DT 06-067

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

Complaint Against Verizon New Hampshire Re: Access Charges

Order Interpreting Tariff

O R D E R N O. 24,837

March 21, 2008

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; Jay E. Gruber, Esq. on behalf of AT&T Communications of New England, Inc.; Garnet M. Goins, Esq. on behalf of Sprint Communications; 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, competitive local exchange carrier (CLEC) Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) filed a petition requesting that the Commission investigate the imposition of switched access charges, including carrier common line (CCL) access charges, by incumbent local exchange carrier (ILEC) Verizon New Hampshire (Verizon) on calls that originate on BayRing's network and terminate on a wireless carrier's network. In its petition, BayRing argued that CCL charges are associated with "access" to a Verizon end user via Verizon's local loop, and that calls between carriers using Verizon as an interim carrier do not involve switched access. 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 that if the Commission determines that a charge should apply to such a transaction, it should be deemed chargeable as tandem transit service under Verizon’s 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 for 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, scheduling 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 pursuant to RSA 365:29, and (5) in the event Verizon's interpretation of the current tariffs is reasonable, whether any prospective modifications to the tariffs would be appropriate.

Timely 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) by fax on July 26, 2006, and by segTEL, Inc. by fax on July 26, 2006.

The prehearing conference took place as scheduled 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. As a result of 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 (as well as wireless) end user 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 conference call held on September 29, 2006. In its report, Staff recommended alternate schedules for proceeding either to an evidentiary hearing or, in the alternative, to briefings and a decision on the pleadings.

On October 23, 2006, the Commission issued Order No. 24,683, which expanded the scope of the investigation and adopted a schedule for discovery, testimony and an evidentiary hearing. The scope was expanded to include any other CLECs or CTP (competitive telecommunications providers) 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 of the investigation now includes calls made or received by either wireless or wireline end users of carriers other than Verizon that do not employ a Verizon local loop. The Commission also 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 (NHTA) filed a petition to intervene.

The second prehearing conference took place as scheduled on November 3, 2006, at which time NHTA's petition to intervene was granted. During 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). 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 among parties with respect to bifurcation and asking the Commission to push back the approved procedural schedule two weeks from the issuance of a decision on the issue of bifurcation. On November 17, 2006, AT&T filed a letter stating its support for bifurcation. On November 20, 2006, Verizon filed its opposition to bifurcation. On November 21, 2006, BayRing filed comments in support of bifurcation.

On November 29, 2006, the Commission issued Order No. 24,705, revising the procedural schedule to provide for the conduct of an initial phase of the proceeding to determine tariff interpretation issues. In its order, the Commission also directed each party intending to seek reparations pursuant to RSA 365:29 to submit by January 12, 2007 a calculation of the estimated financial impact of the disputed charges, and to include a description of the calculation method used, an explanation of any assumptions made, and worksheets illustrating how the calculation was determined. The Commission also requested Verizon to submit by January 12, 2007, (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 Verizon had billed to BayRing and any intervenors, and (3) an estimate of the annual impact on Verizon if the disputed revenue is no longer collected.

On December 18, 2006, Staff filed a series of call flow scenarios developed with input from parties to illustrate the types of calls that can traverse the Verizon tandem switch[1] and applicable charges.

On January 8, 2007, Sprint Communications Company and Sprint Spectrum (Sprint/Nextel) filed a petition to intervene, stating that it had recently discovered that Verizon is billing it for switched access charges, including CCL access charges, on calls that do not involve a Verizon end user or local loop.

Verizon filed, on January 10, 2007, a motion to compel discovery responses from BayRing, AT&T and RNK. At that time, Verizon also moved to suspend the procedural schedule, pending the Commission's resolution of the pending discovery issues. On January 12, 2007, BayRing and AT&T jointly filed a motion to compel Verizon to provide certain discovery materials. On January 16, 2007, AT&T, BayRing and One Communications jointly filed a

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[1] A tandem switch is an intermediate switch that is not involved in either originating or terminating calls.

response to Verizon's motion to suspend the procedural schedule, recommending a revised procedural schedule in lieu of the indefinite suspension requested by Verizon. Staff and Verizon concurred in the proposed revisions to the schedule. The Commission approved the proposed, revised procedural schedule by secretarial letter. On January 22, 2007, One Communications. BayRing, AT&T and RNK filed oppositions to Verizon's motion to compel. By secretarial letter dated February 5, 2007, the Commission granted the Verizon discovery motion in part and denied in part.

On February 8 and 9, 2007, One Communications, BayRing and AT&T each filed estimates of improperly billed Verizon access charges. On February 9, 2007, Verizon provided an estimate of the potential financial impact, including the total amount and individual calculations for each intervenor, in the event the Commission decides that Verizon had not properly applied its tariff and orders refunds of the disputed charges. Verizon also provided an estimate of the annual impact to Verizon NH if the disputed revenue were no longer collected.

On February 9, 2007, RNK formally withdrew its intervention.

On March 9, 2007, witness testimony was filed on behalf of the parties as follows: AT&T witnesses Ola Oyefusi, Christopher Nurse and Penn Pfautz; BayRing witnesses Darren Winslow and Trent Lebeck; and Verizon witness Peter Shepherd. Rebuttal testimony was filed by the same parties on April 20, 2007.

The Commission granted Sprint/Nextel's motion to intervene on April 17, 2007, by secretarial letter. On April 19, 2007, Sprint/Nextel filed its estimate of access charges improperly billed by Verizon.

On June 1, 2007, Verizon filed a motion to compel discovery responses from BayRing and AT&T. BayRing and AT&T objected to Verizon's motion on June 7, 2007. On June 7, 2007, the Commission issued Order No. 24,760, denying Verizon's motion.

On July 3, 2007, BayRing and AT&T jointly filed a request that the Commission conduct the July 10-12 hearing with all three commissioners present. In their filing, BayRing and AT&T also requested, with Verizon's concurrence, confirmation that each party will be permitted to present an oral summary of its written prefiled testimony during direct examination and to file post-hearing briefs with legal arguments. The Commission granted the requests by secretarial letter on July 6, 2007.

