

DT 06-067

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

**Complaint of Freedom Ring Communications, LLC d/b/a BayRing
Communications against Verizon, New Hampshire Re: Access Charges**

Procedural Order

ORDER NO. 24,683

October 23, 2006

APPEARANCES: Orr and Reno, P.A. by Susan Geiger, Esq. on behalf of BayRing Communications; Gregory Kennan, Esq. on behalf of One Communications; Jay Gruber, Esq. on behalf of AT&T Communications of New England, Inc.; Jeremy Katz on behalf of segTEL; Victor Del Vecchio, Esq. on behalf of Verizon New Hampshire; and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On April 28, 2006, Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting that the Commission investigate Verizon New Hampshire's (Verizon's) practice of imposing switched access charges, including Carrier Common Line (CCL) access charges, on calls which originate on BayRing's network and terminate on wireless carriers' networks. In its petition, BayRing invoked RSA 365:1 and alleged that Verizon was in violation of its tariff provisions which, according to BayRing, have the force and effect of law. BayRing argued that calls between carriers using Verizon as an interim carrier do not involve switched access, and that, in any event, CCL charges are associated with "access" to a Verizon end-user via Verizon's local loop. However, according to BayRing, a call between a BayRing customer and a wireless customer does not involve a Verizon end-user or a Verizon local loop and therefore CCL charges should not apply. BayRing further contended in its filing that if the Commission determines that

a charge should apply to such a transaction, it should be deemed chargeable as Tandem Transit Service under Tariff No. 84 and not as switched access under Tariff No. 85.

On May 12, 2006, a copy of BayRing's complaint was forwarded to Verizon by the Commission's Executive Director with instructions for Verizon to file a response by May 22, 2006. Subsequently the Commission granted Verizon an extension of time to respond. On May 31, 2006, Verizon filed an answer disputing BayRing's complaint and contending that Tariff No. 85 provides that "all switched access services will be subject to carrier common line access charges." Verizon further argued, among other things, that Tandem Transit Service is "not available to BayRing for the application at issue here."

On June 23, 2006, the Commission issued an Order of Notice setting a Prehearing Conference date of July 27, 2006, scheduling a technical session for August 11, 2006, making Verizon a mandatory party, and determining that further investigation was merited. In its Order of Notice, the Commission established the following issues for review in this docket: (1) whether the calls for which Verizon is billing BayRing involve switched access; (2) if so, whether Verizon's access tariff requires the 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.

Petitions to intervene were filed by RNK Inc. d/b/a RNK Telecom (RNK) on July 17, 2006, by AT&T Communications of New England, Inc. (AT&T) on July 20, 2006, by One Communications on July 24, 2006, by Otel Telekom, Inc. (Otel) on July 26, 2006, and by segTEL, Inc. on July 28, 2006.

A Prehearing Conference was held on July 27, 2006, during which, there being no objections, all petitions for intervention were granted. The Parties and Staff met in a technical session on August 11, 2006, and agreed upon the following procedural steps: (1) BayRing and Verizon would work together to develop a stipulated agreement on the factual scenario(s) at issue in this docket; and (2) the parties and Staff would hold a follow-up conference call/technical session on September 7, 2006, to develop further procedural steps. On August 22, 2006, BayRing filed a letter informing the Commission that BayRing and Verizon would not be submitting an agreed statement of fact as originally discussed at the August 11, 2006 technical session.

In response to disclosures made during technical sessions held in this docket, BayRing filed a motion on October 6, 2006, to amend its initial petition by adding the assertion that Verizon is improperly assessing access charges to BayRing for calls originated by BayRing end-user customers and terminating at end-user wireline customers served by carriers other than Verizon. In its motion, which effectively seeks to expand the scope of the docket, BayRing requests further notice and opportunity for comment pursuant to Puc 203.10(b).

On October 10, 2006, AT&T filed a motion to clarify or amend the scope of the proceeding to avoid the need for intervenors to file separate petitions raising the same issues. In its motion, AT&T outlined various call scenarios and corresponding charges levied by Verizon warranting review in this docket.

