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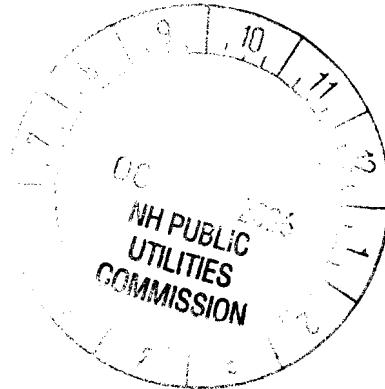
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October 9, 2006

VIA OVERNIGHT MAIL

Deborah Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 Fruit Street, Suite 10
Concord, New Hampshire 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 Secretary Howland:

Enclosed for filing on behalf of AT&T Communications of New England, Inc. ("AT&T") please find an original and eight copies of the following:

MOTION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC. TO CLARIFY OR AMEND THE SCOPE OF THE PROCEEDING TO AVOID THE NEED FOR INTERVENERS TO FILE SEPARATE PETITIONS RAISING THE SAME ISSUES.

Kindly acknowledge receipt of the foregoing, by date-stamping the enclosed copy of this cover letter and returning it in the enclosed self-addressed and stamped envelope.

If you have any questions regarding this matter, please do not hesitate to contact me. Thank you.

Sincerely,

Jay E. Gruber

Enclosures

cc: Service List

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

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

Docket No.06-067

**MOTION OF AT&T COMMUNICATIONS OF
NEW ENGLAND, INC. TO CLARIFY OR AMEND THE SCOPE OF THE
PROCEEDING TO AVOID THE NEED FOR INTERVENERS TO FILE
SEPARATE PETITIONS RAISING THE SAME ISSUES**

Introduction

Pursuant to Admin. Rule Puc 203.07, AT&T Communications of New England, Inc. (“AT&T”) hereby moves the New Hampshire Public Service Commission (“Commission”) to clarify or amend the scope of this proceeding to ensure the inclusion of Verizon’s improper assessment of:

- originating Carrier Common Line (“CCL”) Access Service¹ charges to AT&T for interexchange calls originated by the customers of *Competitive Local Exchange Carriers (“CLECs”)*, other than AT&T, that transit Verizon’s tandem for hand-off to AT&T and are carried by AT&T as an IXC (“Contested Charge A”);²
- originating CCL Access Service charges to AT&T for interexchange calls originated by the customers of *wireless carriers* that transit Verizon’s

¹ While Verizon offers “carrier common line” as part of its “Switched Access Service” under Section 6, “Carrier Common Line Access Service” is offered separately under Section 5 of Tariff 85.

² Verizon assesses Contested Charge A to AT&T as an IXC in call flow numbers 2, 6 and 9 on the *originating* side as depicted on the attached exhibit. The exhibit is an elaboration of the call flows that have been prepared by staff as part of technical sessions in the present docket.

tandem for hand-off to AT&T and are carried by AT&T as an IXC (“Contested Charge B”);³

- originating CCL Access Service charges to AT&T for interexchange calls originated by the customers of *independent telephone companies (“ITCs”)* that transit Verizon’s tandem for hand-off to AT&T and are carried by AT&T as an IXC (“Contested Charge C”);⁴
- terminating CCL Access Service charges to AT&T for interexchange calls carried by AT&T as an IXC that transit Verizon’s tandem for hand-off to a *CLEC* for termination to the CLEC’s customer (“Contested Charge D”);⁵
- terminating CCL Access Service charges to AT&T for interexchange calls carried by AT&T as an IXC that transit Verizon’s tandem for hand-off to a *wireless carrier* for termination to the wireless carrier’s customer (“Contested Charge E”);⁶
- terminating CCL Access Service charges to AT&T for interexchange calls carried by AT&T as an IXC that transit Verizon’s tandem for hand-off to an *ITC* for termination to the ITC’s customer (“Contested Charge F”);⁷
- all terminating CCL Access Service charges that BayRing has contested, which are applicable to AT&T when AT&T acts as a CLEC, including all interexchange calls handed off to (i) wireless carriers, (ii) CLECs and (iii)

³ Verizon assesses Contested Charge B to AT&T as an IXC in call flow number 14 on the *originating* side as depicted on the attached exhibit. Typically, this call flow will occur only when the cellular end-user making the call calls an 800 number where AT&T is the toll provider for the 800 service customer.

