

1 **STATE OF NEW HAMPSHIRE**

2 **PUBLIC UTILITIES COMMISSION**

3 **November 3, 2006 - 1:32 p.m.**
4 **Concord, New Hampshire**

5
6 **RE: DT 06-067**
7 **FREEDOM RING COMMUNICATIONS, LLC**
8 **d/b/a BAYRING COMMUNICATIONS:**
9 **Complaint of Freedom Ring Communications, LLC**
 d/b/a BayRing Communications against
 Verizon New Hampshire regarding
 access charges. (Prehearing conference)

10 **PRESENT:** Chairman Thomas B. Getz, Presiding
11 Commissioner Graham J. Morrison

12 Jody Carmody, Clerk

13 **APPEARANCES:** **Reptg. Freedom Ring Communications d/b/a**
14 **BayRing Communications:**
 Susan S. Geiger, Esq.

15 **Reptg. One Communications:**
16 Gregory M. Kennan, Esq.

17 **Reptg. AT&T Communications of New England:**
 Mary E. Burgess, Esq.

18 **Reptg. the New Hampshire Telephone Assn.:**
19 Frederick J. Coolbroth, Esq.

20 **Reptg. Verizon:**
 Victor D. Del Vecchio, Esq.

21 **Reptg. PUC Staff:**
22 Lynn Fabrizio, Esq.

23
24 Court Reporter: Steven E. Patnaude, CCR

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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good afternoon.

We'll open the prehearing conference in docket DT 06-067.

On April 28, 2006, Freedom Ring Communications, doing business as BayRing, filed with the Commission a petition requesting an investigation of the practice by Verizon New Hampshire of imposing access charges, including Carrier Common Line access charges, on calls that originate on BayRing's network and terminate on wireless carriers' networks. On May 12, 2006, a copy of the complaint by BayRing was forwarded to Verizon for a response that was filed on May 31, and that response disputed the BayRing complaint.

Pursuant to an order of notice issued June 23, a prehearing conference was conducted on July 27, which determined that further investigation was merited. BayRing filed a motion on October 6 to amend its initial petition by adding the assertion that Verizon was improperly assessing access charges to calls originated by BayRing end-users and terminating at end-user wireline customers served by carriers other than Verizon.

And, on October 10, AT&T filed a motion to clarify or amend the scope of the proceeding. And, on October 23, the Commission issued a supplemental order of

1 notice and a procedural order that culminates in this
2 prehearing conference this afternoon.

3 I'll note that the affidavit of
4 publication was filed. And, I'll also note, as in the
5 supplemental order of notice, that interventions had been
6 earlier granted for RNK, AT&T Communications, One
7 Communications, segTEL, and for Otel Telecom. And, I'll
8 note, to the extent there is any confusion between the
9 comments at an earlier prehearing conference and the
10 supplemental order of notice, that Otel is indeed granted
11 intervention. We have subsequent to that, I believe, one
12 further petition to intervene that has been filed by the
13 New Hampshire Telephone Association.

14 So, I think that concludes the
15 procedural background. So, we can take appearances
16 please.

17 **MS. GEIGER:** Yes. Good afternoon, Mr.
18 Chairman and Commissioner Morrison. I'm Susan Geiger,
19 from the law firm of Orr & Reno, and I appear on behalf of
20 BayRing Communications.

21 **CHAIRMAN GETZ:** Good afternoon.

22 **CMSR. MORRISON:** Good afternoon.

23 **MS. BURGESS:** Mary E. Burgess, for AT&T
24 Communications of New England, Inc.

1 **CHAIRMAN GETZ:** Good afternoon.

2 **CMSR. MORRISON:** Good afternoon.

3 **MR. KENNAN:** Good afternoon, Mr.

4 Chairman, Commissioner Morrison. Gregory Kennan, for One
5 Communications.

6 **CHAIRMAN GETZ:** Good afternoon.

7 **CMSR. MORRISON:** Good afternoon.

8 **MR. COOLBROTH:** Good afternoon. For New
9 Hampshire Telephone Association, Frederick Coolbroth, of
10 the firm of Devine, Millimet & Branch. And, with me this
11 afternoon are Deborah Martone from TDS Telecom and William
12 Stafford from Granite State Telephone.

