

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

**Response of Northern New England Telephone Operations LLC
To Joint Motion of Freedom Ring Communications LLC, AT&T Corp. and One
Communications Corp. to Strike Verizon's Reply to FairPoint's Motion for Rehearing
and/or Reconsideration**

Northern New England Telephone Operations LLC, d/b/a FairPoint Communications-NNE, a Delaware limited liability company, having its principal office at 521 E. Morehead Street, Charlotte, North Carolina ("FairPoint") hereby responds to the Joint Motion to Strike Verizon New England Inc.'s Reply to FairPoint's Motion for Reconsideration/Rehearing filed by Freedom Ring Communications LLC ("BayRing"), AT&T Corp. ("AT&T") and One Communications Corp. (collectively, the "Competitive Carriers") on or about May 15, 2008 (the "Motion to Strike"). In support thereof, FairPoint states as follows:

1. On April 21, 2008, FairPoint timely filed a Motion for Reconsideration and/or Rehearing (the "Motion for Rehearing") with respect to the Commission's Order No. 24,837, dated March 21, 2008 (the "Order")¹. Verizon New England Inc. d/b/a Verizon New Hampshire ("Verizon") filed a reply to FairPoint's Motion for Rehearing on April 28, 2008. That same day,

¹ See *Petition of Ellis*, 138 N.H. 159, 160 (1993) (Supreme Court citing RSA 541:3 and Sup.Ct.R. 27(1) and holding that "...in computing time, when the last day is a Sunday the period shall extend until end of next day that is not a Saturday, Sunday, or legal holiday."). Following longstanding New Hampshire law, this response is due May 27, 2008, and also is timely filed. The Competitive Carriers acknowledge this case and cite it as authoritative New Hampshire law in their Motion to Strike (hereinafter defined) at page 3. Thus, their argument that FairPoint failed to timely file its Motion for Rehearing was offered without merit (see Competitive Carriers' Objection to FairPoint's Motion for Rehearing and/or Reconsider, Item V, commencing at page 14) and should be disregarded in its entirety.

the Competitive Carriers filed a joint objection to the Motion for Rehearing. Seventeen (17) days later, the Competitive Carriers filed their Joint Motion to Strike Verizon's "Reply" to FairPoint's Motion for Rehearing and/or Reconsideration (the "Motion to Strike").

2. FairPoint views the Motion to Strike as a collateral attack on the arguments raised by FairPoint in its Motion for Rehearing and therefore submits this brief response. In addition, to the extent that the Motion to Strike addresses FairPoint's arguments, the Motion to Strike is, in effect, untimely supplementation by the Competitive Carriers of their objection to FairPoint's Motion for Rehearing. *See* Puc 203.07(f). FairPoint therefore submits this brief response.

3. FairPoint timely raised issues concerning retroactive ratemaking in its Motion for Rehearing. *See* FairPoint's Motion for Rehearing, at pages 10-11. Regardless of whether Verizon cited one case or ten cases over and above what FairPoint cited (*see* the Competitive Carriers' Motion to Strike, at page 4), the fact is that FairPoint (i) has standing to raise the issue and (ii) timely raised the issue.

4. With respect to the issue of timeliness, FairPoint reiterates that longstanding New Hampshire law governs the calculation of time periods for filing pleadings with this Commission and the New Hampshire courts. The thirty day time period for filing the Motion for Rehearing expired at the close of business on April 21, 2008, and FairPoint filed the Motion for Rehearing prior to the end of that business day. Hence, the "timeliness" issue really is not an issue at all and may be disposed of with little effort.

5. FairPoint's standing also should not be an issue which consumes much (if any) of the Commission's time and effort. Clearly, FairPoint qualifies as a "...person directly affected..." by the Commission's Order. *See* RSA 541:3. FairPoint is the successor in interest to Verizon with respect to the furnishing of intraLATA switched access services. As the successor to

Verizon, the Order directs FairPoint to “...cease the billing of carrier common line charges for calls that do not involve a [FairPoint] end user or a [FairPoint]-provided local loop.” *See* Order at p. 33. How FairPoint could be anything other than a “...person directly affected...” by the Order is not explained by the Competitive Carriers.²

6. Under the New Hampshire Administrative Procedure Act, RSA 541-A, a petitioner (such as FairPoint) must demonstrate that it has not just a mere interest in the proceeding, but rather must set forth a right, a duty, a privilege, an immunity or any substantial interest that may be affected by the proceeding. *See* RSA 541-A:32. The Commission has further explained the standard for permitting intervention as requiring a “legal nexus to the outcome of [the Commission’s] decision.” *See North Atlantic Energy Corporation, The United Illuminating Company, New England Power Company, New Hampshire Electric Cooperative, Inc. and Canal Electric Company Proceeding to Approve the Sale of Seabrook Station Interests*, DE 02-075; Order No. 24,007, Order Denying Rehearing (N.H. Pub. Util. Comm’n, July 8, 2002).

7. New Hampshire courts have upheld this legal nexus requirement. The New Hampshire Supreme Court has emphasized that, in order for a party to have standing to participate in administrative agency proceedings, the person or entity must demonstrate that “he has suffered or will suffer an ‘injury in fact.’” *See Appeal of Richards*, 134 N.H. 148, 154 (1991) (citation and quotation omitted). Given that the Commission’s Order requires FairPoint provide the Competitive Carriers with a telecommunications service absent a fee, there can be no rational argument other than FairPoint has sustained and will continue to sustain an “injury in fact”. FairPoint has more than demonstrated that it has a “substantial interest” that is being

² It should not be lost on the Commission that the Competitive Carriers never filed and objection to FairPoint’s Petition to Intervene.

affected by these proceedings. *See id.* *See also New Hampshire Bankers Ass'n v. Nelson*, 113 N.H. 127, 129 (1973) (Supreme Court adopting the “injury in fact” test for determining standing to appeal from administrative agency orders).

8. Having demonstrated and proven that (i) FairPoint has standing to file a motion for rehearing and to intervene in this Docket and (ii) FairPoint timely filed its Motion for Rehearing, this Commission should address the issues raised therein - to include the issue of retroactive ratemaking. All case law applicable to those issues should be considered in order to provide a thoughtful (and correct) decision on the motion practice. That Verizon cited cases in its reply to the Motion for Rehearing, not otherwise cited in FairPoint’s pleading, is not relevant to the Commission’s ultimate decision. That Verizon and FairPoint have some common interests in the outcome of this Docket also is not relevant to the Commission’s ultimate decision. Instead, the Commission should review the issue in detail and conduct its own analysis of the law with respect to a legal issue properly before the Commission.

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WHEREFORE, FairPoint respectfully submits this response to the Competitive Carriers' Joint Motion to Strike.

Respectfully submitted,

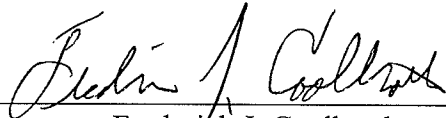
NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC, D/B/A FAIRPOINT
COMMUNICATIONS-NNE

By Its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: May 27, 2008

By: _____



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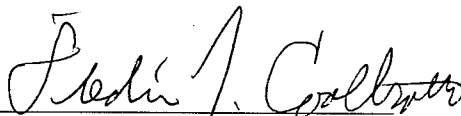
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CERTIFICATE OF SERVICE

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

Dated: May 27, 2008

By: _____



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