

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 06-067

FREEDOM RING COMMUNICATIONS, LLC D/B/A BAYRING COMMUNICATIONS

Complaint Against Verizon New Hampshire Regarding Access Charges

Order on CLEC Motion for Hearing

ORDER NO. 25,295

November 30, 2011

On October 29, 2011, the Commission issued Order Nos. 25,283 and 25,284 in this docket. Order No. 25,283 concluded, among other things, that when Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) filed proposed changes to its tariff on September 10, 2009, it made a single filing, but that different portions of that filing would be subject to different treatment. *See Freedom Ring Communications, LLC d/b/a/ BayRing Communications*, Order No. 25,283 (Oct. 29, 2011) at 30. The Commission determined that the portion of FairPoint's filing concerning an increase to the Interconnection Charge was a voluntary filing made pursuant to RSA 378:6, IV and that it should be withdrawn and treated as illustrative pending further investigation consistent with FairPoint's request. *Id.* at 31. The Commission also determined that the portion of FairPoint's submission amending the terms and conditions of the carrier common line (CCL) charge was made to comply with a Commission order issued pursuant to RSA 378:7 and, therefore, was not subject to certain statutory timeframes for its review. *Id.* at 30-31. That CCL amendment, however, had never gone into effect because "the properly requested hearing on the matter has not been held and the Commission has yet to determine if the changes proposed by FairPoint conform to the

requirements of the Commission.” *Id.* at 31. By Order No. 25,284, the Commission established a procedural schedule for further discovery, technical sessions and testimony in the docket.

On November 10, 2011, Freedom Ring Communications, LLC d/b/a BayRing Communications, Sprint Communication Company, L.P. and Sprint Spectrum, L.P., and AT&T Corp. (collectively the CLECs) filed a motion requesting that the Commission convene a hearing on the portions of the tariff submission relating to the CCL. On November 21, 2011, FairPoint filed a response to the CLECs’ motion which identified the CLECs’ motion more as a request to bifurcate the proceeding and, on that basis, assented in part and objected in part. In addition, on November 29, 2011, FairPoint filed a motion to amend the procedural schedule in which it stated that other parties either assented to the motion, or took no position.

According to the CLECs the issue of whether FairPoint’s tariff filing covering the CCL complies with the Commission’s order is ripe for consideration and no additional discovery is needed for the Commission to render a determination on that issue. In addition, the CLECs contend that the issue of the effective date of the CCL tariff filing is ripe for a decision. According to the CLECs, “These are questions of tariff interpretation and law requiring no discovery, technical sessions or testimony – just argument – as the Commission noted in Order No. 25,284.” CLECs’ Motion for Hearing at 2.

Further, the CLECs contend that any delay that may result from an investigation of the Interconnection Charge should not also delay any determinations relating to the change to the language of the CCL tariff. The CLECs argue that further delay subjects them to on-going uncertainty because they continue to be billed CCL charges improperly. The CLECs, therefore,

request that the Commission “expeditiously” schedule a hearing and issue an order on the CCL filing.

In its response, FairPoint “allows” that although it made a single tariff filing in September 2009, that filing “comprises two separate *questions*” and FairPoint does not dispute that further discovery is unnecessary to decide whether the CCL portion of the filing complies with the Commission’s order. FairPoint Response to Motion for Hearing at 2 (emphasis in original). FairPoint, however, contends that no hearing is needed and that any schedule relating to a decision on the CCL change should be simply for establishing timeframes for briefing on the tariff filing’s compliance with the Commission’s order and its effective date.

FairPoint makes clear that it has taken this position in the interests of economy and ensuring a timely resolution, but it does not concede that the changes to the CCL are separable from an increase in the Interconnection Charge. FairPoint states that it “expects, and reserves all rights to argue, that if any revision of the CCL charge is ultimately required, revenue neutral revisions to the Interconnection Charge should also be established and should be imposed effective the same day [o]n which the CCL charge is revised by the Commission.” FairPoint Response to Motion for Hearing at 4.