13 **CHAIRMAN GETZ:** Good afternoon.

14 **CMSR. MORRISON:** Good afternoon.

15 **MR. DEL VECCHIO:** Good afternoon, Mr.

16 Chairman, Commissioner Morrison. Victor Del Vecchio,
17 representing Verizon. And, with me today is Peter
18 Shepherd and Lisa Thorne.

19 **CHAIRMAN GETZ:** Good afternoon.

20 **CMSR. MORRISON:** Good afternoon.

21 **MS. FABRIZIO:** Good afternoon. Lynn
22 Fabrizio, for Staff. And, with me today are Kate Bailey
23 and Kath Mulholland of the Telecom Division.

24 **CHAIRMAN GETZ:** Good afternoon. Before

1 we hear statements of positions of the parties, is there
2 any objection to the Petition to Intervene by the New
3 Hampshire Telephone Association?

4 (No verbal response)

5 **CHAIRMAN GETZ:** Okay. Hearing no
6 objection, and recognizing that the association has
7 demonstrated rights, duties, privileges, or other
8 interests affected by this proceeding, we will grant the
9 Petition to Intervene.

10 So, then we can turn to Ms. Geiger for a
11 statement of the positions.

12 **MS. GEIGER:** Thank you, Mr. Chairman. I
13 neglected, in making my appearance, to let the Commission
14 know that with me today is Darren Winslow from BayRing
15 Communications. He's appeared before the Commission in
16 prior proceedings and in this docket as well. Because
17 it's already part of the record in this case, I won't
18 reiterate the preliminary statement that I gave at the
19 initial prehearing conference that was held earlier this
20 year in this case. However, I just would like to remind
21 the Commission and reiterate that it's BayRing's position
22 in this docket essentially that Verizon should not be
23 charging for services that it's not providing. And,
24 that's our basic point.

1 The underlying reason for BayRing's
2 complaint is that very point. We do not believe that
3 Verizon has the authority in its tariffs to collect the
4 access charges that it's imposing on BayRing in this case.
5 And, therefore, we would ask that the Commission to -- to
6 recognize that and to order refunds.

7 However, if, you know, for the sake of
8 argument, if the Commission were to somehow construe the
9 language of the tariff to authorize or appear to authorize
10 the collection of some of these charges, we think that
11 that would be improper. We think, quite frankly, that,
12 once the facts in this case are brought before the
13 Commission and laid out for you, that there should be no
14 charges of the type that Verizon is imposing to be allowed
15 in the future.

16 During the discovery process that has
17 occurred so far in this case, and which is not yet
18 complete, many of us identified other calls that we
19 believe were being subjected to improper charges by
20 Verizon. And, so, that led to BayRing filing a motion to
21 amend its initial complaint, and it led to AT&T also
22 filing a similar motion to expand the scope.

23 BayRing appreciates very much the
24 Commission's willingness to look at all of the issues that

1 are relevant to the initial inquiry that was brought --
2 brought to the Commission's attention. And, we look
3 forward to moving ahead in developing the record in this
4 case.

5 One thing that we would like to note,
6 however, is that we would hope that the Commission would
7 not expect BayRing and others to present evidence about
8 the amounts of any refunds to which we believe we are
9 entitled at this phase of the proceeding. We think that,
10 if we move ahead as the Commission has expressed in its
11 order of notice or its supplemental order of notice, with
12 discovery and then prefiled testimony and hearings in this
13 case, the hearings should be limited to the question of
14 whether refunds should be allowed. If the question is
15 answered in the affirmative, that "yes, refunds should be
16 allowed", then at a subsequent proceeding we will sit down
17 and do the math to determine exactly what those refunds
18 should be. We think that, if we devote time and resources
19 right now to calculating for each carrier what they might
20 be entitled to, only to have the Commission decide that
21 refunds aren't appropriate, then there would have been a
22 waste of time and effort. So, we would ask that, sort of,
23 that we bifurcate the issue of liability and the issue of
24 damages, to draw an analogy to a civil tort case, if you

1 will.

