THE STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

BayRing Petition For Investigation Into Verizon New Hampshire's Practice Of Imposing Access Charges, Including Carrier Common Line (CCL) Access Charges, On Calls Which Originate On BayRing's Network And Terminate On Wireless and Other Non-Verizon Carriers' Networks	Docket No.06-067

JOINT OPPOSITION OF AT&T, BAYRING COMMUNICATIONS AND ONE COMMUNICATIONS TO FAIRPOINT'S MOTION FOR REHEARING AND/OR RECONSIDERATION

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On April 21, 2008, Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE ("FairPoint") filed a Motion for Rehearing and/or Reconsideration ("Motion") repeating, often *verbatim*, the same points Verizon raised in its March 28, 2008 Motion challenging the Commission's March 21, 2008 Order No. 24,837. Freedom Ring Communications LLC d/b/a BayRing Communications ("BayRing"), AT&T Corp. ("AT&T"), and One Communications ("One") (collectively "Competitive Carriers") already rebutted Verizon's arguments in our April 9, 2008 Opposition to the Verizon Motion, and we again explain here why there is no merit to either the Verizon or FairPoint Motions for Reconsideration. The Commission should affirm its prior decision.

Introduction

The Commission should reject FairPoint's meritless and flawed Motion. The bulk of FairPoint's pleading merely repeats Verizon's arguments. The Competitive Carriers rebutted Verizon's arguments in their Opposition to the Verizon Motion, which the

Competitive Carriers incorporate herein by reference. And, to the minor extent that FairPoint raised anything new, FairPoint lacks standing to seek rehearing and/or reconsideration of those parts of the Order requiring Verizon to pay restitution for past charges unlawfully charged or collected, as it has suffered no injury in fact from those aspects of the Commission's Order. In any event, FairPoint's claim that the Order constitutes unlawful retroactive retemaking is incorrect and should be rejected. FairPoint's Motion also is untimely as a matter of law and must be rejected on that basis alone.

Argument

I. STANDARD OF REVIEW

The Commission will not grant rehearing unless there is "good reason" to consider an order either unlawful or unreasonable. RSA 541:3, 541:4; *In re Investigation as to Whether Certain Calls Are Local,* DT 00-223, DT 00-054, Order Denying Verizon New Hampshire's Petition for Rehearing of Order Approving Agreements, Order No. 24,266, at 2 ((May 13, 2005); *In re Global NAPs — Petition for an Order Directing Verizon to Comply with Its Interconnection Agreement,* DT 01-127, Order Denying Motion for Reconsideration, Order No. 24,367, at 5 (Sept. 2, 2004). Good reason exists only where there is something the Commission either "overlooked or mistakenly conceived." *In re Verizon New Hampshire — Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues,* DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385, at 14 (Oct. 19, 2004).

The Commission will not grant rehearing merely so that a party may have a second chance to present material it could have presented earlier. *Investigation as to Whether Certain Calls Are Local,* Order No. 24,266, at 3. "A successful motion does not

merely reassert prior arguments and request a different outcome." *In re Verizon New Hampshire — Wire Center Investigation,* DT 05-083, Order Denying Motions for Rehearing or Reconsideration, Order No. 24,629, at 7 (June 1, 2006); *Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues* at 14.

II. FAIRPOINT'S TARIFF INTERPRETATION CLAIMS MERELY REITERATE VERIZON ARGUMENTS THAT ALREADY HAVE BEEN LAWFULLY AND REASONABLY REJECTED.

