

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 06-067

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC D/B/A
FAIRPOINT COMMUNICATIONS - NNE**

FairPoint Communications – NNE Comments and Conditional Request for Hearing

Order Scheduling Hearing

ORDER NO. 25,016

September 23, 2009

On March 21, 2008, the Commission issued Order No. 24,837, concluding that the carrier common line (CCL) charge contained in NHPUC Tariff No. 85, Verizon's access tariff, is properly imposed when: (1) Verizon provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. Based on the evidence, the Commission further decided that when the use of Verizon's common line does not involve a Verizon end user, the CCL charge may not be imposed. *Id.* at 27. By virtue of Northern New England Telephone Operations LLC, d/b/a FairPoint Communications — NNE's (FairPoint's) acquisition of Verizon's landlines and its franchise in New Hampshire, NHPUC Tariff No. 85 now applies to FairPoint. *See Verizon New England Petition for Authority to Transfer Assets and Franchise*, Order No. 24,823 (February 25, 2008).

On May 7, 2009, the New Hampshire Supreme Court reversed the Commission's decision in Order No. 24,837, finding, based on a de novo review, that the plain language of the tariff did not comport with the Commission's interpretation of the tariff language. *Appeal of Verizon New England*, No. 2008-0645, slip op (N.H. May 7, 2009).

The order of notice in this proceeding established that, in the event Verizon's interpretation of the current tariffs was found to be reasonable, the Commission would decide whether any prospective modifications to the tariffs are appropriate. On August 11, 2009, the Commission, in Order *Nisi* No. 25,002, directed FairPoint, pursuant to RSA 378:1 and 378.3, to modify its tariff to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services. The Commission required that such modifications shall include, at a minimum, revisions to, or removal of, the following tariff provisions:

Section 5: "Carrier common line access service is billed to each switched access service provided under this tariff in accordance with the regulations set forth herein and in Section 4.1, and at the rates and charges contained in Section 30.5."

Section 5.4. 1 .A: "General - Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges."

Section 5.4. 1.C: "The switched access service provided by the Telephone Company includes the switched access service provided for both interstate and intrastate communications. The carrier common line access rates and charges will be billed to each switched access service provided under this tariff in accordance with Section 4.1 and Section 5.4.2."

The Commission also directed that FairPoint file revisions to its NHPUC Tariff No. 85 as outlined above within 30 days from the date of the Commission's order.

On August 28, 2009, FairPoint filed comments and a conditional request for hearing stating its position that: (1) the Carrier Common Line (CCL) charge in its Tariff NH PUC No. 85 is valid as currently applied; (2) the related tariff provisions are clear and unambiguous; and (3) the issues addressed by the Order are outside the scope of this proceeding. FairPoint stated that it planned to file tariff revisions, no later than

September 10, 2009, that restrict billing of the CCL to situations in which the FairPoint local loop is employed. FairPoint also stated its intent to revise other access rate elements to compensate for what it claims are lost contributions to its joint and common costs provided by the CCL. FairPoint asserted that, if revisions to the tariff must be made, it is entitled to the revenue derived from the CCL as currently applied.

On September 4, 2009, Global Crossing Telecommunications, Inc. filed a response, and Freedom Ring Communications, LLC d/b/a BayRing Communications and AT&T Corporation filed a joint response to FairPoint's August 28 filing arguing, among other things, that FairPoint's claim that it is not earning sufficient revenue to cover its expenses is a separate matter, that FairPoint is not entitled to a revenue neutral increase of other switched access rates, and that such an increase would not comply with the Commission's order.

On September 10, 2009, FairPoint filed tariff pages for effect October 10, 2009, consisting of certain revisions to NHPUC Tariff No. 85 to comply with the requirements in Order *Nisi* 25,002. In this filing, FairPoint stated that, in conjunction with its compliance filing, it was filing schedule sheets reflecting revenue neutral adjustments to its switched access rates by increasing the InterConnection Charge from \$.000000 to \$.010164 per minute.