The hearing was held on July 10 and 11, 2007, as scheduled. On August 10, 2007, Verizon moved for leave to file supplemental discovery. AT&T responded on August 20, 2007, stating that Verizon had styled its motion as a request to supplement a discovery reply when in fact it was a motion to reopen the record and add new evidence. AT&T stated that although it did not object to Verizon's request, it wished to preserve the right to object to any further efforts of Verizon to supplement the record. BayRing concurred with AT&T's response. On August 22, 2007, the Commission granted Verizon's request to supplement the record, noting that the discovery response might have probative value and that the parties would have the opportunity to impeach or rebut the late-filed exhibit in their briefs.

SegTel filed a post-hearing brief on September 7, 2007. AT&T, One Communications, BayRing, and Verizon filed their post-hearing briefs on September 10, 2007.

II. POSITIONS OF THE PARTIES AND STAFF

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

A panel consisting of Trent Lebeck and Darren Winslow testified on behalf of BayRing at the July 10, 2007 hearing that BayRing had discovered, during a review of its August 2005 bills for intrastate access charges from Verizon, that the bills had increased substantially over prior bills for the same service. According to BayRing, the minutes of use assessed to CCL far exceeded the minutes of use assessed to local switching, which generally should be equal when accessing a Verizon end user through switched access.

According to BayRing, when a BayRing end user calls a Verizon end user, BayRing delivers the call to Verizon at Verizon's tandem switch and Verizon, in turn, delivers the call from its tandem to the end office switch to which the Verizon end user is physically connected via the local loop or common line. In such an instance, terminating switched access should apply because BayRing is using Verizon's end office and common line to access the Verizon end user, and, as a result, Verizon should bill for end office switching with a CCL charge and the minutes of use should be the same.

On the 2005 bills in question, BayRing discovered that the minutes of use that differed substantially from prior bills were labeled "Cellular Tandem Switched" and terminated to a wireless end user rather than a Verizon end user. Such calls, according to BayRing, do not go through a Verizon end-office or use a Verizon common line because they do not connect to a Verizon end user. After a review of Verizon's tariff, BayRing concluded that Verizon was billing CCL charges in error for Cellular Tandem Switched minutes of use. Following the BayRing complaint that triggered these proceedings, Verizon began charging the CCL rate element for other types of calls, including calls that terminated to end users of other CLECs or independent telephone companies (ITCs), for which Verizon had never billed in the past. According to BayRing, Verizon had not previously imposed CCL charges for calls terminating to CLEC or ITC end users, nor had its third-party billing agent, New York Access Billing LLC (NYAB), imposed these charges in the past ten years.

BayRing submitted that these new CCL charges create a substantial new source of revenue for Verizon. BayRing pointed out that the majority of the disputed charges do not represent long-standing Verizon revenues since Verizon has been assessing the bulk of the disputed charges only since September 2006. BayRing theorized that its complaint had alerted Verizon that it was not billing CCL for CLEC-to-CLEC or CLEC-to-ITC calls and that, as a result, Verizon took the opportunity to impose the additional charges to generate additional revenues.

BayRing asserted that Verizon is not authorized to collect access charges for services it does not provide. BayRing's witness claimed that he had never seen an access bill from a carrier other than Verizon that billed for individual rate elements not provided by the billing carrier. Verizon is charging BayRing a CCL charge when Verizon does not provide the facilities connecting the end office and the end user. BayRing also claimed that at times it is being double-billed because in certain cases a wireless carrier may charge BayRing local termination charges to terminate a call to its end user, or a CLEC or ITC charges terminating switched access for access to its end user over the CLEC or ITC common line, while Verizon is applying a CCL charge for the same call, although the Verizon common line is not being used, so BayRing ends up paying two CCL charges.

BayRing contended that Verizon and wireless carriers obtain an unfair advantage over CLECs as a result of Verizon's unlawful CCL billing scheme, contrary to RSA 378:10.

According to BayRing, Verizon pays only 3 cents per minute in terminating access charges for a call from one of its customers to a CLEC end user, while BayRing pays a total of 5.6 cents per minute when terminating a call from one of its customers to the end user of another CLEC. BayRing contends it pays two terminating access charges for such calls: one to the terminating CLEC, and one to Verizon for a service Verizon does not provide. BayRing points out that Verizon pays a wireless carrier only 0.2 cents per minute to terminate a call, which is considered local pursuant to federal regulations, whereas when a BayRing customer calls the same wireless end user, Verizon charges BayRing 2.8 cents per minute for switched access to the wireless provider (considered by Verizon in this instance as a toll call) in addition to what BayRing pays the wireless carrier to terminate the call to its end user. BayRing contended that the cost differential is substantial and that Verizon's jurisdictional distinction between calls from Verizon end users to wireless customers and calls from CLEC end users to wireless customers is anticompetitive, unjust and unreasonable.

BayRing noted that the CCL charge is described in Tariff No. 85, Section 5.1.1A as follows: "Carrier Common Line access provides for the use of end user's 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 "a line, trunk or other facility provided under the general and/or local exchange tariffs of the Telephone Company, terminated on a central office switch." BayRing maintained that Verizon's tariff and the definition of "common line" clearly link the CCL rate element to the common line facilities between Verizon's end offices and end users.

BayRing argued that the tariff provisions indicate that the CCL is authorized to be charged only when a Verizon common line is actually used. BayRing asserted that Verizon's own graphic exhibit, exhibit 6.1.2-1 in Section 6.1.2 of Tariff No. 85, shows the common line as the facility between the end office and the end user. In addition to the definitions above, BayRing contended that there were other provisions in the Verizon tariff that state CCL should be billed when provided and are specifically linked to other sections of Tariff No. 85 (Sections 4 and 6) and Verizon's FCC Tariff No. 11. BayRing argued that Verizon erroneously relies on a generic sentence within its tariff to assert that CCL applies even when common line facilities are not used. That sentence states that, "[e]xcept as set forth herein, all switched access service provided to the customer will be subject to Carrier Common Line access charges." BayRing submitted that Verizon's interpretation is incorrect because it ignores the phrase "except as set forth herein," which indicates there are exceptions to the general language.