FairPoint states that "in an attempt to avoid being unduly repetitious in this Motion, FairPoint hereby incorporates by reference, as if fully set forth herein, the positions set forth by Verizon in its Post-Hearing Brief... and in its Motion for Rehearing and/or Reconsideration...as would be applicable to FairPoint." *Motion*, footnote 2, p. 3. Whatever effort FairPoint made to "avoid being unduly repetitious" has failed, because FairPoint's Motion reiterates *verbatim* several of the arguments made by Verizon in its Post-Hearing Brief and Motion for Rehearing and/or Reconsideration. Indeed, the first seven (7) pages of FairPoint's challenge to the Commission's interpretation of Tariff 85 contain language that is either identical or very similar to several paragraphs of Verizon's Motion for Rehearing and/or Reconsideration.[1]

[1] More specifically: The first paragraph of page 3 of FairPoint's Motion corresponds to paragraph 7 of Verizon's Motion in that both are worded similarly and contain the same citations to legal authority; the second paragraph on page 3 of FairPoint's Motion which carries over onto page 4 corresponds to paragraph 8 of Verizon's Motion in that both are worded nearly identically and contain identical footnotes; the first full paragraph on page 4 of FairPoint's Motion is worded identically to paragraph 9 of Verizon's Motion; the last paragraph on page 4 of FairPoint's Motion corresponds to paragraph 10 of Verizon's Motion and even includes the same typographical error in the first line thereof (i.e. the word "compromises" should be "comprises"); the first paragraph on page 5 of FairPoint's Motion corresponds to paragraph 11 of Verizon's Motion with two of the three sentences worded identically; the second paragraph on page 5 of FairPoint's Motion which carries over onto page 6 is worded identically to paragraph 12 of Verizon's Motion; the first full paragraph on page 6 of FairPoint's Motion is identical to paragraph 13 of Verizon's Motion; the last paragraph on page 6 of FairPoint's Motion that carries over to the top of page 7 is nearly identical to

FairPoint's cutting and pasting of Verizon's arguments may have added length to its pleading, but, like Verizon, it fails to advance any tariff interpretation arguments the Commission has not already considered and rejected. FairPoint's Motion should be rejected for that reason alone. *See In re Verizon New Hampshire – Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues,* DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385 (October 19, 2004) at 14. The Competitive Carriers' April 9 Joint Opposition, in Sections II and III, which the Competitive Carriers incorporate by reference, explains why the Commission's interpretation of Tariff 85 that CCL charges cannot be imposed on traffic not involving a Verizon (and now FairPoint) common line pursuant to the tariff as written is supported by the evidence and is otherwise reasonable, lawful and equitable. Accordingly, FairPoint's tariff interpretation arguments must fail.

III. FAIRPOINT'S REPETITION OF VERIZON'S CONFISCATION ARGUMENT FAILS FOR THE SAME REASONS THE COMMISSION REJECTED VERIZON'S ARGUMENT.

A. FAIRPOINT'S CUT-AND-PASTE CONFISCATION ARGUMENT IS PREDICATED ON THE SAME FLAWED INTERPRETATION OF THE ORDER ON WHICH VERIZON RELIES.

FairPoint's Motion states that the Order "essentially confiscated FairPoint's property by requiring the provision of a telecommunications service without compensation and provides Competitive Carriers with an unjust windfall and competitive advantage[2]." *Motion,* p. 7. The Motion also states that "...it is clear that the effect of the

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paragraph 14 of Verizon's Motion; and the middle paragraph on page 7 of FairPoint's Motion is basically the same as paragraph 18 of Verizon's Motion.

[2] FairPoint offers no factual support for the propositions that the Commission's Order provides the Competitive Carriers with an unjust windfall and competitive advantage. In fact, the opposite is true – the elimination of the CCL charge helps to level the playing field by reducing the significant cost advantage

Commission's Order is to require FairPoint to provide a telecommunications service to the Competitive Carriers without compensation." *Motion,* p. 8. However, nowhere in the Motion does FairPoint describe with specificity "the service" that the Order allegedly requires FairPoint to provide without compensation. If FairPoint is referring to the carrier common line service, then FairPoint's claim is based on an error of fact and can be summarily dismissed. Verizon (and now FairPoint) is not providing a carrier common line service in the disputed call flows at issue. As a result, the Commission's Order prohibiting Verizon/FairPoint for charging the CCL in such situations is not requiring Verizon/FairPoint to provide a service without compensation.