2 In addition to that procedural issue, we
3 would hope that the procedural schedule that's been
4 outlined in the supplemental order of notice could be
5 tweaked a bit to allow for post hearing briefs. We think
6 that this case really centers on, you know, tariff
7 interpretation language. It also is going to depend very
8 heavily on facts that we think are uncontested. We have
9 worked very hard during a couple of discovery sessions to
10 develop call flows and diagrams of calls that depict the
11 piece parts of calls that are at issue in this case, as
12 well as the charges that Verizon is applying and others
13 are applying to the piece parts of those calls.

14 BayRing would like to thank very much
15 Staff for all of its efforts in developing this schematic
16 diagram or "pictogram" as it's been come -- come to be
17 called, that shows the different types of calls placed
18 between carriers' customers and the rates that Verizon is
19 charging for each piece of the call.

20 So, again, with that in mind, BayRing
21 would be happy to answer any questions, if you have such,
22 and we look forward to developing a record in this case
23 and presenting it to the Commission.

24 **CHAIRMAN GETZ:** Thank you. Ms. Burgess.

1 **MS. BURGESS:** Good afternoon. It's the
2 position of AT&T that Verizon is charging for the
3 provision of Common Carrier access -- Common Carrier Line
4 access service, but is not providing the service. The
5 service described in Section 5 of Verizon's tariff is a
6 service that involves the provision of the loop. But, in
7 the scenarios described in AT&T's October 9th pleading,
8 AT&T is not taking the service that is described in that
9 tariff. Verizon is not providing the loop. Therefore,
10 Verizon should not charge the rates in Section 5. In many
11 of these scenarios described in our October 9th pleading,
12 AT&T is being charged by the carrier that is providing the
13 service, as well as Verizon, who is not providing the
14 service.

15 AT&T supports BayRing's recommendation
16 as to the bifurcation issue. We believe that the issue of
17 whether the rates can be charged should be dealt with
18 first, and the amount of refunds should be dealt with in a
19 later phase of the proceeding. We also agree with
20 BayRing's recommendations regarding the procedural
21 schedule and briefing.

22 **CHAIRMAN GETZ:** Thank you. Mr. Kennan.

23 **MR. KENNAN:** Short and sweet, Mr.

24 Chairman. We concur with the views expressed by BayRing

1 and AT&T.

2 **CHAIRMAN GETZ:** Thank you. Mr.

3 Coolbroth.

4 **MR. COOLBROTH:** Thank you, Mr. Chairman.

5 The New Hampshire Telephone Association consists of a
6 group of companies that also provides switched access
7 services. We are unable to determine whether there are
8 any types of instances similar to those that are
9 complained of here, involved with interexchange carriers
10 that purchase access from us, but we're participating in
11 this proceeding to see whether that may be the case.

12 With regard to the issues that the
13 Commission has before it, with regard to Verizon's tariff,
14 we think that the Commission should look at what service
15 these carriers ordered, what is the evidence as to which
16 service they ordered? What the attributes of that service
17 are? And, if a service is a bundled service that a
18 particular customer doesn't use all of the elements of,
19 that doesn't mean that the service is not a bundled
20 service. So, what is the service that they ordered? And,
21 what are the elements of that service? And, what are the
22 charges that are prescribed in the tariff?

23 And, we would ask the Commission to use
24 normal statutory and contract construction rules. What's

1 the plain language of the instrument? To the extent
2 there's an ambiguity, what are the rules of construction
3 that can be applied to determine the meaning? And, just
4 following typical rules of construction in determining
5 what the terms and conditions are and which charges apply.

6 Apart from that, we are available to be
7 a resource to the Commission as well, to provide
8 information. We note that some of the charts that have
9 been, for instance, appended to the AT&T motion include
10 calls that originate or terminate with an independent
11 telephone company customer. We're here to be able to look
12 at those and to make sure those are depicted appropriately
13 for the Commission.

14 I think that's what we have for the
15 moment. Thank you.

16 **CHAIRMAN GETZ:** Thank you. Mr. Del
17 Vecchio.

