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

SUPPLEMENTAL TESTIMONY OF
MICHAEL T. SKRIVAN
ON BEHALF OF FAIRPOINT COMMUNICATIONS-NNE

November 3, 2011

Q. Please state your name, employment position and business address.

A. My name is Michael T. Skrivan, Vice President, Regulatory for FairPoint Communications, Inc. My business address is 1 Davis Farm Road, Portland, ME, 04105.

Q. Please describe your experience in the telecommunications industry and your educational background.

A. I have over thirty-four years of regulatory experience in the telecommunications industry. In 1977, I joined Ernst & Young's (then Ernst & Ernst) Telecommunications practice. My primary duties were performing cost separations studies for independent telephone companies and providing related regulatory consulting. In 1983, I joined Illinois Consolidated Telephone Company, a midsize carrier, to assist it in the implementation of access charges and carrier access billing and to otherwise navigate the requirements associated with the AT&T/Bell System divestiture. From 1992 through 1999, I provided regulatory consulting to rural and midsize local exchange carriers and started a telecommunications consulting practice in Tulsa, OK. From 1999 through April of 2007, I was Vice President, Revenues for Madison River Communications, a midsize local exchange carrier with operations in North Carolina, Illinois, Alabama and Georgia. My duties there included management of carrier relations, including ordering and billing functions, and negotiation and management of interconnection agreements with facilities-based competitive local exchange carriers ("CLECs") and wireless providers ("CMRS");

state and federal regulatory affairs; state and federal tariff management including annual interstate tariff filings; and jurisdictional cost studies.

I joined FairPoint Communications, Inc., in 2007 and was appointed to my current position in December 2007.

I have actively participated in national telecommunication associations and workgroups, including participation in USTelecom's Telecom Policy Committee and as Chair of the USTelecom Midsize Caucus. I have testified in regulatory proceedings in a number of states including Vermont, Maine, New Hampshire, Wyoming, Illinois, North Carolina, and South Carolina. I testified in North Carolina on behalf of Madison River in an interconnection arbitration involving Cingular and Alltel. I testified in Vermont, New Hampshire and Maine in the dockets related to FairPoint's merger proceedings and its reorganization proceedings.

I have a Bachelor of Arts in Business Administration and a Bachelor of Accounting from Washington State University, both received in 1977. I am a Certified Public Accountant (with a non-practicing license in Washington State) and a Certified Management Accountant. I was an instructor at USTelecom's two-week cost separations courses.

Q. What are your current responsibilities with FairPoint?

A. I am responsible for filing and maintaining state and federal tariffs; administration of FairPoint's state and federal compliance obligations; development of state and federal regulatory policy; and oversight of regulatory cost support.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to describe FairPoint's September 10, 2009 New Hampshire switched access tariff filing and the supporting schedules associated with that filing. This includes proposed changes to the application of the Carrier Common Line charge and the Interconnection Charge. This filing was intended to be a unified tariff filing, although I understand the Commission has issued a recent order finding that there is a basis for treating different portions of the filing differently.

Q. Please describe the basic situation regarding the recent tariff filing.

A. In 2006, the Commission opened the investigation in this Docket regarding the applicability of carrier common line access ("CCL") charges to certain traffic. On March 21, 2008, the Commission issued Order No. 24,837 in this Docket determining that the CCL charge contained in NHPUC Tariff No. 85 of Verizon New England Inc. d/b/a Verizon New Hampshire ("Verizon") is chargeable only when Verizon provides the use of its common line (loop) facilities to provide access to or from a Verizon end user. On March 31, 2008, Northern New England Telephone Operations LLC d/b/a FairPoint

Communications - NNE ("FairPoint") acquired the New Hampshire landline properties and business Verizon and assumed Verizon's Tariff NHPUC No. 85.