⁴ Verizon assesses Contested Charge C to AT&T as an IXC in call flow numbers 3, 4, 5 and 8 on the *originating* side as depicted on the attached exhibit.

⁵ Verizon assesses Contested Charge D to AT&T as an IXC in call flow numbers 5 and 6 on the *terminating* side as depicted on the attached exhibit. The reverse flow in call flow number 2 is also an example of Contested Charge D.

⁶ Verizon assesses Contested Charge E to AT&T as an IXC in call flow numbers 7, 8, 9 and 13 on the *terminating* side as depicted on the attached exhibit.

⁷ Verizon assesses Contested Charge F to AT&T as an IXC in call flow number 4 on the *terminating* side as depicted on the attached exhibit. The reverse flow in call flow number 3 is also an example of Contested Charge F.

ITCs for termination to their respective customers (“Contested Charges G, H, and I,” respectively).⁸

Among the several grounds for this motion set forth below is a simple one. In all the scenarios above Verizon contends that it is entitled, pursuant to Section 5 (designated “Carrier Common Line Access Service”) of Verizon’s Tariff 85, to assess the Carrier Common Line Access Service charge authorized by Section 5 even though it does not provide the Carrier Common Line Access service described Section 5. It makes little sense for the Commission to decide this issue for only a subset of the scenarios above. As a matter of practicality and common sense, the Commission should decide all of these issues in this docket. The grounds for this motion are set forth in more detail below.

Procedural History

Freedom Ring Communications, LLC d/b/a BayRing Communications (“BayRing”) initiated this proceeding with a petition on April 28, 2006 complaining that Verizon-New Hampshire (“Verizon”) improperly charges BayRing for calls that originate with a BayRing customer and terminate on a wireless carrier’s network.⁹ On June 23, 2006, the Commission issued an Order of Notice defining the issues as follows:

Based on BayRing’s complaint and Verizon’s answer, the Commission has determined that further investigation is merited. The filing raises, *inter alia*, the following issues:

- (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*;

⁸ Verizon assesses Contested Charges G, H, and I to BayRing and to AT&T, as an CLEC, in call flow numbers 10, 11and 12, respectively, on the *terminating* side as depicted on the attached exhibit.

⁹ In the absence of a distinction between local and interexchange calls, BayRing’s complaint was understood to include both.

- (3) if not, whether BayRing is entitled to a refund for such charges collected by Verizon in the past and whether such services are more properly assessed under a different tariff provision;
- (4) to what extent reparation, if any, should be made by Verizon under the provisions of RSA 365:29; and
- (5) in the event Verizon's interpretation of the current tariffs is reasonable, whether any prospective modifications to the tariffs are appropriate.

Order of Notice, at 2-3 (reformatted; emphasis added). On July 18, 2006, AT&T filed a petition to intervene on the grounds that Verizon is also improperly assessing it (AT&T) CCL Access Service charges for calls that are terminated to wireless carriers and that a determination of the issues raised by BayRing would necessarily affect the rights of AT&T. The Commission concurred and granted AT&T's petition to intervene on July 27, 2006 at the prehearing conference held on that day. July 27, 2006 Prehearing Conference Transcript, at 6.

During the course of technical sessions in this proceeding, AT&T learned that the terminating CCL Access Service charges upon which BayRing's complaint is based (calls terminated to wireless carriers, Contested Charge G), are also being assessed by Verizon to BayRing and to AT&T, as a CLEC, when calls originated by CLECs are terminated to CLECs and ITCs (Contested Charges H and I). Moreover, AT&T learned during the technical sessions that Verizon is assessing originating CCL Access Service charges to AT&T when calls are originated by the customer of a CLEC, wireless carrier, or ITC and carried by AT&T as an IXC (Contested Charges A, B and C, respectively). In all instances, Verizon relies on the same provisions of the same tariff to justify its charges.

In addition to the new issues that were raised during the technical sessions, other issues initially raised appear to have been taken out of the proceeding. BayRing's initial

complaint challenged Verizon's application of CCL Access Service charges to all calls originated by BayRing and handed off to a wireless carrier for termination to the wireless carrier's customers, whether such calls were interexchange (toll) calls or local calls.