On October 12, 2006, Staff filed a report of the technical session held via conference call on September 29, 2006.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Freedom Ring Communications LLC d/b/a BayRing Communications

BayRing states that all prior attempts to resolve its disputes with Verizon regarding this matter have been unsuccessful. BayRing claims that Verizon is improperly assessing and collecting access charges from BayRing calls where no access is provided to Verizon customers or end-users. BayRing maintains that the calls upon which improper access charges are being levied by Verizon are those that are made by BayRing customers or end-users to wireless carrier customers or end-users and customers of local exchange carriers other than Verizon. BayRing submits that Verizon's tariffs do not authorize imposition of access charges on such calls. BayRing asserts that to the extent it has paid these unauthorized charges, Verizon should be ordered to make refunds to BayRing.

BayRing agrees that for calls that originate on BayRing's network and terminate with a Verizon end-user, BayRing properly, and in accordance with Verizon's tariff, should pay the CCL charge as well as other charges associated with the services provided by Verizon for that type of call. However, BayRing argues that when a CLEC customer calls a wireless carrier's end-user or another LEC's end-user, there is no switched access or other common line service provided by Verizon. BayRing maintains that what Verizon provides in that instance is a routing function that does not implicate a Verizon end-user or end-office, that the only service provided in such instance is Tandem Transit Service, and that switched access or CCL charges are not applicable. BayRing states that the estimated charge to BayRing for such routing services, if classified as "switched access," is approximately ten times greater than what it would be if

classified, more appropriately, as “Tandem Transit Service.” BayRing further asserts that the testimony cited by Verizon in its current arguments and provided by New England Telephone (now Verizon) in Docket No. DE 90-002 dealing with toll competition, clearly establishes that in explaining the access charges ultimately incorporated into Tariff No. 85, the company did not intend to “address the issues of separate competing networks or multiple exchange carriers in the same franchise territory.” *See* Tr. at 12-13, citing Staff testimony in Docket No. DE 90-002.

BayRing further asserts that Verizon is, in fact, charging BayRing for Tandem Transit Service, rather than for Switched Access, in connection with some, but not all, calls placed by BayRing customers or end-users to end-users served by a carrier other than Verizon. BayRing maintains that this is inconsistent and not in accordance with the tariffs. BayRing argues that Verizon should be consistent and charge only Tandem Transit Service rates for any BayRing customer calls to customers of wireless carriers and other LECs. Finally, BayRing maintains that it pays terminating charges to other carriers for these calls, and that Verizon’s additional terminating charges to BayRing results in BayRing paying twice to terminate a call to some end-users. BayRing avers that such double payment is unfair, that the tariff does not authorize such a result, that Verizon should correctly charge and bill BayRing for calls that terminate on other carriers’ networks, and that Verizon should refund BayRing for the improper charges it has collected from BayRing in the past.

B. One Communications

One Communications noted that this is the company’s first official appearance before the Commission as the merged entity of the former CLECs Choice One, Conversent Communications, and Lightship/ CTC Communications. One Communications shares

BayRing's concern that it is being charged for services it is not receiving and maintains that charging switched access for routing calls between carriers is unjust and unreasonable.

C. AT&T Communications of New England, Inc.

AT&T agrees with BayRing's representation and questions whether Verizon should be allowed to isolate elements from its switched access tariffed rate and apply access rates in this case. AT&T maintains that the type of service raised in BayRing's complaint is not access service.

D. segTEL

SegTEL agrees with BayRing's analysis and supports BayRing's position.

E. Verizon New Hampshire

Verizon maintains that Section 5.4.1.A of Tariff No. 85 provides that all switched access services shall be subject to CCL access charges, with only two exceptions not applicable here. Verizon avers that the services at issue in this docket are switched access service that does not fall within the two exceptions provided in Sections 5.4.1.A or 5.1.1.B of Tariff No. 85. Verizon argues that BayRing's argument is not persuasive for two reasons: (1) the section of the tariff that deals with "charges" states that "all switched access service shall be charged the carrier common line", and (2) BayRing's reference to Section 6.1.2 regarding a diagram of a completed switched access service is a general description that does not capture all that falls within the scope of "switched access," according to Verizon.