18 **MR. DEL VECCHIO:** Thank you, Mr.
19 Chairman. I, like Ms. Geiger, will not reiterate the
20 specific comments that I made on July the 27th. I would
21 respectfully incorporate by reference my comments that
22 day, and I believe the Commission very aptly reflected
23 that in its procedural order dated October 23rd, on Pages
24 6 and 7 of its order.

1 I would, however, note some additional
2 points, Commissioners. First, I don't think there's any
3 dispute in this case that switched access charges apply to
4 toll calls. That is toll interexchange traffic. And,
5 that switched access terms and conditions are contained in
6 Tariff Number 85. Tandem transit service, which you heard
7 reference to earlier in this proceeding, is set forth in
8 Tariff Number 84, which relates to interconnection local
9 service. Tandem transit is not something that facilitates
10 switched access, *per se*, under Tariff 85. It facilitates
11 traffic under Tariff 84.

12 Thirdly, while it is true that, as we
13 had indicated, Mr. Chairman and Commissioner Morrison, on
14 July the 27th, that, since 1993 in New Hampshire, the CCL
15 charge has captured the difference between costs and
16 revenue requirement under a rate of return environment.
17 It's also true, and the Commission I think needs to focus
18 on the fact, that Carrier Common Line also contributed to
19 joint and common costs beyond simply the recovery of the
20 common line costs prior to 1993. This is not -- It has
21 not been a novel rate design change.

22 Next, the revenue impacts in this
23 proceeding, Commissioners, can be very significant. In
24 making a midcourse correction to Verizon's revenue

1 requirement rate design, given the now expanded scope of
2 this proceeding, which is not limited to calls terminating
3 to CMRS providers, but to any land line customer that is
4 not a Verizon customer, the impact on Verizon's revenues
5 and its financial well-being in this state could be very
6 substantial. Verizon preliminarily estimates that, in
7 granting the CLECs' request, that Verizon would suffer a
8 reduction in switched access revenues of nearly
9 25 percent, which would represent millions of dollars
10 annually.

11 And, if you contemplate making a
12 retroactive adjustment in the form of so-called
13 "reparation", which is what BayRing seeks, the revenue
14 impact under Verizon's operations in this state can be and
15 will be far greater. This is particularly troublesome to
16 Verizon New Hampshire, given the already poor earnings
17 that we have and continue to experience in providing
18 service in the state. It doesn't help our ability to
19 continue to provide the kind of service that we need to
20 provide.

21 Adopting the CLECs' position in this
22 docket, in isolation of other rates, would thus likely
23 mean that a restructuring of other Verizon rates and
24 charges would be necessary to make up the shortfall that

1 we would experience, given the significant hit on revenues
2 that this would represent.

3 Finally, and then I would like to
4 respond to one thing that Ms. Geiger stated, I think the
5 Commission, it may already realize, but I would simply
6 reiterate, that the Commission should understand that
7 CLECs need not use tandem switched access to complete
8 their calls. They can, depending on the volume,
9 specifically and directly purchase dedicated trunks to
10 connect to a CMRS provider or CLEC or an IXC, thus
11 avoiding Verizon's Carrier Common Line Charge entirely.

12 If I may, Commissioners, one final
13 thing. Regarding the issue of bifurcation, it's critical
14 to this Commission that Verizon be given an opportunity to
15 explore the revenue effects on the proposal in this case.
16 This Commission, and the Commission is better aware than
17 I, is charged with balancing the interests of all parties.
18 This is a very significant rate design change, in our
19 view, because we believe the tariff does provide, as we
20 are suggesting, and it has for years, you should be aware
21 of what it means to this company were you to adopt it, and
22 we're being asked not to explore the reparations part of
23 that, which could be many millions of dollars over the
24 past two or three years, depending on when the Commission

1 runs the clock. It's critical to the presentation of our
2 case that we prepare to ask discovery, and I've said this
3 before today, Commissioners, I have stated our intent to
4 explore that which is set forth in the complaint. "What
5 is it you claim we owe you? Identify how you calculate
6 it. And, let us present that to the Commission, so that
7 they can understand what it means to make this tariff
8 change", which is what we contend it constitutes.