However, during a technical session on August 11, 2006, Verizon agreed not to assess CCL Access Service charges to CLEC originated *local* calls that transit Verizon's tandem to wireless carriers for termination to the customers of wireless carriers. AT&T assumes that Verizon's offer will be honored and that it will also apply to such calls (*i.e.*, *local* calls) that Verizon hands off to **CLECs** for **CLECs** to terminate to their customers. If AT&T is wrong about Verizon's intent, then Verizon's assessment of CCL in connection with these local calls will need to be included in this proceeding as well.

Finally, on October 5, 2006, in response to Verizon's disclosures during the technical sessions, BayRing moved to amend its complaint to include within it a challenge to Verizon's application of CCL Access Service rates to BayRing originated traffic that is terminated by a CLEC to its end-user.

Argument

A. UNDER THE COMMISSION'S RULES, THE SCOPE OF A DOCKETED MATTER MAY BE EXPANDED BEYOND THE ISSUES RAISED IN THE INITIAL PLEADINGS.

The Commission's rules clearly contemplate that the scope of a docketed matter may be expanded beyond the issues raised in the initial pleadings. For example, when testimony is filed as part of the intial initial pleading, Admin. Rule Puc 203.06 requires the Commission to permit the petitioner to address those unanticipated issues:

If the scope of a proceeding is expanded or issues arise which were not reasonably anticipated by the petitioner, the commission *shall* allow the petitioner to file supplemental direct testimony or comments on the new or unanticipated issues.

Admin. Rule Puc 203.06 (emphasis added). Under Admin. Rule Puc 203.10(b), the Commission may allow the scope of the proceeding to be broadened as long as notice and an opportunity to comment have been given to those affected prior to final Commission action, and broadening of the scope will encourage the just resolution of the proceeding and not cause undue delay.

B. THE COMMISSION SHOULD INCLUDE WITHIN THE SCOPE OF THIS PROCEEDING THE NEW ISSUES RAISED BY VERIZON'S DISCLOSURES IN THE TECHNICAL SESSIONS TO THE EXTENT THAT THEY ARE NOT ALREADY WITHIN THE SCOPE OF THIS CASE.

At the outset, it should be noted that the Commission's Order of Notice includes Verizon's application of CCL Access Service charges in all the calls identified above and diagramed on the attached exhibit. The Commission did not limit the issues to be addressed in this proceeding only to CLEC originated calls that transit Verizon's tandem and are terminated by a wireless carrier. On the contrary, the Commission expressly identified the issue as "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[.]*" In short, the Commission has already included within the scope of this case issues arising from Verizon's attempt to apply CCL Access Service charges on calls originated by a CLEC and terminated by any non-Verizon carrier, or otherwise terminated to an end-user without the use of Verizon's loop. All of the calls, and all of the contested charges, that AT&T identified above fall within the Commission's definition of the issues to be addressed in this docket.

If the calls and contested charges identified by AT&T above are not already within the scope of the case as noticed by the Commission, the Commission should now

ensure that they are. The Commission's rules certainly permit and arguably require that, at this early stage of the proceeding, before even testimony is filed, the issues raised by Verizon's new disclosures during the technical sessions be included within the scope of this proceeding. Verizon's disclosure that it was charging and/or plans to charge terminating CCL Access Service rates on calls that transit its tandem for termination by CLECs and ITC to their end-users came as a surprise to everyone who was participating in the technical sessions – strong evidence that such a practice had not been previously understood by anyone, other than Verizon, and that the issues raised by this disclosure were therefore unanticipated.¹⁰ Similarly, Verizon's admission that it was charging and/or plans to charge to AT&T (or other IXCs in a comparable position) originating CCL Access Service rates on calls originated by CLECs or ITCs, if such calls eventually transit Verizon's tandem, also came as a surprise and could not have been anticipated.¹¹

The other criteria for determining when it is appropriate to expand the scope of issues to be considered within a proceeding have also been met in the instant case. Notice and an opportunity to comment required by Admin. Rule Puc 203.10(b) are procedural safeguards which can easily be satisfied now by granting BayRing's request in its October 5, 2006, Motion to Amend Petition that the Commission "expeditiously"

¹⁰ Indeed, Verizon's revelation was the first time that AT&T had been informed that it is being charged twice for terminating access when calls that transit Verizon's tandem are delivered to CLECs and ITCs: once by Verizon and once by the CLEC or the ITC that actually performs the termination function. (Wireless carriers are prohibited from assessing access charges on IXCs.) See call flow numbers 4, 5, and 6, on the attached exhibit for call flow scenarios in which AT&T is incurring these double termination charges.