We find that an evidentiary hearing is necessary to address the issues raised by FairPoint's August 28 and September 10 filings as well as the issues raised by the competitive local exchange carriers' September 4 filings. Issues raised include, *inter alia*: whether FairPoint's proposed tariff revisions are just and reasonable; whether the

proposed interconnection charge is consistent with paragraph 9.1 of the Settlement Agreement in DT 07-011 approved by Order No. 24,823; whether the filing is properly considered under RSA 378:6, I or IV; and whether RSA 378:17-a III applies.

Pursuant to NH Admin. Code Puc 1605, FairPoint is required to file supporting documents with a proposed tariff change. FairPoint did not file the required information and, therefore, the filing is not complete. In addition, in order to properly evaluate the proposed change in tariff, pursuant to 1605.02(c), we will require FairPoint to file the information required in Puc 1604.08(c)(9). At the hearing, FairPoint should be prepared to go forward with evidence pursuant to the aforementioned rules and other relevant evidence in support of its position.

Given the time necessary to produce the required information and hear from interested parties, consistent with RSA 378:6, IV, to the extent it controls, we will extend the time for review of the proposed tariff changes for 30 days from the date the filing is complete.

The following procedural schedule shall apply:

Complete filing and FairPoint's written testimony	September 28, 2009
Data Requests to FairPoint	October 5, 2009
FairPoint Data Responses	October 12, 2009
Rebuttal Testimony	October 19, 2009
Technical Session in lieu of discovery on Rebuttal Testimony	October 21, 2009

Reply Testimony

October 26, 2009

Hearing Date

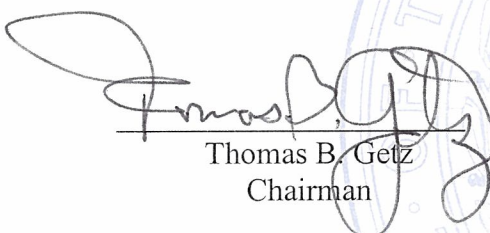
November 4, 2009 at 10:00 a.m.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule outlined above shall govern the remainder of the proceeding; and it is

FURTHER ORDERED, that FairPoint shall file the information required in NH Admin. Code Puc 1604.08(c)(9) no later than September 28, 2009.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 2009.



