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Via Electronic Mail and Overnight Delivery

Ms. Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301



Re: Docket No. DT 06-067
Freedom Ring Communications, LLC d/b/a BayRing Communications
Complaint against Verizon New Hampshire regarding Access Charges:

Northern New England Telephone Operations LLC Tariff NHPUC No. 3

Dear Ms. Howland:

I am writing on behalf of AT&T Corp. ("AT&T") in response to the December 22, 2011, letter sent to you by Harry Malone ("Malone Letter") on behalf of Northern New England Telephone Operations LLC ("FairPoint"). In his letter, Mr. Malone resubmits tariff materials substantively identical to FairPoint's November 30, 2011 filing, which the Commission rejected in Order No. 25,301 (Dec. 14, 2011). The materials rejected in that order, in turn, are the same as those currently under consideration in Docket No. 06-067. In Order No. 25,301, the Commission rejected the November 30 filing and deemed it illustrative for purposes of further proceedings. *See* Order No. 25,301 at 2, 3.

Mr. Malone's letter explains that FairPoint is resubmitting the tariff materials because Order No. 25,301 indicates the Commission's belief that RSA 378:6, IV (and the time constraints it imposes) governed the November 30 filing. However, "[a]fter due consideration of the Commission's reasoning, FairPoint believes that RSA 378:6, I(b) is actually the most appropriate and lawful statute to apply to this filing." Malone Letter at 2. The letter then "presumes" that the Commission's decision was based on an "assumption" regarding the effect of certain statutory changes made in 1997 (*id.*) and then purports to explain why any such "assumption" is incorrect and why RSA 378:6, I(b) applies to the filing. *Id.* at 3.

AT&T respectfully requests that the Commission immediately declare FairPoint's December 22 filing to be null and void, and to have no effect whatsoever. There are several reasons the Commission should take this action as soon as possible.

First, Mr. Malone's letter and the accompanying tariff filing are an obvious attempt by FairPoint to seek reconsideration, through the back door, of the Commission's rejection of the November 30 tariff filing in Order No. 25,301. But Mr. Malone's letter fails to comply with the most basic requirements for a motion for reconsideration: *e.g.*, Puc 203.04, .05, .07 and .33. If FairPoint disagrees with what it "presumes" was the basis for the decision in Order No. 25,301, the appropriate procedural route is to seek reconsideration via RSA 541:3, rather than resubmit



the same tariff filing accompanied by precise instructions about how the Commission should “do the job right” this time.¹

Second, FairPoint again has blatantly ignored the Commission’s directions about how Docket No. 06-067 should proceed. Order No. 25,301 points out that the Commission has scheduled a March 8, 2012, hearing on the merits of the Interconnection Charge that FairPoint proposes in the tariff filing, and that the schedule in the docket was recently extended “at FairPoint’s request.” Order No. 25,301 at 2. In addition, the order makes clear that the Commission’s rejection of the November 30 filing is “not a finding on the merits of the tariff itself” and that FairPoint’s proposed tariff changes are still “before the Commission for determination.” *Id.* at 3. The December 22 filing is simply another attempt to muddy the waters in this long-unresolved docket and to waste the time of the Commission and of everyone else involved with the case.

Finally, the Commission is no doubt aware of the recent order of the Federal Communications Commission overhauling the existing regime for intercarrier compensation, including switched access charges. Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America et al.*, FCC 11-161 (released Nov. 18, 2011). In that order, the FCC talks about the important role that state commissions will play in reviewing intrastate access tariffs to ensure compliance with the new framework for intercarrier compensation. *See* FCC 11-161 at 277 ¶ 813. That role includes guarding against “unanticipated types of gamesmanship” in carriers’ tariffs. *Id.* The agenda behind FairPoint’s December 22 filing is not yet clear, but its submission of essentially identical tariff materials for at least the third time may well represent such gamesmanship. The Commission should reject the filing immediately and make clear that it will tolerate no more games here.

I am authorized to say that Global Crossing Telecommunications: 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; and Global Crossing Telecommunications, Inc (a Level 3 company), join in this letter.

Enclosed are eight copies of this letter. Please return one file-stamped copy of the letter in the enclosed, stamped and self-addressed envelope. Thank you.

Yours truly,



James A. Huttenhower

cc: Service list (via email)

¹ Moreover, the reference in Order No. 25,301 to the time constraints on tariff review contained in RSA 378:6, IV merely replicates the reasoning of an earlier Commission order in this docket. *See* Order No. 25,283 (Oct. 28, 2011), at 31. FairPoint did not seek rehearing of that earlier order, and the time to do so has elapsed.