

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 06-067

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

**Motion for Rehearing by
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE and
Conditional Withdrawal of Tariff Filing**

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) and moves for rehearing with respect to Order No. 25,002 (the “Order Nisi”) and Order No. 25,016 (the “Scheduling Order”) and, to the extent set forth below, conditionally withdraws the tariff pages submitted by FairPoint on September 10, 2009, in response to the Order Nisi. In support, FairPoint states as follows:

I. INTRODUCTION AND BACKGROUND

On March 21, 2008, the Commission issued its Order No. 24,837 in Docket DT 06-067 (this “Docket”) determining that the carrier common line charge (“CCL”) contained in NHPUC Tariff No. 85 of Verizon New England Inc., d/b/a Verizon New Hampshire (“Verizon”) is chargeable only when Verizon provides the use of its common line (loop) facilities to provide access to or from a Verizon end user. *Id.*, pp. 31-32. On March 31, 2008, FairPoint acquired the New Hampshire landline properties and business of Verizon and assumed Verizon Tariff

NHPUC No. 85. This acquisition was effected pursuant to and in accordance with the Commission's Order Approving Settlement Agreement with Conditions, Order No. 24,823 in Docket DT 07-011 (the "Merger Order").

After the issuance of the Merger Order, FairPoint filed a motion to intervene in this Docket, along with a motion for rehearing. Shortly prior to FairPoint's intervention, Verizon had moved for rehearing. While the Commission granted FairPoint's motion to intervene, the Commission denied the motions for rehearing. *See* Order No. 24,886, at ps. 7 and 11. Verizon and FairPoint thereafter appealed the Commission's Order No. 24,837 regarding CCL charges to the New Hampshire Supreme Court. On May 7, 2009, the New Hampshire Supreme Court issued its unanimous decision reversing this Commission, holding that based on the plain language of Tariff NHPUC No. 85, CCL access charges are properly chargeable to all switched-access services, not solely those services for which FairPoint provides loop facilities for access to or from a FairPoint end user. *Appeal of Verizon New England*, 158 N.H. 693 (2009) ("*Verizon*"). Motions for Reconsideration followed. The New Hampshire Supreme Court denied the motions via its order dated June 24, 2009.

On August 11, 2009, the Commission issued its Order Nisi directing FairPoint to file tariff pages revising Tariff NHPUC No. 85 with respect to switched-access charges "to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services." *Id.*, p. 2. On August 28, 2009, FairPoint filed its "Comments and Conditional Request for Hearing...", which pointed out, among other things, that the Commission had expressly removed the issue of prospective tariff changes from this proceeding in its Order dated November 29, 2006 (Order No. 24,705). In Order No. 24,705, the Commission had ruled:

In light of the expanded scope of this investigation and the intervention of several additional carriers, we agree with BayRing and AT&T that, in the interest of

judicial efficiency, it is appropriate to bifurcate the issues of tariff interpretation and reparations. We thus will conduct the proceeding in two phases, first determining the proper interpretation of the relevant tariff or tariffs and then deciding to what extent, if any, reparations are due. For purposes of Phase II, we will treat petitions for intervention in this docket as petitions for reparation under RSA 365:29, upon request of the intervenor. We further find that the consideration of prospective modifications to Verizon's tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary.

Id., p. 6. The Order Nisi makes no reference to this ruling.

In the comments filed on August 28, 2009, FairPoint further asserted that its current CCL charges were lawful and that the applicable tariff provisions were clear and unambiguous. FairPoint further asserted that an order directing FairPoint to reduce access rates without any offset to recover lost revenues would be in violation of the settlement agreement approved in the Merger Order and would be confiscatory in contravention of the New Hampshire and Federal constitutions. However, in an effort to comply with the Order Nisi in a way that would be lawful, FairPoint stated that it would make a tariff filing making the changes directed in CCL rates in a revenue neutral manner.

On September 10, 2009, the Order Nisi became effective in accordance with its terms. Also on that date, in compliance with the Order Nisi, FairPoint filed revised, revenue neutral tariff pages removing CCL charges from certain switched access traffic and replacing the lost revenue by implementing changes to the Interconnection Charge switched access rate element contained in NHPUC 85.

On September 23, 2009, the Commission issued the Scheduling Order again characterizing Order No. 24,837 as follows:

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.

The Scheduling Order further raised the issue of whether the FairPoint tariff filing was subject to RSA 378:6, IV.

