

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-069

STEBBINS COMMERCIAL PROPERTIES

Complaint Against FairPoint Communications, Inc. – Billing Dispute

Order Approving Hearings Examiner's Report and Requiring Repayment

ORDER NO. 25,364

May 14, 2012

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 5, 2012, Amanda Noonan, Director of the Commission's Consumer Affairs Division, filed a memorandum with the Commission describing a billing dispute between Stebbins Commercial Properties (Stebbins) and FairPoint Communications, Inc. (FairPoint). According to the memorandum, Stebbins had contacted FairPoint in August 2011 to discuss billing related to a telephone line for which Stebbins had been paying since 2002, but which it claimed it had never ordered or used. According to the memorandum, FairPoint offered a six-month "good will" adjustment, which Stebbins declined. Stebbins then contacted the Commission's Consumer Affairs Division. Following contacts between the Consumer Affairs Division and FairPoint, FairPoint declined to offer anything beyond the six-month adjustment that Stebbins previously decided it would not accept. Accordingly, Ms. Noonan recommended that the Commission hold a hearing on Stebbins' complaint. A hearing was held on April 18, 2012 with the Commission's General Counsel, F. Anne Ross, Esq., acting as hearing examiner.

II. SUMMARY OF HEARING EXAMINER'S REPORT

According to the report filed by Attorney Ross following the hearing, Michael Reed and Terry Rich, employees of Stebbins, testified that at the time Stebbins moved to its current

location in 2002 it had 4 telephone lines through Verizon, FairPoint's predecessor. According to the testimony, an employee of Stebbins in 2002, though it was not clear which one, contacted Verizon to move the telephone lines to the new location, but did not request any new or expanded services. Beginning in 2002, however, Verizon began billing Stebbins for a fifth line and Stebbins began paying for that line. That billing and payment continued following the transfer from Verizon to FairPoint. Stebbins contended that it never used the fifth line and did not ever need it. Between 2002 and the time the line was terminated in late 2011, Stebbins had paid approximately \$3,300 for the line. Mr. Reed testified that the matter was not raised earlier because he trusted that the companies were billing correctly, and that he only became aware of this issue at the time of internal personnel changes in 2011. In closing, Mr. Reed stated his belief that the six-month adjustment offered by FairPoint was insufficient and that FairPoint should refund all money paid by Stebbins for the line that it did not request, need or use.

As an initial matter with respect to FairPoint, FairPoint requested that a "job aid" describing the process for new order installations from FairPoint be granted confidential treatment. Attorney Ross' report concluded that the job aid should be accorded confidential treatment as a trade secret of FairPoint. As to the issues in dispute, representatives of FairPoint testified that neither FairPoint nor Verizon had documentation of the installation of this line in 2002 because that documentation had been disposed of according to industry-standard record retention practices. FairPoint presented the testimony of Paul Little, who worked in customer sales and support for Verizon and now works in a similar capacity for FairPoint. According to Mr. Little, the standard practice for processing an order for new service requires that a customer initiate the process. Mr. Little also stated that in every instance where a service like this is installed a

technician would be dispatched to the property, but there was not necessarily a time when the customer would “sign off” during the ordering process.

Mr. Little further testified that FairPoint is obligated to deliver dial tone to the point of demarcation, usually a network interface, but that it is the customer’s obligation to bring that dial tone to the internal phone jacks. Mr. Little stated that failing to complete that process might be a reason no one from Stebbins heard a telephone ring when a FairPoint employee called the number to test the line. As to the level of usage, Mr. Little stated that there were no internal practices at FairPoint for reviewing lines with little or no usage. He stated that it is not unusual for certain numbers to be functioning properly, but for no usage to be recorded on them because some kinds of lines, such as those for security systems, elevators and doorbells, can function properly but show no minutes of use.

Mr. Little further testified that under normal circumstances when attempting to determine if service is working, FairPoint would open a trouble ticket and begin an investigation. In this case, however, Stebbins terminated the service and no investigation was done. On behalf of FairPoint, Mr. Ryan Taylor stated that FairPoint did not send a technician to Stebbins’ property to determine that dial tone was delivered to the network interface. In its closing, FairPoint contended that Stebbins had not met its burden and that it should be accountable for the invoices it received.

According to Attorney Ross’ report, there was insufficient evidence to establish that FairPoint was actually providing service to the network interface. Further, the report concludes that there was insufficient evidence to establish what service was actually requested by Stebbins in connection with its move in 2002. Although there were no billing records provided prior to

2007, the evidence and testimony did support the conclusion that Stebbins was billed for and paid the bills on the extra line from 2002 until 2011.

