

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

MOTION FOR LEAVE TO REPLY,
AND REPLY TO JOINT OBJECTION TO MOTION TO CERTIFY
INTERLOCUTORY TRANSFER STATEMENT

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) and respectfully seeks leave to submit the following Reply to the above referenced Joint Objection to FairPoint’s Motion to Certify Interlocutory Transfer Statement by the Competitive Carriers, dated June 3, 2011 (“Joint Objection”). This Reply is for the limited purpose of correcting certain misstatements of fact. Grant of this request will serve the public interest by clarifying the record and, as such, will support the orderly and efficient resolution of matters before the Commission.

In their Joint Objection, the Competitive Carriers asserted that, regarding the Commission’s determination of the question of whether the CCL charge is a contribution rate element, “FairPoint fail[ed] to challenge the finding in its appeal, thereby waiving any right to do so now,”¹ and that “it did not present *any* evidence controverting that finding to the Court, so it is impossible for the Court to have found a preponderance of evidence against that finding.”² Neither of these statements is correct. In their joint Appeal by Petition to the Supreme Court,

¹ Joint Objection at 4.

² *Id.* at 7 (emphasis original).

dated September 8, 2008, Verizon and FairPoint challenged the Commission's determination and cited to record evidence:

[T]he Commission failed to cite any record evidence to support this finding, and the conclusion it draws does not follow from that finding. First, the Commission never found that the CCL Access Charge was *limited* to the recovery of the costs of the local loop. Verizon presented unrebutted evidence that the CCL Access Charge was designed to recover joint and common costs related to its business as a whole, which may include but is certainly not limited to loop costs. *See, e.g.*, Exhibit 15 at 16, 20-21; 7/11/07 Tr. at 11:11-14. The Commission neither rejected this evidence nor cited any opposing evidence that the CCL Access Charge was limited to loop costs.³

This argument was reiterated in Verizon's and FairPoint's Brief, the Appendix to which also provided copies of the relevant testimony and transcript pages.⁴ Furthermore, in their Reply Brief, Verizon and FairPoint devoted an entire section to the argument that uncontroverted evidence showed that the CCL charge was designed as a contribution element.⁵ Thus, notwithstanding FairPoint's position that the Commission's determination was non-dispositive *dicta*, it is clear that this issue has been adequately preserved.

³ Appeal of Verizon New England, Inc., Case No. 2008-645, Appeal by Petition Pursuant to RSA 541:6 at 20 (Sep. 8, 2008) (emphasis original).

⁴ Appeal of Verizon New England, Inc., Case No. 2008-645, Brief of Petitioners-Appellants at 22, Brief App. At 8-14, 44:11-14 (Jan. 29, 2009).

⁵ Appeal of Verizon New England, Inc., Case No. 2008-645, Reply Brief of Petitioners-Appellants at 5-7 (Mar. 20, 2009).

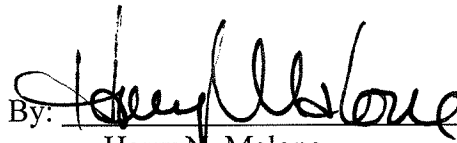
Respectfully submitted,

Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: June 10, 2011

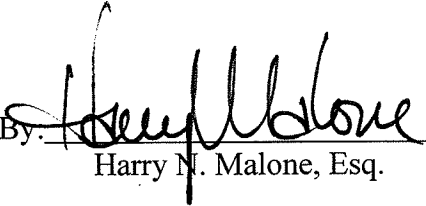
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CERTIFICATE OF SERVICE

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

Dated: June 10, 2011

By:  _____
Harry N. Malone, Esq.