Verizon and FairPoint filed motions for rehearing with respect to Order No. 24,837; the Commission denied the motions in its Order No. 24,886 dated August 8, 2008. Following these denials, Verizon and FairPoint appealed to the New Hampshire Supreme Court. On May 7, 2009, the New Hampshire Supreme Court issued its decision reversing the Commission, holding that based on the plain language of Tariff NHPUC No. 85, CCL charges are properly chargeable to all switched access services, not solely those services for which FairPoint provides loop facilities for access to or from a FairPoint end user.

On August 11, 2009, the Commission issued its Order *Nisi* No. 25,002 (the "Order *Nisi*") directing FairPoint to file tariff pages revising FairPoint Tariff NHPUC No. 85 with respect to switched access charges "to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services." Although FairPoint filed a Conditional Request for Rehearing of the Order *Nisi* on August 28, 2009, FairPoint also filed on September 10, 2009 a revenue-neutral revision to Tariff 85. In this tariff filing, FairPoint revised the service description of the CCL charge and at that the same time reinstated the per-minute "Interconnection Charge." This charge was established to offset the CCL revenue that would be lost due to the Commission's directive to revise Tariff 85 consistent with the Order *Nisi*.

On September 23, 2009, the Commission issued Order No. 25,016, which concluded that a hearing was needed and which outlined the scope of the hearing. On October 12, 2009, FairPoint filed a Motion for Rehearing of the Order *Nisi*, and withdrew the tariff filing, deeming it henceforth merely illustrative. On October 16, 2009, the Commission issued a letter suspending the procedural schedule.

On May 4, 2011, the Commission issued a Procedural Order and Supplemental Order of Notice that, among other things, approved the withdrawal of the tariff filing and reiterated the grant of FairPoint's motion for hearing on the issue of whether FairPoint's proposed tariff revisions are just and reasonable. This Order was modified in the Commission's Order of October 28, 2011, in which the Commission clarified that only that portion of the filing involving the Interconnection Charge would be considered withdrawn and deemed illustrative, while revisions relating to the CCL charge would be considered accepted but suspended and not in effect.[1]

This testimony is in support of the tariff filing and provides evidence that the revisions are just and reasonable.

Q. Was the tariff filing prepared by you, or under you direction?

[1] FairPoint does not concede that the CCL revisions have been accepted and are not illustrative as well, and FairPoint reserves all rights regarding this issue.

A. Yes. It was prepared under my direction, originally in response to the Order *Nisi*. As I explain later in this testimony, the rate development has been updated with more recent demand data since the 2009 filing.

Q. Please describe the tariff filing.

A. In compliance with the Order *Nisi*, FairPoint developed a tariff filing that eliminated the application of the CCL charge to access traffic which does not originate or terminate to a FairPoint end user, and at the same time reinstates the Interconnection Charge. Revenue neutrality was accomplished by using the Interconnection Charge to offset the loss of Carrier Common Line revenue. This rate, previously set at $.0000 per minute, was increased to $.0.010164 per minute. (If this tariff revision were filed today, using the updated data I referenced in the preceding answer, it would be $.009257.) This rate will apply equally to all intrastate switched access usage, with the same rate applicable to all categories of traffic and applicable equally to originating and terminating traffic.

Q. Please describe how you calculated the rate for the Interconnection Charge.

A. Since the development of the Interconnection Charge was intended to be revenue neutral with the loss of revenue from the revised terms and conditions applicable to the CCL charge, the first part of the calculation was to select a test period and calculate the loss of CCL revenue associated with the illustrative tariff changes. The original tariff filing used three months of 2009 for the test period. Given the passage of time, I have selected the most recent full calendar year, 2010, as the new test period for this calculation.

Q. Why did you select that test period?

A. I used the calendar year 2010 as the most recent calendar year available. By using a calendar year, any seasonality that might exist will not impact the results.

Q. Do you think this is a relevant and appropriate test period?

A. Yes. The objective was to calculate the loss of CCL revenues reflecting the proposed CCL charge changes and to calculate a replacement charge to restore the lost revenue. Since we used the same test period for both the CCL revenue loss and the Interconnection Charge, this test period is reasonable.