II. MOTION FOR REHEARING

FairPoint respectfully moves for rehearing with respect to the Order Nisi¹ and the Scheduling Order on the grounds that they are unlawful and unreasonable in that (i) prospective tariff revisions were excluded from this proceeding and the record developed therein by Order No. 24,705; (ii) it is an error of law to characterize the proposed revisions to Tariff NHPUC No. 85 as “clarifications”; (iii) the conduct of further proceedings pursuant to the Order Nisi contravenes the mandate issued by the Supreme Court in *Verizon*; (iv) the modification of Tariff NHPUC No. 85 on other than a revenue neutral basis contravenes the settlement agreement approved as part of Docket DT 07-011; and (v) the schedule established by the Commission in the Scheduling Order is unjust and unreasonable and deprives FairPoint of its due process right to a fair hearing.

A. Prospective Tariff Revisions Were Excluded From This Proceeding By Order No. 24,705 And Are Not Properly Before This Commission.

As noted above, the Commission ruled in Order No. 24,705 the “[w]e further find that the consideration of prospective modifications to Verizon’s tariff will be removed from the present proceeding and designated for resolution in a separate proceeding to be initiated at a later date if necessary.” The record in this Docket was developed on that basis. The inclusion now of prospective tariff modifications in this proceeding constitutes a modification of Order No.

¹ FairPoint notes that it was not afforded a hearing and opportunity to be heard prior to the issuance of the Order Nisi. FairPoint respectfully submits that the findings and rulings contained in the Order Nisi were unlawful and unreasonable in that the Commission did not afford FairPoint with prior notice and an opportunity to be heard.

24,705. While the Commission has the authority to amend orders under RSA 365:28, doing so requires notice, hearing and the development of an appropriate evidentiary record, none of which has occurred. Proceeding on this basis constitutes an error of law.

B. The Changes to Tariff NHPUC No. 85 Order by the Commission in the Order Nisi Do Not Constitute Clarifications.

Respectfully, it is an error of law to characterize such a change in Tariff NHPUC No. 85 as a “clarification”. The New Hampshire Supreme Court unequivocally held that CCL charges apply to all switched access traffic. *Verizon* at 697. The Supreme Court stated that “[w]e are obliged to give effect to the plain language used in the tariff.” *Id.*, p. 700. “If the tariff should be amended, it should be amended as a result of regulatory process, and not by a decision of this court.” *Id.* A Commission order directing the removal of CCL charges from certain switched access services constitutes an amendment to, not a clarification of, NHPUC No. 85 and must be effected by the exercise of the rate fixing authority of the Commission under RSA 378:7 following the conduct of the necessary attendant procedures, including notice and hearing. Failure to do so is unlawful and unreasonable.

C. The Conduct of Further Proceedings Pursuant to the Order Nisi Contravenes the Mandate Issued by the Supreme Court in *Verizon*.

As the basis for its ruling in the Order Nisi, the Commission stated as follows:

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 of Northern New England Telephone Operations LLC, d/b/a FairPoint Communications-NNE (FairPoint) is properly imposed when: (1) Verizon² 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 the inverse to be true, that is, when the use of Verizon’s common line and the presence of a Verizon end user are lacking, the CCL charge may not be imposed.

Order No. 24,837 at 27. As previously stated, the tariff provisions are complex and understanding them requires a sophisticated understanding of the telecommunications industry and the history of such charges. *Id.* The Commission's interpretation of the tariff was based on the evidence presented at hearing combined with its understanding of the industry and the purpose of the tariff charges.

Order Nisi, p. 1.

Respectfully, any reliance on the foregoing paragraph as the basis for further action in this proceeding constitutes an error of law. The Commission references page 27 of Order No. 24,837. The entirety of that page consists of a discussion of provisions within Tariff NHPUC No. 85 and concludes with the statement that "we make our findings based on the language within the four corners of the Tariff." Therefore, the language referenced does not consist of factual findings by the Commission based on evidence but instead is part of the Commission's interpretation of the tariff language relating to CCL charges – the very interpretation that was reversed by the New Hampshire Supreme Court as contrary to the plain meaning of the tariff.

