

**STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
INTER-DEPARTMENT MEMORANDUM**

Date: August 14, 2009

TO: Commissioners
FROM: F. Anne Ross, Hearing Examiner
RE: DT 09-113, Petition of FairPoint Communications-NNE
For Waiver of Certain Requirements under the Performance Assurance Plan

HEARING EXAMINER'S REPORT

At your request, I presided over the August 13, 2009 prehearing conference in the above referenced case.

On June 10, 2009, Northern New England telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) petitioned for a waiver of certain requirements under the Performance Assurance Plan (PAP), specifically FairPoint's obligation to pay competitive local exchange carriers (CLECs) bill credits for the months of March, April, May and June of 2009. On June 26, 2009, Freedom Ring Communications d/b/a BayRing Communications (BayRing) filed a request that the Commission order FairPoint to continue making the required payments or bill credits under the PAP and on July 7, 2009, BayRing, joined by One Communications, segTEL, In. and CRC Communications of Maine, Inc., filed a motion seeking imposition of civil penalties on FairPoint for ceasing to provide bill credits.

On August 7, 2009, FairPoint filed a supplement to its original petition in which it withdrew its waiver request and instead requested an adjustment to reduce the total dollars at risk under the PAP by 65% to \$29.96 million across the three northern New England states, Maine, New Hampshire and Vermont.

Appearances

Harry N. Malone, Esq. for FairPoint
Alan M. Shoer, Esq. for BayRing
Paula W. Foley, Esq. for One Communications
Trina M. Bragdon, Esq. for CRC Communications of Maine, Inc.
Jeremy Katz for segTEL, Inc.
Chris Hodgdon, for Comcast Phone of New Hampshire, LLC
Robert Hunt, Esq. for Commission Staff (Staff)

Intervention Requests

BayRing
One Communications
CRC Communications of Maine, Inc.
segTEL, Inc.
Comcast Phone of New Hampshire, LLC
BCN Telecom, Inc.
DEICA Communications, Inc. d/b/a Covad Communications Company

All intervenors indicated in their filings that they are operating as competitive local exchange carriers in New Hampshire. There were no objections, either filed or entered at hearing, to any of the requested interventions.

Motion for Civil Penalties and Request for Order Requiring Payments or Credits

At hearing FairPoint indicated that it had withdrawn its request for a waiver of PAP bill credits or payments. The CLEC intervenors did not press their earlier motion or their request for a Commission order requiring FairPoint to continue making PAP payments while this proceeding is pending. None of the CLECs indicated that they were not receiving PAP payments from FairPoint, however, the CLECs did not withdraw their motion for civil penalties, nor their request for an order requiring FairPoint to continue making PAP payments.

Scope of the Proceeding

The CLEC intervenors argued that FairPoint's supplemental filing in this proceeding is really a substitute filing and is beyond the scope of the issues noticed in the original order of notice. FairPoint disagreed with this assertion. Staff supported the CLEC position that FairPoint's withdrawal of its waiver request and substitution of a request to amend the PAP was not properly noticed in the original order of notice.

Technical Session

The parties met in a technical session following the prehearing conference and developed a proposed procedural schedule. The proposed schedule allows for a supplemental order of notice and recommends a Commission decision on briefs unless a party requests a hearing on or before September 22, 2009.

Recommendations

I recommend that all requested interventions be granted without condition.

I recommend the Commission approve the proposed procedural schedule.

I recommend that the Commission require that FairPoint issue and publish a supplemental order of notice describing its supplemental request for relief.

I recommend the Commission defer ruling on pending CLEC motions and requests for an order requiring PAP payments until a further record is developed on these issues.

By 
F. Anne Ross, Hearing Examiner