Q. Please describe the development of the Interconnection Charge.

A. In the analysis of the access usage used to bill the CCL rate, we determined the portion of the minutes originating and terminating to FairPoint end users, as well as to non-FairPoint end users. The reduction in CCL revenue was calculated based on taking the number of intrastate originating and terminating minutes to non-FairPoint end users and multiplying it by the intrastate CCL rate to calculate the amount of revenue that would be eliminated, based on the test period demand. As described below, the amount of CCL revenues that would be eliminated would be replaced through the Interconnection Charge, which is applied to all switched access minutes. The rate was therefore developed by dividing the lost CCL revenue by the total switched access minutes. In this case, the reduced CCL minutes for the test period equaled 110,997,293. Multiplying this minute total by the CCL rate of $.026494 resulted in reduced CCL revenue for the test period of $2,940,762. Total Interconnection Charge minutes for the test period were 317,687,059. Dividing the lost test period revenue of $2,940,762 by the total Interconnection Charge minutes for the test period yields a currently applicable Interconnection Charge rate of $.009257. Exhibit MTS-2 to this testimony provides this calculation. Exhibit MTS-3 to this testimony details the minutes of use, by month, separately for calls to and from FairPoint end users and to and from non-FairPoint end users for the test period.

Q. You state that FairPoint has chosen to use the Interconnection Charge as the vehicle to recover the lost CCL revenue. Can you explain what the Interconnection Charge represents?

A. Yes. The Interconnection Charge is based on the restructuring of access charges that resulted in legitimate costs assigned to switched access not being recovered by any other specific rate element. Therefore, when the FCC restructured interstate access charges, in order to allow carriers to recover their costs, it established this rate element, sometimes referred to as the Residual Interconnection Charge or the Interconnection Charge. This restructure was implemented when the FCC restructured transport rates such that carriers could choose to use either Direct Trunked Transport or Tandem Switched Transport. Generally, the design of the Verizon IntraLATA switched access tariff included a switched access structure consistent with the interstate structure, so a state Interconnection Charge was implemented. Although I do not know the specific history, the state charge was obviously reduced to zero at some point in time, given that the previous Interconnection Charge rate was zero. The federal Interconnection Charge was reduced to zero, for Verizon, in conjunction with the adoption of the CALLS plan, which I describe below.

Q. Can you describe how the restructure of transport charges resulted in costs that you describe not otherwise being recovered through specific rate elements?

A. Yes. Let me use the interstate process as an example. Through various cost mechanisms, including Part 32, Part 36, Part 64 and Part 69 of the FCC's rules, costs are assigned to various categories of interstate access services, including Common Line, Local Switching, Local Transport and Special Access. Special access rates are developed to recover loop and transport costs, and Switched Access Transport is then generally set to mirror special access rates based on standard assumptions regarding circuit capacities. Based on the characteristics of these assumptions combined with the various cost allocation mechanisms, a number of transport rate elements are set, and the remaining transport revenue requirement recovered through the Interconnection Charge rate element.

Q. How did the CALLS plan eliminate the Interconnection Charge for Verizon at the federal level?

A. The CALLS plan, as a general description, increased end user Subscriber Line Charges, moved a portion of the access revenue to universal service (which established the Interstate Access Service element), and reduced switched access charges. As switched access charges were reduced pursuant to price cap mechanism and the CALLS plan's temporary productivity offset of 6.5%, the first element to be reduced was the Interconnection Charge element. This element was eliminated over the course of time.

Q. In its May 4, 2011 Supplemental Order , the Commission directed FairPoint to file the information required in Rule Puc 1604.08(c)(9). Have you prepared that information?

A. Yes. That information was resubmitted to the Commission on May 25, 2011. See Exhibit MTS-1, which shows the estimated annual impact of on FairPoint revenues associated with the elimination of CCL on switched access to non-FairPoint end users and the estimated annual impact on FairPoint revenues associated with the increased Interconnection Charge rate. The annual impact was estimated by using the test period demand. The customers impacted by both rate changes are the interexchange carriers, and the net impact on this customer group is zero, which is what is expected from a revenue neutral rate change. The decreased FairPoint revenue from the CCL changes, based on test period demand, is $2,940,762 and the increased revenue from the Interconnection Charge rate increase is $2,940,829. There is a de minimus change of $67 due to the rounding of the rate to six decimal places. The number of customers impacted by this change is 36.

Q. Does the Interconnection Charge apply to all customers of FairPoint's switched access services under Tariff 85?

A. Yes.

Q. Does this also apply to customers who do not connect to FairPoint's end users? For example, does the Interconnection Charge apply to interexchange carriers who are using FairPoint's switched access tandem switching to connect to another local exchange carrier or wireless carrier's end users?

A. Yes. The Interconnection Charge applies to any of the switched access services in Tariff 85, or any combination of them.

Q. Is there a way that carriers who wish to connect to other providers of end user services other than FairPoint can avoid paying this charge?

Q. Yes. There is no statutory, regulatory, or technical requirement that mandates that one telecommunications carrier must interconnect with another only through FairPoint's network. It is technically feasible for each carrier to interconnect with any other carrier directly. In fact, some carriers have advertised the availability of such services. For example, Comcast Phone of New Hampshire has published the availability of a transport service from the switched access customer premises to the Comcast end office.[2] PAETEC Communications, Inc. also provides for direct connection to its end offices.[3]

A. Isn't it impractical for a carrier to have separate interconnection trunks with every carrier that it wants to interconnect with?

Q. It depends on the volume of traffic that the carriers exchange. For example, I would not be surprised if Verizon Wireless directly interconnects with AT&T Communications at some point or points in their respective networks. However, it is true that with small amounts of traffic, direct connection may not be "practical" from an economic standpoint, but this is an internal business decision to be made by the respective carriers.

In any event, direct interconnection is not the only option available to such carriers. There are alternative tandem providers who are authorized to provide services in this

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[2] Comcast Phone of New Hampshire, LLC, NH Access Service Rate Schedule § 3.3.2.
[3] PAETEC Communications, Inc., New Hampshire P.U.C. Rate Schedule § 9.2.2.

state. One example is Neutral Tandem – New Hampshire, LLC, which has published a rate schedule in which it offers an alternative to FairPoint for interconnection among carriers.[4]

Q. What conclusions do you draw from this information?

A. No carrier is forced to use FairPoint's tandem services to interconnect to another carrier, nor does FairPoint represent a "bottleneck" to access to the end users of other local exchange carriers or wireless providers. There are other options, all technically feasible and time tested. To the extent that carriers use FairPoint's network to interconnect with third parties, this is a conscious business decision on their part. Clearly, the opposing parties in this proceeding believe that FairPoint's offering is not as cost effective as they would prefer. However, I submit that the remedy for this is to seek or establish a competitive alternative, rather than use the regulatory process to force their solution on FairPoint.

Q. Are you aware of any other states that still have a Transport Interconnection Charge in effect?

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[4] *See* Neutral Tandem New Hampshire, LLC; CLEC – Rate Schedule § 1.1.

A. Yes. Our research has identified 12 states that still have a Transport Interconnection charge in effect. These states include Arizona, Delaware, Florida, Georgia, Maryland, Mississippi, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota and Wyoming.

Q. Has FairPoint considered other alternatives to increasing the Interconnection Charge?

A. Yes. As an alternative to simply losing revenue from changes in the CCL terms and conditions, FairPoint may consider an increase in customer local service rates, as AT&T suggested earlier in this proceeding.[5] FairPoint estimates it would need approximately $.76 in a local rate increase to offset the proposed loss in CCL revenue.