9 So, we would seriously ask that the
10 Commission not simply bifurcate this, because it makes it
11 more, I believe, synthetic for the arguments the CLECs
12 wish to make. I think the Commission needs to understand
13 the financial hurt that Verizon will experience as a
14 result of this proposed change. Thank you, Commissioners.

15 **CHAIRMAN GETZ:** Thank you.

16 Ms. Fabrizio.

17 **MS. FABRIZIO:** Yes. Thank you, Mr.
18 Chairman. Staff has no position to state at this time.
19 We would just note that discussions have been productive
20 thus far, and we look forward to working with the parties
21 to resolve the issues raised in this proceeding.

22 **CHAIRMAN GETZ:** I just want to explore a
23 little bit the notion of bifurcating and the calculation
24 of damages, reparations, whatever term folks want to use

1 here. But is it, I guess, if I could turn to you, Mr. Del
2 Vecchio, first, is it -- I guess how much particularity is
3 needed? Is it an order of magnitude issue, to the extent
4 you're -- you're analogizing it to a, I guess, more of a
5 prospective rate design change that we'd have to be aware
6 of what the effects would be, but --

7 **MR. DEL VECCHIO:** I don't think we need,
8 Mr. Chairman, the kind of specificity that you might
9 require for purposes of a rate case. But we want to get a
10 sanity check on the impact of this. And, we can do that,
11 if we understand what, in terms of the retroactive
12 portion, the CLECs are claiming we need to refund them on.
13 We're not entirely sure what that is. We think it might
14 be a significant number, particularly now that the docket
15 has been expanded. We don't know whether the other
16 parties are seeking a similar refund. We only have the
17 request to expand the docket by AT&T, but the only party
18 specifically seeking reparations is BayRing. We'd like to
19 establish that right now. What exactly are we being asked
20 to compensate for the past?

21 As far as going forward, I believe we
22 could come up with numbers that would assist in that
23 regard. But, as far as bifurcation, we may be excluded
24 from asking any data that relates to financial impacts,

1 should the Commission embark on the avenue that BayRing is
2 seeking. And, that would not be fair to us. And, I don't
3 think it would give you a true picture of what this means
4 to make this change.

5 **CHAIRMAN GETZ:** Ms. Geiger.

6 **MS. GEIGER:** Sure. Mr. Chairman, on the
7 issue of bifurcation, perhaps this might help. It seems
8 to me that BayRing would be willing to provide, in
9 response to Verizon's point, in sort of big picture
10 numbers, the amounts that it believes it would be entitled
11 to. However, in terms of getting down with any degree of
12 specificity or granularity, to actually provide copies of
13 bills or to get, you know, get real specific about a
14 bottom-line dollar number, we think that, you know, the
15 time and effort, you know, required to do that at this
16 point in time probably would not be appropriate, if the
17 Commission were to decide that refunds for my client were
18 not appropriate. We just think that it makes more sense
19 for the Commission to decide right up front, "yes,
20 refunds", and then to look and sit down, so that we could
21 sit down with Verizon and come up with a number that we
22 might agree upon or maybe even settle it, if we have -- if
23 we have a number in mind that we think we're entitled to,
24 we might be able to settle it. I don't have authority to

1 do that today, but it seems like that would be something
2 that would be worthwhile exploring.

3 **CHAIRMAN GETZ:** Would anyone else like
4 to address that issue? Ms. Burgess.

5 **MS. BURGESS:** AT&T believes that this is
6 a straight tariff interpretation issue as a threshold
7 matter. If the Commission determines that Verizon is
8 correctly interpreting its tariff, then the question of
9 refunds and reparations will become moot. So, we do
10 believe that we should deal with the first part first.

11 **CHAIRMAN GETZ:** Mr. Coolbroth.

12 **MR. COOLBROTH:** Mr. Chairman, as AT&T
13 points out, two of the issues here are "what reparations
14 should be ordered?" And, "if the current tariff is being
15 appropriately construed, what changes should be made to
16 that?" It seems to me that the Commission cannot address
17 those issues without taking into account, you know, the
18 impact that that would have on Verizon's revenue
19 requirement and the potential impact on other rates that
20 could arise from that, including basic service rates.