Rule 24 of the Rules of the Supreme Court of the State of New Hampshire addresses the Court's mandate that follows the issuance of an order. *N.H. Sup. Ct. R. 24*. The Court's mandate is the order that gives authoritative notice to the trial court or administrative agency that the judgment appealed from has been reversed or affirmed, as the case may be. *State v. Gubitosi*, 153 N.H. 79, 82 (2005). The mandate is the official notice of action of the appellate court, directed to the court or agency below, and directing the lower court or agency to have the appellate court's judgment duly recognized, obeyed, and executed. *Auger v. Town of Strafford*, 158 N.H. 609, 612-613 (2009). (quotations omitted). It also bars a trial court from acting beyond the scope of the mandate, varying it, or judicially examining it for any purpose other than execution. *Id.* (quotations omitted). The conduct of further proceedings on this basis would be in contravention of the mandate issued by the Supreme Court and would constitute an error of law. In other words, this Docket should be closed.

D. The Modification of Tariff NHPUC No. 85 to Remove CCL Charges from Certain Traffic on Other Than a Revenue Neutral Basis Contravenes the Settlement Agreement Approved in the Merger Order.

FairPoint raised the issue related to the Settlement Agreement among the Joint Petitioners and Staff dated January 23, 2008 (the “Settlement Agreement”) in order to advise the Commission of a potential conflict between the Order Nisi and the Settlement Agreement. *See* FairPoint’s Comments and Conditional Request for a Hearing, at p.6 (August 28, 2009). Given that Order Nisi essentially compels FairPoint to file revised tariff pages which leads to a reduction in wholesale rates charged to CLECs, FairPoint thought it must advise the Commission of the terms of the Settlement Agreement in order for FairPoint to protect its rights.

Section 9.1 of the Settlement Agreement provides as follows:

For a period of three years following the Closing Date, FairPoint shall continue providing the wholesale services offered by Verizon as of the Closing Date. FairPoint will not seek to increase wholesale rates to take effect during the three years following the Closing Date. The Commission shall not seek to decrease such rates for effect during the three-year period following the Closing Date.

Action by the Commission prospectively to reduce wholesale access rates by removing CCL charges from certain switched access traffic, if done on a basis that is not revenue neutral, appears to contravene the Settlement Agreement approved in the Merger Order. If, in fact, the Commission seeks to decrease FairPoint’s wholesale rates, then such actions should be considered in the context of other provisions of the Settlement Agreement. For example, in Section 3.7 of the Settlement Agreement FairPoint promised not to increase prices for broadband services for a period of two years following the merger closing “...provided that the Commission *does not seek* to alter, amend or reduce any of FairPoint’s prices for services that are subject to the Commission’s regulation.” Settlement Agreement, Section 3.7 (emphasis added).

FairPoint respectfully submits that this Docket's expedited schedule does not afford sufficient opportunity for FairPoint or the Commission to consider the full implications of a required wholesale rate reduction via the required tariff filing. This is especially true considering the fact the underlying record in this Docket was not developed for the purpose of determining or considering prospective changes to Tariff NHPUC No. 85. FairPoint therefore respectfully submits that the Order Nisi is unlawful and unreasonable.

E. The Schedule Established by the Commission in the Scheduling Order is Unjust and Unreasonable and Deprives FairPoint of its Due Process Right to a Fair Hearing.

FairPoint has attempted to comply with the Commission's Order *Nisi* by filing revised tariff pages as instructed. In doing so, FairPoint attempted in good faith to comply fully with the applicable tariff filing requirements. This was not a voluntary filing by FairPoint; it was a response to the Commission's Order Nisi directing the filing. Following the filing, the Commission, without conducting a hearing, technical session or other typical process, issued the Scheduling Order establishing a procedural schedule that commenced with a requirement for FairPoint to file prefiled testimony within three business days, the last of which was a major religious holiday. The Order further established a highly expedited discovery and hearing schedule, including a due date of Columbus Day for FairPoint responses to multiple data requests (essentially affording FairPoint with four (4) business days to complete responses to said data requests), and made findings with regard to the completeness of FairPoint's filing.

The highly expedited procedural schedule was not developed through collaboration, as is typically the case or with regard to the unfair burden placed upon FairPoint. While FairPoint will endeavor in good faith to comply with this schedule, there is a substantial risk that FairPoint will not fairly be able to present its position. To understand FairPoint's concern, the Commission only needs to review the onerous data requests propounded by AT&T in response to

Commission Order No. 25,016 (said data requests being attached hereto and incorporated herein by reference as Attachment 1). AT&T's data requests (among other things) are overbroad and abusive, especially considering the fact that FairPoint only had four (4) business days prior to the Columbus Day Holiday to develop responses. It is apparent to FairPoint that AT&T propounded such onerous discovery requests knowing full well that FairPoint would have little time to respond. For these reasons, and the reasons hereinbefore stated, the schedule is unjust, unreasonable and in violation of FairPoint's due process rights.