Because parties on both sides of the instant matter agree that no further discovery, technical sessions, or testimony are needed regarding: (1) whether the changes to the CCL tariff proposed by FairPoint on September 10, 2009 comply with the Commission’s order; and (2) the effective date of the changes to the CCL tariff, we conclude that addressing those questions in a separate and more expedited process is appropriate. The CLECs have requested that the Commission hold a hearing on the issues, while FairPoint contends that only briefing is needed.

The identified issues relate to matters for which testimony and cross examination would not be needed, and both sides agree these are issues of law for which only argument is necessary. As a result, we do not find that a hearing is necessary and the matter can be decided on the basis of filings by the parties. Accordingly, the Commission will accept briefs addressing:

- (1) Whether the changes to FairPoint's CCL tariff as proposed by FairPoint on September 10, 2009, comply with the Commission's orders requiring FairPoint to amend the CCL provisions in its tariff.
- (2) Presuming the changes identified in question 1 comply, or can be made to comply, with the Commission's orders, what should be the effective date of the amended language in FairPoint's switched access tariff relating to the CCL?

Briefs will be due by the close of business on December 19, 2011. We note that in accepting briefs on the above questions we do not intend to prejudice any other arguments about the Interconnection Charge that may be made later, and do not intend to convey that the Commission has made any determinations about the propriety of the proposed Interconnection Charge or its relationship to the CCL.

In FairPoint's response, at footnote 11, it contends that "a grant of the Motion to any extent would obviate the need for FairPoint to respond to any pending data requests that relate solely to the CCL issue." We have no basis to agree or disagree with the statement and encourage the parties and Staff to informally resolve any issues relating to discovery that may be presented by the instant ruling. We will address any disputes on discovery according to our regular process.

Lastly, with respect to the procedural schedule, in its November 29 motion to amend the schedule, FairPoint contends that modifications are needed to provide it more time to respond to voluminous discovery requests, and to allow other parties more time to respond to the information it will produce. FairPoint contends that the new schedule will enhance the orderly and efficient resolution of this case and will not interfere with the development of the record. In the motion, FairPoint proposes a new procedural schedule and states that AT&T has assented to the motion, Sprint has no objection, Staff, Earthlink, Global Crossing, and CRC take no position, and it had not heard from other parties at the time of filing.

In Order No. 25,284 the Commission noted that changes to the procedural schedule might be needed and that the parties are encouraged to work together to propose appropriate modifications. By this motion most of the parties have proposed modifications to the schedule that are acceptable to Staff and all parties who have contacted the Commission. Accordingly, we conclude that the proposed schedule is acceptable and will adopt it for the remainder of the docket, while also including a new date for the submission of briefs as indicated above. The new procedural schedule will be as follows:

FairPoint update and supplement testimony of Michael Skrivan	11/03/11
CLECs single, joint set of data requests to FairPoint	11/17/11
Briefs on CCL language and effective date	12/19/11
FairPoint responses to data requests	12/21/11
CLEC rebuttal testimony	1/17/12
Data requests on rebuttal	1/24/12
Responses to rebuttal requests	1/31/12

Technical session in lieu of further discovery

between 2/14/12 and 2/17/12

Hearing on the merits

3/8/12

Based upon the foregoing, it is hereby

ORDERED, that the CLECs' Motion for Hearing is GRANTED in part as set out above; and it is

FURTHER ORDERED, that parties shall submit briefs on the above presented questions by December 19, 2011; and it is

FURTHER ORDERED, that the procedural schedule as set out above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 2011.

Clifton C. Below
Clifton C. Below
Commissioner

Amy L. Ignatius (KNS)
Amy L. Ignatius
Commissioner

Attested by:

Lori A. Davis
Lori A. Davis
Assistant Secretary

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	kath@segstel.com
james_white3@cable.comcast.com	katwood@devinemillimet.com
aberry@fairpoint.com	knowlsb@nu.com
alexander.w.moore@verizon.com	matthew.fossum@puc.nh.gov
ashoer@apslaw.com	mcrothfelder@rothfelderstern.com
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gmk@fhllplaw.com	slinn@fairpoint.com
hmalone@devinemillimet.com	ssg@orr-reno.com
jeremy@segstel.com	ted.price@globalcrossing.com
jh7452@att.com	trina.bragdon@ottcommunications.com
karen.potkul@xo.com	
kate.bailey@puc.nh.gov	

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.