

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION .

DT 06-067

FREEDOM RING COMMUNICATIONS LLC D/B/A BAYRING COMMUNICATIONS

Complaint Against Verizon New Hampshire Regarding Access Charges

Order on Motion for Enforcement of Commission Order

ORDER NO. 25,343

April 4, 2012

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On November 18, 2011, the Federal Communications Commission (FCC) issued an order that, among other things, revised the regime for intercarrier compensation in the telecommunications industry. *See generally Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (CAF Order). As part of the reforms in the CAF Order, the FCC requires certain carriers, such as Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) to cap certain switched access and reciprocal compensation rates as of December 29, 2011 and to reduce those rates to a “bill-and-keep” system over six years. In that process, the CAF Order provides for a transitional recovery mechanism permitting carriers like FairPoint to recover a portion of the reduced revenues through an “access recovery charge” (ARC). In simplified terms, the ARC is set with reference to a baseline amount which is established using charges billed in Fiscal Year 2011, that is, October 1, 2010 to September 30, 2011, and which are collected by March 31, 2012. CAF Order ¶ 880.

On January 20, 2012, the Commission issued Order No. 25,319, which concluded, among other things, that effective January 21, 2012, FairPoint’s tariff was amended to prevent it from

billing carrier common line (CCL) charges when its common line was not used. On February 17, 2012, FairPoint moved for Rehearing and/or Reconsideration of Order No. 25,319, as well as Order No. 25,327 in this docket. Various competitive carriers on February 21, 2012 have also moved for reconsideration of Order no. 25,319. The Commission is now considering these motions.

On March 15, 2012, FairPoint filed what it termed an "Emergency Motion for Enforcement of Commission Order" wherein it contended that opposing parties in this docket have failed to pay lawful CCL charges incurred prior to January 21, 2012. FairPoint asserted that if it were not able to collect those CCL charges prior to March 31, 2012 it would be irreparably harmed because its baseline amount for the ARC would be lowered. FairPoint, therefore, requested that the Commission issue an order compelling parties to pay CCL charges by March 31, 2012, or establish other arrangements acceptable to FairPoint. In both redacted and confidential form, FairPoint submitted an exhibit identifying a number of competitive carriers and amounts FairPoint asserts they owe, in an aggregate amount of \$2,157,390.43. There were no invoices or other details submitted with this summary exhibit.

On March 15, 2012, the same day the motion was filed, the Commission issued a secretarial letter requiring that responses to FairPoint's motion be filed by March 21, 2012 in light of the time-sensitive nature of the relief FairPoint had requested. On March 21, 2012, an objection to FairPoint's motion was filed by Freedom Ring Communications LLC d/b/a BayRing Communications, Sprint Communications Company, L.P. and Sprint Spectrum, L.P., and AT&T Corp. (collectively the Competitive Carriers). The Competitive Carriers objected to FairPoint's motion on numerous grounds including: (1) FairPoint's motion is premature because there are

outstanding motions for reconsideration of the Commission's January 21, 2012 order; (2) FairPoint's motion is, in essence, a motion for reconsideration of the Commission's January 21, 2012 order; (3) there is no standard provided and no basis for extraordinary relief; (4) the abbreviated timeframe violates due process; (5) FairPoint's motion is misleading with respect to the impact of the CAF Order and with respect to the amounts actually owed; and (6) FairPoint's predicament is of its own making and is not an "emergency" as it knew of this issue for some time prior to filing for emergency relief.

On March 23, 2012, the Commission issued Order No. 25,337 requiring FairPoint to "produce bills, invoices, or other documentation verifying the amounts it alleges it is owed, clearly identifying the amount billed during the relevant period as defined by the CAF Order." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,337 (Mar. 23, 2012) at 4. That order stated that FairPoint was to file the information electronically as soon as practicable, and that the competitive carriers would have no more than three business days to respond to the information FairPoint produced. On March 28, 2012, FairPoint submitted information intended to comply with the Commission's directive. On March 29, 2012, FairPoint requested to withdraw its emergency motion. On March 30, 2012, AT&T, BayRing and Sprint responded to the information produced by FairPoint on March 28.

## **II. COMMISSION ANALYSIS**

As noted in Order No. 25,337, the information originally submitted by FairPoint was insufficient to allow the Commission to determine what amounts, if any, were owed by various competitive carriers. Therefore, the Commission requested that FairPoint verify the amounts it alleged it was owed. Even after FairPoint did so, it acknowledged that additional data would be

needed to complete the necessary analysis. Given the need for more analysis and the fact that there was less than one day to obtain the relief it sought, FairPoint requested that its motion be withdrawn. We note that the relevant day for the determination of the ARC, March 31, 2012, has passed. As such, it appears that not only would additional data and analysis be needed to reach a conclusion relative to FairPoint's motion, but also that the goal to be served by addressing the motion could no longer be achieved, even if such analysis were done. In such circumstances, we accept FairPoint's request to withdraw its motion from further consideration and we will take no further action on the motion or on the information provided with the motion or in response to Order No. 25,337.

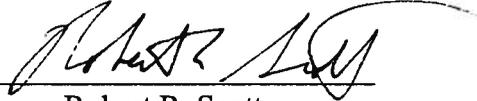
**Based upon the foregoing, it is hereby**

**ORDERED**, that the Commission accepts FairPoint's request to withdraw its motion from further consideration and will take no further action on the motion or on the information provided with the motion or in response to Order No. 25,337.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 2012.

  
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 Amy D. Ignatius  
 Chairman

  
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 Michael D. Harrington  
 Commissioner

  
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 Robert R. Scott  
 Commissioner

Attested by:

  
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 Debra A. Howland  
 Executive Director