

**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

AT&T'S RESPONSE TO FAIRPOINT'S MARCH 27, 2012, FILING

On March 15, 2012, Northern New England Telephone Operations LLC d/b/a FairPoint Communications NNE ("FairPoint") filed an Emergency Motion for Enforcement of Commission Order ("Emergency Motion"), asking the Commission to order certain competitive carriers to pay, by March 31, 2012, a total of \$2.1 million in allegedly past due carrier common line ("CCL") charges. The basis for the so-called emergency was FairPoint's contention that it needed to receive these funds by the end of March to take full advantage of a revenue recovery mechanism created by the FCC's *Connect America Fund Order*.¹ A group of the Competitive Carriers² objected to the Emergency Motion on a variety of grounds, and the Commission directed FairPoint to file, "as soon as practicable," documentation verifying the amounts FairPoint alleges it was owed by each carrier under the relevant criteria, and during the relevant time period, set by the *Connect America Fund Order*. Order No. 25,337 (March 23, 2012) at 4, 5.

Accordingly, on March 27, FairPoint filed the Affidavit of Thomas J. Nolting ("Nolting Affidavit") and Exhibit 2, which purport to explain and verify the amounts FairPoint is owed for

¹ *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (released Nov. 18, 2011) ("*Connect America Fund Order*").

² AT&T Corp.; Freedom Ring Communications, LLC, d/b/a BayRing Communications; and Sprint Communications Company, L.P. and Sprint Spectrum, L.P.

past due CCL charges. Exhibit 2 indicates the competitive carriers that are parties to this proceeding owe FairPoint a total of \$2,567,700.88 in unpaid CCL charges for the period of Fiscal Year 2011. Exhibit 2 at 1 and March 27 cover letter.³ The Nolting Affidavit states that other non-parties “have past due amounts, some substantial, that are not reflected in Exhibit 2.” Nolting Affidavit ¶ 4.

Order No. 25,337 also directed the Competitive Carriers to respond within three business days to the documentation provided by FairPoint. Order No. 25,337 at 5. AT&T Corp. (“AT&T”) therefore submits the following response to FairPoint’s March 27 submission:⁴

1. Mr. Nolting’s explanation of Exhibit 2 is not entirely clear, but it appears that the March 27 submission does address several concerns about the Emergency Motion, which were raised in the affidavit that AT&T employee E. Christopher Nurse (“Nurse Affidavit”) submitted in opposition to the Emergency Motion. For example, Mr. Nolting suggests that only “terminating” CCL charges are included in Exhibit 2 (*see* Nolting Affidavit ¶ 3), which is in accordance with Mr. Nurse’s position on what the *Connect America Fund Order* provides. *See* Nurse Affidavit ¶ 12. In addition, the amount of unpaid CCL revenue that Exhibit 2 attributes to AT&T is more than 75 percent less than the amount of unpaid CCL revenue that FairPoint attributed to AT&T in Exhibit 1 to the Emergency Motion. This four-to-one reduction from the amount in Exhibit 1 also is consistent with Mr. Nurse’s position. *See* Nurse Affidavit ¶ 10.

2. The total for AT&T shown in the “CCL Revenue” column on the first page of Exhibit 2 also is fairly close to AT&T’s own calculation of the total amount of “phantom” CCL

³ AT&T has received a partially redacted version of Exhibit 2 that purports to show the amount of CCL revenue that FairPoint attributed to AT&T and the monthly billing information FairPoint used to calculate that amount. Exhibit 2 at 2. AT&T has not seen an unredacted version of Exhibit 2.

⁴ AT&T is aware that, on March 29, FairPoint filed a request to withdraw the Emergency Motion. AT&T nonetheless submits this response to ensure that it has complied with its obligations under Order No. 25,337.

charges FairPoint billed it in Fiscal Year 2011.⁵ AT&T maintains, however, that the Commission cannot now order it to pay this amount to FairPoint because the amount was billed pursuant to a rate that the Commission has repeatedly found to be unjust and unreasonable and, in any event, the imposition of such a payment obligation would be outside the scope of this docket. *See* Competitive Carriers' Objection to FairPoint's Emergency Motion for Enforcement of Commission Order at 7, 10.

3. Other aspects of Exhibit 2 and the Nolting Affidavit are troubling. For example, the total amount of unpaid CCL charges that FairPoint attributes to the competitive carriers, as a group, has increased by more than \$400,000 between the submission of the Emergency Motion and the submission of Exhibit 2. *Compare* Emergency Motion at 2 (stating that Competitive Carriers' past due CCL charges total \$2,157,390.43) *with* Exhibit 2 at 1 and March 27 cover letter (indicating that Competitive Carriers' past due CCL charges total \$2,567,700.88). This existence of this overall increase is curious, given the 75 percent decrease in the amount of unpaid CCL charges that FairPoint attributes to AT&T. FairPoint provides no explanation for these divergent totals, which raises questions about the weight Exhibit 2 should be accorded.

4. In addition, Mr. Nolting indicates that the \$2.5 million unpaid CCL amount shown in Exhibit 2 does not include "substantial" past due amounts owed by other carriers that are not parties to this proceeding. Nolting Affidavit ¶ 4. This is a surprising statement. FairPoint's decision to pursue payment of "phantom" CCL charges only from the carriers that have participated in this docket, while apparently giving other, similarly situated carriers a pass, seems to discriminate among customers without reasonable justification. Moreover, a

⁵ The two numbers are not identical but, without further information about how FairPoint calculated the total in Exhibit 2, AT&T cannot perform a more nuanced analysis. In addition, AT&T expresses no position on the AT&T-specific information FairPoint provides in the "Total SWA Amount Paid" and "Total SWA Amount Billed" columns in Exhibit 2. AT&T addresses here only the "phantom" CCL amounts that FairPoint billed; it does not concede that such amounts are properly owed.

fundamental premise of the Emergency Motion is FairPoint's claim that it will suffer something close to "irreparable harm"⁶ if the Competitive Carriers fail to pay the CCL charges prior to March 31. However, FairPoint's decision not to pursue similar extraordinary relief against non-party carriers that owe it "substantial" past due amounts completely undermines the premise that FairPoint's failure to receive payment would lead to irreparable harm, and provides yet another reason why the Commission should deny the Emergency Motion.

CONCLUSION

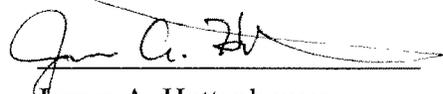
For all of the reasons discussed above, and for the reasons set forth in the Competitive Carriers' Objection to FairPoint's Emergency Motion for Enforcement of Commission Order, the Commission should deny the Emergency Motion.

March 30, 2012

Respectfully Submitted,

AT&T Corp.

By its attorney,

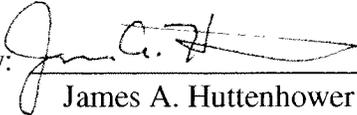


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⁶ As the Competitive Carriers pointed out in their Opposition to the Emergency Motion, FairPoint never actually states that it will suffer irreparable injury if it does not receive payment by the end of March. *See* Competitive Carriers' Objection to FairPoint's Emergency Motion for Enforcement of Commission Order at 9.

CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing Response was forwarded this day to the parties on the service list via electronic mail.

By: 
James A. Huttenhower

Dated: March 30, 2012