

**STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION  
DT 09 - \_\_\_\_\_**

Freedom Ring Communications d/b/a BayRing Communications (“BayRing”) and segTEL, Inc. (“segTEL”) hereby request that the New Hampshire Public Utilities Commission (“Commission”) initiate a proceeding to coordinate the development and implementation of a modified Performance Assurance Plan (“PAP”) for New Hampshire, as required by contractual agreements between BayRing/segTEL and Northern New England Telephone Operations LLC d/b/a FairPoint Communications NNE (“FairPoint”) and as required by the Commission.

BayRing/segTEL further request that the Commission require FairPoint to continue to report on the metrics required under the existing PAP, and that such reporting and all associated bill credits required under the existing PAP are maintained during the pendency of these proceedings to implement a new PAP.

Further, BayRing and segTEL request that the Commission establish the proper treatment for those measures for which FairPoint did not request a waiver, but which FairPoint fails to report.

BayRing/segTEL are seeking Commission intervention in this matter to ensure that FairPoint acts in good faith with the CLECs, through collaboration towards a simplified PAP, under the supervision of the Commission. BayRing/segTEL are seeking Commission intervention in this matter for the following reasons:

1. FairPoint’s initial proposal decreases penalties for poor service by 99% through a combination of metric changes, deletion of measures, reallocation of dollars at risk, and an overall reduction of dollars at risk.

2. BayRing and segTEL believe FairPoint's proposal is evidence that FairPoint is not collaborating in good faith with the CLECs towards a simplified C2C metrics and PAP for New Hampshire.

3. FairPoint's actions with regard to the PAP, such as its withholding of bill credits to the detriment of the CLECs, and without Commission authorization, its unilateral requests for waivers and suspensions of reporting and penalties, as more fully described below, do not suggest FairPoint is working with the CLECs in good faith.

4. BayRing and segTEL believe that dollars at risk is not an appropriate topic for the CLEC Collaborative, as it is likely to bog down discussions and make it more difficult for the collaborative process to develop a simplified C2C and PAP.

5. BayRing and segTEL believe that "dollars at risk" in the simplified PAP should only be determined by this Commission, and only after the Commission has had an opportunity to establish that the PAP is an accurate indicator of wholesale performance, by means of an audit of the C2C and PAP measurements.

6. FairPoint has made several efforts to cut CLEC Collaborative discussions off at the pass by submitting partial changes and proposals to this Commission.

7. BayRing and segTEL believe that for the CLEC Collaborative to be successful, the Commission needs to establish certain ground rules, as set forth herein to ensure that all parties act in good faith in this effort.

## **I. BACKGROUND TO THE NEW HAMPSHIRE PAP**

1. The PAP for New Hampshire was approved by the Commission as part of the wholesale service protections necessary in Verizon's application for authority to provide interLATA service under 47 U.S.C. § 271.

2. The terms of the New Hampshire PAP were enacted pursuant to the Commission's Order of March 29, 2002 in Docket No. DT 01-006 (No. 23,840) and its May 24, 2002 Order On Reconsideration in Order No. 23,976. As a result of these Orders, Verizon was obligated to implement the PAP and was subject to any penalties associated with the PAP.

3. Pursuant to 47 U.S.C. § 271, the FCC granted approval to Verizon to provide InterLATA services in New Hampshire. In its order, the FCC found that the Performance Assurance Plan (PAP) currently in place in New Hampshire will provide assurance that the local market will remain open after Verizon receives section 271 authorization.

4. Verizon's obligations under the PAP are applicable to FairPoint as a result of approval by the Commission of FairPoint's purchase of Verizon's network assets in New Hampshire, and the requirements of certain agreements and conditions associated with that purchase, as more fully described in the Commission's Order No. 24, 823 in Docket No. DT-011 (February 25, 2008).

5. On October 17, 2007, FairPoint Communications NNE ("FairPoint") concluded weeks of negotiations with Freedom Ring Communications d/b/a BayRing Communications, segTEL and Otel Telekom, Inc., culminating in the presentation to the Commission of a "Settlement Stipulation" and specific terms of an agreement ("CLEC Settlement Agreement").