Q. Did the Merger Order anticipate a revenue neutral shift between switched access rates and end user rates?

A. Yes. In paragraph 8.1 of the Settlement Agreement among the Joint Petitioners and the Commission Staff, dated as of January 23, 2008 (the "Settlement Agreement"), which the Commission approved in relevant part in Docket DT 07-011, it specifically anticipates the potential for a revenue neutral "rebalancing of access and retail basic rates."

> 8.1 FairPoint will cause Telco to continue to offer to residential retail

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[5] "Thus, if this Commission were addressing whether the CCL should be maintained going forward, its conclusion should be no. It would want to eliminate the CCL and permit Verizon to adjust its end-user prices accordingly." AT&T Direct Testimony 23:7-9 (Mar. 8, 2007).

> customers a local exchange, stand-alone basic service product that includes the services listed in Puc 412.01. Telco will not seek Commission approval for an increase in New Hampshire basic exchange retail rates (above those in effect for Verizon in New Hampshire as of the Closing Date) to take effect during the five-year period following the Closing Date. The Commission will not require a decrease of any basic exchange retail rates of Telco to be effective within the five-year period following the Closing Date. These restrictions shall not prevent a revenue neutral rebalancing of access and retail basic exchange rates if otherwise approved by the Commission. Notwithstanding the foregoing, FairPoint shall have the right to petition the Commission to allow a retail rate case filing, and the Commission shall have the right to initiate a retail rate investigation, in the event of exigent circumstances (excessively low earnings claimed by FairPoint or a Commission concern of excessively high earnings) as long as the change in rates resulting from such rate proceeding does not take effect before the fourth anniversary of the Closing Date.

Q. Would raising its local service rates put FairPoint at a competitive disadvantage in those geographical areas in which competitive local exchange carriers operate?

A. It could. FairPoint's local service rates in New Hampshire are lower than in the other two Northern New England states in which it operates,[6] but even so, any increase in rates can only make FairPoint's competitors more attractive to end users.

Q. How might FairPoint address this concern in its rate structure?

A. It would certainly make sense for FairPoint to review the relative level of the rate group

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[6]

ME:	$14.69
NH:	**$11.13 - $15.71**
VT:	$13.15 + .022 per min.

local rates, to a limited extent or perhaps completely. FairPoint's local rate structure in New Hampshire differs from those in the other two Northern New England states in that it consists of five rate groups, ranging from $11.13 per month to $15.71 per month for residential service. What is more incongruous is that the lowest rates apply to the least populated calling areas, and the highest rates apply to the most populated areas. Looking at it another way, FairPoint's rates are the highest in areas where it likely to have the most competition, and lowest in those areas where it is likely to have no competition and the highest costs. If FairPoint is to achieve a revenue neutral balance and still be able to respond to competition, it may be necessary to smooth the variance in the rate groups and apply most of the rate increase to the lower priced rate group or groups.

Q. In the event the Commission decides to simply reduce FairPoint's CCL revenue with no increase in access or local service rates, does FairPoint have any further options?

A. Yes. As noted in the same paragraph 8.1 of the Settlement Agreement, FairPoint has the right to petition the Commission to allow a retail rate filing in the event of excessively low earnings claimed by FairPoint. In such an event, the change in rates resulting from such a rate proceeding would not take effect before the fourth anniversary of the Closing Date, or March 31, 2012.

Q. Do you believe that if the Commission were to reduce FairPoint's CCL revenue that FairPoint would experience "excessively low earnings" as contemplated by the

Stipulation?

A. Yes. Based on FairPoint's ARMIS filing with the FCC, FairPoint had a negative operating margin, before income tax benefit, on its combined state and interstate regulated operations of over $100 million for 2010 in New Hampshire. Even without further reductions this would qualify, in my opinion, as excessively low earnings. Based on the annual 2010 report filed confidentially with the Commission that shows intrastate jurisdictional regulated operations results, I conclude that on a jurisdictional basis, FairPoint's operating results are "excessively low."

Q. Does this conclude your testimony?

A. Yes, it does.