

**STATE OF NEW HAMPSHIRE  
PUBLIC SERVICE COMMISSION**

**Freedom Ring Communications LLC d/b/a  
BayRing Communications Complaint Against  
Verizon New Hampshire Regarding Access  
Order**

**Case No. DT 06-067**

STATE OF KANSAS            )  
                                      ) ss  
COUNTY OF JOHNSON    )

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**Kevin A. Bearden**, being duly sworn under oath, states as follows:

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I am a manager in the Access Verification Organization for Sprint United Management Company and am providing this affidavit on behalf of Sprint Communications Company L.P. and Sprint Spectrum L.P. (collectively "Sprint"). I have personal knowledge of the information in this affidavit, which I have acquired in performing my job functions with Sprint and through review of any documents and data referenced herein.

I work in Sprint's Access Verification Organization and my job responsibilities include but are not limited to managing the verification of access charges and payment of invoices.

In that capacity I have responsibility for insuring that Sprint is billed correctly and in turn only pays for correct and applicable charges. In those instances where charges are deemed to be incorrect, disputes/claims are identified and in turn short paid with the applicable carrier, in this instance Northern New England Telephone Operations LLC d/b/a FairPoint Communications NNE ("FairPoint"). In addition to those job responsibilities, I am also responsible for working with carriers to resolve disputes that may arise from their access billings. In this particular

instance the dispute revolves around the application of Carrier Common Line charges for IntraLATA switched access traffic in the State of New Hampshire.

I have been informed of the amount Fairpoint identified as outstanding and due from Sprint in its March 15, 2012 Emergency Motion for Enforcement of Commission Order. I have reviewed Sprint's records and determined that the amount Sprint shows outstanding and in dispute to be *hundreds of thousands of dollars less* than the amount set forth by Fairpoint in its filing.

Sprint entered into an agreement with Fairpoint on October 26, 2011 to resolve the Carrier Common Line ("CCL") issue in New Hampshire for all disputes for invoices dated prior to October of 2009. Subject to the terms of that agreement, Sprint has issued the agreed to payment to resolve the disputed amounts invoiced prior to October 2009, and Fairpoint was to issue credits related to the New Hampshire CCL issue for other invoices disputed prior to October 2009 to bring the New Hampshire CCL outstanding balance to zero for all charges prior to October 2009.

On February 14, 2012, Jeffrey J. Heins, Vice President & Assistant General Counsel of Fairpoint Communications sent Sprint a letter regarding the disputed CCL charges for IntraLATA switched access traffic in the State of New Hampshire (redacted letter attached as Exhibit 1). This demand letter referred to the FCC's Connect America Fund Order 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") and stated that the carriers' refusal to pay the CCL charges by March 31 would reduce the amount of transitional recovery for which FairPoint is eligible under the FCC's order.

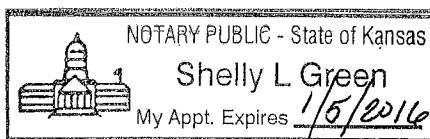
Taking into account the impacts of the settlement agreement reached with Fairpoint and in response to the February 14, 2012 letter, Sprint on or around March 6, 2012 responded and offered to work with Fairpoint to reconcile the amounts outstanding after the settlement date because of the significantly higher amount Fairpoint cited as being owed by Sprint in comparison to the amount that Sprint currently reflects as open and in dispute redacted letter attached as Exhibit 2). My direct contact information was also provided in that correspondence in an attempt to discuss and bring to closure this issue. However, to date there has been no response from Fairpoint to our March 6, 2012 dated correspondence.

~~FURTHER~~ Affiant sayeth not.

  
\_\_\_\_\_  
Kevin A. Bearden

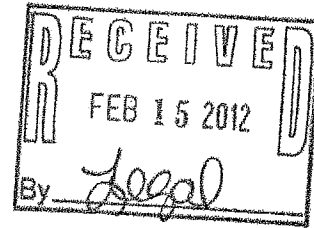
Subscribed and sworn to before me  
this 20th day of March, 2012.

  
Notary Public





1 Davis Farm Road  
Portland, ME 04103



February 14, 2012

LEGAL NOTICE

VIA FED EX

Sprint Communications Company, LP  
Attn: General Counsel  
6330 Sprint Parkway  
MAILSTOP: KSOPHA0110-1B171  
Overland Park, KS 66251

Re: Carrier Common Line charges on IntraLATA switched access traffic in the State of New Hampshire

Dear General Counsel:

This letter serves as a formal demand for payment from Sprint Communications Company, LP ("Sprint") of all Carrier Common Line charges owed to Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") pursuant to FairPoint's N.H.P.U.C. Tariff No. 3. Further, this letter represents formal notification that FairPoint will suffer concrete, foreseeable and quantifiable harm if Sprint does not pay these amounts by **March 31, 2012**.

As Sprint is aware, the New Hampshire Public Utilities Commission issued Order No. 25,319 dated January 20, 2012 in Docket No. DT 06-067 (the "Order"). In the Order, the Commission determined that the appropriate effective date for FairPoint's tariff revision to the Carrier Common Line charge was January 21, 2012. The Order makes clear that FairPoint was entitled to bill and to collect, the Carrier Common Line charge prior to January 21, 2012. Based on the Order, Sprint owes FairPoint approximately [REDACTED] in Carrier Common Line charges. Additionally, pursuant to Section 4.1.2(B) of FairPoint's N.H.P.U.C. Tariff No. 3 Sprint is responsible for a late payment penalty.

