

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

Complaint of Freedom Ring Communications,
LLC d/b/a BayRing Communications Against
Verizon New Hampshire re: Access Charges

DT 06-067

AFFIDAVIT OF E. CHRISTOPHER NURSE

I, E. Christopher Nurse, being duly sworn, do hereby state as follows:

1. I am Regional Vice President, Regulatory and External Affairs in the State Legislative and External Affairs organization for AT&T Services, Inc. My principal responsibilities concern the Atlantic region states, Maine to Virginia. My office address is 1120 20th Street, N.W., Suite 1000, Washington, DC 20036.

2. My duties include regulatory and legislative policy, oversight and support across the region, for both AT&T's wireless and wireline organizations, including facilities-based and non-facilities-based competitive entrants, and long-distance voice and data carriers. I concentrate on promoting competitive market conditions at state commissions and legislatures. Of particular relevance here, I have focused for several years on reforming intercarrier compensation—both reciprocal compensation and access charges. This effort involves pursuing reform and enforcement in state forums as well as supporting our recent landmark ABC Plan proposal at the Federal Communications Commission, which was the foundation for the FCC's recent *Connect America Fund Order*,¹ addressing, among other things, intrastate access reform and eligible recovery via the Access Recovery Charge and CAF funding.

3. I have been employed by AT&T or its predecessor companies for more than 15 years, and have over 30 years experience in telecommunications. Immediately prior to working for (a predecessor acquired by) AT&T, I served on the Engineering--Telecom staff here at the New Hampshire Public Utilities Commission for seven years, including as advisory staff to the

¹ *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (released Nov. 18, 2011) ("*Connect America Fund Order*").

Commissioners during the landmark access charge investigation, DE 90-002. In the year prior to serving on the Commission Staff, I managed the marketing, engineering and construction of broadband networks in several, rural New Hampshire towns, now largely served by Comcast.

4. I received a Bachelors Degree in Economics from the University of Massachusetts at Amherst. I hold a Masters Degree in Business Administration from Southern New Hampshire University.

5. At an earlier stage of this docket, I presented testimony as part of a panel of AT&T witnesses. I have signed proprietary agreements with both FairPoint and its predecessor Verizon to properly receive the proprietary materials in all phases of this proceeding, spanning back to 2008. I have substantially reviewed the entire record in this proceeding, including discovery which was not entered into the record. I attended the hearings held before the Commission, in their entirety.

6. The information in this affidavit is based on my personal knowledge, a review of the Emergency Motion for Enforcement of Commission Order ("Emergency Motion") recently filed by FairPoint in this docket, correspondence from FairPoint's counsel purportedly related to the Emergency Motion, other correspondence from FairPoint related to this docket, and billing information submitted to AT&T by FairPoint for various access services in the State of New Hampshire between July 2009 and December 2011. I also am familiar with the major provisions of the FCC's *Connect America Fund Order*, including the Eligible Recovery section.

7. On February 14, 2012, FairPoint sent AT&T a letter demanding that it pay, by March 31, 2012, all Carrier Common Line ("CCL") charges supposedly owed to FairPoint. A copy of the letter AT&T received, from which any confidential AT&T financial information has been redacted, is attached as Exhibit A to this Affidavit. No support for the amount was provided; that is, there were no invoice numbers, or no billing account numbers or any specificity as to the particular items in dispute. That is, if the requested payment had been made, it would be impossible to determine which particular charges would thereby be resolved, and which would remain.

8. According to the redacted version of Exhibit 1 to the Emergency Motion, the carriers listed there—in aggregate, not simply AT&T – allegedly owe FairPoint a total of more than \$2.1 million in unpaid CCL charges. I have not seen an unredacted version of Exhibit 1, or even an unredacted version showing AT&T's claimed unpaid balance, although I have seen an email that outside counsel for FairPoint sent to counsel for AT&T stating the amount of past due CCL charges in Exhibit 1 that FairPoint attributed to AT&T ("AT&T Past Due Amount").

9. The email from FairPoint's outside counsel consisted only of a purported dollar value for the AT&T Past Due Amount and provided no detail or supporting information

regarding how that amount was calculated, the relevant period of time, or any detail. There is no practical way to establish what accounts, invoices, items, and periods would be satisfied by payment of the amount, and what amounts would remain outstanding or in dispute. That email also was not filed in this record.

