

DT 06-067

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

Complaint Against Verizon, New Hampshire Re: Access Charges

Procedural Order

ORDER NO. 24,705

November 29, 2006

APPEARANCES: Orr and Reno, P.A. by Susan S. Geiger, Esq. on behalf of BayRing Communications; Gregory M. Kennan, Esq. on behalf of One Communications; Mary E. Burgess, Esq. on behalf of AT&T Communications of New England, Inc.; Devine Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. on behalf of the New Hampshire Telephone Association; Victor D. Del Vecchio, Esq. on behalf of Verizon New Hampshire; and Lynn Fabrizio, 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 that originate on BayRing's network and terminate on a wireless carrier's network. BayRing took the position 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, the Commission transmitted a copy of BayRing's complaint to Verizon with instructions to file a response. 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 stated, 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 scheduling a prehearing conference for July 27, 2006, and a technical session for August 11, 2006, making Verizon a mandatory party, and determining that further investigation was warranted. 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 the pending petitions for intervention were granted. The parties and Staff met in a technical session on August 11, 2006. A follow-up technical session was conducted by conference call on September 29, 2006. In response to disclosures made during the technical sessions, 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 wireline end-user (as well as wireless) customers served by carriers other than Verizon. In its motion, which effectively requested an expansion of the scope of the docket, BayRing requested further notice and opportunity for comment pursuant to N.H. Code Admin. Rules Puc 203.10(b). On October 10, 2006, AT&T filed a motion to clarify or amend the scope of the proceeding, outlining various call scenarios and corresponding charges levied by Verizon warranting review in this docket and not yet covered in BayRing's initial and amended complaints.

On October 12, 2006, Staff filed a report of the technical session held via conference call on September 29, 2006. In its report, Staff recommended alternate schedules for proceeding to an evidentiary hearing or, in the alternative, for proceeding to briefings and a decision on the papers.

On October 23, 2006, the Commission issued Order No. 24,683, which expanded the scope of this investigation and adopting a schedule for proceeding to discovery, testimony and an evidentiary hearing. The scope was expanded to include any other CLEC or CTP carriers affected by the relevant tariff applications, and to review calls made or received by both wireless and wireline end-users. Accordingly, the first two issues were revised as follows:

- (1) whether calls made or received by end-users which do not employ a Verizon local loop involve Verizon switched access; and

- (2) if so, whether Verizon's access tariff requires the payment of certain rate elements, including but not limited to CCL charges.

Thus, the scope now includes calls made or received by either wireless or wireline end-users of carriers other than Verizon, which do not employ a Verizon local loop. The Commission issued a supplemental order of notice on October 23, 2006, scheduling a prehearing conference on the expanded scope of the proceeding.

On October 31, 2006, the New Hampshire Telephone Association filed a petition to intervene.

The prehearing conference took place as scheduled on November 3, 2006. At the prehearing conference, BayRing asked the Commission to bifurcate the issues of "liability" (i.e., the proper interpretation and application of the Verizon tariffs) and "damages" (i.e., calculation of any refunds and/or reparations due from Verizon) in this proceeding. Verizon opposed BayRing's request. Staff convened a technical session on November 14, 2006, and thereafter submitted a written report noting a lack of agreement with respect to bifurcation and asking the Commission to push back the approved procedural schedule two weeks upon the issuance of a decision on bifurcation. On November 17, 2006, AT&T filed a letter stating its support for bifurcation. On November 20, 2006, Verizon filed a response to AT&T's letter with comments in opposition of bifurcation. On November 21, 2006, BayRing filed comments reiterating its arguments for bifurcation.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

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

BayRing recommends this proceeding be divided into two phases in the interest of judicial economy. Under this proposal, a first phase would concern the proper interpretation of Verizon's tariff, with inquiry limited to the question of whether refunds should be allowed, with

a second phase conducted to determine the exact amount of such refunds. According to BayRing, it would be inefficient to calculate, with specificity, the charges it believes are owed by Verizon, if the Commission decides the charges are not owed at all.

