

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 06-067

FREEDOM RING COMMUNICATIONS LLC D/B/A BAYRING COMMUNICATIONS

Complaint Against Verizon New Hampshire Regarding Access Charges

Order Requiring Production of Documents

ORDER NO. 25,337

March 23, 2012

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 18, 2011, the Federal Communications Commission (FCC) issued an order that, among other things, revised the regime for intercarrier compensation in the telecommunications industry. *See generally Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (CAF Order). As part of the reforms in the CAF Order, the FCC requires certain carriers, such as Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) to cap certain switched access and reciprocal compensation rates as of December 29, 2011 and to reduce those rates to bill-and-keep over six years. In that process, the CAF Order provides for a transitional recovery mechanism permitting carriers like FairPoint to recover a portion of the reduced revenues through an “access recovery charge” (ARC). In simplified terms, the ARC is set with reference to a baseline amount which is established using charges billed in Fiscal Year 2011, that is, October 1, 2010 to September 30, 2011, and which are collected by March 31, 2012. CAF Order ¶ 880.

On January 20, 2012, the Commission issued Order No. 25,319, which concluded, among other things, that effective January 21, 2012, FairPoint’s tariff was amended to prevent it from

billing carrier common line (CCL) charges when its common line was not used. Order No. 25,319 is subject to a Motion for Rehearing and/or Reconsideration filed by FairPoint on February 17, 2012 (also seeking rehearing of Order No. 25,327) and by five competitive carriers on February 21, 2012. The Commission is now considering these motions.

On March 15, 2012, FairPoint filed an "Emergency Motion for Enforcement of Commission Order" wherein it contended that opposing parties in this docket have failed to pay lawful CCL charges incurred prior to January 21, 2012. FairPoint asserted that if it were not able to collect those CCL charges prior to March 31, 2012 it would be irreparably harmed because its baseline amount for the ARC would be lowered. FairPoint, therefore, requested that the Commission issue an order compelling parties to pay CCL charges by March 31, 2012, or establish other arrangements acceptable to FairPoint. In both redacted and confidential form, FairPoint submitted an exhibit identifying a number of competitive carriers and amounts FairPoint asserts they owe, in an aggregate amount of \$2,157,390.43. There were no invoices or other details submitted with this summary exhibit.

On March 15, 2012, the same day the motion was filed, the Commission issued a secretarial letter requiring that responses to FairPoint's motion be filed by March 21, 2012 in light of the time-sensitive nature of the relief FairPoint had requested. On March 21, 2012, an objection to FairPoint's motion was filed by Freedom Ring Communications LLC d/b/a BayRing Communications, Sprint Communications Company, L.P. and Sprint Spectrum, L.P., and AT&T Corp. (collectively the Competitive Carriers). The Competitive Carriers objected to FairPoint's motion on numerous grounds including: (1) FairPoint's motion is premature because there are outstanding motions for reconsideration of the Commission's January 21, 2012 order; (2)

FairPoint's motion is, in essence, a motion for reconsideration of the Commission's January 21, 2012 order; (3) there is no standard provided and no basis for extraordinary relief; (4) the abbreviated timeframe violates due process; (5) FairPoint's motion is misleading with respect to the impact of the CAF Order and with respect to the amounts actually owed; and (6) FairPoint's predicament is of its own making and is not an "emergency" as it knew of this issue for some time prior to filing for emergency relief.

II. COMMISSION ANALYSIS

We note initially that the CAF Order was issued on November 18, 2011 and our order relating to the CCL was issued on January 20, 2012. According to affidavits attached to the Competitive Carriers' objection, FairPoint sent notices to at least some of the carriers in mid-February making essentially the same arguments raised in FairPoint's motion to the Commission. Only on March 15, 2012 did FairPoint seek relief from the Commission to compel the other carriers to act by March 31, 2012. As a result, and given the extraordinarily compressed timeframe now presented to the Commission, we shall endeavor to provide as expeditious treatment of this issue as possible given all parties' rights to due process.

With respect to the issues raised in the motion and objection, to illustrate the amounts owed FairPoint has provided only a single page spreadsheet showing the names of various competitive carriers and a total amount alleged to be owed. It provided no bills, invoices, checks or any other evidence demonstrating that the amounts owed are accurate. Moreover, the basis for FairPoint's request for emergency relief is that the amounts it alleges it is due must be collected by March 31, 2012 to be counted under the formula in the CAF Order. In that formula, only amounts

billed in Fiscal Year 2011, covering October 1, 2010 to September 30, 2011, and collected by March 31, 2012, are to be included.

The Competitive Carriers contend that FairPoint appears to have included revenues from outside that period in its calculations, but that they cannot verify the amounts because no supporting documentation has been provided. At least one competitive carrier states that it had reached a settlement with FairPoint with respect to certain disputed amounts, but the amount now claimed by FairPoint does not appear to account for that settlement. Further, in their pleadings, the Competitive Carriers state that the amounts provided by FairPoint are materially inaccurate. Based on the current record, there is a substantial question about the amounts that FairPoint may be owed, by particular carriers as well as the amount actually billed during the period relevant to FairPoint's request for emergency relief.

To the extent that the need to collect revenue from the relevant period is the basis for FairPoint's motion, FairPoint must demonstrate that the amounts alleged fall within the parameters of CAF Order ¶ 880. Without such evidence, the Commission cannot make findings concerning Competitive Carriers' payment obligations.

In light of the foregoing issues, the Commission hereby orders that FairPoint produce bills, invoices, or other documentation verifying the amounts it alleges it is owed, clearly identifying the amount billed during the relevant period as defined by the CAF Order. Such documentation should separately show both originating and terminating access charges and provide any legal basis from the CAF Order for inclusion or exclusion of such amounts. FairPoint shall file this documentation electronically with the Commission and all parties. The Competitive Carriers

will then have no more than three business days to respond to the evidence and arguments presented by FairPoint.

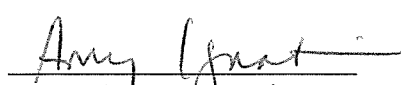
For clarity, in issuing this order the Commission is not rendering any judgment on the arguments underlying the motions for rehearing or the objections; nor does the Commission intend or imply any ruling on the pending motions for reconsideration in this matter. The disposition of the emergency motion may be affected by our determination on pending motions for rehearing, however, obtaining this billing information in an expedited manner could hasten the resolution of all other matters.


Based upon the foregoing, it is hereby

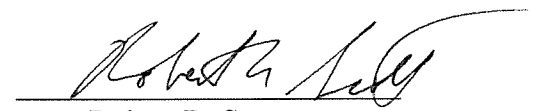
ORDERED, that FairPoint shall file documentation with the Commission and all parties electronically as soon as practicable; and it is

FURTHER ORDERED, that the Competitive Carriers shall have three business days to respond to the documentation provided by FairPoint, submitted under the same terms as stated above.

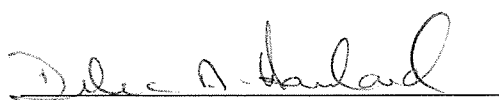
By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 2012.


Amy L. Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 06-067-1 Printed: March 23, 2012

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.