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March 12, 2012

Via Electronic Mail and Overnight Delivery

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

Re: Docket No. DT 06-067
Freedom Ring Communications, LLC d/b/a BayRing Communications
Complaint against Verizon New Hampshire regarding Access Charges

Dear Ms. Howland:

I am writing on behalf of AT&T Corp. ("AT&T") to clarify the record with respect to assertions made by FairPoint in its February 28, 2012, Objection to the Competitive Carriers' Motion for Reconsideration ("Objection") regarding the effect of the confirmation of FairPoint's Bankruptcy Plan. In particular, FairPoint states that the discharge it received as a result of the confirmation of its Bankruptcy Plan on January 24, 2011, prohibits a carrier to make a claim "for refunds or reduced payments... for any traffic" prior to that date (Objection at 10), and suggests that the Commission is thus precluded from finding that the changes to FairPoint's CCL tariff took effect prior to January 24, 2011. FairPoint quotes from Section 13 of its Third Amended Joint Plan of Reorganization ("Third Amended Plan") in support of its position. Objection at 11.¹

To clarify the record, AT&T directs the Commission to two provisions of the *Confirmation Order* pertinent to FairPoint's assertions in the Objection.

First, Paragraph 16 of the *Confirmation Order* requires FairPoint to "take all actions necessary or reasonably required to effectuate the Regulatory Settlements" included as part of the Third Amended Plan, and provides that those Regulatory Settlements "shall be binding" on FairPoint. The Regulatory Settlements include the *NHPUC Regulatory Settlement*² that FairPoint entered into with the Commission Staff Advocates on February 5, 2010, and that the Commission approved in Order No. 25,129 in Docket No. DT 10-025 on July 7, 2010. The *NHPUC Regulatory Settlement*, in turn, describes FairPoint's obligation to comply with the 2008 Settlement Agreement filed with the Commission on January 23, 2008, which was incorporated by reference and approved by the Commission in Order No. 24,823 in Docket No. DT 07-011 on February 25, 2008 ("2008 Order").³ See *NHPUC Regulatory Settlement* at 3 n.3. Under the terms of the 2008 Order, FairPoint is obliged to

¹ In the Objection (at 11 n. 38), FairPoint provides a citation only to the bankruptcy court order approving the reorganization plan: Order Confirming Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code Dated as of December 29, 2010, *In re FairPoint Communications, Inc. et al.*, Case No. 09-16335 (S.D.N.Y. Jan. 13, 2011) ("*Confirmation Order*"). The Third Amended Plan is Exhibit A to the *Confirmation Order*. It also was filed with the Commission on December 30, 2010, in Docket No. DT 10-025.

² The *NHPUC Regulatory Settlement* is Exhibit E to the Third Amended Plan.

³ The 2008 Order approved FairPoint's acquisition of Verizon's assets.



“honor the terms of a final order in Docket No. DT 06-067 on a going-forward basis.” Order No. 24,823 at 75. Given that the *Confirmation Order* and the Third Amended Plan expressly recognize the *NHPUC Regulatory Settlement*, which effectively incorporates the terms of the *2008 Order*, the exception to the general termination and release of claims in Section 13.2 of the Third Amended Plan⁴ encompasses whatever decision the Commission makes regarding the effective date of the CCL tariff revisions.

Second, Paragraph 71 of the *Confirmation Order* specifically reserves AT&T’s right “to assert rights of setoff” under the Bankruptcy Code or applicable non-bankruptcy law, while also recognizing FairPoint’s ability to oppose such rights of setoff in certain circumstances. Accordingly, AT&T has the ability in this docket to pursue “refunds or reduced payments” related to CCL charges billed prior to January 24, 2011, although the bankruptcy court may ultimately have to decide the extent to which the Commission’s decision regarding such charges affects AT&T’s rights to setoff.

Enclosed are eight copies of this letter. Please return one file-stamped copy of the letter in the enclosed, stamped and self-addressed envelope. Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "James A. Huttenhower".

James A. Huttenhower

cc: Service List (via email)

⁴ Section 13.2 begins “Except as provided in the Plan...”