¹¹ By this revelation, AT&T now understands that it is being charged twice for originating access if calls that are originated by CLECs and ITCs happen to traverse Verizon's tandem at some point in their journey: once by Verizon and once by the carrier that actually performs the origination function. See call flow numbers 2, 3 ,4 ,5, 6, 8 and 9 on the attached exhibit for call flow scenarios in which AT&T is incurring these double origination charges.

provide notice and an opportunity to comment[.]”¹² BayRing Motion To Amend Petition, at 3.

Finally including within the scope of this proceeding all of the scenarios in which carriers contest Verizon’s CCL rate application in reliance on Section 5 of Tariff 85, rather than an artificial subset, makes complete sense and certainly promotes a just resolution of the principal issue in this case: whether Verizon may apply CCL charges under Section 5 when it does not provide the CCL Access Service that is defined and described in Section 5. Regarding the issue of delay, it can hardly delay a proceeding that does not now have a procedural schedule to be delayed.

The alternative to an artificial limitation of the factual scenarios raised by the principal issue (Verizon’s application of CCL Access Service rates when it does not provide the common line, the essential element of the service described in Section 5) illustrates that including all of the scenarios now will not delay, and indeed will expedite, the just resolution of the principal issue. If the additional factual scenarios implicated by Verizon’s new disclosures and identified by AT&T in this pleading are not considered within the scope of this proceeding, AT&T would be forced to file its own complaint to raise them. In that case, the Commission would in all likelihood want to consolidate AT&T’s complaint with this proceeding to avoid the necessity of relitigating the Verizon’s right to impose a CCL charge when it does not provide the loop.

¹² As noted above, the issues raised by Verizon’s disclosures of access rate application during the technical sessions fall within the Commission’s Order of Notice and do not require that the Commission issue another Order of Notice. Here, AT&T is pointing out that, should the Commission decide otherwise, this is a requirement that is easily met.

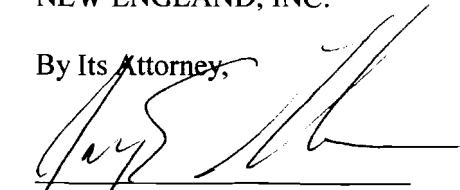
Conclusion

For all the reasons set forth above, the Commission should either find that the issues raised by the factual scenarios disclosed by Verizon and identified by AT&T in this motion are already within the scope of notice for this proceeding, or expand the scope to include them.

Respectfully submitted,

AT&T COMMUNICATIONS OF
NEW ENGLAND, INC.

