

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of)	
)	
FREEDOM RING COMMUNICATIONS, LLC)	DT 06-067
D/B/A BAYRING COMMUNICATIONS)	
)	
Complaint Against Verizon New Hampshire)	
Re: Access Charges)	

RESPONSE OF GLOBAL CROSSING TELECOMMUNICATIONS, INC.

Global Crossing supports the Commission’s August 11, 2009 Order *Nisi*¹ and opposes FairPoint’s August 28, 2009 Comments in response.² During Phase I of this proceeding, the Commission developed an extensive record and concluded, appropriately, that a carrier common line (“CCL”) charge should not be imposed on switched access traffic that does not traverse a common line belonging to Verizon (now FairPoint).³ The New Hampshire Supreme Court later ruled that the *language* of Tariff 85, strictly interpreted, allows the imposition of a CCL charge for such traffic, but the court also held that whether such a charge should be allowed going forward was a matter for the Commission to decide.⁴ Based on that ruling, the Commission rightly decided in the Order *Nisi* that FairPoint should modify its tariff prospectively to ensure the CCL charge is not imposed on calls that do not go over FairPoint common lines.

In its Comments, FairPoint says it will make the modifications the Commission requires to Tariff 85 but will, at the same time, “recover[] the shortfall through increases in other access

¹ Order No. 25,002 (Aug. 11, 2009) (“Order *Nisi*”).

² Comments and Conditional Request for Hearing of Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE (Aug. 28, 2009) (“FairPoint Comments”).

³ Order No. 24,837 at 27 (Mar. 21, 2008).

⁴ *Appeal of Verizon New England, Inc.*, 972 A.2d 996 (N.H. 2009).

rate elements.”⁵ The Order *Nisi*, however, does not permit FairPoint to increase its other access rate elements; rather, it requires the company to forego the CCL revenue that its tariff currently allows for calls that do not traverse its common lines. FairPoint’s proposed changes would therefore be contrary to the Order *Nisi* as well as the Commission’s finding in Phase I that recovery of common line costs is unwarranted in the context of calls that do not traverse FairPoint common lines. For this reason, the Commission should reject any modifications to Tariff 85 that increase FairPoint’s other access rates.

In its Comments, FairPoint attempts to identify certain infirmities with the Order *Nisi* so as to argue it is under no obligation to make any tariff modifications. There are, however, no such infirmities with the Order *Nisi* or the changes it requires to Tariff 85. Specifically, FairPoint states that prospective tariff revisions are outside the scope of this proceeding and that it has therefore been deprived of its right to notice and hearing under RSA 365:4.⁶ But FairPoint goes on to make detailed arguments based on the record from Phase I that its CCL charge is valid. In fact, FairPoint cites to specific pages from the hearing transcript and to testimony from Verizon’s witness concerning what costs the CCL charge was designed to recover.⁷ It is therefore inconsistent and incorrect for FairPoint now to argue that there has been no hearing on this subject when clearly a hearing has already taken place and has provided the basis for FairPoint’s arguments against making changes to Tariff 85.⁸ The fact is that the Commission

⁵ FairPoint Comments at 6.

⁶ *Id.* at 2.

⁷ *Id.* at 3-5.

⁸ FairPoint claims that a procedural order from November 2006 removed the issue of prospective tariff modifications from the proceeding. *Id.* at 2. However, this does not change the fact that a hearing on this matter has clearly taken place and that the parties were well aware of the issues involved from the start of this proceeding. See Order *Nisi* at 2 (“The order of notice in this proceeding established that in the event Verizon’s interpretation of the current tariffs was found

held a hearing, weighed the evidence and decided to require prospective tariff modifications.

FairPoint now appears to be challenging that decision on procedural grounds simply because it disagrees with the Commission on the merits.

FairPoint also seems to believe that, because the New Hampshire Supreme Court ruled that the current language of Tariff 85 allows a CCL charge on all calls, the Commission cannot now order prospective tariff changes.⁹ The Supreme Court's decision, however, only addressed what the tariff, *as currently written*, allows; it did not in any way prohibit the Commission from ordering prospective changes to the tariff based on the Commission's regulatory authority.¹⁰

Clearly the record in this proceeding, as evidenced by FairPoint's discussion of it in its Comments, addresses the issue of what costs should be recovered through the CCL charge and in what manner. That the Commission has now ordered prospective changes to Tariff 85 based on its evaluation of that record is not at all inconsistent with the Supreme Court's decision, RSA 365:4 or any other legal requirements just because FairPoint disagrees with the Commission's conclusions.

Finally, FairPoint argues that the Order *Nisi*'s required tariff modifications would amount to a "confiscation" if FairPoint is not allowed to recoup its revenue losses.¹¹ This, according to FairPoint, would raise state and federal constitutional concerns and would be a breach of the Commission's agreement not to seek a wholesale rate decrease from FairPoint for three years

to be reasonable, the Commission would decide whether any prospective modifications to the tariffs are appropriate."'). Moreover, the Commission has given interested parties an opportunity to comment on its decision in the Order *Nisi*. *Id.* at 3. Whether that opportunity is part of this proceeding or a new proceeding with a different docket number should be of no consequence.

⁹ See FairPoint Comments at 4.

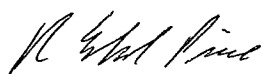
¹⁰ See *Appeal of Verizon New England*, 972 A.2d at 1001 ("If the tariff should be amended, it should be amended as a result of regulatory process, and not by a decision of this court.").

¹¹ FairPoint Comments at 6.

following the approval of a settlement in DT 07-011.¹² These arguments are all incorrect. The Commission has concluded, based on the record in this proceeding, that FairPoint should not be entitled to recover its common line costs on traffic that does not traverse common lines. Requiring FairPoint to modify its tariff accordingly is not a “confiscation” but merely an exercise in the Commission’s lawful ratemaking authority. Nor is it a breach of the settlement agreement in DT 07-011. That settlement agreement required FairPoint to cap, and other interested parties not to seek a decrease in, UNE and *special* access rates.¹³ The rates at issue in this proceeding are for *switched* access and are not part of the commitments in the settlement agreement.

For the foregoing reasons, it is clear the Commission has made a reasonable determination in the Order *Nisi* based on the record in this proceeding that is procedurally and legally sound. Global Crossing therefore supports the Order *Nisi*’s requirement that FairPoint revise Tariff 85 to eliminate the CCL charge for certain calls and respectfully requests that the Commission deny FairPoint’s other proposed tariff changes that would raise its other access rate elements.

Respectfully submitted,



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¹² *Id.*

¹³ Order No. 24,823, DT 07-011, at 31 (Feb. 25, 2008).