Citing *City of Rochester v. Corpening*, 153 N.H. 571 (2006), and *Weare Land Use Assoc. v. Town of Weare*, 153 N.H. 510, 511 (2006), BayRing argued that the tariff language must be interpreted in the context of the overall scheme of the tariff, should not be interpreted in isolation, must lead to a reasonable result and should entail a review of a particular provision, not in isolation, but with all the associated sections. BayRing emphasized that the interplay between tariff Sections 5 and 6 associated with the disputed charges indicates that the CCL charge applies only when another carrier makes use of Verizon's common line to reach a Verizon end use customer and that when a carrier uses the common line, it must also use the end office local switching service in Section 6 in order for Verizon to apply the usage-based CCL charge.

In its post-hearing brief, BayRing asserted that when interpreting provisions of a utility tariff, it is appropriate for the Commission to apply principles of statutory construction and contract interpretation and that, in doing so, the Commission should find that Verizon's Tariff No. 85 does not permit it to charge the CCL rate when Verizon is not providing use of its common line. According to BayRing the Commission should interpret Verizon's tariff to lead to a reasonable rather than absurd result, citing *Weare Land Use Assoc.* at 511, and that the tariff should not be construed in a manner that produces an unjust and illogical result, citing *State v. Farrow*, 140 N.H. 473, 476 (2005). BayRing maintained that 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 is being provided by Verizon.

BayRing also argued because the tariff language does not specifically describe or address charges associated with calls from CLECs to non-Verizon end users, the tariff does not permit Verizon to impose the disputed CCL charges for these calls. BayRing cited RSA 378:1, which requires that every public utility file "schedules showing rates, fares, charges and prices for any service rendered" and rule Puc 1603.02(m), which requires that a utility provide with each tariff "a full description of the rates and terms under which service shall be provided" to support its argument. BayRing asserted that Verizon is not adhering to state statutory and regulatory requirements or to federal requirements, which are made applicable at the state level through RSA 378:2, that all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations. *See* 47 C.F.R. § 61.2(a).

BayRing also claimed that Verizon's interpretation of the tariff is unjust and unreasonable because it is inconsistent with industry practices. BayRing pointed out that the diagram set forth in Section 6.1.2 of the tariff is consistent with industry-wide treatment of the CCL rate element. BayRing stated that the practice within the telecommunications industry is that a CCL charge is imposed only when the billing carrier actually provides access to its common line or loop and that Verizon admits it is not providing CCL service for the calls at issue. BayRing cited the definition of a CCL charge contained in *Newton's Telecom Dictionary* as stating that the CCL charge is paid to local exchange carriers "for the privilege of connecting to the end user through the LEC local loop facilities." BayRing indicated that the most persuasive evidence of industry practice regarding the proper application of the CCL charge is the FCC decision in *AT&T v. Bell Atlantic Pennsylvania*, 14 F.C.C.R. 556 (Dec. 9, 1998), in which 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."

In addition, BayRing asserted that Verizon's argument that it is entitled to impose the CCL charge as a contribution rate element must also fail as illogical and unreasonable. 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 common line.

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

A panel consisting of Ola A. Oyefusi, Christopher Nurse and Penn Pfautz testified on behalf of AT&T at the July 10, 2007 hearing that AT&T was in agreement with BayRing's position. AT&T claimed that it noticed something amiss while examining its November 2005 bill from Verizon, unsuccessfully attempted reconciliation with Verizon, and subsequently intervened in this docket.

AT&T stated that it disputes Verizon's interpretation of the tariff language regarding CCL charges. AT&T is not disputing switched access charges when it uses Verizon's end office and common line for access to a Verizon end user. The problem, according to AT&T, is that Verizon has begun charging CCL charges on the terminating side, even though Verizon is no longer supplying access to a Verizon end user via a Verizon local loop or common line. In addition, according to AT&T, Verizon is charging for originating CCL service even when the customer has left Verizon for another company. AT&T stated that even though Verizon has no loop on either end of a call, Verizon is charging AT&T for both originating and terminating CCL service. AT&T emphasized that, as a long distance provider, it already pays those charges to the two CLECs that actually provide use of the originating and terminating loops and believes it is unreasonable to have to pay Verizon as well, when Verizon is not providing the service.

AT&T believes that if the tariff is applied in accordance with Verizon's interpretation, the results are unreasonable. AT&T indicated that it is illogical for Verizon to expect that, when Verizon loses a customer, Verizon would continue to receive revenue from that loop for the CCL that Verizon no longer provides. AT&T pointed out that the CCL component is by far the largest component of the access charges, representing approximately 90 percent. AT&T stated that the tariff language allows Verizon to collect CCL charges only when Verizon supplies the loop, and that Verizon cannot charge for an access rate element unless it actually provides the service associated with that rate element.

In its post-hearing brief, AT&T stated that Section 6 of Tariff No. 85 delineates three major components of what it describes as a "Complete Switched Access Service": local transport, local switching, and common line, along with the applicable rate categories. AT&T stated that Section 6.1.2.B.3 of Tariff No. 85 expressly excludes CCL service as a service provided under Section 6; rather, CCL service is provided under Section 5, which describes CCL access service as follows: "Carrier common line access provides for the use of end users' Telephone Company provided common lines by [IXC] customers for access to such end users to furnish intrastate communications. . . . The Telephone Company will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6." AT&T concluded that in order to use Verizon's Section 5 CCL services, it must also use Section 6 local switching services.

