

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

**Objection to Joint Motion for Clarification and Expedited Relief of
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE**

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") and objects to the Joint Motion of Freedom Ring Communications, LLC d/b/a BayRing Communications ("BayRing") and AT&T Corp. ("AT&T," and together "AT&T/BayRing.") In support, FairPoint states as follows:

I. INTRODUCTION

In its Order of Notice ("Order") dated September 23, 2009, the Commission found that in regard to FairPoint's recent tariff filing, "an evidentiary hearing is necessary to address the issues raised by FairPoint's August 28 and September 10 filings as well as the issues raised by the competitive local exchange carriers' September 4 filings."¹ Accordingly, the Order established a procedural schedule in which FairPoint could present its case, albeit in a compressed timeframe.²

However, on October 2, 2009, AT&T/BayRing filed a pleading styled as a motion for

¹ Order at 3.

² FairPoint notes that it has filed this same day a Motion for Rehearing with respect to the Commission's Order Nisi (Order No. 25,002) dated August, 11, 2009 (the "Order Nisi"). FairPoint incorporates that pleading by reference as if fully set forth herein and reiterates that the Order Nisi is unlawful and unreasonable.

“clarification” that is in effect a petition to *amend* the Commission’s Order of Notice to exclude certain issues from consideration. Rather than consider all of the issues that the parties have raised in the current proceeding, AT&T/BayRing have requested that the revisions to the CCL rate regulations in Section 5, to which they do not object, become effective as a matter of law under RSA 378:6,IV, while the effectiveness of the revised Interconnection Charge in Section 6, to which they do object, be subject to investigation and delayed effectiveness.

FairPoint’s September 10th filing, however, is not a collection of individual changes, but a single integrated revision that can only be evaluated as a whole. FairPoint respectively objects to any procedure that evaluates any aspect of the tariff filing independently of the rest of the filing. Moreover, as established in FairPoint’s Motion for Rehearing, FairPoint has conditionally withdrawn the tariff filing of September 10, 2009. Thus, there is no need for the Commission to consider the motion for clarification as said motion is moot.

II. THE TARIFF REVISIONS ARE A REVENUE NEUTRAL, INTEGRATED WHOLE.

Citing no legal authority, precedent or statement of fact, AT&T/BayRing assert that “[t]he compliance tariff changes needed to effectuate the requirements of the Commission’s August 11, 2009 order are separable and distinct from the proposed rate increase issue and therefore should not be tied to or further delayed by the procedural schedule necessitated by FairPoint’s rate filing.”³ This is incorrect as a matter of fact and law.

At every step of the proceeding involving this tariff filing, FairPoint has emphasized that the revisions were intended to be revenue neutral, meaning that to the extent that the Commission’s suggested revisions result in lower revenues to FairPoint, other charges would need to be increased to restore the balance. In its August 28th Comments, FairPoint notified the

³ Joint Motion at 3.

Commission and other parties that it would “revise its tariff in a revenue neutral manner by revising the application of the CCL and recovering the shortfall through increases in other access rate elements.”⁴ The tariff transmittal letter provided that “in conjunction with this filing, FairPoint is filing schedule sheets reflecting a revenue neutral adjustment to its switched access rates and is doing so by increasing the Interconnection Charge from \$.00000 to \$.010164 per minute.” The letter went on to describe “the lost CCL revenue and the required Interconnection Charge rate to recover the lost CCL revenue.” In his testimony, FairPoint’s Michael Skrivan testified that the revised tariff pages reflected a revenue neutral adjustment, accomplished by an increase in the Interconnection Charge.⁵ Consequently, there can be no doubt of FairPoint’s intention that the revised tariff pages encompass a single revision of interdependent prices and terms. Any suggestion to the contrary by AT&T/BayRing simply is not correct.

This interdependency conforms to the Commission’s definition of a “rate,” which encompasses much more than a numerical price. Puc 1602.03 defines a “rate” as “any charge or price, *and all related service provisions* for services regulated and tariffed by the commission, including, but not limited to, availability, terms of payment, and minimum service period.” (emphasis supplied). In this case, the “rate” for CCL access service is related to the Interconnection Charge, which “is applied to all local transport access minutes”⁶ Consequently, the new CCL rate regulations can not be divorced from the interconnection charge and evaluated separately.