10. I have reviewed, in particular, the amounts that FairPoint billed AT&T for CCL charges between October 2010 and September 2011, since this period is the base period—FY 2011—for intrastate access services subject to reform in the *Connect America Fund Order*. See *Connect America Fund Order* ¶ 868, fn. 1679. As a result of that review, I am certain that:

- the AT&T Past Due Amount is **significantly and hugely overstated**.
- the AT&T Past Due Amount **indisputably includes ineligible charges** for access service that are irrelevant to the Eligible Recovery process because the services were provided prior to the start of Fiscal Year 2011 (i.e., October 1, 2010), as defined in the *Connect America Fund Order*.
- the AT&T Past Due Amount **may also other include ineligible charges** for access services provided after the end of Fiscal Year 2011 (i.e., September 30, 2011), as defined in the *Connect America Fund Order*.

Specifically, my review determined that the AT&T Past Due Amount is grossly overstated by well more than \$1 million! In fact, more than three quarters of the AT&T Past Due amount is irrelevant to FairPoint's claimed "emergency" because those amounts are plainly ineligible under the *Connect America Fund Order* criteria for Eligible Recovery. Precisely how wrong the FairPoint number is cannot be determined from the information supplied, but it is so far from any measure of reasonableness that it cannot form a basis for the Commission to consider FairPoint's request.

11. Under the *Connect America Fund Order*, a price cap carrier's baseline can only include access revenues "billed for service provided in" Fiscal Year 2011. *Connect America Fund Order* ¶ 880. Accordingly, the vast majority of the past due amount shown on Exhibit 1 is irrelevant to the establishment of FairPoint's baseline under the FCC's order.


12. In addition, the *Connect America Fund Order* provides that a price cap carrier's baseline is derived from revenues "being reduced as part of reform adopted" in the order. *Connect America Fund Order* ¶ 880. Only specified intrastate terminating intrastate access rates are being reduced by the FCC's order (*see id.* ¶ 888 (Price Cap Example) and 47 CFR 51.907(a)), and thus only specified terminating² intrastate access revenues can be used in the calculation of FairPoint's baseline. Given the lack of detail regarding calculation of the AT&T

² An exception applies to a joint use originating-terminating dedicated transport flat rate element, which is not of material consequence here. 47 CFR §51.903(c).

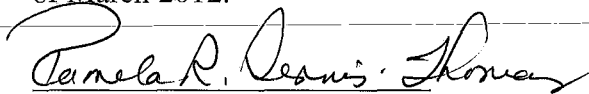
Past Due Amount, I cannot determine whether that amount includes CCL charges for both originating and terminating access, or simply for terminating access.

13. On February 22, 2012, FairPoint issued Industry Notification – Accessible Letter PRC 0138-02222012 describing changes it made to its billing of CCL charges as a result of Order No. 25,319 issued by the Commission in this docket. A copy of this accessible letter is attached as Exhibit B to this Affidavit.

FURTHER AFFIANT SAYETH NOT.


E. Christopher Nurse

Subscribed and sworn to
before me this 21 day
of March 2012.


Notary Public

Pamela R. Dennis-Thomas
District of Columbia, Notary Public
My Commission Expires
September 14, 2015



1 Davis Farm Road
Portland, ME 04103

February 14, 2012

LEGAL NOTICE

VIA FED EX

AT&T Corporation
Shiela M. Paananen
Lead Carrier Relations Manager
26019 NE 34th Street
Redmond, WA 98053

Re: Carrier Common Line charges on IntraLATA switched access traffic in the State of New Hampshire

Dear Ms. Paananen:

This letter serves as a formal demand for payment from AT&T Corporation ("AT&T") of all Carrier Common Line charges owed to Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint ") pursuant to FairPoint's N.H.P.U.C. Tariff No. 3. Further, this letter represents formal notification that FairPoint will suffer concrete, foreseeable and quantifiable harm if AT&T does not pay these amounts by **March 31, 2012**.

As AT&T is aware, the New Hampshire Public Utilities Commission issued Order No. 25,319 dated January 20, 2012 in Docket No. DT 06-067 (the "Order"). In the Order, the Commission determined that the appropriate effective date for FairPoint's tariff revision to the Carrier Common Line charge was January 21, 2012. The Order makes clear that FairPoint was entitled to bill and to collect, the Carrier Common Line charge prior to January 21, 2012. Based on the Order, AT&T owes FairPoint approximately \$ in Carrier Common Line charges. Additionally, pursuant to Section 4.1.2(B) of FairPoint's N.H.P.U.C. Tariff No. 3 AT&T is responsible for a late payment penalty.

