

STATE OF 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

Order *Nisi* Directing FairPoint to Revise Tariff

ORDER NO. 25,002

August 11, 2009

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) Verizon¹ 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.

On May 7, 2009, the New Hampshire Supreme Court reversed the Commission's decision in Order No. 24,837, finding, based on a *de novo* review, that the plain language of the tariff did not comport with the Commission's interpretation of the language. *Appeal of Verizon New England*, No. 2008-0645, slip op (N.H. May 7, 2009). With regard to the Commission's

¹ Verizon was authorized to transfer its assets to FairPoint by Order No. 24,823, dated February 25, 2008, and FairPoint adopted the former Verizon tariff on April 1, 2008.

interpretation of the tariff in light of the evolution of the telephone industry since the tariff was first adopted, the Court stated “[w]ere we to review the PUC’s tariff interpretation deferentially for mere reasonableness or rationality, we might find this argument persuasive.” *Id.* at 7.

The order of notice in this proceeding established that in the event Verizon's interpretation of the current tariffs was found to be reasonable, the Commission would decide whether any prospective modifications to the tariffs are appropriate. Based upon the record developed in this proceeding, the Commission found that FairPoint’s access tariff should permit the imposition of CCL charges only in those instances when a carrier uses FairPoint’s common line and the common line facilitates the transport of calls to a FairPoint end-user. Order No. 24,837 at 27. Because the language of the tariff does not clearly reflect this finding, we direct FairPoint, pursuant to RSA 378:1 and 378:3, to modify its tariff to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services. Such modifications shall include at a minimum, revisions to, or removal of, the following tariff provisions:

Section 5: “Carrier common line access service is billed to each switched access service provided under this tariff in accordance with the regulations set forth herein and in Section 4.1, and at the rates and charges contained in Section 30.5.”

Section 5.4. 1.A: “General - Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges.”

Section 5.4. 1.C: “The switched access service provided by the Telephone Company includes the switched access service provided for both interstate and intrastate communications. The carrier common line access rates and charges will be billed to each switched access service provided under this tariff in accordance with Section 4.1 and Section 5.4.2.”

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, FairPoint file revisions to its NHPUC Tariff No. 85 as outlined above, within 30 days from the date of this order; and it is

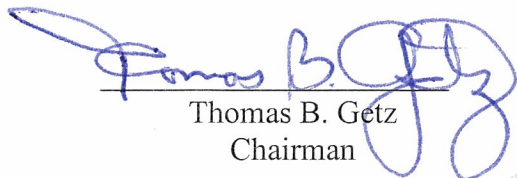
FURTHER ORDERED, that the Executive Director shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 21, 2009 and to be documented by affidavit filed with this office on or before September 11, 2009; and it is


FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 28, 2009 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 4, 2009; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 10, 2009, the Commission provides otherwise in a supplemental order issued prior to the effective date.

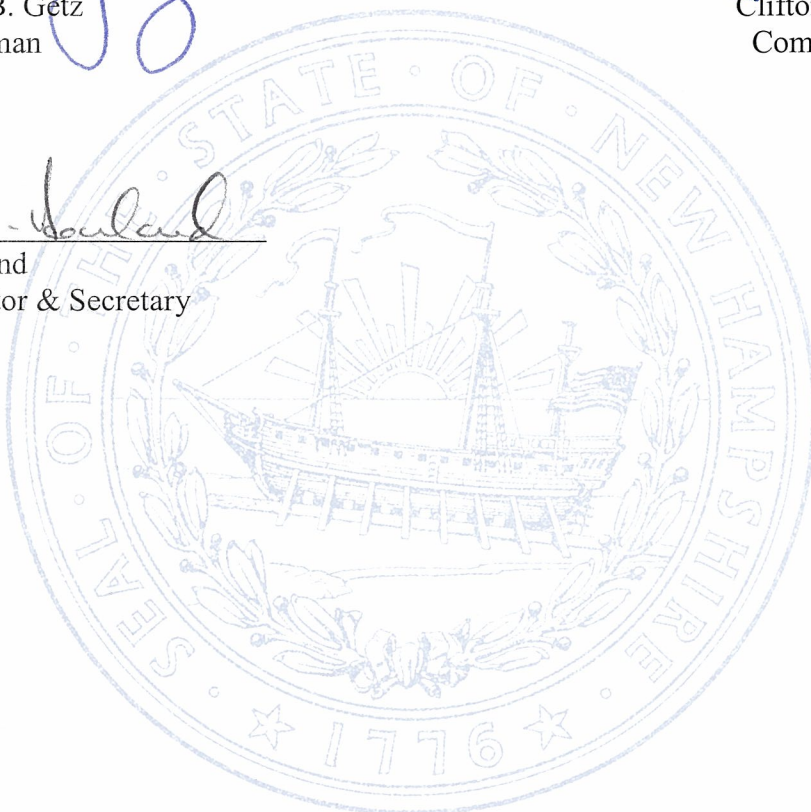
By order of the Public Utilities Commission of New Hampshire this eleventh day of
August, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner

Attested by:


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Docket #: 06-067 Printed: August 11, 2009

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

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Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

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