By Its Attorney,

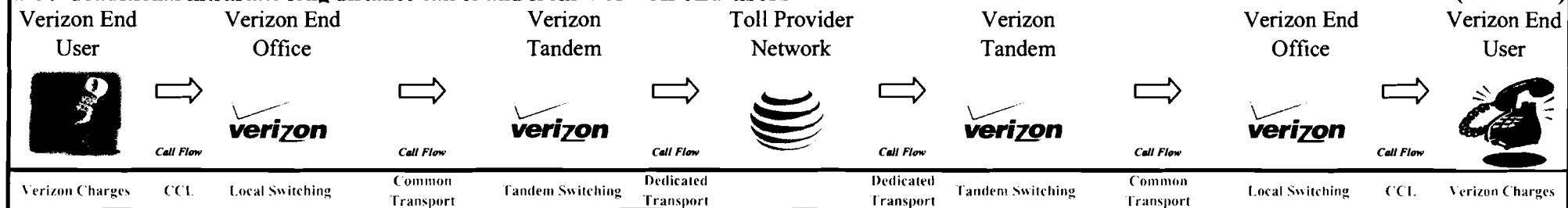


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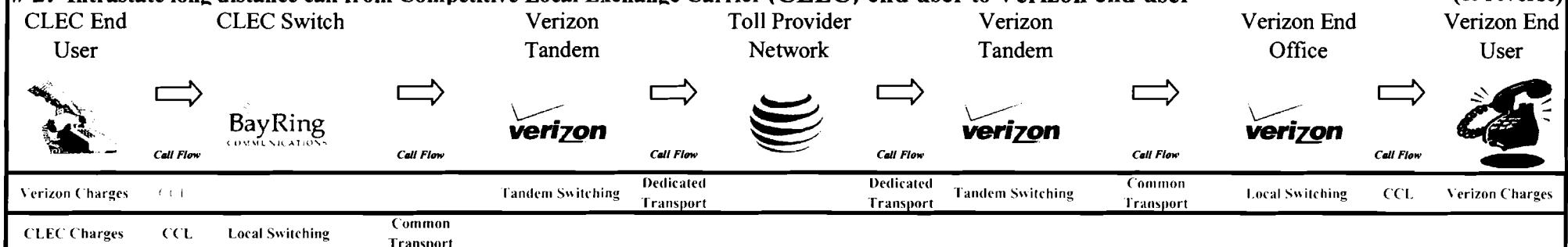
Dated: October 9, 2006

TYPES OF CALLS THAT TRAVERSE VERIZON'S TANDEM: Intrastate Long Distance Calls using a Toll Provider

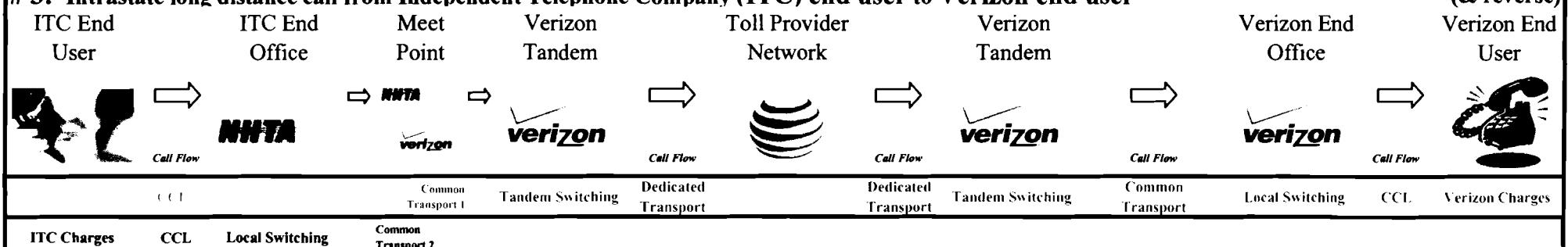
1: Traditional intrastate long distance call to and from Verizon end users



2: Intrastate long distance call from Competitive Local Exchange Carrier (CLEC) end user to Verizon end user



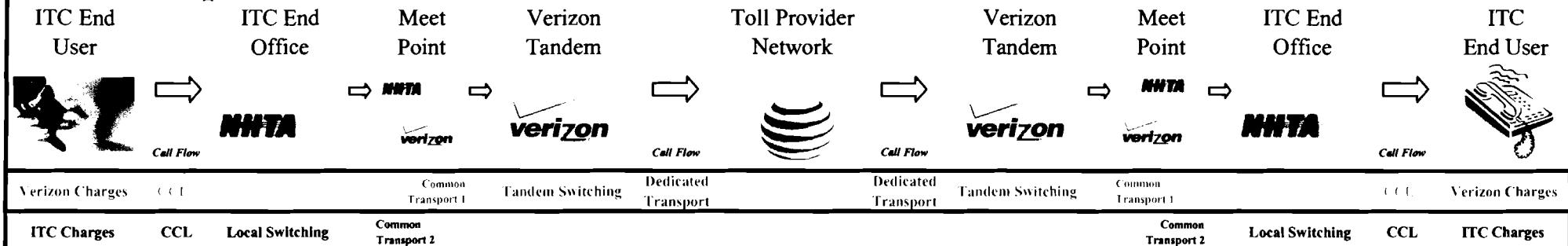
3: Intrastate long distance call from Independent Telephone Company (ITC) end user to Verizon end user