III. CONDITIONAL WITHDRAWAL OF TARIFF PAGES

To the extent that the procedural schedule has been developed on the basis that the timeframe specified in RSA 378:6, IV may apply, FairPoint respectfully submits that that statute is not applicable to the issues presently before the Commission. This tariff filing was made pursuant to the Order Nisi. The tariff filing *was not a voluntary filing* under RSA 378:6, IV; instead, it is a response by FairPoint to comply lawfully to the exercise by the Commission of its ratemaking authority under 378:7. To the extent that the Commission is treating the tariff page filing as having been voluntarily made pursuant to RSA 378:6, IV, FairPoint hereby withdraws the filing and requests that the filing be treated as illustrative. To the extent that the Commission conducts further proceedings in this Docket - which should not be the case - and deems a tariff filing as having been ordered by the Order Nisi, FairPoint affirms and reserves all of its rights with respect to the tariff filing made on September 10, 2009. However, FairPoint respectfully submits that the procedural schedule should accord FairPoint the protections contained in RSA 378:7, as well as those provided by RSA 541-A, and the due process of law protections provided by the New Hampshire Constitution (Part I, Article 15) and United States Constitution (Amendment XIV).

WHEREFORE, FairPoint respectfully requests that this Commission:

- a. Grant this Motion for Rehearing;
- b. Rescind the Order Nisi and the Scheduling Order; and
- c. Close this Docket in compliance with the Supreme Court's mandate in *Verizon*, since the sole issues before the Commission as set forth in Order No. 24,705 have been fully adjudicated; and
- d. Grant such other relief as will be just and reasonable.

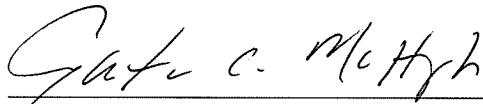
Respectfully submitted,

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

By Its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: October 12, 2009

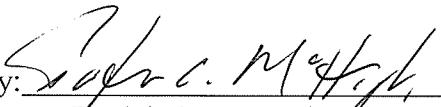
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CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing petition was forwarded this day to the parties by electronic mail.

Dated: October 12, 2009

By: 
Patrick C. McHugh, Esq.

ATTACHMENT 1

DATA REQUESTS PROPOUNDED BY AT&T

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

DT 06-067

**FREEDOM RING COMMUNICATIONS, LLC d/b/a BAYRING COMMUNICATIONS
Complaint Against Verizon New Hampshire Re: Access Charges**

AT&T's DATA REQUESTS TO FAIRPOINT COMMUNICATIONS, NNE

AT&T Corp. ("AT&T") serves these data requests upon Northern New England Telephone Operations LLC, d/b/a FairPoint Communications – NNE ("FairPoint").

INSTRUCTIONS

A. If you object to any part of an Interrogatory, answer all parts of such Interrogatories to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

B. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to an Interrogatory contained in a non-written communication, state the following with respect to the nonwritten communication:

1. the date thereof;
2. the identity of each of the participants in the non-written communication;
3. the identity of each person present during all or any part of the non-written communication;
4. a description of the non-written communication which is sufficient to identify the particular communication without revealing the information for which a privilege or protection from non-disclosure is claimed;
5. the nature of your claim of non-discoverability (e.g. attorney-client privilege); and
6. each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit AT&T to make a full determination as to whether your claim is valid.

C. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to an Interrogatory contained in a document, set forth with respect to the document:

1. the date and number of pages;
2. the identity of the author(s) or preparer(s);
3. the identity of the addressee, if any;
4. the title;
5. the type of tangible thing (e.g. letter, memorandum, telegram, chart, report, recording disc);
6. the subject matter (without revealing the information as to which privilege or protection from non-disclosure is claimed);
7. the identity of each person who has received the document or to whom knowledge of the contents of the document was communicated;
8. the identity of the present custodian(s);
9. the nature of your claim of non-discoverability (e.g. attorney-client privilege); and
10. each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit AT&T to make a full determination as to whether your claim is valid.

D. If you claim any form of privilege or other protection from disclosure, otherwise than as set forth in Instructions B and C, as a ground for not answering any interrogatory, set forth:

1. the nature of your claim as to non-discoverability; and
2. each and every fact on which you rest your claim or privilege or other protection from disclosure, stating such facts with sufficient specificity to permit AT&T to make a full determination as to whether your claim is valid.

