

DT09-039

SCOTT SAWYER
ATTORNEY AT LAW
38 THIRD ST.
BARRINGTON, RI 02806
(401) 289-0324
sasawyer@cox.net

February 27, 2009



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

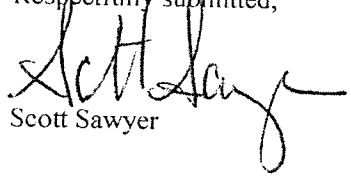
RE: Petition of Freedom Ring Communications, LLC d/b/a/ BayRing Communications

Dear Ms. Howland:

Enclosed for filing with the Commission pursuant to RSA 365:1, please find an original and eight (8) copies of the above captioned Petition on behalf of Freedom Ring Communications d/b/a BayRing Communications. Electronic copies will be sent today to you, Jody Carmody, Kate Bailey and counsel for FairPoint. An electronic version will also be sent as a courtesy to the parties in Docket DT 07-011. Please do not hesitate to contact me if you have any questions.

Thank you for your attention to this matter.

Respectfully submitted,


Scott Sawyer

cc: Frederick J. Coolbroth, Esquire

STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

PETITION OF FREEDOM RING COMMUNICATIONS, LLC D/B/A/ BAYRING
COMMUNICATIONS

v.

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

RE: CLEC OSS AND ACCESS TO WHOLESALE SERVICES

DOCKET NO. _____

NOW COMES Freedom Ring Communications, LLC d/b/a/ BayRing Communications (“BayRing”), through its attorney, and pursuant to NH RSA 365:1, files this Complaint with the New Hampshire Public Utilities Commission (“Commission”) against Northern New England Telephone Operations d/b/a FairPoint Communications-NNE (“FairPoint”) for its failure, following the cutover, to provide BayRing with Operating Support Systems (“CLEC OSS”) that are adequate, operationally ready, just and reasonable, and nondiscriminatory. In support of this Complaint, BayRing states as follows:

1. On February 25, 2008, the Commission, by Order No. 24, 823, issued in Docket DT 07-011 (the “*Transfer Order*”), approved the transfer of Verizon’s local exchange and long distance businesses in New Hampshire to FairPoint.
2. As part of the Transfer Order, the Commission approved the CLEC Settlement Agreement, in which “FairPoint ... agreed to assume all of Verizon’s wholesale

obligations.”¹ The CLEC Settlement agreement also specifically states that FairPoint shall assume Verizon’s wholesale tariff² and will adhere to the PAP and C2C Guidelines.³

3. In connection with its approval of the transaction, the Commission took jurisdiction over the cutover from Verizon’s wholesale systems to FairPoint’s systems, noting that a “successful cutover from Verizon’s systems to FairPoint’s new systems is critical to the provision of safe and adequate service.”⁴ In reaching this conclusion, the Commission pointed to New Hampshire RSA 374:1, which requires every public utility to furnish service and facilities “as shall be reasonably safe and adequate and in all other respects just and reasonable.” It also relied on RSA 374:3, which gives the Commission general supervision over public utilities to ensure statutory obligations are met.
4. To assist the Commission in connection with cutover issues, the Commission approved an independent third party monitor to oversee FairPoint’s readiness for cutover.⁵
5. There is ample guidance for evaluating FairPoint’s CLEC OSS for competitive purposes. The FCC has found that “in order to meet the nondiscriminatory standard for OSS, an incumbent LEC must provide to competing carriers access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing

¹ *Transfer Order*, p. 73.

² CLEC Settlement Agreement, section 4.

³ CLEC Settlement Agreement, section 6. The CLEC Settlement Agreement does provide that the reporting obligations and penalties under the PAP or C2C Guidelines will be temporarily suspended for a 30 day period following the cutover, but it also provides that “FairPoint shall take commercially reasonable steps to ensure that adequate personnel are available to process wholesale orders during the transition period and will structure the transition so as to be able to demonstrate that parity is maintained in the processing of retail and wholesale orders.”

⁴ *Transfer Order*, p. 77.

⁵ *Id.*

that is equivalent to what it provides itself, its customers or other carriers.”

Additionally, the FCC has concluded that incumbent LECs must generally provide network elements, including OSS functions, on terms and conditions that “provide an efficient competitor with a meaningful opportunity to compete.”⁶

6. When analyzing whether a BOC has met the nondiscrimination standard for each OSS function, the FCC first determines whether the BOC has deployed the necessary systems and personnel to provide **sufficient access** to each of the necessary OSS functions and whether the BOC is adequately assisting carriers to understand how to implement and use all of the OSS functions available to them. The FCC then assesses whether the OSS functions that the BOC has deployed [for CLECs] are operationally ready, as a practical matter.
7. In reviewing FairPoint’s cutover readiness, the third party monitor did not consider whether FairPoint’s CLEC OSS complied with the market opening provisions of the Telecommunications Act. Instead, its testing was limited by FairPoint to whether CLECs could send the transaction to FairPoint and whether FairPoint could receive the transaction and send back the appropriate notifier.⁷
8. On November 25, 2008, the Commission held a hearing to examine FairPoint’s cutover readiness. At the hearing, CLECs, including BayRing, asserted that FairPoint’s CLEC OSS was inadequate and not operationally ready, that FairPoint

⁶ *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 F.C.C.R. 20543, 12 FCC rcd 20543, CC Docket No. 97-137, Memorandum Opinion and Order, (1997) (*Ameritech 271 Order*).

