

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DT 06-067

Freedom Ring Communications LLC d/b/a BayRing Communications
Complaint Against Verizon New Hampshire Regarding Access Charges

**Brief of Northern
New England Telephone Operations LLC. d/b/a
FairPoint Communications - NNE Regarding Reparations**

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE, a Delaware limited liability company ("FairPoint") having its principal office at 521 E. Morehead Street, Charlotte, North Carolina, pursuant to the parties agreement, and hereby submits this abbreviated Brief in the above captioned docket (this "Docket"). In support thereof, FairPoint states as follows:

I. INTRODUCTION

Pursuant to the agreement of the parties and the Commission's Staff at the technical session in this Docket held on November 5, 2008, FairPoint hereby files this abbreviated brief addressing: (1) the interest rate to be applied to any reparations awarded by the New Hampshire Public Utilities Commission ("Commission") to AT&T Corp., One Communications Corp., Freedom Ring Communications LLC and other competitive local exchange carriers that intervened in this Docket (collectively, "Competitive Carriers" or "CLECs") pursuant to RSA 365:29; and (2) the appropriate period for

calculating any such reparations. In submitting this pleading, FairPoint waives no argument or legal position applicable to the pending appeal before the New Hampshire Supreme Court. *See* New Hampshire Supreme Court Case No. 2008-0645, *Appeal of Verizon New England Inc. d/b/a Verizon New Hampshire and New England Telephone Operations LLC d/b/a FairPoint Communications-NNE*.

FairPoint has received a limited number of claims for damages in this phase of the proceedings. To date, two (2) CLECs submitted damage claim information to FairPoint - XO Communications, Inc. and Global Crossing. To the extent the Commission's determinations in Phase II of these proceedings require it to pay reparations, a fact not conceded herein, FairPoint believes it necessary to address certain of the legal issues to be briefed by the parties.¹

II. ISSUES PRESENTED & ARGUMENT

A. Applicable Interest Rate.

The first issue centers on the proper rate of interest to be applied by the Commission when determining damages in a reparations case. The Commission was established to provide comprehensive control over certain aspects of public utilities' operations in the State of New Hampshire. *Appeal of Granite State Electric Company*, 120 N.H. 536, 539, 421 A.2d 212, 123 (1980), citing *Petition of Boston & Maine Corp.*, 109 N.H. 324, 326, 251 A.2d 332, 335 (1969). To achieve this goal, the Commission was endowed with "important judicial duties" and "large administrative and supervisory

¹ FairPoint also joins in and incorporates herein by reference those legal arguments contained within the Brief filed this day by Verizon New England Inc. ("Verizon") with respect to the issues addressed herein concerning (i) the application of RSA 336:1(II) and (ii) the appropriate reparations period set forth within RSA 365:29.

powers.” *Id.* at 536, citing *Boston & Maine*, 109 N.H. at 326, 251 A.2d at 335; *Parker-Young Co. v. State*, 83 N.H. 551, 556, 145 A. 786, 789 (1929). In awarding reparations, the Commission performs a judicial function. *Appeal of Granite State Electric* citing *Arizona Grocery v. Atchison Ry.*, 284 U.S. 370, 388, 389, 52 S.Ct. 183, 185, 186, 76 L.Ed. 348 (1932).

In light of the Commission’s “judicial duties”, and absent a statute to the contrary, the Commission ought to utilize RSA 336:1(II) in the event it determines interest must be paid on any award of reparations. An award of reparations made by the Commission in its “judicial function” is akin to a judgment issued by the Superior or District Courts of the State of New Hampshire. The Commission’s prior orders wherein it appeared to award interest based upon the rate set for awards of interest on judgments is contained within Section III.A.2 of Verizon’s Brief and incorporated herein by reference (and not repeated).

RSA 336:1(II) establishes the rate for interest on judgments and states in relevant part that:

The annual simple rate of interest on judgments, including prejudgment interest, shall be a rate determined by the state treasurer as the prevailing discount rate of interest on 26-week United States Treasury bills at the last auction thereof preceding the last day of September in each year, plus 2 percentage points, rounded to the nearest tenth of a percentage point...

The New Hampshire Supreme Court has clearly ruled that the simple interest method is to be employed when calculating interest due under this statute. *See Metropolitan Prop. & Liabil. Ins. Co. v. Ralph*, 138 N.H. 378, 384-385, 640 A.2d 763, 767-768 (1994). This is well settled law, and no deviation is required by the facts of the present proceedings.

B. The Reparations Statute.

The time frame for determining reparations is controlled by RSA 365:29 (1995). By the plain language of RSA 365:29, an order of reparation may cover only the disputed payments that a petitioner made within two years before the filing of its petition for reparation. The statute states in relevant part that “[s]uch order for reparation shall cover only payments made within 2. years before the date of filing the petition for reparation.” *See* RSA 365:29 (1995). Per Order 24,705, the Commission held that the CLECs’ petitions for intervention would be treated as petitions for reparations under the statute with respect to Phase II of the proceedings. *See* Order No. 24,705 at p. 6 (November 29, 2006). Hence, the applicable time frame for calculating damages in this Docket runs from the date each CLEC filed its petition for reparations or petition for intervention, as the case may be, with the Commission back to the date that is two (2) years prior to the respective CLEC’s filing. *See ex. Upton v. Town of Hopkinton*, 157 N.H. 115, 118-19 (2008) (the Supreme Court ascribing the plain and ordinary meaning to the words used within a statute).

III. CONCLUSION

To the extent damages are awarded and reparations must be made, the Commission should impose interest at the rate set forth in accordance with RSA 336:1(II) based upon the simple interest method. No reparations should be ordered beyond the two year time frame permitted by RSA 365:29 calculated from the date of each individual CLEC’s petition for reparations or petition for intervention, as applicable.

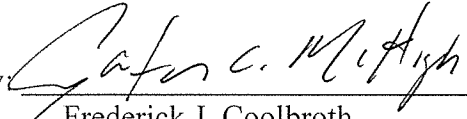
Respectfully submitted,

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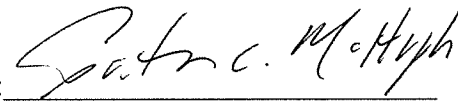
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CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing brief was forwarded this day to
the parties by electronic mail.

Dated: December 19, 2008

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