Furthermore, based upon a recent decision by the Federal Communications Commission, released November 18, 2011 known as the FCC's Report and Order and Further Notice of Proposed Rulemaking regarding the Connect America Fund (the "CAF Order")¹, FairPoint is placing AT&T on notice it will suffer additional damages. Among many other things, the *CAF Order* requires FairPoint to cap its interstate and intrastate switched access and reciprocal compensation rates as of December 29, 2011, and

¹ Connect America Fund, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*CAF Order*").

to reduce its rates for terminating transport and termination services to bill-and-keep within six years.² The *CAF Order* does provide for a transitional recovery mechanism which permits FairPoint to recover a portion of this reduced revenue, subject to limitations, through a restricted access recovery charge ("ARC") on end user services and, to the extent that the ARC limitations do not enable sufficient recovery, by distributions from the Connect America Fund. However, the amount of this transitional recovery will decline each year from a set baseline, beginning with 10% reduction effective July 2012, followed by further 10% reductions each year through 2017.

This baseline will be established based on revenues and usage that were billed for services provided during the Fiscal Year 2011 (i.e. October 1, 2010 to September 30, 2011) and which have been *collected* by March 31, 2012.³ The rule regarding the baseline makes no exception for revenue that was withheld or uncollected due to a billing dispute (good faith or otherwise). Consequently, if AT&T continues to withhold payment, and this refusal continues past March 31, 2012, FairPoint's Fiscal Year 2011 Baseline will be lowered and it will suffer concrete, foreseeable and quantifiable harm by the resulting reduction in the amount of transitional recovery for which it is eligible each year through 2017. Any amounts AT&T refuses to pay will create a multiplier effect based on how the transitional recovery amounts are calculated and then reduced.⁴

The *CAF Order* establishes a detailed formula for the calculation of the transitional recovery. Thus, FairPoint's damages if AT&T refuses to pay can be calculated precisely and as such are recoverable in litigation. If AT&T continues to refuse to pay amounts it owes FairPoint, FairPoint estimates that its lost transitional recovery could exceed the unpaid amounts of revenue subject to the transition rules, currently claimed by FairPoint. This is in addition to the other amounts AT&T already owes FairPoint. AT&T can mitigate these damages by paying FairPoint.

TAKE NOTICE, that payment of the past due amount of \$ _____ is due to FairPoint *immediately*. Please contact Tom Nolting to arrange for payment of this amount at (802) 860-2323.

TAKE FURTHER NOTICE, this letter serves as formal notice that FairPoint will suffer measurable and foreseeable damage pursuant to the *CAF Order* if payment is not made by **March 31, 2012**.

Sincerely,



Sarah Davis
Regulatory Attorney
FairPoint Communications

² *CAF Order* ¶ 801.

³ *Id.* ¶ 880.

⁴ See the new rules adopted in the *CAF order* in Subpart J—Transitional Access Service Pricing, which is a new section of Part 51 of the FCC rules, specifically the rules in paragraphs 51.907 Transition of Price Cap Carrier Access Charges and 51.915 Revenue Recovery for Price Cap Carriers.

1 Davis Farm Road
Portland, ME 04103**Industry Notification – Accessible Letter**

Date:	February 22, 2012	Number:	PRC 0138-02222012
Effective Date	February 22, 2012	Category:	Billing
Subject:	NH CCL Access Charge Billing		
Related Letters:	N/A		
Attachments:	N/A		
Target Audience	IXC, CLEC, Wireless, UNE		
Area Impacted:	NH		
Wholesale Customer Response deadline:		N/A	
Contact:	Send all Questions to: <u>wholesalebilling@FairPoint.com</u>		
Conference Call/Meeting	N/A		

Dear FairPoint Communications Wholesale Customer:

This notice is being issued to advise FairPoint Communications Wholesale Customers that the New Hampshire Public Utility Commission ordered Northern New England Telephone Operations LLC ("NNETO") to revise certain of its charges via order dated January 20, 2012.

Specifically, in order number 25,319 the Commission ruled that:

"ORDERED, that the First Revision of pages 1 and 4 of Section 5 of FairPoint's Tariff No. 3 originally filed by FairPoint on September 10, 2009 in response to Order No. 25,002 and refiled on December 22, 2011 on the application of the carrier common line charge shall take effect on January 21, 2012 as stated on the pages filed December 22, 2011..."

With this ruling, NNETO effectively has reduced the carrier common line charge to zero (\$0.00) when an NNETO common line is not in use. Henceforth, pending any relief from the New Hampshire Supreme Court, FairPoint's access tariff permits the imposition of carrier common line charges only in those instances when a carrier uses an NNETO common line and the common line facilitates the transport of calls to an NNETO end user. Wholesale customers will see these changes effectuated with the February 2012 billing statements.

Questions or concerns should be directed to wholesalebilling@fairpoint.com or 866-925-8971 ext. 2.