AT&T asserted that by Verizon's own design, the language in Tariff No. 85 mirrors that of Verizon's FCC Tariff No. 11, under which Verizon concedes it may not charge for CCL for calls that do not involve a Verizon common line. AT&T averred that interpreting the same language differently in federal and state tariffs violates contract and statutory interpretations. AT&T pointed out that the Commission applies well-established principles of statutory construction and contractual interpretation to tariffs.

AT&T stated that Verizon's interpretation of its tariff is anti-competitive and anti-consumer. According to AT&T, following Verizon's interpretation of the tariff would undermine local competition and the benefits it produces, when the tariff's very purpose is to obtain the benefits of competition. AT&T argued that the commission adopted Tariff No. 85 and access rate levels, in particular, for the purpose of promoting competition and lowering rates for telecommunications services. AT&T submitted that when the Commission rejected a proposed settlement agreement in 1993 that included the issue of access charges for intrastate toll competition in New Hampshire in Order No. 20,864 (entered in Docket No. DE 90-002), it was sending a clear message that the proposed access rates were too high and left no doubt that it was endorsing competition as a means of reducing prices for New Hampshire ratepayers.

Finally, AT&T argued that Verizon's past billing practices are in direct conflict with its new tariff interpretation. Tariff No. 85 was adopted in 1993, while Verizon did not begin billing CCL charges without local switching (from the end office connecting the common line to the end user) until the fall of 2005. AT&T stated that Verizon's sudden reinterpretation of its tariff to generate new revenues for itself and impose substantial costs on competitors is inconsistent with the settled meaning of Tariff No. 85, as established not only by its language, but also by Verizon's behavior and that of its billing agent.

C. One Communications

In its post-hearing brief, One Communications argued that the Commission should hold that the access charges at issue in this proceeding are improper and inappropriate because Verizon's access tariff does not permit the imposition of a per-minute usage charge for the CCL when no Verizon common line is involved. One Communications further argued that when the call is originated or terminated to a CLEC or wireless carrier, Verizon does not provide access to the end user via a common line, and the CCL charge should not apply. One Communications asserted that Verizon's tariff language is clear that it may not impose the CCL charge without providing CCL access to a Verizon end user, and therefore no inquiry beyond the language of the tariff is required.

One Communications reiterated the positions of BayRing and AT&T, stating that the Commission should apply the principles of contractual interpretation and statutory construction contained in common law and should ascribe the plain and ordinary meaning to the words used, while interpreting the tariff language in light of the tariff's overall scheme and not in isolation. The Commission should examine any particular section together with all associated sections and should interpret the tariff so as to produce a reasonable outcome, not an absurd one.

One Communications argued that Tariff No. 85 prohibits Verizon from imposing a CCL charge when it does not provide CCL service. The tariff clearly states (in Section 5) that Verizon "will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6." According to One Communications, this language means

Verizon will provide access to the common line only in conjunction with local switching and/or local transport as described in Section 6.

One Communications also reiterated that Verizon's tariff is clear that it may charge only for services it actually provides; therefore, under the tariff, Verizon may not impose a CCL charge unless the call traverses a Verizon common line.

One Communications claimed that calls originated by wireline carriers and terminated to a wireless carrier within New Hampshire are local calls and should not be charged for CCL access. One Communications contended that, under FCC requirements, calls originated by or terminated to a wireless carrier in the same major trading area as the other party are deemed local and subject to reciprocal compensation, not access charges.

One Communications also stated that it does not agree with Verizon's argument that the tariff allows per-minute CCL usage charges even when no Verizon CCL is involved, because Order No. 20,864 authorized Verizon to recover all residual contribution from intraLATA toll revenues through CCL. One Communications asserted that the tariff language is clear that Verizon is not allowed to impose the CCL charge when no Verizon common line is used to access a Verizon end user.

One Communications emphasized that Verizon's billing practice is contrary to industry standard practice and that Verizon's imposition of CCL charges is anomalous even by its own standards. One Communications stated that Verizon does not impose the CCL charge in all or most other jurisdictions, and that it does not impose the charge in any other New England state where no CCL is involved. Under its federal tariff, Verizon does not impose a CCL charge when no common line is used. And finally, One Communications asserts that the failure of Verizon's billing agent, NYAB (which specializes in billing access charges for telecommunications carriers), to bill CCL charges in such a case speaks volumes about the industry's view of the reasonableness of imposing CCL charges when no CCL is involved. Verizon's historical failure to bill CCL charges undermines its claim that they are an important revenue source.

Finally, One Communications stated that imposing a CCL charge when no Verizon common line is used is contrary to the public interest, creates a competitive advantage for Verizon and Verizon Wireless, while posing a competitive disadvantage for competitors, and undermines the competitive atmosphere in New Hampshire, to the detriment of ratepayers.

D. segTEL

SegTEL averred that Verizon is forbidden from charging rates for services that are not properly set out in its tariff, and that there is no applicable rate for CCL access in the absence of a Verizon end user. SegTEL argued that the charges Verizon seeks to assess are not specified in its tariff and are therefore unlawful. Tariff language, according to segTEL, must be clear and unambiguous. SegTEL posits that Verizon's tariff does not entitle it to collect CCL charges for calls to wireless carrier end users because the tariff does not allow for CCL charges where there is no Verizon end user customer. SegTEL stated that in the absence of clear and unambiguous language in Tariff No. 85 specifying the inclusion of CCL charges beyond the limitations established by the tariff, Verizon is prohibited by state law from imposing charges. SegTEL claimed that the Supreme Court has consistently articulated that such "rates, fares, charges and prices for any service rendered" must be set forth in clear and unambiguous language to be enforceable. According to segTEL, the Commission has likewise held that a tariff must be clear and unambiguous in order to permit its enforcement. segTEL alleged that Verizon seeks to charge for services it does not provide and for use of facilities it does not own. segTEL held that it is precisely to avoid this type of uncertainty that carriers are required to set forth their charges clearly and unambiguously in a tariff.