E. If you know of any document, communication or information but cannot give the specific information or the full information called for by a particular Interrogatory, so state and give the best information you have on the subject and identify every person you believe to have the required information.

F. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; the masculine form of a pronoun shall be considered to include also within its meaning the feminine and neuter forms of the pronoun, and vice versa; and the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb. In each instance, the Interrogatory shall be construed so as to require the most inclusive answer or production.

G. Please attach written material to any answer for which written material is requested and/or available. If such written material is not available, state where it may be obtained. Label the written material with the number of the Interrogatory to which it pertains.

H. On each Interrogatory response, list the name and title of the person or persons who prepared the response or who is responsible for the information contained therein.

DEFINITIONS

As used in these Interrogatories, the following terms have the meaning as set forth below:

A. The terms "Fairpoint" or "you" or "your company" shall include the named entities and all of their subsidiaries and affiliates, the respondent's former and present officers, attorneys, employees, servants, agents and representatives, and any person acting on the respondent's behalf for any purpose.

B. The terms "relates to" or "relating to" mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

C. The term "including" means "including, but not limited to."

D. "List", "describe", "explain", "specify" or "state" shall mean to set forth fully, in detail, and unambiguously each and every fact of which the respondent or its agents or representatives have knowledge which is relevant to the answer called for by the Interrogatory.

E. The terms "document" or "documents" as used herein shall include, without limitation, any writings and documentary material of any kind whatsoever, both originals and copies (regardless of origin and whether or not including additional writing thereon or attached thereto), and any and all drafts, preliminary versions, alterations, modifications, revisions, changes and written comments of and concerning such material, including but not limited to: correspondence, letters, memoranda, notes, reports, directions, studies, investigations, questionnaires and surveys, inspections, permits, citizen complaints, papers, files, books, manuals, instructions, records, pamphlets, forms, contracts, contract amendments or supplements, contract offers, tenders, acceptances, counteroffers or negotiating agreements, notices, confirmations, telegrams, communications sent or received, print-outs, diary entries, calendars, tables, compilations, tabulations, charts, graphs, maps, recommendations,

ledgers, accounts, worksheets, photographs, tape recordings, movie pictures, videotapes, transcripts, logs, workpapers, minutes, summaries, notations and records of any sort (printed, recorded or otherwise) of any oral communication whether sent or received or neither, and other written records or recordings, in whatever form, stored or contained in or on whatever medium including computerized or digital memory or magnetic media that:

1. are now or were formerly in your possession, custody or control; or
2. are known or believed to be responsive to these Interrogatories, regardless of who has or formerly had custody, possession or control.

F. The term “date” shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof, including relationship to other events.

G. The term “person” or “persons” means and includes any individual, committee, task force, division, department, company, contractor, state, federal or local government agency, corporation, firm, association, partnership, joint venture or any other business or legal entity.

H. The terms “identify” and “identity” when used with reference to a natural person mean to state his or her full name, present or last known address, present or last known telephone number, present or last known place of employment, position or business affiliation, his or her position or business affiliation at the time in question, and a general description of the business in which he or she is engaged.

I. The terms “identify” and “identity” when used with respect to any other entity means to state its full name, the address of its principal place of business and the name of its chief executive officers.

J. The terms “identify” and “identity” with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and its present custodian. If any such document was but is no longer in the possession of the respondent or subject to its control, state what disposition was made of it and explain the circumstances surrounding, and the authorization, for such disposition, and state the date or approximate date thereof.

K. The terms “identify” and “identity” with respect to any non-written communication means to state the identity of the natural person(s) making and receiving the communication, their respective principals or employers at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.

L. The term “oral communication” means any utterance heard, whether in person, by telephone, or otherwise.

M. The term “identify the sources” means to identify and specify all documents and non-written communications upon which you rely in support of the allegation, contention, conclusion, position or answer in question, to state the references drawn from each such source upon which you rely in support of such allegation, contention, conclusion, position or answer and to identify all individuals whom you know to be knowledgeable with respect to the subject matter of such allegation, contention, conclusion, position or answer. Where a source is a public record (e.g., a newspaper, trade journal, judicial or administrative opinion), a quotation and page reference of the material relied upon shall be supplied.

N. The term to “state the basis” for an allegation, contention, conclusion, position or answer means (a) to identify and specify the sources therefore, and (b) to identify and specify all facts on which you rely or intend to rely in support of the allegation, contention, conclusion, position or answer, and (c) to set forth and explain the nature and application to the relevant facts of all pertinent legal theories upon which you rely for your knowledge, information and/or belief that there are good grounds to support such allegation, contention, conclusion, position or answer.