⁴ FairPoint Comments at 6.

⁵ Skrivan Testimony at 5:3-10.

⁶ Tariff Transmittal § 6.2.1.E.2.

III. APPLICABLE LAW DOES NOT PERMIT THE COMMISSION TO ACT ON LESS THAN THE ENTIRE TARIFF FILING.

Although FairPoint does not necessarily agree, the Commission has indicated that the September 10th tariff filing is subject to some provision of RSA 378:6.⁷ Regardless of which provision of RSA 378:6 may apply to this proceeding (and FairPoint contends that none of them applies), the Commission can only act on the entire filing. Section 378:6,I provides that the Commission may suspend a “rate schedule”, defined in the Commission rules as “the initial collection of information along with *any* revisions filed by a utility which includes the most recent rate schedule cover sheet and all effective rate sheets.”⁸ This suspension applies to entire “rate schedules,” not simply rates or provisions. Thus, if RSA 378:6,I were to apply here (and FairPoint’s position is that it does not), the rate schedule to be considered for suspension would be the entire filing, not a portion of it.

To the extent that RSA 328:6,IV governs this proceeding, FairPoint has withdrawn the tariff filing, and the issue is moot. To the extent that this Docket continues, FairPoint has requested that the tariff pages be treated as illustrative, and AT&T/BayRing can argue their positions during such further proceedings.

IV. GRANTING THE MOTION WOULD AMOUNT TO FIXING OF FAIRPOINT’S RATES WITHOUT AN OPPORTUNITY TO BE HEARD.

Section 9.1 of the Staff Settlement Agreement in the FairPoint-Verizon asset transfer proceeding provides that the Commission will not seek a decrease in FairPoint’s wholesale rates for three years following the acquisition.⁹ Furthermore, state law provides that the Commission

⁷ Order at 4.

⁸ Puc 1602.04 (emphasis supplied).

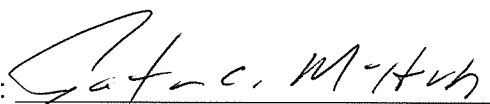
⁹ DT 07-011, *Petition of Verizon et al. for Authority to Transfer Assets*; Order No. 24,823 Approving Settlement Agreement with Conditions at 31 (Feb. 25, 2008) (“Settlement Order”) (“For a period of three years following the Closing Date, FairPoint shall continue providing the

may not fix the rate of a public utility except “after a hearing,”¹⁰ and it must conduct the proceeding in a manner that does not violate FairPoint’s contract or due process rights.¹¹ Granting the AT&T/BayRing motion, even on a temporary basis, would effectively be setting a rate of zero for a significant component of FairPoint’s access service. As FairPoint noted in its Motion for Rehearing, any reduction of wholesale rates potentially implicates several provisions of the Settlement Agreement. FairPoint submits such an analysis of the Settlement Agreement can not be accomplished via a motion for clarification and it should be noted that AT&T/BayRing’s motion fails to address the issue.

WHEREFORE, FairPoint respectfully requests that this Commission DENY the Joint Motion for Clarification and Expedited Relief.

Respectfully submitted,
NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC, D/B/A FAIRPOINT
COMMUNICATIONS-NNE
By Its Attorneys,
DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: October 12, 2009

By: 
Frederick J. Coolbroth
Patrick C. McHugh
Harry N. Malone
43 North Main Street
Concord, NH 03301
(603) 226-1000
fjcoolbroth@devinemillimet.com
pmchugh@devinemillimet.com
hmalone@devinemillimet.com

wholesale services offered by Verizon as of the Closing Date. FairPoint will not seek to increase wholesale rates to take effect during the three years following the Closing Date. *The Commission shall not seek to decrease such rates for effect during the three-year period following the Closing Date.*”) (emphasis supplied).

¹⁰ RSA 378:7.

¹¹ *Richter v. Mountain Springs Water Co., Inc.*, 122 N.H. 850, 851 (1982).

CERTIFICATE OF SERVICE

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

Dated: October 12, 2009

By: 
Patrick C. McHugh, Esq.