SegTEL stated that the language governing federal tariff interpretation is equally explicit and supports its argument. 47 U.S.C. § 203(c) states that it is unlawful under federal law for a carrier to charge, demand, collect, or receive a greater or less or different compensation other than the charges specified in a tariff.

SegTEL argued that Verizon's tariff does not provide for CCL charges in the absence of a Verizon-provided common line. The plain language of Verizon's Tariff No. 85 states that CCL charges apply when common lines provide other carriers with access to Verizon's end users. segTEL pointed out that Section 5.1.1.A. states that CCL access provides for the use of Verizon-provided common lines by customers for access to such end users to furnish intrastate communications. SegTEL concluded that Verizon should not be allowed to charge CCL charges for services it does not provide.

E. Verizon New Hampshire

Peter Shepherd of Volt Services Group, a division of Volt Information Science Company, testified on behalf of Verizon at the July 11, 2007 hearing. Mr. Shepherd testified that although the arguments of BayRing and AT&T have merit and may be ripe for a separate proceeding to determine if the tariff should be changed in the future, their logic has little relevance to the basis upon which the access charges were established and the intent, interpretation and lawful application of the existing tariff. Mr. Shepherd explained that switched access is a wholesale service for toll calls that provides carriers with the use of transmission, transport and switching facility components of Verizon's network. Mr. Shepherd noted that Section 2.1 of Tariff No. 85 defines "switched access" as follows: "This tariff contains regulations, rates and charges applicable to switched access services, which essentially are services provided by Verizon New England to interexchange carriers and wireless carriers, including resellers and/or other entities engaged in the provision of public utility common carrier services which utilize the network of the Telephone Company." Verizon argued that it provides the use of its network for the toll services offered by competitive carriers, services which are subject to the carrier common line charge. Verizon further alleged that the CCL rate was deliberately established in the generic competition docket, No. DE 90-002, as a contribution rate element applicable to all switched access services and not as an element to recover use of loop-related costs. Verizon maintained that the tariff is very specific in saying that the CCL charge applies to all switched access minutes of use.

In its brief, Verizon maintained that New England Telephone (NET) Tariff No. 78 (now Verizon Tariff No. 85) introduced the carrier common line (CCL) charge into NET's access rate design and that the CCL charge to long distance providers for all switched access calls including those originated from or terminated to wireless carrier end users has been billed since 1993. In 1996, Verizon elected to outsource billing of switched access services for calls originating from CLECs and ITCs where Verizon provided intermediate switched access transport and tandem switching to deliver calls to another CLEC, ITC, or long distance provider. According to Verizon, its third party billing agent failed to properly assess CCL charges on these calls from 1996 until Verizon ended the out-sourced billing arrangement in 2006.

According to Verizon, this case revolves primarily around the interpretation of one sentence in Section 5.4.1.A of Tariff No. 85, which states that "[e]xcept as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges." In its brief, Verizon argued that the Commission has deemed it appropriate to apply the principles of contractual interpretation and statutory construction contained in common law when interpreting a rate-setting tariff. Under New Hampshire common law, this requires that the Commission ascribe the plain and ordinary meaning to the words used in a tariff, citing *Appeal of Town of Bethlehem*, 154 N.H. 314, 316 (2002), and *West v. Turchioe*, 144 N.H. 509, 515 (1999). Verizon concluded that the preamble to Section 5.1 provides important context for interpreting Section 5.4.1.A. The preamble states that "[c]arrier common line access service is billed to *each switched access service* provided under this tariff in accordance with the regulations as set forth herein and in Section 4.1 [relative to the issuance, payment and crediting of customer bills], and at the rates and charges contained in Section 30.5" (emphasis added by Verizon), and, according to Verizon, makes clear the intention that the CCL would be billed to every call involving switched access.

Verizon claimed that the clause "except as set forth herein" in Section 5.4.1.A pertains only to an exception for enhanced service providers as required by FCC regulations. Verizon avers that nowhere in Section 5.4.1 is the CCL charge limited to intrastate toll calls involving Verizon end users; rather, it applies broadly to all switched access service components that may be purchased by carriers on a stand-alone or combined basis. Verizon claimed that Sections 5.4.1 and 5.4.2 explicitly require the payment of CCL access service charges for "all" and "each" switched access service provided by Verizon.

Addressing the arguments of BayRing and AT&T that assert that Verizon is not permitted to assess CCL charges on intrastate toll calls involving non-Verizon end users even when Verizon provides an intermediate switched access function, such as tandem switching, Verizon contends that such a view is predicated on an erroneous interpretation of Sections 5.1.1 and 5.2.1 of the tariff. Verizon maintained that while the tariff provides for the use of a Verizon-provided end user loop for the furnishing of intrastate toll service when a carrier uses Verizon's network, it does not mandate such use. According to Verizon, language in the tariff at Section 5.1.1.A.1, which states that "[Verizon] will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6," means only that access to the common line is required to be provided in conjunction with switched access service. Verizon claimed that nothing in Section 5.2.1 mandates that the carrier must make use of the Verizon common lines every time it utilizes switched access components. According to Verizon, use of the common line is unrelated to the application of CCL charges, which are governed by Section 5.4 requiring payment of CCL whether the common line is used or not, and nothing in Section 5.2.1 contradicts or qualifies the explicit requirement that each and all of the switched access services provided by Verizon be assessed the CCL charge.

Verizon also maintained that the interpretations of BayRing and AT&T contradict standard industry practice of collaboration among carriers for the provision of switched access services, as well as the provisions of the tariff governing "meet point billing" arrangements. Verizon maintained that Section 3.1.2.D of Tariff No. 85 provides for the allocation of local transport elements among multiple exchange carriers collaborating in the provision of switched access to a carrier for use of the exchange carriers' network in furnishing toll service. Verizon claimed that this provision plainly authorizes Verizon to bill carriers for switched access when Verizon functions as an intermediate carrier for calls originating or terminating with another carrier*; i.e.*, without the use of a Verizon end user loop. Verizon contended that if CLECs avail themselves of Verizon's switched access services, they must pay the rates and charges set forth in Tariff No. 85, including CCL charges.

