

June 5, 2009

VIA FEDERAL EXPRESS

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



**RE: DT 09-039 Freedom Ring Communications d/b/a BayRing Communications
Complaint against FairPoint Communications**

Dear Executive Director Howland:

On behalf of Freedom Ring Communications d/b/a BayRing Communications (BayRing) we are writing to inform Staff and the Commission that FairPoint is not providing complete PAP reports and data as required by the Commission's Orders and as agreed to by FairPoint in the CLEC Settlement in Docket 07-011. As a consequence, BayRing requests that the Commission notify FairPoint that it must compensate BayRing at the maximum allowable liability under the PAP, and that such payments will continue for each month where FairPoint fails to provide the required data in the PAP.

Background

After the filing of BayRing's March 2, 2009 Complaint in this proceeding, the Secretary issued a letter on April 20, 2009 to FairPoint, requiring that the parties meet with Staff to discuss the complaint. Specifically, the letter required that "[p]rior to the meeting, and no later than April 24, 2009, FairPoint shall provide a copy of the BayRing PAP reports for December 2008, January, February and March 2009, and an account of any applicable credits issued to Bay Ring as a result." FairPoint, after further requests by BayRing, eventually supplied its post-cutover PAP report for March 2009, in a letter dated May 3, 2009.

However, an examination of the March 2009 Report, as compared to the December 2008 and January 2009 Reports, reveals that FairPoint has unilaterally, and without Commission authorization, eliminated any data reporting for many of the important "Critical Measures" that are used to calculate bill credits for poor wholesale performance.

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Specifically, FairPoint has removed all data including but not limited to the following examples (that were reported by Verizon systems in the December 2008 and January 2009 PAP Reports) with regard to the following Critical Measures:¹

CRITICAL MEASURES

MR-3-01-1341 % Missed Repair Appt -Loop -2W Digital -
UNE/Resale
MR-3-01-3144 % Missed Repair Appointments - Loop -
Platform - Bus
MR-3-01-3145 % Missed Repair Appointments - Loop -
Platform - Res
MR-4-03-3342 Mean Time To Repair -CO -2W xDSL Loops
MR-4-04-1341 % Cleared (all troubles) w/in 24 Hours -2W
Digital -UNE/Resale
MR-4-04-3342 % Cleared (all troubles) w/in 24 Hours -2W
xDSL Loops
MR-4-06-1217 % Out of Service > 4 Hours - DS1 & DS3 -
UNE/Resale
MR-4-08-2110 % Out of Service > 24 Hours - POTS - Bus.
MR-4-08-3145 % Out of Service > 24 Hours - Platform - Res
MR-5-01-1200 % Repeat Reports w/in 30 days -UNE/Resale
MR-5-01-2100 % Repeat Reports w/in 30 days - POTS
MR-5-01-3140 % Repeat Reports w/in 30 days - Platform
MR-5-01-3342 % Repeat Reports w/in 30 Days -2W xDSL
Loops
MR-5-01-3112 % Repeat Reports w/in 30 days - Loop
OR-1-02-2320 % On Time Design Layout Record
OR-10-01-1000 % PON Exceptions Resolved w/in 3 Bus
Days
PR-3-01-2100 % Completed in 1 Day (1-5 lines - No Disp) -
POTS Total
PR-3-01-3140 % Completed in 1 Day (1-5 Lines - No Disp) -
Platform
PR-4-01-1211% Missed Appointment -VZ -DS1 -UNE/Resale

¹ The particular measures are not the subject of the specific measures that FairPoint has requested a temporary or permanent waiver of reporting according to the petition filed in DT- 09-059.

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has no authority to unilaterally disregard both its commitments in the CLEC settlement in Docket DT 07-011 (approved by Order No. 24,823) and the requirements in the applicable New Hampshire PAP that complete reports and data must be provided to CLECs each month. Accordingly, BayRing requests that the Commission require that FairPoint pay the maximum liability allowable under the PAP, and that such payments continue for each month that FairPoint fails to report on the required data.²

The Applicability of the PAP to FairPoint and Penalties for Non-Performance

Pursuant to the CLEC Settlement Agreement in DT 07-011, FairPoint agreed to “adhere to the applicable PAP and C2C Guidelines as implemented in each of the three states and be subject to potential penalties and enforcement mechanisms set forth in those documents.” CLEC Settlement Agreement 6(a). Further, “[a]ny CLEC may seek enforcement of the applicable PAP, even if such right is not expressly incorporated in the interconnection agreement, tariff or SGAT pursuant to which the CLEC purchases service. CLEC Settlement Agreement 6(b). Finally, the [r]eporting obligations and penalties under the PAP or C2C Guidelines will be temporarily suspended” for only one month following the cutover. CLEC Settlement Agreement 6(d). FairPoint, in no uncertain terms, agreed to adhere to the PAP and C2C Guidelines, including the penalty and enforcement provisions. FairPoint’s refusal to provide BayRing with the required data associated with the PAP, identified above, constitutes a failure to perform the obligations set forth in the CLEC Settlement Agreement and the obligations set forth in the PAP. Accordingly, FairPoint should be liable to BayRing for the maximum penalties associated with such a deliberate failure to perform the obligations called for by the PAP, particularly at a time where CLECs have registered serious quality of service complaints against FairPoint.

The PAP is important to the CLECs, and the PAP is critical to the CLECs ability to compete in the New Hampshire local exchange market. See Orders No. 23,940 and 23,976 in Docket DT-01-006. According to the PAP, in order to ensure that there is timely information regarding FairPoint’s performance, FairPoint must report its performance on a monthly basis and the reports must also contain underlying performance details for Critical Measures and the underlying data used to calculate FairPoint’s performance for BayRing. FairPoint has not filed for any waiver or relief from reporting the data for the Critical Measures identified above and missing from the March 2009 PAP Report provided to BayRing. Accordingly, FairPoint has failed to meet the standards in the PAP for the simple reason that FairPoint has failed to provide the required data for the Critical Measures metrics identified above and has essentially ignored

² Pursuant to the March 29, 2002 Commission Order in Docket No. DT 01-006 (No. 23,840) and its May 24, 2002 Order On Reconsideration in the same Docket (No. 23,976) FairPoint is subject to a maximum overall liability under the PAP of up to 39% of its net revenues.

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BayRing's requests for this information or an explanation for why it is missing. FairPoint is therefore not in compliance with the PAP's basic reporting requirements and its refusal to provide even basic data for these measures constitutes a serious violation of the PAP and is clearly subject to enforcement by the Commission.

In the event of a failure to perform the basic reporting requirements under the PAP the Commission has the authority to order FairPoint to pay CLECs the maximum potential liability under the PAP, as shown in the detailed analysis of the Commission in its Orders No. 23,940 and 23,976 in Docket DT-01-006. BayRing requests that the Commission require that FairPoint pay to BayRing its authorized percentage of the maximum allowable CLEC liability under the PAP (39% of its net revenues) and that such payments continue on a monthly basis until such time that FairPoint provides all of the data required in the monthly PAP reports to the CLECs as required by the CLEC Settlement and as ordered by the Commission in its approval of the CLEC Settlement in Docket No. 07-011.

Without such a penalty imposed FairPoint has no incentive to even report on the data that is required by the PAP, leaving BayRing without any basis to measure the poor performance that BayRing has complained about in this proceeding.

Thank you for your consideration of the issues identified in this letter and please let me know if you have any questions in regards to this matter.

Respectfully Submitted,



Alan M. Shoer

cc: Parties on Service List