O. The terms “and” and “or” have both conjunctive and disjunctive meanings as necessary to bring within the scope of the Interrogatories and request any information or documents that might otherwise be construed to be outside their scope; “all” and “any” mean both “each” and “every”.

DATA REQUESTS

- 1) Please state and describe what role Mr. Skrivan played in developing the tariff filing described at page 5, lines 1-5 of his testimony.
- 2) Please state when Mr. Skrivan began that role, and whether that role changed over time.
- 3) Please identify all other persons who were involved in developing that tariff filing.
- 4) Please provide all work papers that Mr. Skrivan or any of the other persons identified in response to request number 4 prepared, reviewed, or considered in preparing the tariff filing described at page 5 lines 1-5 of Mr. Skrivan’s testimony,
- 5) When were “the supporting schedules associated with that filing” first developed?
 - i) If they were developed when the tariff was filed, why were they not supplied then?
 - ii) If they were developed in preparation for Mr. Skrivan’s testimony, what was the basis for the earlier “recent tariff” was filed? (See, pp. 3-4 of direct testimony).

- 6) Please provide all documents reflecting or relating to communications between Verizon and FairPoint regarding the CCL issue, Tariff NHPUC No. 85, or the tariff changes described at page 5, lines 1-5 of Mr. Skrivan's direct testimony.
- 7) Please provide all documents relating to the CCL issue, Tariff NHPUC No. 85, or the tariff changes described at page 5, lines 1-5 of Mr. Skrivan's direct testimony, including but not limited to financial accruals, allowances, reserves, or other arrangements made to reflect, treat or account for the CCL issue in NH.
- 8) Please describe when and how Mr. Skrivan obtained knowledge of Verizon's resolution of its CCL charges subsequent to the Supreme Court decision? Provide the entirety of Mr. Skrivan knowledge of Verizon's resolution.
- 9) The testimony at p. 5 indicates that: "[t]he tariff that was filed, under your [Mr. Skrivan's] direction, in response to the Order *Nisi*." And further asserts that: "In compliance with the Order *Nisi*, FairPoint filed revised tariff pages to eliminate the application of the CCL charge to access traffic which does not originate or terminate to a *FairPoint* end user on a revenue neutral basis." (emphasis added)
 - a) Provide all legal *authorities* and all bases in the Order *Nisi* which you contend directed or entitled FairPoint to make a compliance filing "on a revenue neutral basis."
 - b) Provide all legal authorities and all bases in any other Order which you contend directed or entitled FairPoint to make a compliance filing "on a revenue neutral basis"
- 10) The testimony at p. 5 states: Revenue neutrality was accomplished by using an existing switched access rate element called the Interconnection Charge. This rate, previously set at \$.0000 per minute, has been increased to \$.010164 per minute.
 - a) When was the Interconnection Charge rate set at zero, \$.0000 per minute?
 - b) In Mr. Skrivan's understanding, why was the Interconnection Charge set at zero.
 - c) Please provide all legal authorities and all bases in the Order *Nisi* which you contend directed or entitled FairPoint to change the rate for the Interconnection Charge, of which Mr. Skrivan is aware.
 - d) Please provide all legal authorities and all bases in any other Order which you contend directed or entitled FairPoint to change the rate for the Interconnection Charge, of which Mr. Skrivan is aware.
 - e) Please provide all citations and references in the Order *Nisi* to the Interconnection Charge, of which Mr. Skrivan is aware.
 - f) Please provide all citations and references in any Order to the Interconnection Charge, of which Mr. Skrivan is aware.