Verizon further disagreed with the claim of BayRing and AT&T that the tariff provisions are not applicable because Verizon is not providing switched access services. Verizon supplies the use of its network, including transmission, transport and switching components for the provision of toll service. Verizon stated that the use of its network to provide an intrastate toll call, regardless of the number of components involved, constitutes "switched access."

Verizon asserted that a billing error of its vendor, NYAB, does not absolve carriers of their obligations to pay CCL charges on switched access services provided by Verizon. Carriers are presumed to know the content of Verizon's tariff, which premise renders the error immaterial. Verizon alleged that carriers have received services from Verizon for several years for which they have paid less than the tariffed rates. Verizon became aware of the billing error and took steps to rectify the error.

Verizon took the position that the history of the development of Tariff No. 78 (now Tariff No. 85) in Docket No. DE 90-002 informs the debate. According to Verizon, the tariff language "was the product of negotiations among carriers." Verizon goes on to state that a plain-language reading of the tariff will give effect to the underlying purpose of the CCL charge, which was designed by Verizon to provide contribution for the support of other services. Verizon refers to its witness's testimony in DE 90-002 that "the CCL rate element was designed to apply to all switched access because retail toll and wholesale switched access are the same service, and should therefore provide the same level of contribution per minute of use." According to Verizon, NET provided extensive testimony in DE 90-002 to support its position that access and toll were the same service and therefore should be priced approximately the same. Verizon cited additional testimony from DE 90-002, which said "[t]he sole purpose of the carrier common line rate element is to bring the end-to-end access rate from the incremental costs of transport and switching up to a level which results in the proper relationship between toll and access," and concluded that since the Commission approved the tariff with the language in dispute today, it gave effect to NET's express intent.

Verizon also pointed to testimony of an AT&T witness in DE 90-002 in support of Verizon's understanding that CCL is a contribution element and not a mechanism to recover the cost of using the local loop. Verizon pointed out that its ultimate agreement to a stipulation on this issue altered its initial position but did not change the fact that CCL was designed to recover contribution.

Verizon points to a similar case in New York where a CLEC argued it should not have to pay CCL and local switching for access to a wireless carrier. The New York Public Service Commission rejected the carrier's argument, similar to the argument here, that "Verizon cannot charge for a service it does not perform" and found that the plain and ordinary meaning of the tariff's terms controlled.

Finally, Verizon dismissed as irrelevant BayRing's assertion that CCL charges are anti-competitive. Verizon intimated that this proceeding is limited to determining the proper interpretation of the relevant tariffs, and that any consideration of modifications to the tariffs or whether the tariffs are anti-competitive is irrelevant to this docket and must be addressed in a future proceeding.

III. COMMISSION ANALYSIS

The June 23, 2006 order of notice in this proceeding set forth a number of issues for review that were subsequently modified in the October 23, 2006 supplemental order of notice. The issues posed were: (1) whether calls made or received by end users that do not employ a Verizon local loop involve Verizon 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 such calls, (3) if not, whether BayRing or other carriers are entitled to a refund for such charges collected by Verizon in the past, (4) if not, whether such services are more properly assessed under a different tariff provision, (5) if not, to what extent reparation, if any, should be made by Verizon under RSA 365:29, and (6) in the event Verizon's interpretation of the current tariffs is reasonable, whether any prospective modifications to the tariffs are appropriate.

Subsequently, in Order No. 24,705 (November 26, 2006), the Commission determined to conduct this proceeding in two phases, with Phase I concerning the proper interpretation of the relevant tariff provisions and, if necessary, Phase II concerning the determination of refunds. It was also noted in Order No. 24,705 that a separate proceeding would be initiated if tariff modifications were determined necessary as a prospective matter.

A. Phase I—Interpretation of Tariff Provisions.

At issue before us is the proper interpretation and application of Sections 5 and 6 of Verizon's access tariff, Tariff No. 85. When interpreting the provisions of a utility's tariff, we apply principles of statutory construction and contract interpretation. *Public Service Company of New Hampshire*, 79 NH PUC 688, 689 (1994). Accordingly, we look first at the plain and ordinary meaning of the terms of the tariff. *City of Rochester v. Corpening*, 153 N.H. 571, 573 (2006) (citing *Carignan v. New Hampshire Int'l Speedway*, 151 N.H. 409, 419 (2004)).

Section 5 of Tariff No. 85 governs the provisioning of "carrier common line access service." Section 5.1.1.A describes that service as providing "for the use of end users' Telephone Company provided common lines by customers [i.e., carriers] for access to such end users to furnish intrastate communications." A "common line," in turn, is defined in Section 1.3.2 as 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." Section 5.1.1.A.1 further states that Verizon "will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6" of the same tariff. Section 6.1.2.A of Tariff No. 85 states that "switched access services" provided under Section 6 includes originating and terminating access, as well as two-way and 800 database access. Of particular interest in this proceeding are originating and terminating access services, as they address the origination and termination of calls to and from end users who place and receive calls.

Section 6.1.2.B outlines the rate categories applicable in the provision of switched access services, including local transport (as described in Section 6.2.1), local switching (described in Sections 6.2.2 and 6.2.3), and carrier common line (described in Section 5). Thus, the individual, billable elements of "switched access" are local transport, local switching, and carrier common line. Section 6.1.2.D recognizes that when local transport, local switching and carrier common line are combined, they provide a "complete switched access service."

"Local transport" is described in Section 6.2.1.A as the provision of the transmission facilities between the customer's [i.e., the carrier's] equipment[2] and the end office switch(es) where traffic is switched to originate or terminate an end user's call. Local transport includes tandem switching. The petitioners and intervenors use tandem switching and, therefore, local transport for the calls that are the focus of this dispute.