Verizon maintains that since 1993, in New Hampshire, the carrier common line charge was intended to capture the difference between costs and revenue requirement under a rate of return revenue environment. Verizon asserts that for thirteen years, Verizon has not heard this dispute rise to this level, regarding alleged inappropriate application of its tariff. Verizon further

argues that the Commission approved the rate structure in Docket No. DE 90-002 and intended to allow for a contribution element designed not solely to recover the cost of the common line, but to allow Verizon to recover its revenue requirement. Verizon states that it believes the Commission has permitted it to collect access charges under the tariff for the past 13 years and that it should be allowed to continue to collect them. According to Verizon, BayRing's reliance on the Tandem Transit section in Tariff No. 84 does not work because Tandem Transit Service occurs between "TCs" (telecommunications carriers) as defined in the tariff, or between a "TC" and another carrier under a "Meet Point B" billing arrangement, neither of which describes the situation at issue here. Verizon contends that the definition of a "TC" in the tariff includes only local exchange carriers subject to the Commission's jurisdiction, but does not include wireless carriers that are interexchange carriers. Verizon further argues that the Commission should enforce the tariff which, in Verizon's view, permits Verizon to charge what it has charged for thirteen years.

Finally, Verizon avers that it attempted to work out the disputes in this docket and engaged in discussions with Staff, but was unable to reach agreement with BayRing.

F. Staff

Staff did not take a substantive position on the outcome of this case at the prehearing conference, noting that it intends to help determine what the tariff means.

III. COMMISSION ANALYSIS

We have reviewed the record to date, including BayRing's original complaint, Verizon's response thereto, the prehearing conference transcript, Staff's report of technical sessions, and the motions for amendment and clarification filed by BayRing and AT&T. Based upon our review of the record, we find there to be sufficient outstanding factual issues requiring further

investigation and clarification to warrant proceeding to evidentiary hearings. Although resolution of the dispute ultimately will turn on a determination of the proper tariff provision to apply in the particular factual scenarios raised by BayRing's initial and amended complaints, we find that evidentiary hearings are necessary to enable us to clarify the factual switching scenarios implicated. We therefore adopt an expedited schedule based on the proposal outlined in Staff's October 12, 2006 report.

Accordingly, we adopt the following procedural schedule:

Nov. 3, 2006	Technical Session
Nov. 10, 2006	Discovery served on all parties
Dec. 1, 2006	Discovery responses due from all parties
Jan. 12, 2007	Prefiled testimony from all parties due
Jan. 24, 2007	Discovery served on all parties
Feb. 7, 2007	Discovery responses due from all parties
Feb. 21, 2007	Rebuttal testimony due from all parties
Mar. 7, 2007	Discovery served on all parties
Mar. 21, 2007	Discovery responses due from all parties
TBD	Hearings

We further grant BayRing's motion to amend its initial complaint and AT&T's motion for clarification or amendment of scope. Given the additional factual scenarios raised by BayRing's motion to amend its initial complaint as well as those described in AT&T's motion for clarification or amendment of scope, we will issue a supplemental Order of Notice outlining the amended scope of this proceeding. We will issue our Supplemental Order of Notice promptly so that the procedural schedule described above may be preserved. Thus, for purposes of clarifying the scope of the docket, we note that this proceeding will investigate whether Verizon's access tariff requires the payment of certain rate elements, including but not limited to CCL charges, for calls made or received by a CLEC customer to or from end-users not associated with Verizon or otherwise not involving a Verizon local loop. End-users shall be

deemed to include both wireless and wireline end-users of telephone service provided by carriers other than Verizon.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as set forth above is APPROVED; and it is

FURTHER ORDERED, that the scope of this proceeding shall include consideration of both wireline and wireless end-users of telephone service, as clarified above.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of October, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary