

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

FREEDOM RING COMMUNICATIONS,)	
LLC d/b/a BAYRING COMMUNICATIONS)	Docket DT 06-067
Complaint Against Verizon New Hampshire)	
Re: Access Charges)	

BRIEF OF SPRINT

Sprint Communications Company, L.P. and Sprint Spectrum L.P. (collectively “Sprint”), respectfully submits its Brief in the above captioned matter as per the schedule announced at the November 5, 2008 technical session and memorialized in a November 5, 2008 letter filed with the New Hampshire Public Utilities Commission (“Commission”) by Commission staff. The issues indicated by staff to be addressed are whether interest can be applied to any refund/credit determined by the Commission to be due, the relevant interest rate(s), and whether the date for calculation of the claims period is the date the original petition in this proceeding was placed on file with the Commission. Sprint addresses those questions as follows:

- 1. Whether Interest can be Applied to any Refund/Credit Determined by the Commission to be Due, and Whether the Date for Calculation of the Claims Period is the Date the Original Petition in this Proceeding was Placed on File with the Commission?**

The Commission is vested by statute with the authority to award interest whenever a petition has been filed with the Commission and the Commission has found that an illegal or unjustly discriminatory rate, fare, charge, or price has been collected for any service. R.S.A. § 365.29. In such an instance, the Commission may order a public utility to make reparation to the person who has paid the improper charges, with interest from the date of the payment. *Id.*; see also *Appeal of Granite State Electric Company*,

120 N.H. 536, 541; 421 A.2d 121, 124 (1980) (citing R.S.A. 365:29 to support its finding that the Commission is vested with authority to apply interest to judgments). Such an order for reparation shall cover all payments made from within 2 years before the date the petition for reparation is filed. R.S.A. § 365:29.¹

Sprint contends that the only reasonable interpretation of the statute is that it authorizes application of interest in the matter at bar. As has been recognized by the Supreme Court of New Hampshire, the Commission is vested with broad authority. *See Granite State Electric* at 539. The Commission's broad authority includes the power to award restitution if one party has been unjustly enriched at the expense of another. *Id.* The Court in *Granite State Electric* also recognized that a public utility could be unjustly enriched if it were not required to pay interest on monies that it should not have collected. *Id.* at 541.

In the matter at bar, the Commission has found that Verizon owes restitution to aggrieved carriers for impermissibly billing for and collecting certain CCL access charges. New Hampshire Public Utility Commission's Order Interpreting Tariff, Order 24,837, at 32, dated March 21, 2008 ("We therefore find that Verizon is, and has been, impermissibly imposing a CCL access charge . . . Therefore, we find that Verizon owes restitution."). Accordingly, it follows that Verizon would be unjustly enriched if allowed to keep the interest it earned on funds it improperly collected. Never having had the right to collect these funds, it would be inherently unjust to allow Verizon to enjoy the benefit of the interest these funds generated while in Verizon's possession.

¹ The statute was amended in 2008, but Sprint is here interpreting the statute prior to its amendment as the matter at bar predates the amendment – the outcome would be no different if the revised statute is interpreted. Sprint addresses the revision later herein.

In awarding restitution, the Commission is performing an equitable role. “In this context, the terms “restitution” and “unjust enrichment” are modern designations for the older doctrine of quasi-contracts, and the action for “unjust enrichment,” therefore, lies in a promise, implied by law, that one will restore to the person entitled thereto that which in equity and good conscience belongs to him.” *Granite State Electric* at 539-40 (internal citations omitted). It is this principle that must guide the Commission in its determination of whether to award interest and in determining the date from which interest shall be calculated.

R.S.A. § 365:29, prior to its revision, mentioned only one date – the date on which a petition for reparations is filed (“Such order for reparation shall cover only payments made within 2 years before the date of filing the petition for reparation.”) – as the date from which the claims period is calculated. The statute does not mention later dates for intervenors or for any other purpose or circumstance. Statutes must be given their plain and ordinary meaning and must be interpreted without adding or subtracting language from the text. “When examining the language of the statute, we ascribe the plain and ordinary meaning to the words used ... We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include ... Further, we interpret a statute in the context of the overall statutory scheme and not in isolation.” *New Hampshire v. Langill*, 157 N.H. 77, 84; 945 A.2d 1, 14 (2007). Applying these principles, the Commission must conclude that had the legislature intended the relevant period to be calculated differently for intervenors, the statute would have so specified. The absence of any mention of another date for calculation of the relevant period is a clear indication that

the only relevant date is that which is written in the statute itself: the date the petition for reparations is filed.

It also bears noting that the statute specifies a “petition for reparations” when describing the method for determining the start of the claims period. Had the legislature intended intervenors to calculate their damages using a later date, it could have used broader language – such as simply “petition.” The language used in the statute specifying the type of petition that would be used for the purposes of calculating the claims period must be read to have a purpose. *See Id.* Therefore, the fact that the legislature specified a particular type of petition, a petition for reparations, must be deemed significant and relevant insofar as such a petition is quite obviously different from a petition for intervention. Accordingly, the Commission must conclude that the use of the language “petition for reparations” in the statute is intended to identify a particular type of petition, and in the matter at bar, the relevant petition is therefore that which was filed by BayRing to initiate this proceeding.

The equitable principles of restitution, which are promoted by the statute, also dictate this same answer. Insofar as the legislative intent behind the statute has been interpreted as allowing the Commission to make whole parties that have been unjustly deprived of their property by paying impermissibly imposed charges, *see Granite State Electric* at 539-41, it is counterintuitive to find that the legislature intended for a shorter recovery period to apply to parties other than the initial plaintiff(s). The legislature’s concern was with the prevention and correction of unjust enrichment. This statutory intent is best realized by allowing the longest recovery period permitted by the statute, not the shortest.

Should the Commission determine that the statute should be read as revised, there is no change to the result. The revised statute indicates that the claims period begins at the *earlier* of the date of the Commission's notice of hearing or the date the petition for reparations was filed. Despite the revisions to the statute, the statute continues to specify the type of petition that is relevant for calculation of the claims period: a petition for reparations. As the filing of BayRing's petition was the first to occur, the result is no different under the revised statute. The legislative intent described above is fully and consistently illustrated by the revised statute. The legislature clearly remained concerned with combating unjust enrichment, and that concern is illustrated in its decision to allow aggrieved parties to use the *earlier* of the two statutorily specified events to calculate the claims period. Had the legislature indicated that the later of the two dates would apply, the conclusion might be different, but as the legislature elected to allow parties the longest claims period available under the statute, it is clear that the legislative intent is in promoting equitable relief to the fullest extent. Applied to the matter at bar, forcing intervenors, such as Sprint, to calculate their claims period using some later date would be contrary to the legislature's clear policy favoring the availability of broad and inclusive equitable relief, and contrary to the plain meaning of the language used in the statute itself.²

² Even if the Commission determines that Sprint's Petition to Intervene is the relevant petition in terms of determining the date for calculation of the claims period, the Commission's notice initiating the instant docket would be the earlier of the two dates, and would therefore be the relevant date for purposes of the statute. As stated above, however, such an interpretation of the relevant petition would be contrary to the equitable principles the statute is intended to vindicate.

2. **Identifying the Appropriate Interest Rate Applicable to any Refund/Credit Determined by the Commission to be Due.**

Sprint believes that the interest rate to be applied is governed by R.S.A. 336:1, which indicates the method for the state treasurer to determine the applicable interest rate. The Administrative Office of the Courts of New Hampshire maintains a list of the interest rates applicable by year on its website at the following link:

<http://www.courts.state.nh.us/sitewidelinks/interest.htm>

The interest rates published on that website are as follows:

2009	3.5%
2008	6.0%
2007	6.8%
2006	5.7%
2005	4.0%
2004	3.0%

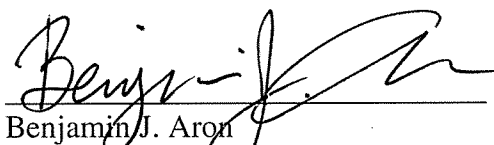
While Sprint would certainly welcome such higher rate as the Commission may deem to be appropriate, and contends that equitable principles permit the Commission to determine such higher rate as may be applicable, Sprint is willing to accept application of those rates published on website listed above.

3. **Conclusion.**

For the foregoing reasons, the Commission should require that Verizon make restitution to Sprint for illegal charges going back to April 28, 2004. Interest should be

applied to the amounts due to be repaid as reparations, and this interest should be calculated pursuant to those rates determined by the state treasurer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin J. Aron", written over a horizontal line.

Benjamin J. Aron
2001 Edmund Halley Drive
Mailstop: VARESP0201 - 208
Reston, Virginia 20191
(703) 592-7618 (office)
(703) 592- 7407 (fax)
benjamin.aron@sprint.com

Dated: December 19, 2008

CERTIFICATE OF SERVICE

I, Benjamin Aron, certify that I have served a true copy of Sprint Communications Company, L.P. and Sprint Spectrum L.P.'s foregoing document in Docket 06-067 upon the parties of record in this proceeding by First Class Mail, postage prepaid, on this 19th day of December, 2008.