The report further concluded that Stebbins' request for a hearing was sufficient to serve as a request for reparation under RSA 365:29 and that under that statute the Commission can order reparation for up to two years of rates collected by a public utility which are illegal or unjust. Based upon the failure of FairPoint to prove that it was actually providing service and the failure of Stebbins to act reasonably by paying for a service it alleged it was not receiving, Attorney Ross concluded that the parties' shared responsibility for this dispute. Accordingly, Attorney Ross recommended that that FairPoint return one-half of the rates collected between September 2009 and September 2011, which amounted to approximately \$372.

III. COMMISSION ANALYSIS

Having reviewed the hearing examiner's report and the record in this matter we adopt the report and its conclusions and rule as follows. First, as to the issue of confidential treatment, we conclude that FairPoint's job aid is entitled to confidential treatment. In applying the balancing test applicable to such requests, *see, e.g., EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,356 (April 30, 2012) at 6, we note that FairPoint's process involves its proprietary systems and notations and therefore FairPoint has a privacy interest in the information. Further, we see, at best, only a slight public interest requiring disclosure of this document since disclosure will do little, if anything, to inform the public about the activities of government. Balancing these factors, we conclude that disclosure is not warranted and grant confidential treatment to this document.

As to the merits of the issues in dispute, pursuant to N.H. Code of Admin. Rules Puc 203.25, the moving party, in this case Stebbins, bears the burden of proof. Applying that standard, we agree that Stebbins has not shown that it acted reasonably in these circumstances. The testimony and evidence demonstrates that for nine years Stebbins was billed for the disputed telephone line on a monthly basis and that for nine years it paid those bills without question or dispute. In such a case, even if permitted by law, there is an insufficient basis to award Stebbins the relief it seeks – the return of all money paid since 2002.

We also conclude, however, that there is no basis to absolve FairPoint of responsibility for this dispute. We conclude that to hold Stebbins responsible for all bills would require some proof that Stebbins was, in fact, provided with a service for which it was paying. As FairPoint noted, there are no installation records from 2002 to show how or why this line was billed to Stebbins. We do not fault FairPoint for not retaining these records as they were destroyed in conformance with standard record retention practices. We raise the issue, however, to demonstrate that some other form of investigation needed to occur to determine whether this line provided any service to Stebbins' property, at the demarcation point or elsewhere. Mr. Little stated that while some lines can be properly functioning while showing no use, he also testified that the standard practice when a customer questions their service is to open a trouble ticket and investigate the problem. Rather than investigate, however, FairPoint simply terminated the line. Though it was responding to a customer request to terminate service, doing so in this instance meant that it did not follow its own investigation procedures as described by Mr. Little, and it eliminated the only means to determine whether any service was available to Stebbins through

the disputed line. FairPoint could have discontinued the billing for the disputed line while it conducted its investigation.

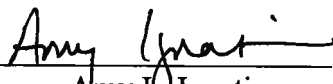
For the above reasons, we agree with Attorney Ross' conclusion that the parties share responsibility for this dispute. We further agree that, pursuant to RSA 365:29, the Commission is limited to two years' worth of payments in determining a proper level of reparations. Accordingly, we agree that Stebbins should receive reparations for one-year's worth of payments and FairPoint shall reimburse Stebbins \$372.00 as a one-time payment by check no later than July 1, 2012.

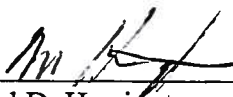
Based upon the foregoing, it is hereby

ORDERED, that FairPoint's motion for confidential treatment is granted; and it is

FURTHER ORDERED, that FairPoint shall reimburse Stebbins \$372.00 by check by July 1, 2012 for the reasons described above.

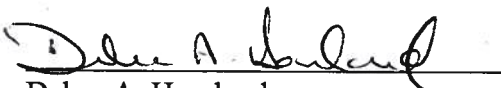
By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 2012.


Amy Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director

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
amanda.noonan@puc.nh.gov
Christina.Martin@oca.nh.gov
kate.bailey@puc.nh.gov
Kathryn.akerman@puc.nh.gov
matthew.fossum@puc.nh.gov
michael.ladam@puc.nh.gov
mreed@stebbinscommercialproperties.com
pmchugh@fairpoint.com
Rorie.E.P.Hollenberg@oca.nh.gov
ryan.taylor@fairpoint.com
trich@stebbinscommercialproperties.com

Docket #: 12-069-1 Printed: May 14, 2012

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.