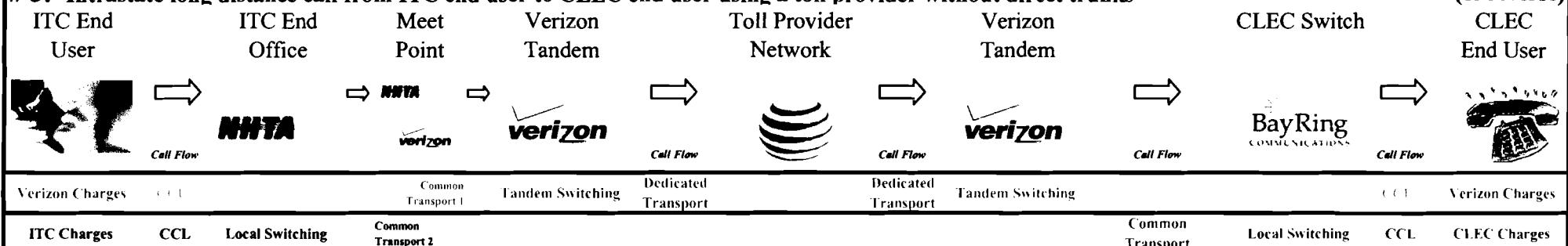
* charge contested by AT&T

TYPES OF CALLS THAT TRAVERSE VERIZON'S TANDEM: Intrastate Long Distance Calls using a Toll Provider

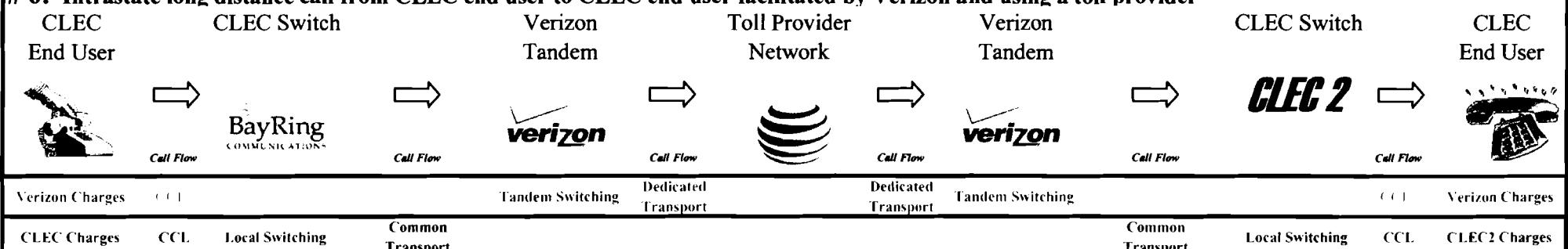
4: Intrastate long distance call from ITC end user to Other ITC end user



5: Intrastate long distance call from ITC end user to CLEC end user using a toll provider without direct trunks



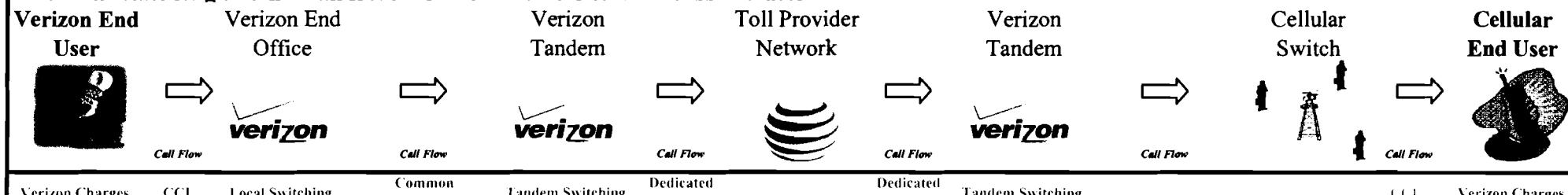
6: Intrastate long distance call from CLEC end user to CLEC end user facilitated by Verizon and using a toll provider



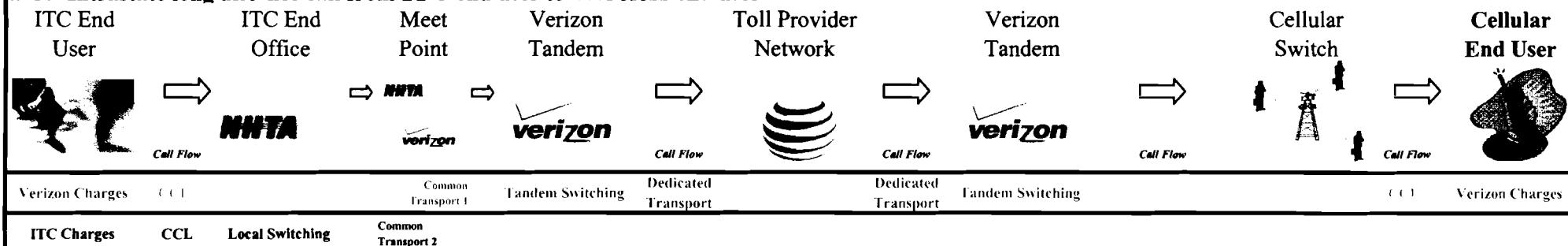
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TYPES OF CALLS THAT TRAVERSE VERIZON'S TANDEM: Intrastate Long Distance Calls using a Toll Provider