- g) Please describe all network function or functions performed by FairPoint, if any, that the newly introduced interconnection charge is designed to recover.
- 11) The testimony at 5 states: "This [Interconnection Charge] rate will apply equally to all intrastate switched access usage, with the same rate applicable to all categories of traffic and applicable equally to originating and terminating traffic.
- a) On a call with a FairPoint common line and a CLEC common line, how many FairPoint Interconnection Charges apply? Please explain why that number applies.
 - b) On a call, with no FairPoint common line and two CLEC common lines, how many FairPoint Interconnection Charges apply? Please explain why that number applies.
 - c) On a call with two FairPoint common lines and no CLEC common line, how many FairPoint Interconnection Charges apply? Please explain why that number applies.
- 12) The testimony at p. 5 states: "Since the development of the Interconnection Charge was intended to be revenue neutral..."
- a) Define the term "revenue neutral" as used by Mr., Skrivan in his testimony.
 - b) Please provide all legal authorities and all bases on which Mr. Skrivan relies for his position that the development of the Interconnection Charge was intended to be "revenue neutral."
- 13) The testimony states at p. 5. "We reviewed the history of access charges and selected the months of May, June and July 2009, as the test period for this calculation." Identify by name, title and affiliation all persons or entities included within the referenced "we."
- 14) The testimony at p. 6 states: Immediately upon FairPoint assuming control of the New Hampshire operations, at my direction, Verizon was instructed to discontinue billing the CCL charge on switched access traffic that does not originate from or terminate to a FairPoint end user."
- a) Provide all documents and describe all communications by which Verizon was instructed to discontinue billing the CCL charge on switched access traffic that does not originate from or terminate to a FairPoint end user.
 - b) Identify whether this instruction was written or verbal, or both.
 - c) If verbal, identify who at FairPoint delivered the instruction to Verizon.
 - d) If verbal, identify who at Verizon received such instruction.

- e) Provide any confirmation or response provided by Verizon (or its agents) related to the instructions provided to it to discontinue billing the CCL charge on switched access traffic that does not originate from or terminate to a FairPoint end user.
- 15) The testimony at p. 6 states: “However, this change took a few months to accomplish, during which time we instructed interexchange carriers not to pay that portion of their bills.” Provide all documents reflecting such instruction to interexchange carriers, and describe all verbal communications of such instruction, stating who at FairPoint delivered the instruction, which carriers received that instruction, which persons received that instruction, and when.
- 16) The testimony at p. 6 states: “In approximately June of 2008 the CCL charge was eliminated from bills for switched access traffic that does not originate from or terminate to a FairPoint end user, and credits were applied retroactively to April 1, 2008. Thus, during the second half of 2008 and the first quarter of 2009, no relevant billing was done for this service, and Verizon did not provide us with the usage data to calculate exactly the CCL charges for this period.
- a) Define the term “In approximately June of 2008”.
 - b) Define the term “no relevant billing” and contrast to “no billing”.
 - c) Is it FairPoint’s view that no CCL charges were billed for switched access traffic that does not originate from or terminate to a FairPoint end user, for usage on or after June 1, 2008?
 - d) Quantify all CCL charges that were billed for switched access traffic that does not originate from or terminate to a FairPoint end user, for usage on or after June 1, 2008?
- 17) The testimony at 6. States: “When the Supreme Court’s decision on appeal became final, these CCL charges were reinstated for the entire period based on actual and estimated data.”
- a) When does Mr. Skrivan believe that the Supreme Court’s decision on appeal became final?
 - i) Include the date on which Mr. Skrivan believes it became final?
 - ii) What is the basis for Mr. Skrivan’s belief that the Supreme Court’s decision became final on that date?
 - iii) Explain why charges were reinstated based on “estimated data.”
 - iv) Provide all disclosure that FairPoint made to access customers that these charges were being billed based in whole or in part on estimated data.

- v) Identify or provide all provisions in FairPoint tariffs that authorize FairPoint to utilize “estimated data” to produce access bills.
 - vi) Identify and describe the period, amount, volume of minutes, and dollars for the CCL charge that was reinstated based on actual data.
 - vii) Identify and describe the period, amount, volume of minutes, and dollars for the CCL charge that was reinstated based on estimated data.
 - viii) What is the basis for Mr. Skrivan’s understanding that estimated data was used for this back billing purpose?
 - ix) Who at FairPoint approved the use of estimated data for such billing? Please provide all associated documents.
- 18) The testimony states at p. 6 “We chose to use the May, June and July bill periods, which were billed under our wholesale billing system following the cutover transition.” Did the NH intrastate switched access bill period May, June and July, include:
- a) any bill credits,
 - b) any adjustments of any kind,
 - c) any corrections,
 - d) any settlements,
 - e) any uncollectible amounts,
 - f) any out-of-period usage,,
 - g) any errors, or omission of any kind, and/or
 - h) any downward or other trends in volume?
 - i) Separately described, quantify, and identify all such:
 - i) bill credits
 - ii) adjustments
 - iii) corrections
 - iv) settlements
 - v) uncollectible amounts

- vi) out-of-period usage
- vii) errors, or omission of any kind
- viii) any trends

19) The testimony states at p. 6: Our objective was to calculate the loss of CCL revenues reflecting the CCL charge changes specified in the Order *Nisi* and to calculate a replacement charge to restore the lost revenue.

