

June 25, 2009

VIA FEDERAL EXPRESS and ELECTRONIC MAIL

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



RE: DT 09-113: FairPoint Communications Petition for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier-to-Carrier Guidelines

Dear Executive Director Howland:

On behalf of Freedom Ring Communications d/b/a BayRing Communications (BayRing) we are writing to request an Order from the Commission that requires FairPoint to continue to make required payments and/or bill credits under the applicable FairPoint Performance Assurance Plan ("PAP") pending final resolution of FairPoint's requests to modify the PAP in Docket Nos. DT-09-059 and DT-09-113.¹

BayRing makes this request because it has been informed by FairPoint that FairPoint has unilaterally, and without Commission authorization, decided to stop making *any* required payments or applicable bill credits while its requests for modifications and waivers to the existing requirements under the PAP are pending resolution before the Commission.² BayRing requests that the Commission enter an Order that prohibits FairPoint from stopping all PAP payments and/ bill credits and these payments and/or bill credits be maintained until the Commission is able to properly consider the issues that will be raised by FairPoint's request for a waiver of the applicable PAP in New Hampshire.

As the Commission is aware, in the CLEC Settlement Agreement in DT 07-011 FairPoint agreed to "adhere to the applicable PAP and C2C Guidelines as implemented in each of the three

¹ BayRing opposes FairPoint's requests for modification of the PAP, has filed its opposition in DT-09-059 and intends to similarly oppose FairPoint's recent request for waivers and its other relief requested in DT-09-113.

² BayRing was informed of this in a telephone message delivered on or about June 23, 2009, as represented by FairPoint's Director of Revenue Assurance & Wholesale Collections.

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states and be subject to potential penalties and enforcement mechanisms set forth in those documents.” CLEC Settlement Agreement 6(a).³ Moreover, the CLEC Settlement Agreement only authorized a temporary suspension of PAP payments for one month following the cutover. CLEC Settlement Agreement 6(d). And, while FairPoint has recently petitioned the Commission on two separate occasions to modify the PAP, at no point has FairPoint been granted any authority to stop making any payments for poor performance ***while these waiver request matters are pending resolution.***

Furthermore, the PAP does not authorize FairPoint to simply declare that it no longer will make any payments. Rather, the PAP has a procedure that allows FairPoint to request modifications to the PAP under certain designated circumstances but only upon Order of this Commission.⁴ Under no circumstances does the PAP allow FairPoint to undertake a self-help plan to stop making penalty payments for poor performance simply because FairPoint believes it does not want to make any further payments. On the contrary, the PAP expressly requires that no changes may be implemented until so ordered by the Commission. The PAP states that “[u]ntil such time as a replacement mechanism is developed or the Plan is rescinded, ***the Plan will remain in effect, as it may be modified from time to time by the Commission***” (PAP, Section I(I)) and that “[a]ny modifications to the Plan will be implemented as soon as is reasonably practical ***after Commission approval of the modifications.***” (PAP, Section I(K) at pg. 24)(emphasis added).

BayRing has complained about both FairPoint’s deteriorating wholesale performance generally, and its repeated non-compliance with the PAP specifically. BayRing has appropriately sought relief for these matters with the Commission.⁵ Meanwhile, FairPoint continues to seek further waivers and relief from the PAP and, up until now, was continuing to provide certain (and not insubstantial) bill credits owed to BayRing, to account for poor performance. However, FairPoint’s Director of Revenue Assurance & Wholesale Collections

³ The PAP is important to the CLECs, and the PAP is critical to the CLECs ability to compete in the New Hampshire local exchange market. See Orders No. 23,940 and 23,976 in Docket DT-01-006.

⁴ The PAP has specific procedures whereby FairPoint may seek exceptions and waivers from the obligations in the PAP (Section II(J)) and for seeking changes or modifications as part of Commission review and/or audit (Section II(K))

⁵ For example, and by Secretary letter of April 20, 2009, FairPoint was ordered to provide an account of applicable bill credits to FairPoint. As BayRing pointed out in its letter of June 5, 2009, FairPoint has not complied and has unlawfully removed certain measures and data from the report. BayRing seeks the maximum penalties allowable under the PAP to account for FairPoint’s removal of measures and reported data without Commission authorization. See also BayRing complaint in DT-09-039 and Objection of BayRing filed in DT-09-059.

ADLER POLLOCK & SHEEHAN P.C.

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recently informed BayRing that all bill credits would cease regardless of the level of poor performance, and that such payments and/or bill credits would cease on a going forward basis without further explanation. BayRing is not aware of any authorization or Order of the Commission that would allow FairPoint to take this unprecedented and unauthorized step that only further harms BayRing's business.

Accordingly, BayRing requests that the Commission Order FairPoint to make continued payments and/or bill credits, as applicable, under the existing PAP, until such time as the Commission completes its final resolution of FairPoint's requests to modify the PAP, and considers the objections of BayRing and other parties in Docket Nos. DT-09-059 and DT-09-113 under the procedures set up by the Commission for resolution of these petitions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Alan M. Shoer".

Alan M. Shoer

cc: Parties on Service List

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