

STATE OF NEW HAMPSHIRE BEFORE THE PUBLIC UTILITIES COMMISSION

DT 09-206

**Petition to Supplement and Modify the Initial Filing of
Freedom Ring Communications LLC d/b/a BayRing Communications and segTEL, Inc.**

BACKGROUND

On October 29, 2009 Freedom Ring Communications LLC d/b/a BayRing Communications and segTEL, Inc. ("BayRing/segTEL") made an initial filing to the New Hampshire Public Utilities Commission ("Commission") in Docket No. DT 09-206, requesting, *inter alia*, that the Commission initiate a proceeding to coordinate the development and implementation of a modified Performance Assurance Plan ("PAP") for New Hampshire.

BayRing/segTEL based its request, in part, on the Settlement Stipulation among FairPoint Communications, Inc. ("FairPoint"), BayRing, segTEL, and OTEL Telekom, Inc. dated October 17, 2007, and filed with the Commission in Docket No. DT 07-011 ("CLEC Settlement"). The CLEC Settlement was incorporated into and made a part of the Settlement Agreement among the Joint Petitioners and Staff ("Staff Settlement") also filed in Docket DT 07-011. The Staff Settlement was adopted by the Commission when it approved FairPoint's acquisition of Verizon. The Staff Settlement set June 1, 2010 as the date by which, if a simplified performance assurance plan were not adopted, FairPoint agreed to an independent audit of the existing plan.

As the Commission is aware, no simplified wholesale performance assurance plan was adopted by June 1, 2010; therefore, FairPoint is required to satisfy its commitment to an audit of the existing PAP.

When efforts toward a simplified PAP stalled, and egregious irregularities in FairPoint's Carrier to Carrier (C2C) and PAP reporting came to light, BayRing/segTEL, along with five other New Hampshire competitive local exchange carriers (CLECs), filed letters with the Commission stating that an audit was both timely and necessary, and arguing that work on a simplified PAP was premature without an audit of FairPoint's existing PAP. These letters,

which adequately explain BayRing/segTEL's position regarding the importance and need for an audit of FairPoint's current PAP, were filed on November 18, 2010, December 8, 2010, and January 11, 2011 under DT 07-011.

REQUEST TO SUPPLEMENT AND MODIFY PETITION

BayRing/segTEL hereby Supplement and Modify its Petition filed October 29, 2009 in the above captioned docket. BayRing/segTEL modify the petition to eliminate the request that the Commission initiate a proceeding to coordinate the development and implementation of a simplified PAP. BayRing/segTEL also modify those parts of the petition that contemplate the development of a simplified wholesale performance assurance plan.

In accordance with the recent correspondence from the CLECs to which BayRing/segTEL were signatories, BayRing/segTEL hereby supplement the petition, adding a request that the Commission order a thorough audit of both FairPoint's performance under and compliance with the existing PAP. BayRing/segTEL believe that an audit of the existing PAP should precede any further movement toward a simplified PAP. Such an audit should be conducted as soon as possible, and, because the operation of the PAP and FairPoint's compliance with its Section 271 obligations depend on the accuracy and integrity of the underlying C2C metrics, the audit should include the C2C metrics as well.

ARGUMENT

BayRing/segTEL believe that an audit is urgently needed to review the adequacy of FairPoint's performance, systems and processes for their past, current and future compliance with federal and state law, and Federal Communications Commission (FCC) and Commission rules and orders. Further an audit will determine whether FairPoint's PAP reporting is compliant with the PAP and C2C requirements and sufficient to meet the goals of the PAP, acting as an effective deterrent to anti-competitive behavior.

Although FairPoint testified that its state-of-the-art systems would comply with the PAP requirements ordered by the Commission, immediately after FairPoint was required to file its first self-generated PAP reports, FairPoint filed a petition for a waiver (See Docket No.

DT 09-059) requesting that the Commission approve the elimination of many metrics that “FairPoint systems will not be able to perform.” FairPoint’s petition went on to say that “FairPoint systems are not structured to capture these reports.” Now, nearly two years later, FairPoint, despite requesting that the Commission hold its waiver request in abeyance, and, as a result, without Commission approval, continues to fail to report these metrics, reports unavailable data and data for which it has requested waivers for in a misleading manner, and also makes its own interpretations to change metrics reporting (from Verizon’s methods) without Commission authorization or any notification to the Commission.

