

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 TO MOTION FOR HEARING

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) and responds to the Motion of Freedom Ring Communications, LLC d/b/a BayRing Communications, Sprint Communications Company, L.P. and Sprint Spectrum, L.P., and AT&T Corp. (together “CLECs”) for Hearing to Determine Language and Effective Date of FairPoint’s CCL Tariff Filing (“Motion”). Although styled as a “Motion for Hearing” it appears, based on the requested relief, that the CLECs Motion should be treated as a motion to bifurcate the proceeding, and FairPoint responds accordingly. As set forth further below, FairPoint assents in part and objects in part to the Motion.

On October 28, 2011, the Commission issued Order No. 25,283 dispensing with various motions related to FairPoint’s September 10, 2009 tariff filing in which FairPoint revised the application of its CCL charge and increased the Interconnection Charge. On the same day, the Commission issued a separate order establishing the procedure for further discovery, technical sessions and testimony in this matter. In their Motion, the CLECs assert that “the CCL tariff language change ordered by the Commission is currently ready for review and should not be subject to the procedural schedule needed for the consideration of the interconnection rate

increase issue.”¹ They further suggest that “[t]here is therefore no need to subject the CCL tariff filing to the procedural schedule set out in Order No. 25,284, a schedule that more properly applies to the interconnection rate change sought by FairPoint.”² As such, they request that the Commission dispense with discovery, technical sessions and testimony, and convene a hearing on the question of revisions to the CCL tariff language alone.

The CLECs’ motion to bifurcate appears to be grounded in their persistent contention that *two separate* tariff filings are the subjects of this proceeding,³ notwithstanding the Commission’s clear rejection of this argument.⁴ FairPoint is past the point of disputing this now-settled issue, but it does allow that the tariff filing comprises two separate *questions*, and it does not dispute, as the CLECs state, that the question of “whether FairPoint’s CCL tariff filing complies with the Commission’s prior orders is presently ripe for consideration by the Commission”⁵ (as are other questions related to the CCL charge) and that “it should not be subject to the procedural schedule needed for the consideration of the interconnection rate increase issue.”⁶ Consequently, FairPoint assents to the Motion to the extent that it seeks to place the resolution of these two questions on separate procedural tracks.

However, FairPoint disagrees that any hearing is necessary on the CCL question, and thus requests that the Commission order a procedural schedule that moves straight to briefing. As the CLECs have stated, “[n]o discovery or *additional process* is necessary for the Commission to determine whether the CCL tariff language complies with the Commission’s directives to FairPoint to modify its tariff to eliminate the imposition of CCL charges when no

¹ Motion at 2.

² *Id.*

³ Motion at 1-2.

⁴ Order 25,283 at 29.

⁵ Motion at 2.

⁶ *Id.*

FairPoint common line is used.”⁷ Moreover, FairPoint also concurs that “[t]he effective date of the CCL tariff language is also ripe for adjudication by the Commission. These are questions of tariff interpretation and law requiring no discovery, technical sessions or testimony — *just argument . . .*.”⁸

The Commission previously has determined that “[d]ue process requires a meaningful opportunity to be heard, i.e., a hearing, where *issues of fact* are presented for resolution by an administrative agency.”⁹ However, “no hearing is necessary [when] [a]ll of the issues . . . can . . . be resolved as a matter of law, and thus do not require the introduction of any additional evidence”¹⁰ Given the consensus of the parties that no further fact finding is necessary and that there are only questions of tariff interpretation and law, a hearing would serve no lawful purpose. Accordingly, FairPoint requests that in addition to dispensing with further development of the factual record, the Commission also dispense with a hearing on the CCL question and move directly to briefs.¹¹

FairPoint takes this position in the interest of judicial economy and timely resolution of this proceeding. However, despite assenting to bifurcation of the issues, FairPoint in no way concedes that the revisions to the CCL charge are not intertwined and conditioned on an increase

⁷ *Id.* (emphasis added)

⁸ *Id.* (emphasis added).

⁹ Birchview by the Saco, Inc., DE 97-255, Order No. 23,649 Denying Motion for Rehearing (March 7, 2001) (emphasis added).

¹⁰ Holiday Acres Water and Wastewater Services, DW 01-244, Order No. 23,931 Denying Request for Hearing (March 8, 2002).

¹¹ FairPoint also notes that a grant of the Motion to any extent would obviate the need for FairPoint to respond to any pending data requests that relate solely to the CCL issue. Further, FairPoint emphasizes that regardless of the extent of the relief it grants pursuant to the Motion, this proceeding cannot be restricted to only the questions as described by the CLECs, *i.e.* whether FairPoint’s CCL tariff filing complies with the Commission’s directives (which FairPoint continues to assert are unlawful) and the effective date of such revisions. All relevant questions, including but not limited to those presented by the Commission in its Orders of Notice and by the parties in their respective pleadings, must remain before the Commission.

in the Interconnection Charge. Accordingly, FairPoint expects, and reserves all rights to argue, that if any revision of the CCL charge is ultimately required, revenue neutral revisions to the Interconnection Charge should be also be established and should be imposed effective the same day in which the CCL charge is revised by the Commission.

WHEREFORE, FairPoint respectfully requests that this Commission:

- a) GRANT the CLECs' request to forego further development of the factual record in regard to the question of revisions to the CCL charge;
- b) DENY the CLECs request for a hearing on the question of revisions to the CCL charge; and
- c) GRANT FairPoint's request that the Commission issue a revised procedural schedule in which the parties proceed directly to briefing on the question of the revisions to the CCL charge.

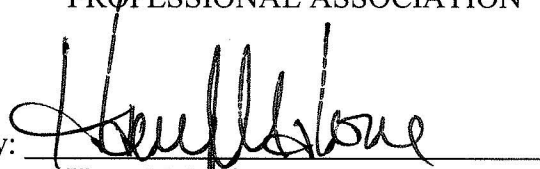
Respectfully submitted,

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

By Its Attorneys,
DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: November 21, 2011

By:

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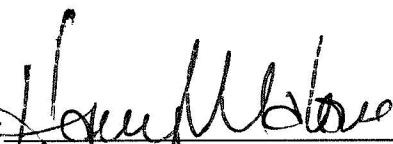
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CERTIFICATE OF SERVICE

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

Dated: November 21, 2011

By: 
Harry N. Malone, Esq.