KELLY ATWOOD
DEVINE MILLIMET & BRANCH PA
43 NORTH MAIN ST
CONCORD NH 03301-4934

ANNMARIE BERRY
FAIRPOINT NEW ENGLAND
155 GANNETT DR
SOUTH PORTLAND ME 04106-6942

GENT CAV
OTEL TELEKOM INC
ONE SUNDIAL AVE STE 210
MANCHESTER NH 03103

MICHELLE CONSALVO
AT&T
99 BEDFORD STREET
BOSTON MA 02110

FREDERICK J COOLBROTH
DEVINE MILLIMET & BRANCH PA
43 N MAIN ST
CONCORD NH 03301

VICTOR D DEL VECCHIO
VERIZON NEW ENGLAND
185 FRANKLIN ST 13TH FL
BOSTON MA 02110-1585

SUSAN GEIGER
ORR & RENO PC
ONE EAGLE SQUARE
PO BOX 3550
CONCORD NH 03302-3550

JAY GRUBER
AT&T COMMUNICATIONS OF NE INC
99 BEDFORD ST ROOM 420

BOSTON MA 02111

MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

NANCY HUBERT
BRETTON WOODS TELEPHONE CO
MT WASHINGTON PLACE
BRETTON WOODS NH 03575

NANCY JACOBSON
ONE COMMUNICATIONS
24 ALBION RD STE 230
LINCOLN RI 02865
JEREMY L KATZ

SEGTEL INC
PO BOX 610
LEBANON NH 03766
GREGORY M KENNAN

GREGORY M. KENNAN
FAGELBAUM & HELLER LLP
PO BOX 230
SHERBORN, MA 01770

PAULA W. FOLEY
ONE COMMUNICATIONS CORP.
5 WALL STREET
BURLINGTON, MA 01803

MATTHEW T KINNEY
RNK INC
333 ELM ST STE 310
DEDHAM MA 02026

SARAH KNOWLTON
MCLANE GRAF RAULERSON & MIDDLETON
PO BOX 459
PORTSMOUTH NH 03802-0459

SHIRLEY J LINN
FAIRPOINT COMMUNICATIONS INC
521 E MOREHEAD ST STE 250

CHARLOTTE NC 28202

DEBRA A MARTONE
TDS TELECOM
PO BOX 337
11 KEARSARGE AVE
CONTOOCOOK NH 03229-0337

PATRICK MCHUGH
DEVINE MILLIMET & BRANCH PA
111 AMHERST ST
PO BOX 719
MANCHESTER NH 03101

MICHAEL J MORRISSEY
FAIRPOINT COMMUNICATIONS INC
521 E MOREHEAD ST STE 250
CHARLOTTE NC 28202

STEPHEN NELSON
DUNBARTON TELEPHONE CO
2 STARK HIGHWAY SOUTH
DUNBARTON NH 03045

JOHN NESTOR III
FAIRPOINT COMMUNICATIONS INC
900 ELM ST STE 1927
MANCHESTER NH 03101-2008

PENN PFAUTZ
AT&T
200 S LAUREL AVE
RM E4-3A01
MIDDLETOWN NJ 07748

CHRIS RAND
GRANITE STATE TELEPHONE
600 SOUTHSTARK HIGHWAY PO BOX 87
WEARE NH 03281

MIKE REED
TDS TELECOM
24 DEPOT SQUARE
NORTHFIELD VT 05663

KEVIN M SHEA
FAIRPOINT COMMUNICATIONS INC
900 ELM STREET
19TH FLOOR
MANCHESTER NH 03101

PETER L SHEPHERD
VERIZON NEW HAMPSHIRE
125 HIGH ST
BOSTON MA 02110

WILLIAM STAFFORD
GRANITE STATE TELEPHONE
600 SOUTH STARK HWY
PO BOX 87
WEARE NH 03281

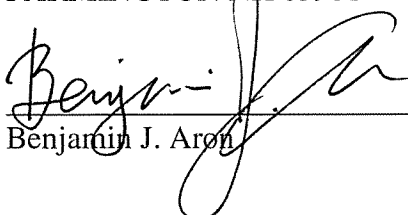
MICHAEL S TENORE
RNK INC D/B/A RNK TELECOM
333 ELM ST STE 310
DEDHAM MA 02026

BEN THAYER
BAYRING COMMUNICATIONS
359 CORPORATE DR
PORTSMOUTH NH 03801-2888

ROJEAN TULK
FAIRPOINT COMMUNICATIONS INC
155 GANNETT DR
SOUTH PORTLAND ME 04106-6942

ANN WALSH
DIXVILLE TELEPHONE CO
ONE CRANBERRY HILL STE 105
LEXINGTON MA 02421

DARREN R WINSLOW
UNION COMMUNICATIONS
13 CENTRAL ST
PO BOX 577
FARMINGTON NH 03901


Benjamin J. Aron 12/19/08