

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
DT 06-067
FREEDOM RING COMMUNICATIONS, LLC d/b/a
BAYRING COMMUNICATIONS

Complaint Against Verizon New Hampshire Re: Access Charges

JOINT MOTION FOR CLARIFICATION AND EXPEDITED RELIEF

NOW COME Freedom Ring Communications, LLC d/b/a BayRing Communications (“BayRing”) and AT&T Corp. (“AT&T”), and respectfully request that the New Hampshire Public Utilities Commission (“the Commission”) expeditiously issue an order clarifying that:

- a. The issues, process and procedural schedule set forth in Order No. 25, 016 (September 23, 2009) apply only to the portions of FairPoint’s September 10, 2009 filing that propose a wholly new “Interconnection Charge” in Sections 6 and 30; and
- b. The exclusion of FairPoint’s proposed changes to Section 5 from the process established in Order No. 25,016, has the legal effect of permitting the proposed Section 5 changes to go into effect on October 10, 2009, in accordance with their terms and as a matter of law.

Given that there are no objections to FairPoint’s proposed changes to Section 5, the Commission has not rejected or amended them, and nothing in FairPoint’s September

28, 2009, filing relates to Section 5, such changes should go into effect as proposed and as a matter of law.

In support of this motion, BayRing and AT&T state as follows:

1. On August 11, 2009, the Commission issued Order No. 25,002 in the above-captioned docket. Among other things, that Order required FairPoint to file revisions to its NHPUC Tariff No. 85 within 30 days to clarify that FairPoint shall impose the CCL charge only when a FairPoint common line is used in the provision of switched access services.

2. On September 10, 2009, FairPoint filed revisions to its NHPUC Tariff No. 85. The cover letter submitted by FairPoint with that filing stated that the revisions relating to the CCL charge were “[i]n compliance with the... Order Nisi in DT 06-067 dated August 8 (sic), 2009...” The cover letter further stated that in conjunction with the above-referenced filing, FairPoint was also making a filing reflecting a revenue neutral adjustment to its switched access rates by increasing the “Interconnection Charge” from \$.00000 to \$.010164 per minute.

3. The Commission issued Order No. 25, 016 on September 23, 2009 which established a procedural schedule culminating with an evidentiary hearing to be held November 4, 2009. None of the issues and process contemplated in Order No. 25,016 and nothing in FairPoint’s September 28th filing relate to approval of a tariff change¹ already ordered by the Commission. Given that there are no objections to FairPoint’s

¹ A tariff change that has been *ordered* is not commensurate with a “proposed” change that requires “supporting documents” from the party already required to file it. Thus, given that page 4 of Order No. 25, 016 indicates that FairPoint must file “supporting documents” with its “proposed tariff change,” this directive does not logically apply to the compliance tariff filing which FairPoint has already been ordered to make (i.e. revisions to certain tariff language relating to the CCL charge.)

proposed language in Sections 5.1, 5.4.1.A. and 5.4.1.C.,² and in the absence of any rejection or amendment by the Commission, FairPoint's proposed changes to the foregoing sections become effective on October 10, 2009, pursuant to the terms of the tariff pages and RSA 378:6, IV.³

4. While the process and procedural schedule contained in Order No. 25, 016 may be appropriate for considering FairPoint's proposed rate increase, they are unnecessary for the consideration and implementation of FairPoint's compliance tariff that makes language changes to reflect the Commission's order that no CCL charge may apply when no FairPoint common line is used. The compliance tariff changes needed to effectuate the requirements of the Commission's August 11, 2009 order are separable and distinct from the proposed rate increase issue and therefore should not be tied to or further delayed by the procedural schedule necessitated by FairPoint's rate filing. With respect to the proposed changes to Section 5, nothing remains to be done. FairPoint's unilateral decision to make a noncompliant filing that goes well beyond the tariff language ordered by the Commission should not be rewarded by a process that delays the institution of the tariff language ordered by the Commission. The tariff changes ordered

² Although the proposed changes are less than perfect, AT&T and BayRing are willing to accept them as effectuating the Commission's intent in Order No. 25,002. In the unlikely event that the Commission should decide that further process is required for consideration of FairPoint's proposed language, BayRing and AT&T reserve their rights to propose further changes to the tariff language. In such an event, AT&T and BayRing urge the Commission to make clear that FairPoint's proposed Section 5 language goes into effect on October 10, as proposed, subject to further review.