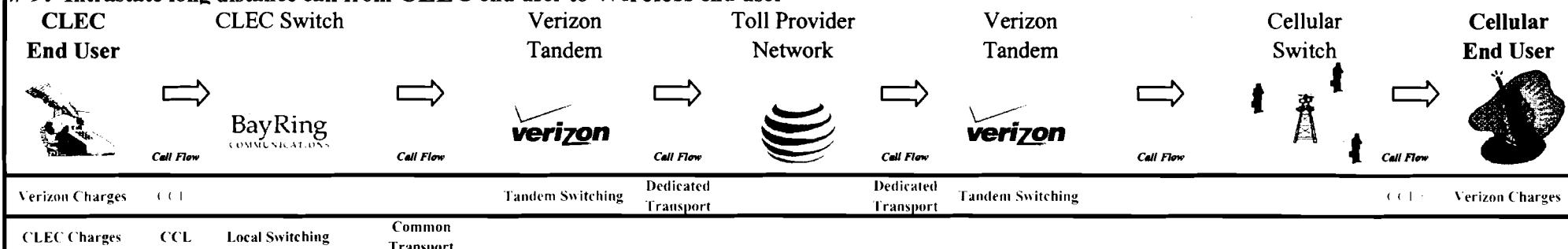
7: Intrastate long distance call from Verizon end user to Wireless end user



8: Intrastate long distance call from ITC end user to Wireless end user



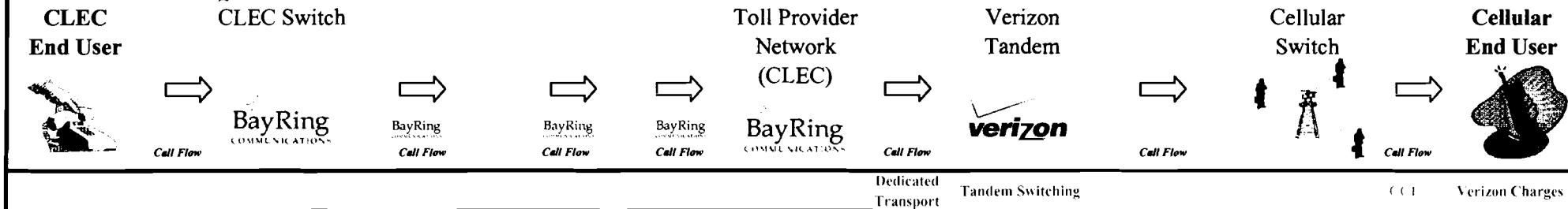
9: Intrastate long distance call from CLEC end user to Wireless end user



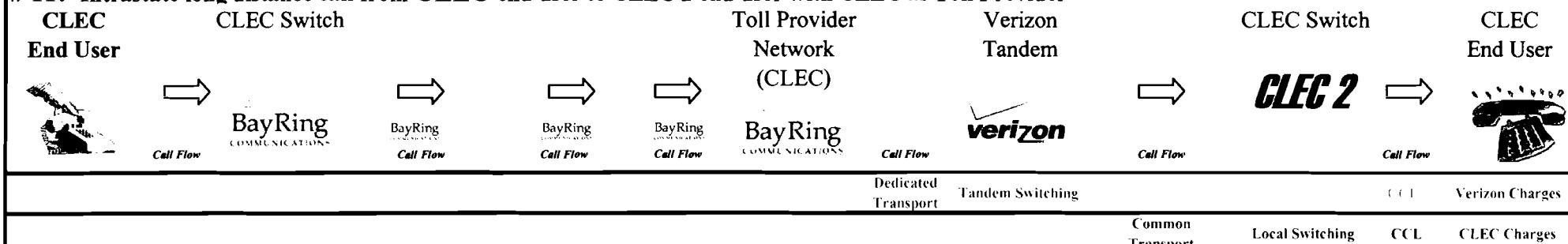
* charge contested by AT&T

TYPES OF CALLS THAT TRAVERSE VERIZON'S TANDEM: Intrastate Long Distance Calls using a Toll Provider