Furthermore, based upon a recent decision by the Federal Communications Commission, released November 18, 2011 known as the FCC's Report and Order and Further Notice of Proposed Rulemaking regarding the Connect America Fund (the "CAF Order")<sup>1</sup>, FairPoint is placing Sprint on notice it will suffer additional damages. Among many other things, the *CAF Order* requires FairPoint to cap its interstate and intrastate switched access and reciprocal compensation rates as of December 29, 2011, and

<sup>1</sup> Connect America Fund, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*CAF Order*").

to reduce its rates for terminating transport and termination services to bill-and-keep within six years.<sup>2</sup> The *CAF Order* does provide for a transitional recovery mechanism which permits FairPoint to recover a portion of this reduced revenue, subject to limitations, through a restricted access recovery charge ("ARC") on end user services and, to the extent that the ARC limitations do not enable sufficient recovery, by distributions from the Connect America Fund. However, the amount of this transitional recovery will decline each year from a set baseline, beginning with 10% reduction effective July 2012, followed by further 10% reductions each year through 2017.

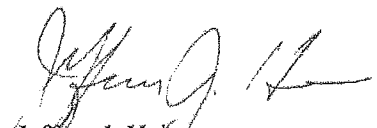
This baseline will be established based on revenues and usage that were billed for services provided during the Fiscal Year 2011 (i.e. October 1, 2010 to September 30, 2011) and which have been *collected* by March 31, 2012.<sup>3</sup> The rule regarding the baseline makes no exception for revenue that was withheld or uncollected due to a billing dispute (good faith or otherwise). Consequently, if Sprint continues to withhold payment, and this refusal continues past March 31, 2012, FairPoint's Fiscal Year 2011 Baseline will be lowered and it will suffer concrete, foreseeable and quantifiable harm by the resulting reduction in the amount of transitional recovery for which it is eligible each year through 2017. Any amounts Sprint refuses to pay will create a multiplier-effect based on how the transitional recovery amounts are calculated and then reduced.<sup>4</sup>

The *CAF Order* establishes a detailed formula for the calculation of the transitional recovery. Thus, FairPoint's damages if Sprint refuses to pay can be calculated precisely and as such are recoverable in litigation. If Sprint continues to refuse to pay amounts it owes FairPoint, FairPoint estimates that its lost transitional recovery could exceed the unpaid amounts of revenue subject to the transition rules, currently claimed by FairPoint. This is in addition to the other amounts Sprint already owes FairPoint. Sprint can mitigate these damages by paying FairPoint.

**TAKE NOTICE**, that payment of the past due amount of [REDACTED] is due to FairPoint *immediately*. Please contact Tom Nolting to arrange for payment of this amount at (802) 860-2323.

**TAKE FURTHER NOTICE**, this letter serves as formal notice that FairPoint will suffer measurable and foreseeable damage pursuant to the *CAF Order* if payment is not made by **March 31, 2012**.

Sincerely,

  
(Jeffrey J. Heins  
Vice President & Assistant General Counsel  
FairPoint Communications

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<sup>2</sup> *CAF Order* ¶ 801.

<sup>3</sup> *Id.* ¶ 880.

<sup>4</sup> See the new rules adopted in the *CAF order* in Subpart J—Transitional Access Service Pricing, which is a new section of Part 51 of the FCC rules, specifically the rules in paragraphs 51.907 Transition of Price Cap Carrier Access Charges and 51.915 Revenue Recovery for Price Cap Carriers.



Janette W. Luehring  
Senior Counsel  
Sprint Nextel  
6450 Sprint Parkway  
Overland Park, KS 66251  
(913) 315-8525

March 6, 2012

*Via Overnight Federal Express*

Jeffrey J. Heins  
Vice President and General Counsel  
Fairpoint Communications  
1 Davis Farm Road  
Portland, ME 04103

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RE: NH CCL Charges

Dear Mr. Heins:

This letter is in response to your letter dated February 14, 2012 regarding CCL charges for the state of New Hampshire. Your letter requests payment of approximately [REDACTED] by March 31, 2012.

Your request for payment fails to acknowledge two points. First, the Public Utilities Commission's order on this matter is not yet final. Fairpoint, as well as Sprint and other carriers, has filed for reconsideration and a reconsideration order has not yet been issued. Thus Sprint is not obligated to pay CCL charges at this time and may not be so obligated by March 31, 2012.

Second, as you are aware, Fairpoint and Sprint entered into a settlement agreement for all CCL charges up to and including September 2009 dated invoices. Sprint is willing to work with Fairpoint in order to reconcile the amounts outstanding after the settlement date. Such reconciliation is a necessity as the amount FairPoint claims is owed is dramatically inaccurate and fails to acknowledge the aforementioned settlement. Sprint's contact to reconcile the outstanding amounts is Kevin Bearden. Mr. Bearden can be reached at [kevin.bearden@sprint.com](mailto:kevin.bearden@sprint.com) or 913-762-6462.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janette Luehring".  
Janette Luehring