed revenue stream in rate elements that are charged regardless of whether they are used or not.

Verizon's Allegations of Financial Impact

Q. Was it appropriate that Verizon stated its financial impact in its direct testimony?

A. No. This information should not be part of the first phase of this process. The first phase is only to determine Verizon's authority to bill for certain access charges disputed in this docket. BayRing will ask that this information not be considered until the Commission has made a decision on phase one of this proceeding.

Q. Could the numbers provided by Verizon mislead the Commission as to the size of Verizon's projected revenue loss?

A. Yes. First of all, Verizon provided a two year financial loss for the period of time between January 1, 2005 and December 31, 2006. In this time period Verizon admitted that they billed carriers based on incorrect traffic factors. It is possible that Verizon's numbers included these incorrect billed amounts, thus inflating the revenue loss stated to the Commission. BayRing is not allowed to make inquiries on the amounts because the Commission ordered bifurcation of the issues in this docket.

In addition, BayRing would like to remind the Commission that Verizon only recently began (after BayRing's dispute alerted Verizon to the discrepancy) charging CCL on certain of the disputed call flows and as a result created a significant source of *new* revenues for itself. BayRing is concerned that Verizon may attempt to lead the

Commission to believe that substantial longstanding revenue streams are at risk, when in fact much of the revenue that Verizon claims is at risk has only been billed for a few months.

Conclusions

Q. Please provide your conclusions from rebuttal testimony above.

A. Verizon's direct testimony as discussed above lacks sufficient evidence to enable the Commission to conclude that Verizon is authorized to bill access charges for usage elements that it does not provide, specifically the CCL rate element. Although Verizon made arguments regarding its authority to impose the disputed charges, it is important to note that Verizon's testimony does not establish that the charges are just or reasonable in a competitive market place (a market place that has changed significantly in 15 years). Verizon has not argued the justness or reasonableness of their billing practices as Verizon knows the practice of billing for a service that a carrier does not provide is not just or reasonable. Verizon's scheme of charging BayRing and other carriers for services it does not provide is anticompetitive. The Commission did not and would never have authorized such a billing practice in DT 90-002.

Our testimony also highlights that Verizon's "contribution" argument is flawed in many respects. BayRing showed that the CCL rate element is related to the recovery of loop cost as intended per Verizon's specific tariff language for the CCL rate element. We also showed that Verizon never intended the "contribution" element to be charged when a Verizon end user was not on the end of a call flow as Verizon's focus in DE 90-002 was only on "end-to-end" calls and Verizon did not and could not have contemplated these charges in the current competitive environment.

The issue at hand in this case remains simple. A common sense approach requires a finding that Verizon cannot bill for services it does not provide. Verizon's tariffs specifically do not support Verizon's position and tariff 85 has not been updated for the new market entrants. Verizon's billing for services it does not provide on the theory that CCL is a contribution element is absurd.

Q. Does this conclude your testimony?

A. Yes it does.

[redacted]