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VIA E-MAIL AND HAND DELIVERY

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



RE: Docket No. 06-067, Bay Ring Petition for Investigation into Verizon New Hampshire's Practice of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, on Calls Which Originate on BayRing's Network and Terminate on Wireless Carriers' Networks

Dear Ms. Howland:

Enclosed for filing please find

**AT&T'S OPPOSITION TO VERIZON'S MOTION TO COMPEL AND  
AT&T'S REQUEST FOR EXPEDITED RESOLUTION.**

If you have any questions regarding this matter, please contact me at the address or e-mail above. Thank you.

Sincerely,

Jay E. Gruber

(ssg)

*Enclosures*

cc: Service List (Electronic Only)

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**THE STATE OF NEW HAMPSHIRE  
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

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BayRing Petition For Investigation Into  
Verizon New Hampshire's Practice Of  
Imposing Access Charges, Including Carrier  
Common Line (CCL) Access Charges, On  
Calls Which Originate On BayRing's Network  
And Terminate On Wireless and Other Non-  
Verizon Carriers' Networks

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Docket No.06-067

**AT&T'S OPPOSITION TO VERIZON'S MOTION TO COMPEL AND  
AT&T'S REQUEST FOR EXPEDITED RESOLUTION**

**Introduction**

On June 1, 2007, Verizon filed a motion to compel certain parties to this case to respond to certain information requests. AT&T hereby opposes Verizon's motion to compel and motion to stay the proceeding. The reasons supporting AT&T's opposition are set forth below. In addition, AT&T seeks an expedited resolution of this dispute, created in large part by Verizon's failure to confer prior to filing the motion, so that this "discovery" dispute over matters that are not properly discovery, cannot be used by Verizon as a pretext for delay.

**Argument**

**I. STANDARD OF REVIEW**

In Verizon's own motion to compel filed on June 1, 2007, in this docket, it quoted and cited to appropriate authority regarding the scope of permissible discovery in regulatory proceedings such as this one. Rather than repeating in detail the same references to multiple authority, AT&T here states the basic principle: discovery must seek information that is relevant or likely to lead to the discovery of admissible evidence on the issues to be decided by the Commission. A motion to compel seeking information that does not meet that standard will be denied. *See, e.g., Lower Bartlett Water Precinct*, Docket DW 99-166, Order No. 23,471 at 4-5 (May 9, 2000).

## **II. VERIZON'S MOTION TO COMPEL IS PROCEDURALLY DEFECTIVE AND SHOULD BE DENIED OUTRIGHT.**

Puc 203.09(i)(4) requires that a motion to compel include a certification “that the movant has made a good-faith effort to resolve the dispute informally.” Verizon’s motion contains no such certification, and for good reason. Verizon made no such attempt. Indeed, Verizon’s own motion makes clear that its dispute could potentially have been resolved easily because in its motion Verizon supplied the missing information that gave rise to what – in Verizon’s view – was an inadequate response.

Because Verizon has unnecessarily imposed on other parties and on this Commission the burden of addressing a potentially unnecessary dispute, Verizon’s motion should be denied outright. Moreover, given the very questionable right of Verizon even to propound a question that does not seek facts within AT&T’s possession but rather seeks an interpretation of a Commission order, no harm will ensue to Verizon from denying its ability to pursue what is argument, rather than fact.

## **III. AT&T COULD NOT AFFIRM OR DENY SOMETHING THAT VERIZON CLAIMS THE COMMISSION DID, WHEN VERIZON PROVIDES NO CONTEXT OR REFERENCE TO THE COMMISSION’S WORDS WHERE VERIZON CLAIMS THE COMMISSION TOOK THE ACTION IT ALLEGES.**

In VZ-ATT 3-9, Verizon asked AT&T to admit or deny that the Commission excluded minutes of use for toll traffic terminated to or originated from non-Verizon end-users from the allocator used to apportion non-traffic sensitive (“NTS”) costs of the distribution system (*i.e.*, primarily loop costs). There is, however, no express discussion in that order of excluding minutes of use related to toll traffic for non-Verizon end users. As a result, AT&T stated that it was unable to affirm or deny. No further response to an incomplete question is required, and on this basis Verizon’s motion should be denied.

Verizon seeks to cure its original defect by providing, *in its motion to compel*, language in the Commission’s decision that its question was based on. Verizon thus now

seeks a second bite at the apple. Verizon cannot, however, propound another, clearer information request and expect to have the right to an answer. The procedural schedule does not permit a fourth round of discovery. (Certainly, Verizon's attempt to obtain a fourth round of discovery is not a grounds for granting Verizon's motion to stay the proceeding, which should be denied outright.)

Notwithstanding the lack of any right to obtain an answer to a question not asked, in the interest of expediting the case and avoiding unnecessary argument, AT&T hereby seeks to respond to the question. Verizon's question states:

Referring to pages 9-11 of the Panel Rebuttal Testimony of Ola Oyefusi, Christopher Nurse and Penn Pfautz, please affirm or deny that the New Hampshire Public Utilities Commission Order No. 20,082 in Docket DR 89-010 excluded toll minutes of use for toll provided to other local exchange carrier end-users on the originating, the terminating or both ends of a toll call, from the allocator used to determine "proportional use of the network by each service" for the apportionment of the balance of NTS incremental costs among all services using the distribution system.

In its subsequent motion to compel, Verizon provided the paragraph to which the question was referring, which states:

Accordingly, the commission finds, first, that the company's NTS costs should be reduced by 25% to reflect an equivalent amount that will be received from the interstate jurisdiction through the application of the End User Common Line charge. The balance of NTS costs will then be allocated among all services utilizing the distribution system by the application of a minute of use allocator. This allocation will apportion costs based on the proportional use of the network by each service and reflect the fact that, in the long run, part of network costs may be usage driven. However, since NTS costs are generated not through usage but via the demand for access lines, intraservice (basic exchange) NTS allocations will reflect relative numbers of access lines.

As is evident, the Commission's order does not state explicitly whether Verizon must exclude or include any toll minutes of use terminated to non-Verizon end-users. Therefore, AT&T can neither admit nor deny Verizon's assertion. While AT&T may have its own

interpretation of the meaning the Commission's order, such an interpretation is argument properly provided in brief and not fact that is subject to discovery.

**Conclusion**

Verizon's effort to seek what amounts to AT&T's interpretation of a Commission Order without making an effort to resolve the matter informally should be denied. It does not meet the basic requirements for filing such a motion. Moreover, it is not seeking discovery of relevant facts or facts that could lead to admissible evidence.

In addition Verizon's request to delay the proceeding should be denied when its own behavior, including the lack of informal consultation, has given it the pretext to request such a delay.

For the reasons stated above, the Commission should deny Verizon's motion to compel and its motion to stay the proceeding and should rule expeditiously on Verizon's motion and AT&T's opposition so that this docket may proceed as scheduled.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW  
ENGLAND, INC.

By Its Attorney,



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