If FairPoint's claim is that the Order is confiscatory because it "does not allow FairPoint to impose a CCL charge for the [local transport and tandem switching] service provided..." (*Motion,* p. 9), then FairPoint's argument suffers the same fatal flaw as that of Verizon: it assumes a decision that the Commission did not make. The Competitive Carriers demonstrated beyond doubt that such a claim is baseless in Section IV of their April 9 Joint Opposition, which is hereby incorporated by reference as if set forth fully herein. A plain reading of the Order indicates that the Commission did not simply order Verizon to stop billing for all access service, but rather ordered Verizon to cease billing ***for CCL service when Verizon does not provide that service.*** The Commission's decision on this point is clearly worded:

> In summary, based on our review of the tariff language and the record developed in this proceeding, we interpret Verizon's access tariff to permit the imposition of CCL charges only in those instances when a carrier uses CCL services.

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that Verizon/FairPoint have over competitors when the CCL charge is improperly applied. *See Exhibits 4 and 5; see also Post-Hearing Brief of BayRing Communications,* at pp. 29-33.

Order, at 32. The sole ordering paragraph of the Order is similarly clear and uncomplicated:

> **ORDERED**, that Verizon cease the billing of carrier common line charges for calls that do not involve a Verizon end user or a Verizon-provided local loop.

Order, at 33.

FairPoint's fabrications notwithstanding, the Commission did not require that Verizon/FairPoint cease billing for individual components of switched access service when the services *are* actually provided. Nor did the positions of the parties require it to. The issue of whether Verizon (and now FairPoint) can charge for services that it does provide (such as the Section 6 services of Local Transport or Tandem Switching) was never contested. No party has claimed that it is not responsible to pay for the services it receives, nor has any party stated an intention not to pay for such functions in the future, nor has any party asked the Commission to preclude Verizon/FairPoint from collecting compensation when services which are specified in the tariff are actually provided. Indeed, the record evidence is to the contrary.[3]

FairPoint, like Verizon, seeks to fabricate an issue here, where there is none, based on a mistatement of the issue in the case and a mischaracterization of the Commission's decision.

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[3] It is not relevant, for purposes of Verizon's confiscation claim, that BayRing argued at certain points in the case that the disputed call flows are not subject to Tariff 85 on the ground that they are not "switched access." BayRing has never taken the position that it is not required to pay Verizon for actual use of Verizon's network. Indeed, BayRing, like the other Competitive Carriers in this case, has expressly acknowledged its obligation to pay Verizon for use of its network. *See, e.g.*, Transcript I, at 78-79 (BayRing witness Winslow agrees that Verizon should be compensated for services Verizon provides, including the local transport and tandem switching services that Verizon provides in the disputed call flows.); *see also, id.*, at 82-83.

B. FAIRPOINT'S COMPLAINTS THAT THE COMMISSION DID NOT ADDRESS CERTAIN ISSUES HAVE NO MERIT, BECAUSE FAIRPOINT MISCONCEIVES THE SCOPE OF THE CASE AND THE ORDER, AND BECAUSE NOTHING IN THE ORDER PREVENTS FAIRPOINT FROM FILING TARIFF LANGUAGE THAT ENSURES JUST COMPENSATION FOR THE SERVICES IT IS PROVIDING.

On page 8 of its Motion, FairPoint takes exception to the Order because it did not address whether the services at issue in this case should be assessed under a tariff other than Tariff 85 and did not address whether prospective modifications to the tariff would be appropriate. The latter criticism of the Order levied by FairPoint is invalid because it fails to recognize that the October 23, 2007 Order of Notice in this docket indicated that the issue of prospective modifications to the tariff would be addressed "in the event Verizon's interpretation of the current tariffs is reasonable". *Order* at 25. Since the Commission did not find that Verizon's interpretation of Tariff 85 was reasonable, there was no need for the Commission to address the issue of prospective tariff modifications. Moreover, in its Procedural Order in this docket dated November 29, 2006, the Commission decided that consideration of prospective modifications to the tariff will not be part of this proceeding, and will be resolved "in a separate proceeding to be initiated at a later date if necessary." *Procedural Order,* Order No. 24, 705 (Nov. 29, 2006) at 6.