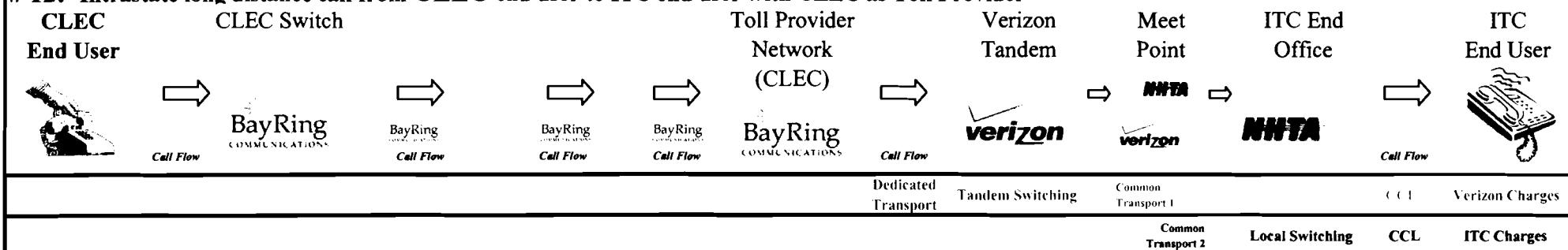
10: Intrastate long distance call from CLEC end user to Wireless end user with CLEC as Toll Provider



11: Intrastate long distance call from CLEC end user to CLEC 2 end user with CLEC as Toll Provider



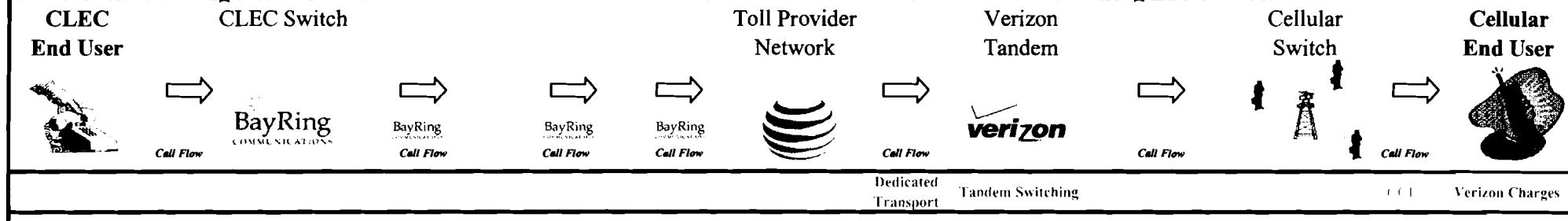
12: Intrastate long distance call from CLEC end user to ITC end user with CLEC as Toll Provider



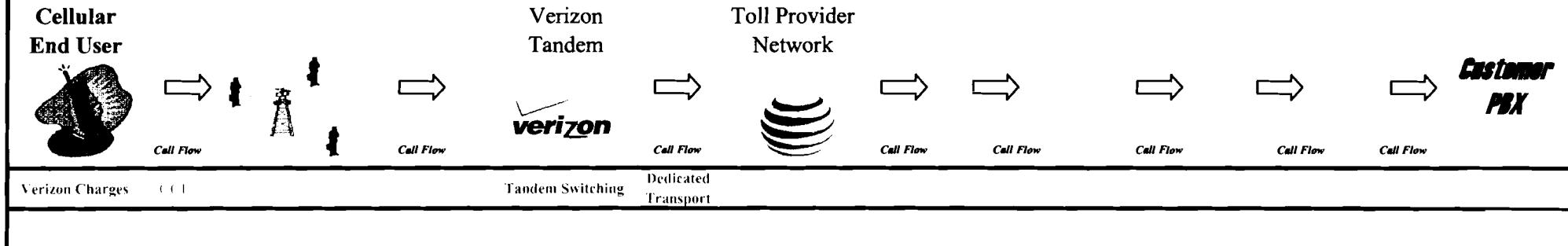
* charge contested by AT&T

TYPES OF CALLS THAT TRAVERSE VERIZON'S TANDEM: Intrastate Long Distance Calls using a Toll Provider

13: Intrastate long distance call from CLEC end user to Wireless end user with CLEC as Toll Provider using IXC backbone



14: Intrastate long distance 8YY call from Wireless end user to Toll Provider Network



* charge contested by AT&T