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[2] Tariff 85 generally applies to interexchange carriers, commonly referred to as IXCs, which provide long distance service on a competitive basis. "Customer" is defined as "any individual . . . which subscribes to the services offered under this tariff, including ICs [interexchange carriers], resellers or other entities engaged in the provisioning of interexchange services which utilize the network of the Telephone Company ." The reference to the customer's premises in Section 6.2.1.A is to the interexchange carrier's equipment or switch. Local transport is the component of switched access service that transports the call between the end office switch through Verizon's tandem switch to the interexchange carrier on the originating side of a call and the reverse on the terminating side of a call. Local transport includes three components: local transport termination (termination of an interoffice facility in the end office and tandem switch); local transport facility (the interoffice wire or fiber facility) and local transport tandem switching (the switch between carriers).

"Local switching" is described in Section 6.2.2 as the provision "for the use of common lines and the local end office switching and end user termination functions necessary to complete the transmission of switched access communications to the end users served by the local end office." Because the end user is not Verizon's in the calls at issue in this case, local switching is not involved.

"Carrier common line access service" is described in Section 5, separately from Section 6 "Switched Access Service." Section 5 begins with an introductory sentence that states: "Carrier common line access service is billed to each switched access service provided under this tariff in accordance with the regulations *as set forth herein* and in Section 4.1 and at the rates and charges contained in Section 30.5" (emphasis added). Section 4.1 sets forth specifics of billing procedures. Thus, our analysis here turns on the regulations specified in Section 5 governing carrier common line access service charges.

Carrier common line access service under Section 5.1.1.A "provides for the use of end user's Telephone Company provided common lines [i.e., Verizon's common lines to Verizon end users] by customers [i.e., other carriers] for access to such end users." Thus, carrier common line access, for which CCL access charges apply, is provided when the CLEC customer uses a Verizon-provided common line to access a Verizon end user. Accordingly, the CCL charge is properly imposed when (1) Verizon provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. It is also reasonable to conclude the inverse to be true, that is, when the use of Verizon's common line and the presence of a Verizon end user are lacking, the CCL charge may not be imposed. The tariff provisions are complex and interpreting them requires a sophisticated understanding of the telecommunications industry, nonetheless, we make our findings based on the language within the four corners of the tariff.

Verizon argues as well, however, that under Section 5.4.1.A of Tariff No. 85, "[e]xcept as set forth herein, *all* switched access service provided to the customer will be subject to carrier common line access charges" (emphasis added). According to Verizon, the wording of Section 5.4.1.A suggests that any and all "switched access service" is subject to a CCL charge.

Tariff No. 85 does not include a specific definition of "switched access." Assuming *arguendo* that an ambiguity exists to the extent that there is an uncertainty of meaning or intent, we look beyond the four corners of the tariff to resolve the ambiguity. We therefore turn to the context of the provisions pertaining to the term "switched access," with a view toward its relation to carrier common line access services. The record in this proceeding reveals that when the language of Section 5 of Tariff No. 85 was initially introduced, it was not contemplated that a carrier would use switched access without using Verizon's common line[3]. In 1993, switched access rates were primarily designed to provide interexchange carriers access to end users of local exchange carriers. At the time, every wireline end user was served by an incumbent local exchange carrier; either NET (a predecessor of Verizon) or an independent telephone company. Interexchange carriers were required to use incumbent carrier common lines or local loops in order to connect with or gain access to the incumbent's end users for the provision of toll calls. Each time an interexchange carrier used local switching and local transport it had to use the common line of an incumbent carrier.

Under Verizon's interpretation of Section 5.4.1.A and the preamble to Section 5.1, Verizon would have billed interexchange carriers CCL when Verizon jointly provisioned switched access with an ITC for a toll carrier's access to an ITC end user. However, the record evidence shows that neither NET nor Verizon billed CCL to toll providers when an ITC end user

[3] Switched access was not contemplated without the use of either a Verizon common line or, alternatively, an ITC common line under a meet-point billing arrangement. For purposes of this discussion, we focus on whether a Verizon common line is used.

was involved until 2006, after this docket was initiated.[4] Nevertheless, Verizon's billing history, including whether it charged or did not charge for certain elements at different times, and the actions of its billing agent are not factors we have relied on in our interpretation of the tariff.

One of the changes Congress wrought through the Telecommunications Act of 1996 was to allow carriers other than incumbents to provide local exchange service. Once CLECs entered the market, incumbents no longer provided local switching and common line service to every end user. The FCC clarified the application of common line charges for the interstate switched access tariff in the 1998 *AT&T* decision cited by BayRing. In that decision, the FCC established that "a [local exchange carrier] 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." AT&T, 14 F.C.C.R. 556 at ¶ 28.

We agree with Verizon that, at the time the switched access rate was approved in 1993, retail toll service and switched access service used the same physical components of Verizon's network and, therefore, effectively provided the same service. However, as an NET witness testified in Docket No. DE 90-002, which established Verizon's current switched access rate design, the proceeding conducted in that docket was:

> 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.

Exh. 2 at 56. Since the issuance in 1993 of Orders No. 20,864 and No. 20,916 resolving the issues in that docket, the telephony market in New Hampshire has seen the entry of numerous

[4] Likewise, Verizon does not bill two separate carrier common line charges when both local switching and local transport are used. *See generally* Tr. Day II at 102-105.

CLECs, many of which employ large portions of their own networks, formerly provided by NET, in the provision of toll service.[5]

In 1993, when Verizon's switched access rate was first approved, end users in Verizon's franchise territory were exclusively Verizon's. Today, CLECs own, operate and maintain local loop[6] and end-office switches serving their own end users. As a result, a CLEC need not purchase "complete switched access service" from Verizon when it is not accessing a Verizon end user. Moreover, we agree with the original NET position that Docket No. DE 90-002 was "not intended to address issues of separate competing networks or multiple exchange carriers in the same franchise territory." Consequently, we do not rely on Docket No. DE 90-002 as precedent for our decision here, where the crux of the dispute arises from the use of separate network facilities owned by competitors.

