

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Complaint of Freedom Ring Communications,
LLC d/b/a BayRing Communications Against
Verizon New Hampshire re: Access Charges

DT 06-067

**COMPETITIVE CARRIERS' MOTION
TO SUSPEND OR MODIFY PROCEDURAL SCHEDULE AND
FOR EXPEDITED DECISION ON THIS MOTION**

The Competitive Carriers¹ move to modify or suspend that part of the procedural schedule addressing the proposal of Northern New England Telephone Operations, LLC, d/b/a FairPoint Communications – NNE (“FairPoint”) to increase the Interconnection Charge (“IC”) imposed on intrastate switched access services in New Hampshire. The Competitive Carriers further move that the Commission act expeditiously on this motion so as to obviate the need for the Competitive Carriers to file testimony by the currently scheduled deadline of January 17, 2012 (the next procedural step in this docket).

Federal regulations that became effective December 29, 2011 have made unlawful the increase to the IC that FairPoint seeks. The Competitive Carriers have filed a motion to dismiss or for summary judgment on the part of this docket addressing FairPoint’s IC proposal. When the Commission grants the motion to dismiss or for summary judgment, as it must under applicable law, most or all of the remaining schedule in this case — including the prefiled testimony due on January 17th — will become moot.

¹ Choice One of New Hampshire Inc., Conversent Communications of New Hampshire, LLC, CTC Communications Corp., and Lightship Telecom, LLC, all of which do business as EarthLink Business; Freedom Ring Communications, LLC, d/b/a BayRing Communications; AT&T Corp.; Sprint Communications Company, L.P. and Sprint Spectrum, L.P.; and Global Crossing Telecommunications, Inc, a Level 3 company.

Granting this motion would serve the interests of administrative efficiency by saving the Commission and parties the substantial time, effort, and expense of preparing testimony, undertaking discovery, and otherwise complying with the litigation schedule in this docket, which will become unnecessary when the Commission grants the Competitive Carriers' dispositive motion.²

Discussion

In Order No. 25,295 (Nov. 30, 2011), the Commission modified the procedural schedule in this docket and established a dual-track process for addressing the remaining issues in this case. Issues related to FairPoint's compliance with the Order *Nisi* and the elimination of the CCL charge on certain calls, and the effective date when such charges were or will be eliminated, will be decided on briefs filed on December 19, 2011. Order No. 25,295 at 3-5. The procedural steps on that part of the case are complete, but for the Commission's decision.

With respect to the remaining issues of FairPoint's proposed increase to the IC, to which FairPoint claims it is entitled as compensation for the revenues it will not receive once the CCL charge is eliminated, the Commission modified the existing procedural schedule at FairPoint's request. The next steps are:

CLEC rebuttal testimony	1/17/12
Data requests on rebuttal	1/24/12
Responses to rebuttal requests	1/31/12
Technical session	between 2/14/12 and 2/17/12

² This motion to suspend or modify the procedural schedule relating to the IC proposal does *not* affect that part of this docket relating to the Commission's consideration of whether FairPoint has complied with the Commission's directive in the Order *Nisi*, Order No. 25,002 (August 11, 2009), to eliminate the CCL charge on calls that do not involve a FairPoint common line, and the effective date of such compliance. Those issues have been fully briefed and are awaiting a Commission decision. Order No. 25,295 (Nov. 30, 2011) at 4.

Id. at 5-6.

After the issuance of Order No. 25,295, however, federal regulations became effective capping FairPoint's intrastate switched access rates at the levels in effect on December 29, 2011. 47 C.F.R. § 51.907(a); *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 801 & Fig. 9 (released Nov. 18, 2011) ("*Connect America Fund Order*" or "*Order*"). Accordingly, as of December 29th, FairPoint's proposed increase to the Interconnection Charge is prohibited by federal law. Because, as a matter of law, FairPoint is not entitled to the relief it seeks, the Competitive Carriers are filing contemporaneously with this motion a Motion to Dismiss or for Summary Judgment requesting that the Commission dismiss or reject FairPoint's IC proposal.

To continue with the present schedule in this docket will require the parties to address many complex issues in testimony and discovery. These potentially involve: the appropriateness of the IC; the accuracy of FairPoint's calculations; whether FairPoint chose a proper test year; whether adjustments to FairPoint's MOU data should be made; and numerous other issues. The effort required to explore and address these issues will be significant.

Such effort and expense, however, are unnecessary in light of the FCC regulations making FairPoint's proposal unlawful. To file testimony and conduct discovery on an unlawful proposal would be an illogical and inefficient waste of the Commission's and parties' time and resources.

The Competitive Carriers also note that their motion to compel responses to discovery, which FairPoint has opposed, is pending. Granting the Competitive Carriers' motion to dismiss

or for summary judgment will make unnecessary a Commission decision on all or part of the motion to compel as well.

It would save the Commission and parties substantial time and effort to suspend or modify the procedural schedule so as to allow the Commission to decide the motion to dismiss or for summary judgment. If issues remain after the Commission's decision on the motion, a new procedural schedule can be established at that time.

Conclusion

In the interests of administrative efficiency and to conserve the Commission's and parties' time and resources, the Commission should — on an expedited basis — suspend or modify the procedural schedule relating to FairPoint's Interconnection Charge proposal while the Commission is considering the Competitive Carriers' Motion to Dismiss or for Summary Judgment.

January 9, 2012

Respectfully Submitted,

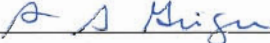
**Choice One of New Hampshire Inc.,
Conversent Communications of New
Hampshire, LLC, CTC Communications
Corp., and Lightship Telecom, LLC,
all d/b/a EarthLink Business**

**Freedom Ring Communications LLC
d/b/a BayRing Communications**

By their attorney,

By its attorney,


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Certificate of Service

I certify that on this 9th day of January, 2012, copies of the foregoing Motion were served by electronic mail or by U.S. mail to the Service List.

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