With respect to the issue of whether the services at issue in this case should be assessed under a tariff provision other than the provisions of Tariff 85, a reasonable reading of the Commission's Order indicates that the Commission found that unnecessary and that Tariff 85 governs all of the services at issue in this case. A fair interpretation of the Commission's decision is as follows: local transport, on its own, does not constitute a "complete" switched access which would warrant the imposition of a CCL charge; however, FairPoint/Verizon may nonetheless be compensated for individual access

components or rate elements listed in Tariff 85 (*e.g.* local transport) when the corresponding network services are actually provided. Thus, there is no need for the Commission to investigate whether tariff provisions other than Tariff 85 apply to the issues raised in this case.

Lastly, and perhaps most importantly as to the issue of FairPoint's tariff complaints, nothing in the Commission's decision found that FairPoint does not have the right to charge for services it does provide. Indeed, even if the Commission had decided – which it did not – that Tariff 85, *as currently drafted*, does not permit FairPoint to charge for the transport and switching services it does provide, then FairPoint has both the ability and the responsibility to rectify the situation. If FairPoint believes that Tariff 85 does not accurately reflect or describe the rates and services it is providing to the Competitive Carriers (and others), then FairPoint, not the Commission, bears responsibility for filing tariff revisions.[4] N.H. RSAs 378:1 and 378:2. FairPoint should not be permitted to use the rehearing process in this case to short circuit or otherwise evade its statutory tariff filing responsibilities.

C. FAIRPOINT'S CONFISCATION ARGUMENT HAS NO APPLICATION TO A TARIFF INTERPRETATION CASE INVOLVING A SINGLE RATE ELEMENT.

Just like Verizon's argument, FairPoint's confiscation claim also attempts to apply a ratemaking concept designed for general rate cases to this case, which involves whether Verizon's tariff permits it to apply the CCL charge when no CCL is provided.

[4] Herein lies the difference between this case, which is a tariff interpretation case, and a ratemaking or ratesetting case. In a ratemaking case, a Commission is acting in its "legislative" capacity to determine the rights to charge prospectively without regard to whether the current tariff permits or does not permit such charges. In a rate interpretation case, the Commission is acting in an adjudicatory capacity to determine rights under existing tariff language and is making no "legislative" pronouncement regarding anything else the utility might be entitled to do.

FairPoint's confiscation argument has no application to a case involving a single rate, and certainly no application to a case involving the interpretation of how an existing and approved tariff applies a specific rate.

The cases addressing the confiscation issue that Verizon cites (and FairPoint copied) concern themselves with rate-setting or "the fixing of prices" which involves the **establishment** of rates that a company is permitted to charge to recover its overall costs of service (including capital costs) necessary to provide the services it offers. Moreover, the cases address issues that affect the utility's overall rate of return resulting from the revenues from all services and the costs of providing them.[5] As a result, none of the cases Verizon cited (and FairPoint copied) concerns the situation at issue here — the particular rate that a utility is allowed to charge for an individual service. Thus, for all of the reasons set forth in the Competitive Carriers' Joint Opposition to Verizon's Motion for Rehearing and/or Reconsideration at pages 11 through 18 (which are incorporated by reference as if set forth fully herein), the Commission should reject FairPoint's copycat confiscation claim.

Significantly, FairPoint's Motion, just like the Verizon Motion it copied, does not allege the extent, if any, to which the Order affects FairPoint's overall revenue requirement. Thus, in the absence of specific factual evidence to support the allegation

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[5] An examination of Verizon's authorities shows the overarching nature of allegedly confiscatory regulation. *Appeal of Public Service Company of New Hampshire,* 130 N.H. 748 (1988), related to the cost of capital that the Commission determined should be applied in setting PSNH's rates. *Petition of Public Service Company of New Hampshire,* 130 N.H. 265 (1988), concerned the impact of the elimination of tens or hundreds of millions of dollars of construction costs from PSNH's rate base by the application of the anti-construction work in progress statute, RSA 378:30-a. *Duquesne Light Company v. Barasch,* 488 U.S. 299 (1989) also involved a similar prohibition against inclusion in the rate base of any facility until used and useful in public service. *Verizon Communications Inc. v. FCC,* 535 U.S. 467 (2002) concerned the FCC's TELRIC ratesetting methodology for unbundled network elements. *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944), concerned use of the "present fair value" versus "actual legitimate cost" methodologies for determining the rate base.

that the Order does not permit FairPoint to achieve its authorized revenue requirement, the confiscation argument surely must fail. Moreover, if FairPoint believes that a Commission tariff interpretation drives earnings below authorized levels, it may take curative action by making an appropriate filing with the Commission.