³ The Commission has raised the issue of whether FairPoint's filing is properly considered under RSA 378:6, I or IV. This is a legitimate question regarding the proposed changes to Sections 6 and 30 that relate to a *rate* schedule and that propose an *increase* in rates. *See* RSA 378:6, I.(a). There is no doubt, however, that RSA 378:6, I. does not apply to FairPoint's proposed changes to Section 5, which do not propose *any increase* in rates. RSA 378:6, IV, therefore, applies to the Section 5 changes, and under that provision, telephone tariff changes become effective 30 days following their filing unless amended or rejected by the Commission.

by the Commission are separable from the rate increase issue and, therefore, should not be subject to the procedural schedule needed for the consideration of that issue.

5. Given recently published reports of the possibility that FairPoint may soon make a bankruptcy filing, immediate implementation of only the ordered tariff changes is necessary. If FairPoint files for bankruptcy before the ordered tariff revisions are implemented, the possibility exists that further activity in this docket could be stayed pending the resolution of the bankruptcy proceeding. In these circumstances, and given that this docket has been pending for 3 ½ years, the Commission should proceed forthwith to institute the tariff changes it has ordered. FairPoint's proposal to increase other, unrelated, rates should be addressed separately.

6. Nothing in the Commission's prior decisions granted FairPoint authority to propose a rate increase, certainly not by increasing an access rate element that provides no functionality and that has no basis in cost. Any such proposal, therefore, does not comply with *any* Commission order and should be rejected as not properly part of this compliance filing. At a minimum, it should be taken up in accordance with the separate schedule set forth in Order No. 25,016. Certainly, FairPoint should not be allowed to delay compliance with a Commission directive by proposing new charges that trigger statutory requirements of supporting documentation and review.

WHEREFORE, for the reasons discussed above, BayRing and AT&T respectfully request that the Commission:

A. Expediently issue an order clarifying that the issues identified in Order No. 25, 016 and the procedural schedule established therein apply only to FairPoint's proposed revisions to Sections 6.2.1.E. and 30.6.6 of its NHPUC

Tariff No. 85, specifically, the wholly new “Interconnection Charge, and not to the changes in the wording of other sections of that Tariff that eliminate the CCL charge when no FairPoint common line is used;

B. Expeditiously issue an order clarifying that the exclusion of FairPoint’s proposed changes to Section 5 from application of the process established in Order No. 25,016, has the legal effect of permitting the proposed changes to go into effect as a matter of law; and

C. Grant such further relief as it deems appropriate.

Date: October 2, 2009

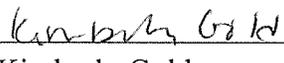
Respectfully submitted,

AT&T CORP.

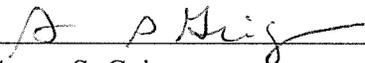
**FREEDOM RING COMMUNICATIONS D/B/A
BAY RING COMMUNICATIONS**

By its attorney

By its Attorneys,
ORR & RENO, P.A.



Kimberly Gold *SSG*
AT&T Services, Inc.
675 West Peachtree Street
Suite 4300
Atlanta, GA 30375
(404) 927-3990 (voice)
(214) 486-8065 (fax)
kg2143@att.com

By: 

Susan S. Geiger
One Eagle Square, P. O. Box 3550
Concord, NH 03302-3550
(603) 223-9154 (voice)
(603) 223-9054 (fax)
sgeiger@orr-reno.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has on this 2nd day of October, 2009 either been mailed first class postage prepaid or e-mailed to the parties named on the Service List in the above-captioned matter.

Kimberly Gold
Kimberly Gold *KG*

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