6. In the CLEC Settlement Agreement, the signatory CLECs (including BayRing/segTEL) agreed to withdraw their active opposition to the FairPoint/Verizon petition in DT-07-011. In exchange for the CLECs support, FairPoint agreed to continue certain fundamental wholesale conditions, including, among other things, to “be subject to the Performance Assurance Plan (“PAP”) in effect as of the Merger closing date.”

7. In the CLEC Settlement Agreement, FairPoint also agreed to work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to FairPoint in Maine, New Hampshire and Vermont. CLEC Settlement Agreement at 6(c).

8. The only modification to the PAP applicable to FairPoint on the Merger date is contained in the terms of the agreement at 6(d), where the parties agreed that reporting obligations and penalties under the PAP or C2C Guidelines will be “temporarily suspended” for one month, and only one month. CLEC Settlement Agreement at 6(d).

9. FairPoint also agreed in the CLEC Settlement that the PAP that was “in effect as of the Merger closing date” would govern metrics reporting and any associated penalty payments due and owing to the CLECs, including the applicable dollars “at risk” in the event of poor service quality as measured by the PAP/C2C

10. FairPoint’s commitments in the CLEC Settlement Agreement were also incorporated into a settlement agreement between FairPoint and Staff in DT-07-011 and presented by FairPoint to the Commission for Commission approval.

11. The Staff Agreement incorporates the CLEC Agreement and also includes its own wholesale provisions as well, calling for FairPoint to pay for an independent audit of the PAP (as stated in ¶ 9.4 of the FairPoint/Staff Settlement Agreement dated January 23, 2008 in DT-07-

011) In ¶ 9.4 of the FairPoint/Staff Agreement, FairPoint agreed to pay for an independent audit of the simplified PAP, if completed by June 1, 2010 and if not so completed to pay for an independent audit “of the existing wholesale assurance plan.”

12. On February 25, 2008, after reviewing the settlement agreement and the stipulations incorporating the CLEC Settlement in detail, the Commission approved the FairPoint/Verizon petition in DT-07-011, Order No. 24,823 (“Approval Order”) but only after requiring as a condition to its approval that FairPoint abide by its contractual commitments reached in the CLEC Settlement Agreement, including FairPoint’s agreement to “be subject to the Performance Assurance Plan (“PAP”) in effect as of the Merger closing date.”

13. The Merger closing date occurred on April 1, 2008. The PAP that was “in effect” on that date is the PAP approved by the Commission in Docket DT 05-096 in Order No. 24,504 (dated Aug 19, 2005). *See also* the Staff notation on the Commission’s web page, at <http://www.puc.state.nh.us/Telecom/clecs.htm>.

## **II. FAIRPOINT ACTIONS REGARDING THE PAP AFTER THE CLOSING DATE**

14. After the Merger closing date FairPoint implemented several efforts to avoid its responsibilities agreed to in the CLEC Settlement Agreement and as ordered by the Commission.

15. First, on March 26, 2009 in Docket DT-09-059, FairPoint requested authority to waive certain PAP metrics temporarily and other PAP metrics permanently from a PAP document never approved by the Commission and contrary to what FairPoint agreed to in the CLEC Settlement Agreement. This matter is still pending.

16. Second, and without authorization from the Commission, FairPoint ceased reporting on required metrics and ceased making required PAP payments or bill credits to

CLECs, forcing the CLECs to file complaints with the Commission requesting that FairPoint adhere to its PAP obligation. FairPoint continues to refuse to provide the required metrics reporting that is required under the NH PAP.

17. FairPoint has an obligation, imposed by the Commission pursuant to its Order in DT 07-011, requiring that FairPoint comply with all the terms of the NH PAP, including reporting of its performance under existing metrics and providing CLECs specified payments and/or bill credits. See also Orders No. 23,940 and 23,976 in Docket DT 01-006. Moreover, the PAP is of critical importance to ensuring fair, just and nondiscriminatory access to wholesale services and FairPoint is not authorized to pick and choose what it will, and what it will not report under the PAP. See Order No. 24, 823 at pg. 76.