IV. THE COMMISSION SHOULD REJECT FAIRPOINT'S CLAIMS OF RETROACTIVE RATEMAKING.

There is no merit to FairPoint's claim that the Commission engaged in improper retroactive rulemaking when it ruled that Verizon's tariff did not permit it to impose a CCL charge when no Verizon common line or end-user was involved. FairPoint has no standing to raise this claim, as it has not suffered any injury in fact by the Order's restitution requirement. Substantively, FairPoint is incorrect; the Commission did not set rates retroactively, but merely interpreted Verizon's tariff and found that in many cases Verizon was imposing CCL charges that its tariff did not authorize.

A. FAIRPOINT LACKS STANDING TO RAISE ITS CLAIM OF RETROACTIVE RATEMAKING.

In order to seek rehearing of the Commission's decision, FairPoint must show that it is "directly affected thereby." RSA 541:3. To be directly affected means that a person has suffered or will suffer an "injury in fact." *Appeal of Richards,* 134 N.H. 148, 154, 590 A.2d 586, 589-90 (1991) (per curiam). Mere interest in a problem is insufficient to confer standing. *Id.,* 134 N.H. at 156, 590 A.2d at 591.

FairPoint has not alleged that the Order requires it to make restitution or that the Order has any other retrospective effect on it. To the contrary, FairPoint admits that the Order's effects upon it are prospective only. In asserting that the Order directly and adversely affects its interests, FairPoint claims, "*In relevant part,* the Order requires FairPoint to '. . . *cease the billing* of carrier common line charges for calls that do not

involve a [FairPoint] end user or a [FairPoint]-provided local loop.'" Motion at 2, quoting Order at 33 (emphasis added; ellipsis in original). Notably, FairPoint does not cite to any "relevant part" of the Order requiring it to make restitution.

Nor could it. The Commission carefully confined the restitution obligation to Verizon.

> Based on our review of the record, we have concluded, as more fully described above, that Verizon's misinterpretation of the provision pertaining to CCL charges under Tariff No. 85 has resulted in it impermissibly imposing CCL charges on certain customers. Therefore, we find that Verizon owes restitution.

Order at 32. The Commission specifically noted the FairPoint transaction and took pains to explain that Verizon, not FairPoint, would be responsible for restitution of charges that Verizon had improperly imposed in the past.

> On February 25, 2008, Order No. 24,823 was issued in Docket No. DT 07-011 approving the proposed transfer of certain assets from Verizon to FairPoint and Verizon's discontinuance of landline operations in the State of New Hampshire. One condition of approval in that order was the provision that, in the event it was decided that Verizon was not authorized to collect the charges in dispute in the present proceeding, Verizon would be required to refund the amount collected by it.

Id. at 33.

The Order was issued and effective on March 21, 2008, prior to the March 31 closing date of the Verizon-FairPoint transaction. *See* Motion at 1. Presumably, FairPoint is complying with the Order and is not billing CCL charges when the calls do not involve a FairPoint end-user or local loop. Therefore, the only legally cognizable complaint FairPoint could have would be with the Order's prohibition against FairPoint's imposition of the CCL charge going forward. There is nothing "retroactive" in that.

Thus, FairPoint has not shown, or even alleged, that it has suffered any injury in fact from the Commission's alleged retroactive ratemaking. In charging that the Commission's action constitutes retroactive ratemaking, FairPoint challenges the Commission's ability to scrutinize any rate imposed or collected in the past. While this position is legally incorrect (see below), it also is clear that FairPoint's concern about the alleged retroactive ratemaking in this case rises only to the level of mere interest in the alleged problem. That is insufficient to confer standing on FairPoint to seek rehearing based on its claims of retroactive ratemaking.

