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Date: April 30, 2012

TO: Commissioners

FROM: F. Anne Ross, Hearing Examiner

RE: DT 12-069 Stebbins Commercial Properties Billing Complaint against FairPoint Communications

HEARING EXAMINER'S REPORT

At your request, I presided over the April 18, 2012 hearing in the above referenced case.

On March 5, 2012 Amanda Noonan, head of the Commission's Consumer Affairs Division, filed a memorandum with the Commission describing staff's attempts to assist Stebbins Commercial Properties (Stebbins) and FairPoint Communications (FairPoint) in resolving this billing dispute and indicated that the parties had not reached a settlement. Ms. Noonan recommended that the Commission grant Stebbins' request for a hearing on the billing complaint. The Commission set a hearing for April 18, 2012 and, by secretarial letter dated April 4, 2012, described the process for submitting evidence and presenting witnesses at hearing.

Appearances

Michael Reed and Terry Rich for Stebbins
Ryan Taylor and Sarah Davis, Esq. for FairPoint
Matthew Fossum, Esq. for Commission Staff

Intervention Requests

None

Hearing

A. Exhibits

The following exhibits were marked for identification and admitted as full exhibits at the close of hearing:

1. Cover Letter from Stebbins dated April 11, 2012 and attached copies of FairPoint bills for 603-622-0463 from Feb. 9, 2009 to Nov. 9, 2011
2. FairPoint's Exhibit consisting of attachments A, B and C

   A. Spreadsheet showing billing for 603-622-0463 from 9/9/07-11/9/11
   B. Copies of FairPoint bills for 603-622-0463 from 9/9/07-11/9/11
   C. Job Aid Performance Management Team describing FairPoint's process for installing a new service (Exhibit C was ruled as Confidential)

Stebbins attempted to present a third exhibit consisting of print outs from online searches dated April 4 and 5, 2012 showing the telephone number 603-622-0463 being advertised as a number for a law office in Manchester, NH. FairPoint objected to admission of the exhibit and the hearings examiner sustained the objection and did not admit the exhibit, ruling that the information was not relevant to the billing dispute at issue in this docket.

B. Stebbins Testimony

Stebbins presented its two witnesses, Michael Reed and Terry Rich, as a panel and presented its Exhibit 1. Mr. Reed testified that in 2002 Stebbins moved its offices from 355 Elm Street to 730 Pine Street in Manchester, which is their current location. Mr. Reed testified that he was employed by Stebbins in 2002 and that at the time of the move in 2002 he asked the person in his office handling utility services to request that the existing telephone service at the Elm Street office be transferred to the new Pine Street office. He testified that at that time existing service was comprised of a fax line, a main telephone line and two hunt lines for incoming calls. Mr. Reed testified that neither he nor his assistant asked for an additional line in connection with the move to the new office. Notwithstanding that fact, Verizon, and later FairPoint, billed Stebbins for a fifth telephone line beginning in 2002 and continuing through August 2011 when Stebbins discovered the billing for an extra line and requested termination. Mr. Reed concluded that Stebbins never requested an additional line, never used one, and never needed one, but nonetheless Stebbins was billed for and paid approximately $3,300 for the line over the 10 year billing history. Mr. Reed urged the Commission to require reimbursement of all charges paid for the fifth line.

On cross examination by FairPoint, Mr. Reed stated that he had been president of Stebbins for 16 years and was in that position at the time of the move to new offices in 2002. When asked why he had waited until 2011 to dispute the billing for the fifth line, he replied that he had trusted Verizon's and then FairPoint's expertise in providing the requested telephone service and never thought to question the correctness of the billings. Mr. Reed indicated that discovery of the billing error was the result of a personnel change at Stebbins. Mr. Reed admitted that as president he has oversight over accounts payable. He also confirmed that FairPoint had offered a $186 credit to settle the billing dispute with Stebbins and that Stebbins had refused to accept that settlement amount. He did not contact Verizon to complain about the billing during the time Verizon was operating the system, June 2002 until April 2008, as Stebbins did not become aware of the billing issue until August 2011. Mr. Reed indicated that he was not familiar with the concept of a statute of limitations. Mr. Reed testified that his average monthly telephone bill with the fifth line was approximately $100-130 and that his current average bill for the remaining four lines is $80-100 a month. Mr. Reed did not know whether Giselle Wantuk or Lynn Glenn, both former employees, made the request to transfer telephone services to the new office, but he recalls instructing one of them to do so. It is Mr. Reed's understanding that the request to transfer existing service was made by telephone.