21 In terms of the specifics of it, perhaps
22 what the Commission could consider doing is defer
23 consideration of the specifics associated with it and deal
24 with it at the time that perhaps the data requests are

1 made by Verizon or another party to BayRing, and an
2 objection is made, something like that, the Commission
3 could consider it at that time. But, certainly, and maybe
4 "big picture" is the right phrase, there should be, at
5 least in a general sense, in an order of magnitude sense,
6 in a general number sense, what the impact would be, so
7 the Commission can take that into account in making these
8 determinations. Thank you.

9 **CHAIRMAN GETZ:** Is there anything else
10 that we need to address this afternoon? Ms. Fabrizio.

11 **MS. FABRIZIO:** Mr. Chairman, Staff would
12 just note that, because Verizon is billing these charges,
13 that Verizon should be able to determine the magnitude of
14 the liability on its financial records.

15 **CHAIRMAN GETZ:** Mr. Del Vecchio.

16 **MR. DEL VECCHIO:** I'm not quite sure
17 what it is they're claiming they need to be refunded for.
18 We've now expanded the docket to more than CMRS providers.
19 So, if the parties would like to rely on our calculation
20 alone, which, frankly, would be a phenomenal admission on
21 everyone's part, and something I'm not accustomed to, we
22 could try that. But, I think, more realistically, we
23 would like to see what the basis is for their claim that
24 they're entitled to refunds and what -- in what particular

1 way? Again, I mean, I am sympathetic to Ms. Geiger's
2 point, because we have the same concerns in most of our
3 dockets, it's the degree of specificity. I'm not
4 focussing on that nth degree of specificity. But I do
5 think we are entitled, and you are as well, to some
6 general sense of how much we're talking about. And, with
7 respect to what particular pieces, because this is a very
8 complicated process, I think the Commission readily
9 observed that in the order which resulted in the
10 prehearing today, you saw all the scenarios. It's
11 complex. And, we would like a better understanding of
12 what they're claiming we need to refund to them. That's
13 it.

14 **CHAIRMAN GETZ:** Ms. Geiger, you have the
15 opportunity for the last word on this subject.

16 **MS. GEIGER:** And, I will forgo that
17 opportunity. Thank you.

18 **MS. FABRIZIO:** Mr. Chairman, there are a
19 couple of items on the procedural schedule to clarify for
20 the parties at this time. The technical session has been
21 postponed until November 14th, because a particular party
22 could not attend today. And, as a result, discovery, the
23 first two discovery dates are now November 20th and
24 December 11th. And, I would also clarify that the initial

1 discovery will be served on all parties by all parties who
2 wish to serve. It's not coming just from Staff to the
3 parties.

4 **CHAIRMAN GETZ:** All right. Then, and so
5 I take it there's no tech session following this. And,
6 then, I guess we'd be looking at putting together a
7 procedural order after this hearing, addressing at least
8 these issues that have been raised today, and that we
9 don't need to wait until after the tech session to issue a
10 procedural order, is that correct?

11 **MS. FABRIZIO:** Unless you're adding post
12 hearing briefs to the new schedule.

13 **CHAIRMAN GETZ:** Which that was requested
14 today, so we could address that as well. Okay. Is there
15 anything else then? Mr. Coolbroth.

16 **MR. COOLBROTH:** Mr. Chairman, coming in
17 late, have the parties agreed to electronic service of
18 discovery and so forth in this docket, to avoid
19 difficulties of paper service? Just trying to catch up to
20 speed.

21 **CHAIRMAN GETZ:** Well, I guess, let's do
22 it this way. Why don't we close the prehearing
23 conference. I know there's not a technical session, but,
24 to the extent there are some of these other issues that

1 need to be addressed, and if there's anything that wasn't
2 on the record today, the Staff could put in a short letter
3 to the Commission on items that we may need to issue in
4 terms of a procedural order or secretarial letter that
5 amends the procedural schedule, then we can do that.
6 Shouldn't take too long, I expect.

7 Is there anything else?

8 (No verbal response)

9 **CHAIRMAN GETZ:** Okay. Then, hearing
10 nothing, we'll close the prehearing conference and take
11 the matter under advisement. Thank you.

12 **(Prehearing conference ended at 1:57**
13 **p.m.)**

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