B. THE ORDER DOES NOT CONSTITUTE RETROACTIVE RATEMAKING.

Even if FairPoint had standing to raise the issue of retroactive ratemaking, which it does not, the Commission should reject FairPoint's claim. FairPoint mischaracterizes the Order. In the Order, the Commission did not set any rate — retroactively or otherwise. Instead, the Commission interpreted Verizon's tariff and correctly determined that *under the terms of that tariff,* Verizon was not entitled to impose or collect the CCL charge when no Verizon end user or local loop was involved. Whether tariffs are quasi-legislative, contractual, or something else, the Commission performed a normal adjudicative function of interpreting the language that governs the relationship between the parties. That is not retroactive ratemaking.

Basically, FairPoint disagrees with the Commission's decision. It claims that the CCL charge "was based on a straightforward application of the Tariff . . . and is not illegal." Motion at 11. On this premise it sets forth arguments concerning the quasi-legislative status of tariffs and Verizon's entitlement to collect lawful rates until the Commission changes those rates. *Id.* at 10-11. Of course, the Commission found exactly the opposite — that Verizon's tariff did not permit imposition of the CCL charge when

no Verizon end-user was involved. Thus, FairPoint's arguments miss the point. That FairPoint disagrees with the result does not turn the Commission's act of interpretation into an instance of ratesetting.

FairPoint's position would eviscerate RSA 365:29. Section 365:29 expressly grants the Commission authority to order a public utility "to make due reparation to the person who has paid . . . an illegal or unjustly discriminatory rate, fare, charge or price." That is precisely what the Commission did in this case, by ordering Verizon to make reparation of charges that are illegal because they are not authorized by Verizon's tariff. If the Commission's ability to redress illegal charges were restricted to prospective adjustments to a utility's tariffs, the Legislature's grant of authority in RSA 365:29 would be meaningless surplusage. The Commission may not read the statute out of existence in that manner.

FairPoint's position also would lead to absurd results. According to FairPoint, the Commission cannot redress past overcharges at all. "[A]ny challenge by a customer [to FairPoint's rates] or action by the Commission on its own motion must address the issue through proceedings that are prospective only." Motion at 10. Thus, FairPoint would completely immunize utilities from liability for unlawful overcharges. It also would sanction unjust enrichment of utilities at the expense of consumers, whose only redress for illegal overcharges would be to seek prospective changes in the utility's tariff. Such results would be contrary to the public interest.

Finally, the weakness of FairPoint's position is underscored by the fact that Verizon, which, unlike FairPoint, *is* subject to making restitution under the Order, did not make a claim of retroactive ratemaking.

V. FAIRPOINT'S MOTION IS UNTIMELY.

FairPoint filed its Motion on April 21, 2008, thirty-one days after the Commission issued the Order on March 21. FairPoint thus violated RSA 541:3, which requires that a motion for rehearing be filed "[w]ithin 30 days after any order or decision has been made by the commission." Since the Motion was filed after the statutory deadline, the Commission may not consider it.

That the thirtieth day after issuance of the Order — April 20, 2008 — fell on a Sunday does not serve to extend the statutory deadline in RSA 541:3. PUC Rule 202.03(b), which extends the time for taking action when the deadline falls on a day the Commission is closed, applies only to time periods specified in Commission rules and not to statutory time periods such as that in RSA 541:3.

The inapplicability of PUC rule 202.03(b) to statutory deadlines is plain from the wording of the rule itself.

> (a) Computation of any period of time *referred to in the Commission rules* shall begin with the first day following that on which the act which initiates such period of time occurs.
>
> (b) The last day of the period *so computed* shall be included unless it is a day on which the office of the commission is closed, in which event the period shall run until the end of the next following business day.