- a) Identify all persons comprising the “our” referenced.
- b) Who established the objective?
- c) When was the objective established?
- d) Provide all documentation of the objective, including its development, author, and approval.
- e) Please “Admit” or “Deny” that the Order *Nisi* No. 25002 referenced did not explicitly require or authorize FairPoint to introduce a replacement charge to restore or recover any lost revenue.
- f) If “Deny” in (e) above, specifically cite and provide the actual language from the order that directed that as FairPoint eliminates the application of the CCL charge when FairPoint does not perform common line function it should simultaneously introduce an interconnection charge to restore any lost revenue.
- g) Explain how FairPoint could have lost any revenue, to which it is purportedly entitled to recover, when the Order *Nisi* directed the application of the CCLC rate only to instances when FairPoint actually provided the CCLC.
- h) Since the CCLC has traditionally been used to recover common line, *e.g.*, loop costs, to the extent FairPoint did not perform any common line function, why is it reasonable that FairPoint should be paid as if it had provided a common line function?
 - i) Why does Mr. Skrivan believe that it is not anticompetitive for FairPoint to propose that it be compensated in its access rates for CCLC or loop costs in instances when competitors are supplying those loops and FairPoint is not supplying those loops?
 - i) Provide Mr. Skrivan’s understanding of the purpose Order *Nisi* and in particular the Commission specific directive to file *verbatim* tariff language changes, and the Commission’s intended purpose in doing so.

20) Reference Skrivan Testimony at p.10, lines 6-9: Please cite and provide the specific language in the Order *Nisi* that suggested any wholesale rates would change, other than to ensure that

existing rates are applied only when FairPoint actually performs the function for which those rates exist.

- 21) At p. 10 the testimony states: "I would also point out that in Section 9.3 of the Settlement Agreement, the parties agreed to adopt the provisions of the settlement agreement between FairPoint Communications, Inc. and certain CLECs attached as Exhibit 2 to the Settlement Agreement (the "CLEC Settlement"). Section 4(h) of the CLEC Settlement provides: "Notwithstanding anything herein to the contrary, FairPoint shall have the same rights and obligations as Verizon in connection with and arising out of any final order which may be issued with NHPUC Docket 06-067."

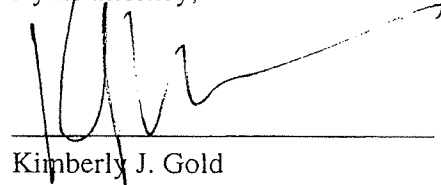
Please provide a copy of the referenced Settlement Agreement, including Exhibit 2 ("The CLEC Settlement")

- 22) At p. 10 the testimony states: "While I will leave the legal analysis to the attorneys, my understanding is that the Settlement Agreement among Verizon, FairPoint Communications, Inc. and the Commission Staff contemplated that wholesale rates would remain in place for three years. Given the terms of the Order *Nisi*, which directed changes in access rates, maintaining revenue neutrality best reflects the intent of the paragraph. A non-revenue neutral decrease in wholesale rates does not appear to be consistent with the last sentence of Section 9.1 of the Settlement Agreement, which states: "The Commission shall not seek to decrease such rates for effect during the three-year period following the Closing Date."
- a) When did Mr. Skrivan first read the Settlement Agreement?
 - b) When did Mr. Skrivan develop the referenced understanding?
 - c) Provide all cites in the docket 06-67 briefs by Verizon and FairPoint where they made the argument that the Commission was barred from ordered a change in the application of the NH PUC No. 85 tariff to CCL charges because of the reference Settlement.
 - d) Please provide citations and references to any statement in any NH PUC Order that you contend support the argument that under the Settlement Agreement, the Commission was barred from ordered a change in the application of the NH PUC No. 85 tariff to CCL charges
 - e) Please provide citations and references to any statement by the Commission, the Supreme Court, or by any party in any document filed in the Supreme Court or the Commission where Verizon and FairPoint took the position that the Commission was barred from ordering a change in the application of the NH PUC # 85 tariff to CCL charges because of the referenced Settlement, or that you contend constitutes support for that position.

f) If the Order *Nisi* ordered a change in wholesale rates which purportedly violated the referenced Settlement Agreement and the Settlement Agreement and the order approving it controlled, please explain why FairPoint did not raise any objection to that effect during the *Nisi* comment period.

Date: October 5, 2009

By its attorney,

A handwritten signature in black ink, appearing to read 'Kimberly J. Gold', written over a horizontal line.

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