18. On June 10, 2009, FairPoint filed a petition in DT-09-113 seeking additional waivers of required PAP payments. That matter is also pending review on various Motions to Dismiss. FairPoint also filed a “Supplemental Petition” in Docket No. DT-09-113 on August 7, 2009, requesting that the current PAP be modified by reducing the “dollars at risk” by 65% and to allow FairPoint to retroactively receive back PAP credits made and processed to CLECs since January 1, 2009. That matter is pending review of the CLECs Motions to Dismiss.

### **III. ACTIVITY REGARDING THE COLLABORATION TOWARDS A SIMPLIFIED PAP FOLLOWING THE MERGER CLOSING DATE**

19. The CLEC Agreement calls for FairPoint to work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to FairPoint in Maine, New Hampshire and Vermont. FairPoint agreed to begin this process by proposing for consideration by the CLECs a modified PAP that could be implemented in all three states. CLEC Agreement, section 6.c.

20. On June 19, 2009 and October 1, 2009 the CLECs participated with FairPoint in teleconferences to discuss the proposed simplified PAP.

21. On September 16, 2009, FairPoint submitted a proposed simplified PAP to CLECs in all three states. FairPoint also filed its proposed simplified PAP with the Maine Commission; however it is not known if FairPoint filed its proposed simplified PAP with the New Hampshire Staff or Commission.

22. On October 13, 2009, the Maine Commission opened its own investigation for purposes of reviewing and approving a simplified PAP. See Notice of Investigation in Docket 2009-334 (October 13, 2009) and Procedural Order issued on October 13, 2009 in Docket Nos. 2007-67; 2009-166; 2009-291; and 2009-334.

23. On October 16, 2009, FairPoint posted an “Industry Notification – Accessible Letter” (PRC 0043-10162009) on its web site. Attached to this notice was a redline version of the current PAP/C2C reports for ME, NH, and VT showing the metrics FairPoint is proposing to remove as part of its simplified PAP. The Industry Notification PRC 0043-101162009, and the spreadsheets attached to the Notification, provide a comparison showing the aggregate penalties FairPoint was assessed under the current PAP/C2C for August 2009 and the penalties FairPoint would have been assessed for the same month under its proposed modified PAP. Incredibly, FairPoint’s proposal would reduce penalties owed to CLECs for poor service by more than 99%.

24. The CLECs will continue to work on the metrics and allocations of bill credits and will continue to participate in the teleconferences. However, BayRing/segTEL believe that the Commission should establish a separate docket to set the ground rules for the development and implementation of the simplified PAP.

25. The Commission has authority under RSA 365:40 to require FairPoint to abide by the Orders of the Commission implementing the existing PAP in effect in New Hampshire, and to implement the conditions imposed by its Order approving the FairPoint/Verizon transactions. The Commission further has authority under RSA 365:41 to issue appropriate penalties for the failure of FairPoint to abide by its Orders.

WHEREFORE, BayRing/segTEL request that the Commission:

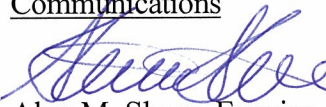
- a. Open this Docket to oversee and approve the simplified PAP required by the CLEC Settlement Agreement and the Commission's Order in DT-07-011;
- b. Require FairPoint to continue to report on all required metrics under the existing PAP/C2C unless or until modified in an approved simplified PAP.
- c. Require FairPoint to continue to provide bill credits as required and determined under the existing PAP/C2C.
- d. Establish the proper Scope of the Collaborative so that all the parties understand that the appropriate "dollars at risk" under the simplified PAP will be a matter for the Commission to establish, in the context of a fully-audited FairPoint PAP.
- e. Declare that any metric which FairPoint should be measuring and reporting under the existing PAP, and which FairPoint fails to measure and report (either because it isn't providing the "measurable" service, or because it never set up the metric in its systems) be considered a complete miss under the PAP/C2C, and require that penalties be assessed at the maximum rate for that metric.



f. Order such other relief and take all other measures as the Commission deems appropriate with regard to the PAP in effect and the transition to the simplified PAP.

Respectfully submitted,

Freedom Ring Communications d/b/a BayRing  
Communications

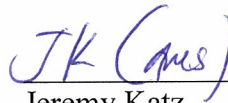


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