Thomas B. Getz
Chairman

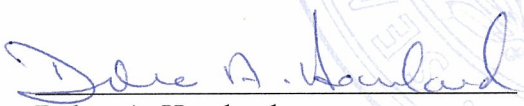


Clifton C. Below
Commissioner



Amy Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director

BENJAMIN J ARON
SPRINT NEXTEL
2001 EDMUND HALLEY DR BLDG A
RESTON VA 20191

SUSAN GEIGER
ORR & RENO PC
ONE EAGLE SQUARE
PO BOX 3550
CONCORD NH 03302-3550

SHIRLEY J LINN
FAIRPOINT COMMUNICATIONS INC
521 E MOREHEAD ST STE 250
CHARLOTTE NC 28202

KELLY ATWOOD
DEVINE MILLIMET & BRANCH PA
43 NORTH MAIN ST
CONCORD NH 03301-4934

KIMBERLY J GOLD
AT&T COMMUNICATIONS OF NE INC
99 BEDFORD ST ROOM 420
BOSTON MA 02111

DEBRA A MARTONE
MERRIMACK COUNTY TELEPHONE C
PO BOX 337
11 KEARSARGE AVE
CONTOOCOOK NH 03229-0337

ANNMARIE BERRY
FAIRPOINT NEW ENGLAND
155 GANNETT DR
SOUTH PORTLAND ME 04106-6942

MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

PATRICK C MCHUGH
DEVINE MILLIMET & BRANCH PA
43 NORTH MAIN ST
CONCORD NH 03301

BARBARA BROHL
QWEST COMMUNICATIONS CORPORA
1801 CALIFORNIA STE 1000
DENVER CO 80202

NANCY HUBERT
BRETTON WOODS TELEPHONE CO
MT WASHINGTON PLACE
BRETTON WOODS NH 03575

ALEXANDER W MOORE
VERIZON COMMUNICATIONS INC
185 FRANKLIN ST 13TH FLR
BOSTON MA 02110-1585

GENT CAV
OTEL TELEKOM INC
ONE SUNDIAL AVE STE 210
MANCHESTER NH 03103

JEREMY L KATZ
SEGTEL INC
PO BOX 610
LEBANON NH 03766

MICHAEL J MORRISSEY
FAIRPOINT COMMUNICATIONS INC
521 E MOREHEAD ST STE 250
CHARLOTTE NC 28202

MICHELLE CONSALVO
AT&T
99 BEDFORD STREET
BOSTON MA 02110

GREGORY M KENNAN
FAGELBAUM & HELLER LLP
PO BOX 230
SHERBORN MA 01770

STEPHEN NELSON
DUNBARTON TELEPHONE CO
2 STARK HIGHWAY SOUTH
DUNBARTON NH 03045

FREDERICK J COOLBROTH
DEVINE MILLIMET & BRANCH PA
43 N MAIN ST
CONCORD NH 03301

MATTHEW T KINNEY
RNK INC
333 ELM ST STE 310
DEDHAM MA 02026

PENN PFAUTZ
AT&T
200 S LAUREL AVE
RM E4-3A01
MIDDLETOWN NJ 07748

PAULA W FOLEY
ONE COMMUNICATIONS
5 WALL ST
BURLINGTON MA 01803

SARAH KNOWLTON
MCLANE GRAF RAULERSON & MIDD
PO BOX 459
PORTSMOUTH NH 03802-0459

KAREN M POTKUL
XO COMMUNICATIONS SERVICES INC
1601 TRAPELO RD STE 397
WALTHAM MA 02451

09/23/09 Order No. 25,016 issued and forwarded to all parties. Copies given to PUC Staff.

Docket #: 06-067

Printed: September 23, 2009

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429

R EDWARD PRICE
GLOBAL CROSSING TELECOMMUNICA
225 KENNETH DR
ROCHESTER NY 14623

MICHAEL S TENORE
RNK INC D/B/A RNK TELECOM
333 ELM ST STE 310
DEDHAM MA 02026

CHRIS RAND
GRANITE STATE TELEPHONE
600 SOUTHSTARK HIGHWAY PO BOX :
WEARE NH 03281

BEN THAYER
BAYRING COMMUNICATIONS
359 CORPORATE DR
PORTSMOUTH NH 03801-2888

MICHAEL C REED
TDS TELECOMMUNICATIONS CORPOR
24 DEPOT SQUARE UNIT 2
NORTHFIELD VT 05663-6721

ROJEAN TULK
FAIRPOINT COMMUNICATIONS INC
155 GANNETT DR
SOUTH PORTLAND ME 04106-6942

MARTIN C ROTHFELDER
ROTHFELDER STERN LLC
625 CENTRAL AVE
WESTFIELD NJ 07090

ANN WALSH
DIXVILLE TELEPHONE CO
ONE CRANBERRY HILL STE 105
LEXINGTON MA 02421

KEVIN M SHEA
FAIRPOINT COMMUNICATIONS INC
900 ELM STREET
19TH FLOOR
MANCHESTER NH 03101

DARREN R WINSLOW
UNION COMMUNICATIONS
7 CENTRAL ST
PO BOX 577
FARMINGTON NH 03901

PETER L SHEPHERD
VERIZON NEW HAMPSHIRE
125 HIGH ST
BOSTON MA 02110

ALAN M SHOER
ADLER POLLOCK & SHEEHAN PC
ONE CITIZEN'S PLAZA 8TH FLR
PROVIDENCE RI 02903-1345

WILLIAM STAFFORD
GRANITE STATE TELEPHONE
600 SOUTH STARK HWY
PO BOX 87
WEARE NH 03281