An audit of the existing PAP and C2C metrics, the calculation of those metrics, the data that feeds into those calculations and an analysis of how the underlying systems report metrics data is critical to establishing a baseline that all parties can rely on to make decisions regarding FairPoint’s compliance with its obligations as a regional Bell operating company.

An audit will allow all parties, including the Commission, to understand exactly what FairPoint’s systems can do today and what the systems are capable of doing in the future, as well as allowing all parties to depend upon the metrics going forward as a reliable indicator of both retail and wholesale performance. A baseline audit is needed to provide CLECs and the Commission with the proper tools to monitor FairPoint’s performance, and to establish the credibility of any successor performance assurance plan.

Representatives of both BayRing and segTEL have been involved in most of the PAP discussions to date between FairPoint and the CLECs, and BayRing/segTEL believe that an audit is critical to ensure the accuracy of the metrics, evaluate performance and establish a baseline. To date, even in the face of dismal performance measures (inaccurate as they may be), FairPoint continues to focus on changing the calculation of and reducing the number of metrics, instead of assessing and correcting its actual service performance.

At recent PAP meetings, FairPoint confirmed that large amounts of data were not included in several metric calculations. Missing data in turn means that performance results cannot be calculated. It is unknown what impact these errors may have on PAP penalties without an audit. In any case, missing metrics result in an incomplete portrait of FairPoint’s performance since cutover. Simple comparisons between the PAP metric data reported by

FairPoint in the past several months and the data reported by Verizon in the months previous to cutover highlight glaring data issues. When these discrepancies are pointed out, invariably the underlying cause has been a difference between what FairPoint counts and what Verizon may have counted. Yet FairPoint has indicated that it has never done such a comparison, and on many items only corrected the discrepancies when questioned by CLECs or Commission Staff. These missing data issues alone should cause the Commission enough concern to warrant a thorough review of FairPoint's systems and metric reporting.

Equally troubling, FairPoint has admitted that when it could not meet PAP-required parity comparisons/benchmarks over time, FairPoint indicated they wished to establish their own criteria, thus making their own determination about whether a PAP requirement was "reasonable." For example, FairPoint indicated that it recognized that its own employees had better access to FairPoint's trouble reporting systems than CLECs did, but reasoned that it should not incur penalties because the difference in access couldn't be corrected! Since under the Telecommunications Act, FCC rules and Commission orders "parity" requires that FairPoint provide access to CLECs that is at least as good as the access it provides to itself, such a conclusion conveys the depth of FairPoint's lack of understanding of the purpose of the PAP, and the entire basis of the requirements of providing UNEs.

In other cases, when certain metrics continue to assess penalties, it appears that FairPoint may simply determine that not reporting the metric is the "correct" solution. BayRing/segTEL believe, and other state commissions have upheld, that failure to report a metric is considered a complete miss for the purpose of determining performance and establishing penalties; otherwise there is no disincentive for failing to report.

Wherefore, for all the reasons stated herein, BayRing/segTEL modify and supplement the initial filing and hereby request that the Commission:

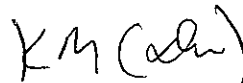
- a. Use DT 09-206 to open an investigation into FairPoint's past, current and future compliance with existing PAP and C2C guidelines;
- b. Require an independent audit of FairPoint's PAP and C2C reports that will:
 - a. Evaluate FairPoint's system capabilities to accurately and consistently record and gather the data that populates the metrics;
 - b. Evaluate metric reports, benchmarks, and calculations for compliance with PAP and C2C guidelines;
 - c. Review all manual processes and any effect such processes have on the metrics;
 - d. Identify metrics FairPoint is currently not reporting that can and should be reported; and
 - e. Identify metrics for which data is legitimately available;
- c. Establish or enforce the proper treatment of those metrics that FairPoint has failed to report or has under-reported, including a Commission ruling that FairPoint's failure to report a metric shall be considered a complete miss for the purpose of determining performance and establishing penalties.
- d. Based on the finding above, order the appropriate assessment of penalties for all months in which such failure to report or under-reporting has occurred;
- e. Require FairPoint to continue to provide bill credits as required and determined under the existing PAP and provide stability for CLECs by ensuring all parties that the dollars-at-risk waivers filed by FairPoint, if approved, will not be retroactive;
- f. Eliminate the strain on FairPoint, CLEC, and Commission Staff resources by tabling discussions of a simplified/modified PAP until an audit of the existing plan is completed;
- g. Order such other relief and take all other measures as the Commission deems appropriate.

Respectfully submitted,



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