Section 5.1.1.A.1 states that "[t]he Telephone Company will provide carrier common line access service to customers in conjunction with switched access service provided in Section 6." In the calls at issue here, Verizon is providing a component of switched access from Section 6 (i.e., local transport) but cannot physically provide carrier common line access service to the carrier as required by Section 5.1.1.A.1 because Verizon does not have a common line to the CLEC, ITC or wireless end user. Although, at its initiation, switched access appears to have required access to Verizon's[7] common line by reason of the structure of the network itself, that is no longer the case. Where a non-Verizon carrier provides the local loop that connects an end-user to the public switched network, Verizon does not (and cannot) provide carrier common line

[5] When competition became a reality and multiple carriers were competing in the same franchise area, rather than constructing an interpretation of the tariff to charge customers for a service they did not receive, it was Verizon's responsibility to seek revisions to its tariff if it believed it was somehow not recovering its costs or if the tariff no longer fit changing market and technical conditions.

[6] Some CLECs lease and pay for an unbundled local loop from Verizon. In this case, Verizon maintains the loop, but the CLEC pays Verizon to do so.

[7] See footnote 3.

access in conjunction with local transport. Since access to the common line is required to be provided in conjunction with switched access service and Verizon cannot provide access to the common line in the calls at issue here, we conclude that local transport, used independently without the benefit of Verizon's common line, does not constitute switched access service.

Verizon further argues, however, that the CCL rate element is a contribution element not dedicated to the common line or designed to recover any costs of the common line itself. We disagree. Based on the record before us, we find that the CCL rate element was intended to recover and, in fact, does recover a portion of the costs of the local loop or common line. As a result, we find that the CCL charge may be applied only when Verizon provides the use of its common line.

We note as well in regard to Verizon's interpretation of Section 5.4.1.A that it effectively concludes that a carrier will be "subject to" CCL charges regardless of whether CCL service is provided. We interpret this section, however, to mean that a carrier will be "subject to" CCL charges to the extent CCL service is provided in conjunction with switched access. The phrase "subject to" is plainly meant to be conditional in the sense that a carrier will be "liable for" CCL charges when the condition of CCL service is precedent. Verizon's interpretation improperly nullifies the obvious conditional nature of Sections 5.1.1.A.1 and 5.4.1.A.

We find, furthermore, that Verizon's assertion that the New York Public Service Commission determined that the plain and ordinary meaning of the New York tariff allowed Verizon to charge the CCL rate element for calls terminating to wireless carriers is inapposite because the situation there is distinguishable from the case before us here. The language in the New York tariff explicitly states that "[f]or traffic which originates or terminates at RTU [wireless] Interconnections, Carrier Common Line Service and Switched Access Service Local

Switching rates and charges as specified in [the tariff] will apply." New York Public Service Commission Tariff No. 11 § 2.4.8, *cited in* Verizon Post-Hearing Brief at 28. In contrast, there is no analogous language in Verizon's New Hampshire tariff that explicitly permits the application of CCL charges for calls to or from wireless end users.

In summary, based on our review of the tariff language and the record developed in this proceeding, we interpret Verizon's access tariff to permit the imposition of CCL charges only in those instances when a carrier uses CCL services. We therefore find that Verizon is, and has been, impermissibly imposing a CCL access charge in those instances where neither Verizon's common line nor a Verizon end-user is involved for either terminating or originating calls.

B. Phase II--Determination of Refunds.

As previously noted, in Order No. 24,705 it was determined that this proceeding would be conducted in two phases. Based on our review of the record, we have concluded, as more fully described above, that Verizon's misinterpretation of the provision pertaining to CCL charges under Tariff No. 85 has resulted in it impermissibly imposing CCL charges on certain customers. Therefore, we find that Verizon owes restitution. As a result, we will proceed to Phase II in order to determine the extent to which restitution should be made.

We note in this regard that refunds are an appropriate means for providing restitution for improperly applied charges. *See* Appeal *of Granite State Electric Co.*, 120 NH 536 (1980) (PUC has inherent power to award restitution if one has been unjustly enriched at the expense of another). Furthermore, RSA 365:29 provides for reparations covering payments made within two years prior to the date of filing a petition for any illegally or unjustly discriminatory rate, fare, charge or price demanded and collected by a public utility.

For purposes of the second phase, and pursuant to Order No. 24,705, we received estimates of potential claims from BayRing, One Communications, AT&T, and Sprint Nextel, and we also received from Verizon its estimate of the overall financial impact. Based on this information, some of which has been accorded confidential treatment on a company-by-company basis, the aggregate potential Verizon liability appears to be on the order of $15 million to $20 million. The exact amount of refunds or reparations shall be determined in Phase II of this docket, as will the manner of such refunds or reparations.

On February 25, 2008, Order No. 24,823 was issued in Docket No. DT 07-011 approving the proposed transfer of certain assets from Verizon to FairPoint and Verizon's discontinuance of landline operations in the State of New Hampshire. One condition of approval in that order was the provision that, in the event it was decided that Verizon was not authorized to collect the charges in dispute in the present proceeding, Verizon would be required to refund the amount collected by it. See, Order No. 24,823, p. 75. Furthermore, it was made clear as an ordering clause in that order, at p. 89, that Verizon's discontinuance of operations in New Hampshire was "subject to the ongoing jurisdiction of the Commission for purposes of enforcing the conditions described in the order." Inasmuch as we have determined that Verizon was not authorized to collect the charges at issue here, we will issue an order initiating Phase II, in which the extent of restitution will be determined.

Based upon the foregoing, it is hereby

ORDERED, that Verizon cease the billing of carrier common line charges for calls that do not involve a Verizon end user or a Verizon-provided local loop.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of March 2008.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Clifton C. Below Commissioner

Attested by:

Debra A. Howland
Executive Director