

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**

EMERGENCY MOTION FOR ENFORCEMENT OF COMMISSION ORDER

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) and requests that the Commission enforce compliance with its Order No. 25,319 dated January 20, 2012 ("2012 CCL Order") in which it determined that changes to FairPoint's Carrier Common Line rate would be effective as of January 21, 2012 and not before. The opposing parties in this proceeding have failed to pay lawful CCL charges incurred prior to January 21, 2012 and, in some cases have failed to pay the reduced rates following that date. FairPoint has been harmed and continues to be harmed by this continued self-help. However, an even more pressing concern is that, because of a recent ruling by the Federal Communications Commission ("FCC"), FairPoint may suffer significant and possibly irreparable harm if payment is not received by March 31, 2012. Accordingly, FairPoint submits that emergency relief is merited, in the form of an order compelling payment of past due CCL charges by that date or establishment of such other arrangements by individual opposing parties as are acceptable to FairPoint.

On April 28, 2006, Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) filed a petition requesting that the Commission investigate the practice of FairPoint's predecessor in interest, Verizon New Hampshire (Verizon), of imposing access charges, including Carrier Common Line ("CCL") access charges, on calls which originate on BayRing's

network and terminate on wireless carriers' networks, *i.e.* do not involve a Verizon/FairPoint end user. Over time, the Commission granted the petitions to intervene of AT&T Corp., CRC Communications of Maine, Inc., EarthLink Business (and its constituent companies), Global Crossing Telecommunications, Inc. (a Level 3 company), Otel Telekom, Inc., Qwest Communications Co., segTEL, Inc., Sprint Communications Company, L.P. and Sprint Spectrum, L.P. On January 20, 2012, the Commission issued its 2012 CCL Order in which it ordered FairPoint to amend its tariff, effective on January 21, 2011, "to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services."¹ The Commission held that it had no statutory or other lawful authority to impose these revisions retrospectively. Accordingly, the lawful rate of the CCL charge up to January 20, 2012 was the rate that FairPoint had been charging since it had stepped into Verizon's shoes.

Pending the 2012 CCL Order, several of the competitive carriers had engaged in self-help and had not paid the CCL charges that they had been billed. Furthermore, even though FairPoint has revised its CCL rate in accordance with the terms of the 2012 CCL Order, many carriers continue to withhold payment. Consequently, with the issue of the lawfulness of FairPoint's tariff decided in an effective order of the Commission, the competitive carriers have no colorable grounds to withhold payment, if they ever did.

Currently, the total past due balance of all of the CCL charges at issue is \$2,157,390.43.² Furthermore, if the carriers' refusal to pay continues through March 31, 2012, FairPoint will suffer additional, possibly irreparable harm due to a recent decision of the FCC. On November 18, 2011, the FCC released its Report and Order and Further Notice of Proposed Rulemaking

¹ Order *Nisi* at 2.

² Outstanding amounts by individual carrier are listed on confidential Exhibit 1, the unredacted version of which is being filed separately with the Commission under a Motion for Confidential Treatment.

regarding the Connect America Fund.³ Among many other things, this *USF/ICC Order* requires FairPoint to cap its interstate and intrastate switched access and reciprocal compensation rates as of December 29, 2011, and to reduce its rates for termination and transport rates to bill-and-keep within six years.⁴

The *USF/ICC Order* does provide for a transitional recovery mechanism which permits FairPoint to recover a portion of this reduced revenue, subject to limitations, through a restricted access recovery charge (“ARC”) on end user services and, to the extent that the ARC limitations do not enable sufficient recovery, by distributions from the Connect America Fund. However, the amount of this transitional recovery will decline each year from a set baseline, beginning with 10% reduction effective July 2012, followed by further 10% reductions each year through 2017.

This baseline will be established based on revenues that were billed in Fiscal Year 2011 (i.e. October 1, 2010 to September 30, 2011) and which have been *collected* by March 31, 2012.⁵ The rule regarding the baseline makes no exception for revenue that was withheld or uncollected due to a billing dispute (good faith or otherwise) and the type of self-help that the competitive carriers have engaged in. Thus, if the carriers continue to withhold payment, and this refusal continues past March 31, 2012, FairPoint’s baseline will be lowered and it will suffer concrete harm by the resulting reduction in the amount of transitional recovery for which it is eligible. Furthermore, even though FairPoint plans to take legal action against parties who force such a result by their failure to pay, there is no assurance that this harm will not be irreparable.

³ Connect America Fund, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Order*”).

⁴ *Id.* ¶ 801.

⁵ *Id.* ¶ 880.

Consequently, it is imperative that the Commission direct the payment of all past due CCL charges by March 31, 2012. Not only is it in the public interest for the Commission to ensure that FairPoint, the carrier of last resort in much of the state, is able to recover its costs to the greatest lawful extent, but the balance of harms also heavily favors FairPoint. Without this payment, FairPoint will suffer a permanent reduction in its recoverable costs. However, if in the unlikely event that FairPoint's CCL rate prior to January 21, 2012 is reduced on appeal, then the Commission simply can order reparations in accordance with RSA 365:29.

FairPoint also emphasizes that all payments by the competitive carriers must include late payment penalties of .0005 of the outstanding amount per day. Not only is this authorized by Section 4.1.2 of FairPoint's Tariff No. 3, but it is consistent with the views of various parties to this proceeding who have argued that the time value of money must be factored into any compensation dictated by this proceeding. For example, Sprint has recommended that a guiding principle for the Commission must be the elimination of unjust enrichment, asserting that "Verizon would be unjustly enriched if allowed to keep the interest it earned on funds it improperly collected."⁶ FairPoint submits that the same guiding principle would apply to interest that the competitive carriers earned on funds they improperly withheld from FairPoint. BayRing also invoked principles of "fundamental fairness" in advocating interest of .0005 per day on improperly collected charges, "the same interest rate . . . impose[d] on [Verizon's] customers when they unsuccessfully dispute their access charge bills."⁷ Sprint believes that the interest rate to be applied is governed by R.S.A. 336:1 (*i.e.* the rate published by the Administrative Office of the Courts),⁸ although it "would certainly welcome such higher rate as the Commission may

⁶ Sprint Brief at 2-3 (Dec. 19, 2008).

⁷ BayRing Phase II Brief at 10-11 (Dec. 19, 2008).

⁸ Sprint Brief at 3.

deem to be appropriate. . . .”⁹ Global Crossing went even further, recommending that “Verizon’s cost of capital should, at a minimum, be used to calculate interest.”¹⁰ AT&T goes so far as to recommend that “[a]t a minimum, the Commission should award interest for such payments over such period at Verizon’s approved rate of return.”¹¹ Accordingly, there is ample justification for the Commission to find that unpaid bills by the competitive carriers are subject to a late payment penalty of, at a minimum, .0005 per day.

For the reasons described herein, and to prevent further harm to FairPoint, FairPoint requests that the Commission enforce the 2012 CCL Order and direct that the competitive carriers make payment of all past due CCL charges as described in the attached Exhibit 1 or establish such other arrangements as are acceptable to FairPoint.

Respectfully submitted,

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

By Its Attorneys,
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Dated: March 15, 2012

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⁹ Sprint Brief at 6.

¹⁰ Global Crossing Brief at 8-9 (Dec. 18, 2008).

¹¹ AT&T Phase 2 Brief at 2 (Dec. 19, 2008).

CERTIFICATE OF SERVICE

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

Dated: March 15, 2012

By: 

Harry N. Malone, Esq.