B. Verizon

Verizon opposes bifurcation, characterizing the CLECs' position with regard to the tariff interpretation and application as a significant rate design change. According to Verizon, reparations on the scale contemplated by BayRing could cost the company many millions of dollars. According to Verizon, data regarding the revenue generated by the current application of the tariff is necessary for the Commission's full understanding of why Verizon has applied the particular charges as it has. Verizon further asks the Commission to keep in mind the magnitude of the financial impact of both the proposed application change(s) and any ultimately required reparations as the Commission considers the proper interpretation and application of the tariff language in question.

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

In its November 17, 2006 letter, AT&T supported BayRing's recommendation for bifurcation of the proceeding. According to AT&T, at issue is the alleged misapplication of a single, existing tariffed rate; that the question before the Commission is what the tariff has required since it was adopted and what it continues to require today. AT&T does not support the consideration of damages in the first phase of this docket. AT&T stated that due process requires a fair adjudication of whether the language in the tariff allows Verizon to apply CCL charges in the manner it is applying them.

Further, AT&T disagreed with Verizon's statement that the issues in this case constitute tariff changes or rate redesign. According to AT&T, none of the parties have proposed a tariff

change but, rather, the Commission is being asked to determine whether the existing tariff is being properly applied. AT&T suggested that the charges in question are a relatively recent development that are not based on historical revenue requirement considerations, and that to review the issue of tariff interpretation in concert with a consideration of the financial implications of the tariff's application would amount to single-issue ratemaking.

D. NHTA

The NHTA took no position regarding bifurcation of the proceeding.

III. COMMISSION ANALYSIS

In light of the expanded scope of this investigation and the intervention of several additional carriers, we agree with BayRing and AT&T that, in the interest of judicial efficiency, it is appropriate to bifurcate the issues of tariff interpretation and reparations. We thus will conduct the proceeding in two phases, first determining the proper interpretation of the relevant tariff or tariffs and then deciding to what extent, if any, reparations are due. For purposes of Phase II, we will treat petitions for intervention in this docket as petitions for reparation under RSA 365:29, upon request of the intervenor. We further find that the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary.

However, as Verizon has noted, a fair assessment of the interests implicated in a proceeding of this nature warrants some consideration of the magnitude of the potential financial impact involved. We therefore direct each party that seeks reparations pursuant to RSA 365:29 to submit an estimate of the general order of magnitude of the disputed charges. We also direct Verizon to provide an estimate of the potential financial impact to it, if it were ultimately decided that Verizon had not properly applied the tariff. That estimate should include a total amount, and

to the extent practicable, individual calculations of the charges at issue which have been billed to BayRing and each intervenor. Finally, we require Verizon to provide an estimate of the annual impact to Verizon if the disputed revenue is no longer collected.

The required estimates may be submitted in the form of a range of dollar values and should include (1) a description of the methodology used in calculating the estimate, (2) an explanation of any assumptions made in the calculations, and (3) worksheets that illustrate how the calculations were made. There will be no discovery on those estimate calculations during Phase I of the proceeding, which will be limited to tariff interpretation. Finally, we adopt a revised schedule for this proceeding as requested in Staff's November 16, 2006 report.

Accordingly, we revise the procedural schedule as follows, so as to provide for the conduct of Phase I:

Dec. 15, 2006	Discovery served on all parties
Jan 12, 2007	Discovery responses due from all parties
Feb 9, 2007	Prefiled testimony from all parties due
Feb. 23, 2007	Discovery served on all parties
Mar. 9, 2007	Discovery responses due from all parties
Mar. 23, 2007	Rebuttal testimony due from all parties
Apr. 6, 2007	Discovery served on all parties
Apr 20, 2007	Discovery responses due from all parties

We will schedule a merits hearing on Phase I, as well as Phase II as necessary, at a later date.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that each party that intends to seek reparations pursuant to RSA 365:29 submit a calculation of the estimated financial impact of the disputed charges on or before January 12, 2007. Such calculations should include a description of the calculation methodology used, an explanation of any assumptions made, and worksheets illustrating how the calculation was determined; and it is

FURTHER ORDERED, that on or before January 12, 2007, Verizon submit (1) an estimate of the total financial impact on Verizon of the charges at issue in this proceeding, (2) to the extent practicable, individual estimates of the disputed charge totals billed to BayRing and any intervenors, and (3) an estimate of the annual impact on Verizon if the disputed revenue is no longer collected, as set forth more fully above.

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

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Lori A. Normand
Assistant Secretary