⁷ Docket DT 07-011, November 25, 2009 Transcript at p. 124, lines 18-21.

had intentionally limited and controlled CLEC testing, and that FairPoint's OSS was not at parity with FairPoint's retail OSS.⁸

9. FairPoint responded that its OSSs were ready and urged the Commission to permit it to cutover to its systems from Verizon's systems on or about January 31, 2008. The Commission allowed the cutover to proceed.
10. The cutover began on or about January 31, 2009. Prior to and during the cutover, there was a two-week long dark period during which time CLECs could only enter, but not process orders. On February 9, 2009, the dark period and cutover ended and BayRing began attempting to use FairPoint's CLEC OSS for preordering, ordering, provisioning, maintenance and repair and billing. In all material respects, FairPoint's CLEC OSS has failed for all of these functions.
11. FairPoint's CLEC OSS is not adequate, is not operationally ready, is not just and reasonable and is discriminatory, and does not permit BayRing to perform the most basic functions crucial to BayRing's business. BayRing is unable to use FairPoint's CLEC OSS to obtain critical preordering information, to effectively place simple and complex orders, to provision orders, to report and resolve trouble tickets and to receive timely and accurate billing information. Without such access, BayRing does not have a meaningful opportunity to compete in the local exchange.
12. BayRing has notified FairPoint of the severe problems it is having with FairPoint's CLEC OSS and has made numerous attempts to resolve such problems by contacting FairPoint representatives and participating in industry-wide conference calls but nothing of substance has been fixed. The problems BayRing continues to encounter

⁸ *Id.* at 157-158, 164-168.

pertain to virtually every wholesale transaction or function that BayRing has sought to undertake. The following paragraphs are representative of the problems BayRing is having but do not constitute all of what is an exhaustive list.

13. FairPoint has failed provide BayRing with CLEC OSS for preordering that is adequate, operationally ready, just and reasonable, and nondiscriminatory. There are severe defects with FairPoint's preordering systems that have resulted in a loss of functionality when compared to what was provided to BayRing prior to cutover.
14. BayRing is unable to process the most basic preordering functions such as obtaining Customer Service Records, Address Validations, and Loop Qualifications. These types of preordering information are required by BayRing in advance of order entry to ensure smooth customer migrations. The lack of pertinent information provided by FairPoint in connection with these requests is pervasive and the data that is provided is questionable.
15. As examples, BayRing has encountered addresses that do not match the customer's service location, assigned Telephone Numbers ("TNs") that do not match the state in which BayRing is requesting services, and loop qualifications that were approved by Verizon prior to cutover but which now show "address not found" or "service unavailable." As stated above, these preordering functions are required to enter accurate orders for service delivery. If preordering information is not provided in an adequate manner, either orders are not placed or they are placed using incomplete information, which, in turn, increases the likelihood of receiving a "jeopardy notice" due to inaccurate information on the order.

16. FairPoint has failed to provide BayRing with CLEC OSS for ordering that is adequate, operationally ready, just and reasonable, and nondiscriminatory. BayRing has not been able to achieve the completion of a single Access Service Order (ASR) for an unbundled T1 circuit or above. Since the cutover began, only 17 of BayRing's orders have been installed, not one of which was completed without manual intervention.
17. BayRing has hundreds of orders backlogged in FairPoint systems, the majority of which are far beyond the extended intervals FairPoint originally committed to. Of additional concern is the fact that BayRing's daily order entry continues to exceed FairPoint's order completion. On many days, FairPoint completes no BayRing orders.
18. Most of BayRing's orders have been given a non fatal order status. This status has been referred to by FairPoint as "stuck" orders. All of these stuck orders require manual intervention by FairPoint and as a result BayRing cannot intervene in a productive way to assist these orders to provisioning. Many of these orders have been in the Wisor system for some time. Initially, FairPoint promised that it would process these stuck orders on a "first in first out" basis. Recently, it has recanted on this promise, which certainly raises parity issues.
19. Recently, FairPoint has split its work force in two, with half working the stuck/manual orders and the other half working new orders. This division of labor has resulted in many new orders receiving earlier due dates than orders that have been in queue for a longer period of time. The customers whose orders have been stuck, in effect, are being held hostage as a result of FairPoint's inadequate CLEC OSS.