PUC Rule 202.03 (a)-(b). The extension of a deadline falling on a Sunday until the next business day, as provided in subsection (b), applies only to a time period "so computed" — that is, a "computation of [a] period of time referred to in the Commission's rules" as set forth in subsection (a). The Commission's rules do not specify the time within which a motion for rehearing must be filed; that time period is specified in the statute. Thus, by

its terms, PUC Rule 202.03(b) does not apply to the deadline in RSA 541:3 and does not serve to extend the time for filing a motion for reconsideration.[6]

There is no statutory equivalent to PUC Rule 202.03(b) that would extend the deadline in RSA 541:3 until the next business day if that deadline falls on a Sunday. The general New Hampshire law governing computation of time addresses only the beginning of a time period, not the end, and it does not provide for exclusion of non-business days from statutory time periods.

> **Time, How Reckoned; Days Included and Excluded.** – Except where specifically stated to the contrary, when a period or limit of time is to be reckoned from a day or date, that day or date shall be excluded from and the day on which an act should occur shall be included in the computation of the period or limit of time.

RSA 21:35.

Further, the Commission cannot assume that the Legislature implied either a general extension of statutory deadlines until the next business day when the deadline falls on a Sunday, or a specific extension in the case of motions for reconsideration under RSA 541:3. When the Legislature wanted to exclude Saturdays, Sundays, and legal holidays from a statutory time period, it has done so explicitly. For example:

> Whenever *the election laws* refer to a period or limit of time, Saturdays, Sundays, and holidays shall be included, except as provided in paragraph I. However, when the last day for performing any act *under the election laws* is a Saturday, Sunday or official state holiday, the act required shall be deemed to be duly performed if it is performed on the following business day.

RSA 652:18, II (emphasis added). In another example, the Legislature stated:

> Any probationer or parolee who is arrested under the authority of RSA 504-A:4 or RSA 651-A:25 shall be detained at the county jail closest to

[6] For the same reason, the Commission may not waive the deadline in RSA 541:3. PUC Rule 201.05 allows the Commission to waive its own rules, not statutory provisions.

> the location where he or she was arrested or any other suitable confinement facility in reasonable proximity to the location where he or she was arrested. Such probationer or parolee shall be detained there pending a preliminary hearing which shall be held within 72 hours from the time of arrest, excluding Saturdays, Sundays, and holidays . . . .

RSA 504-A:5. Similarly, the Legislature is familiar with the concept of "business days," and has used the term explicitly when it has wanted to set a time period based on business days rather than calendar days. For example:

> **Saturdays, Sundays, and Legal Holidays.** If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if performed on the next business day.

RSA 80:55, III.[7]

The Commission must assume that the Legislature meant what it said. When the Legislature wished to exclude Saturdays, Sundays, and legal holidays from a statutory time period, it has said so explicitly. The Legislature has not said so in the case of the time period for filing a motion for rehearing under 541:3. Therefore, the Commission cannot read such an extension into the statute. In addition, the Legislature last amended RSA 541:3 in 1994, by changing the deadline for filing a rehearing motion from 20 to 30 days. 1994 N.H. Stat. 54:1. Although the Legislature had the opportunity at that time to make the deadline the next business day after a weekend or holiday, it did not do so. This further shows the Legislature's intent not to exclude Saturdays, Sundays, and holidays from the calculation of the 30-day deadline for filing motions for rehearing.

[7] The phrase "any report, claim, tax return, statement, remittance, or other document" refers back to the introductory language in RSA 80:55, I: "Any report, claim, tax return, statement and other document, relative to tax matters, required or authorized to be filed with or any payment made to the state or to any political subdivision thereof . . . ." RSA 80:55, III, therefore, is confined to tax matters.

FairPoint's filing of its Motion on the thirty-first day after issuance of the Order was untimely. The Commission can and should reject FairPoint's motion on that basis alone.

Conclusion

For the foregoing reasons, the Commission should reject FairPoint's Motion as meritless, improper, and untimely.

Respectfully Submitted,

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By its attorney,

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Dated: April 28, 2008

Certificate of Service

I hereby certify that a copy of the foregoing Joint Opposition has on this 28th day of April, 2008 been sent either by first class postage prepaid or by electronic mail to the parties named on the Service List in the above-captioned matter.

Susan S. Geiger