20. FairPoint has failed to provide BayRing with CLEC OSS for provisioning and billing functions that are adequate, operationally ready, just and reasonable, and nondiscriminatory. For example, BayRing has received false order identifiers such as Provisioning Completion Notices (“PCNs”). This has forced BayRing to dispatch technicians prematurely to confirm the validity of the notice it has received only to have to dispatch additional times to complete the install. Further, after the receipt of a PCN a false Billing Completion Notice (BCN) in some cases this will result in the end-user customer being billed by two carriers. Additionally, BayRing will be required to audit the billing on all orders to verify the correct billing completion date has been manually corrected as FairPoint has stated it will do.
21. BayRing has encountered additional difficulties in connection with FairPoint’s CLEC OSS for billing functions. First, all of the billing disputes with FairPoint that were pending in the system at the time of cutover have been lost. As a result, BayRing was required to spend time and resources to reenter each dispute. Additionally, FairPoint’s CLEC OSS for billing does not have provided a single credit to BayRing for PAP payments due from previous months.
22. Since the cutover, FairPoint also has failed to implement the hot cut process that it agreed to create in connection with the Commission’s review. This has resulted in failed coordinated cuts, often leaving the customer out of service. FairPoint presented a manual process as a work around to this issue but even this work around fell to the wayside in less than one week following its roll out.

23. As explained in the paragraphs above, FairPoint's CLEC OSS for preordering, ordering, provisioning, maintenance and repair, and billing functions is not adequate, is not operationally ready, and is not just and reasonable and nondiscriminatory. FairPoint's failure to provide BayRing with adequate, operationally ready, just and reasonable and non-discriminatory access to OSS for these essential functions violates the Transfer Order, the CLEC Settlement Agreement, New Hampshire RSA 374:1, FairPoint's wholesale tariff, the metrics and standards in the C2C guidelines and PAP, and sections 251 and 271 of the Telecommunications Act.
24. FairPoint's failure to provide BayRing with CLEC OSS that is adequate, operationally ready, just and reasonable, and non-discriminatory has caused BayRing to lose substantial revenue and has required BayRing to incur substantial costs, expenses and the expense of other resources. This loss of revenue and increase in costs, expenses and resources is the direct result of the transaction and would not have been incurred in the ordinary course of business.
25. Under RSA 365:1 any person may make a complaint by petition to the Commission against a public utility for the utility's conduct which the complainant believes is in violation of any provision of law, the terms and conditions of the utility's franchise or charter, or any order of the Commission. As set forth above, BayRing believes that FairPoint has violated the conditions of the Commission's *Transfer Order*, the CLEC Settlement Agreement, RSA 374:1, FairPoint's wholesale tariff, the C2C Guidelines and the PAP, and sections 251 and 271 of the Telecommunications Act.

WHEREFORE, BayRing respectfully requests that this honorable Commission:

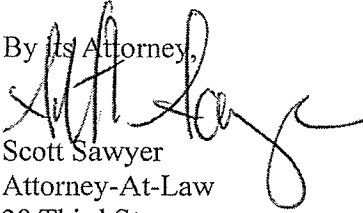
- A. Pursuant to RSA 365:2, order that FairPoint satisfy the matters complained of herein by ensuring that it: i) immediately provide BayRing with access to CLEC OSS that is adequate, operationally ready, just and reasonable, and nondiscriminatory and ii) pay compensation and reparations to BayRing;
- B. Order FairPoint to answer this Complaint in writing as soon as possible;
- C. Institute an investigation for the purpose of determining: i) whether FairPoint's CLEC OSS is adequate, operationally ready, just and reasonable and nondiscriminatory, ii) consistent with page 78 of the *Transfer Order*, determine the amount of compensation that FairPoint owes BayRing in connection with the substantial lost revenues and substantial and extraordinary increased costs, expenses and resources that BayRing has incurred in connection with FairPoint's failure to provide BayRing with access to CLEC OSS that is adequate, operationally ready, just and reasonable and nondiscriminatory, iii) the amount of due reparations to be made by FairPoint under the provisions of RSA 365:3, 365:4 and 365:29, iv) whether FairPoint should be permitted to continue issuing dividends until such time as it demonstrates to the Commission that it has fixed its CLEC OSS; v) whether FairPoint should be fined for failing to provide CLEC OSS that complies with

its legal obligations, and vi) whether the Commission should recommend to the FCC that FairPoint's 271 authority be revoked;

D. Grant such further relief as it deems appropriate.

Respectfully submitted,

Freedom Ring Communications, LLC
d/b/a BayRing Communications

By its Attorney,

Scott Sawyer
Attorney-At-Law
38 Third St.
Barrington, RI 02806
(401) 289-0324