C. FairPoint Testimony

FairPoint witness Mr. Taylor opened by stating that Verizon and then FairPoint had invoiced Stebbins for 9 years for a service for which Stebbins had paid. Mr. Taylor stated that neither Verizon nor FairPoint had installation records for the Stebbins line added in 2002 and stated that FairPoint had complied with its own record retention policy of retaining documents of this nature for 7 years and had also complied with the Commission rule Puc 416.01 which requires telephone utilities to retain records for two years. FairPoint witness Mr. Paul Little then testified as an expert in provisioning telephone services. Mr. Little stated that he worked for Verizon in 2002 in the customer sales and support area for business customers only. Mr. Little currently works for FairPoint in customer sales and support for residential customers only. Mr. Little indicated that the Feb. 9, 2009 invoice was the first one issued by FairPoint. Prior to that time, Verizon issued all invoices, whether on its own behalf or on FairPoint's behalf.

Mr. Little described the current provisioning process for a new service and stated that the process is unchanged from the process used by Verizon in 2002. Mr. Little indicated that the customer must initiate the process and that customer ID and customer passwords are needed to process an order for new service. Mr. Little testified that FairPoint is only required to provide dial tone to the demarcation point, which would be either the network interface device, typically a small grey box on the outside of the customer premises, or an interior terminal in an equipment room within the customer premises. It is the customer's responsibility to get the dial tone from the demarcation point to the interior phone jacks. Mr. Little stated that, even though Stebbins reported no audible ring when a FairPoint employee called the number, the service could still have been installed to the demarcation point but not wired to a jack. Alternatively, the line could have been wired to a jack, but a trouble might have occurred within the inside wiring resulting in no dial tone. When asked whether it would be unusual for no voice minutes to be generated on a working phone line, Mr. Little testified that lines provided for security, elevators or door bells do not show voice minutes and are still functioning properly.

On cross examination by Mr. Reed, Mr. Little stated that he worked for Verizon business customer sales from 1995 through 2009. When asked how the customer validates that service is received, Mr. Little indicated that there is no actual point of customer sign off in the ordering process. That would occur when a technician is dispatched to the premises post installation which Mr. Little testified happens 100% of the time. When asked if Mr. Little knew of any instance when a customer without an elevator or alarm had no voice minutes and after some extended period of time complained about improper billing, Mr. Little said he was not aware of this situation ever happening.

On cross examination by Staff, Mr. Little stated that there were no internal FairPoint practices to review lines with no voice usage. Mr. Little testified that when the sales representative called the line to see if anyone answered in response to Stebbins' inquiry in August 2011 that was the first attempt by FairPoint to determine if service was working. Normally under those circumstances, a trouble ticket would be placed, and then an investigation would begin. In this case, Stebbins terminated service, and no investigation occurred. Mr. Taylor testified that Verizon's record retention policy for service orders and provisioning records were similar to FairPoint's and was either 6 or 8 years. Mr. Taylor confirmed that Fairpoint has no billing records for 2002-2007. Mr. Taylor also stated that no FairPoint technician visited the customer premises when Stebbins complained about billing for the extra line in August 2011 and FairPoint did not confirm at that time that there was dial tone at the network interface. Further, Mr. Taylor stated that there had been no communications with Stebbins concerning telephone service at the Pine Street offices during the time for which FairPoint retains records.

D. Closing Statements

FairPoint argued that Stebbins had not met its burden of proof concerning its billing dispute. Stebbins paid invoices for 9 years without protest. Expert testimony from FairPoint established that in 100% of the installations there is dispatch of a technician and customer contact following completion of the installation. The fact that there were no usage minutes on this line could be explained by other types of services such as an elevator or alarm system. Stebbins should be held accountable for its own business practices in paying its invoices without confirming it was receiving the services billed for.

Stebbins argued that there is no evidence that the customer, in this case Stebbins, ordered or used the fifth line. Stebbins never requested the line and had no knowledge of the line. The fact that the fifth line was billed to Stebbins was a mistake by both Verizon and FairPoint. A settlement offer of $186 is "insulting" to a business. Small businesses trust their telephone utility, and the utility should make the customer whole when a mistake is made.

Motion for Confidential Treatment

FairPoint sought protection from disclosure of information in its filing identifying customer charges for Stebbins and for the description of FairPoint's process for taking a customer request for installation of new service. At hearing, Stebbins waived confidential treatment of its billing records (Exhibit 1 and Exhibit 2, Attachments A and B). The hearings examiner determined that Exhibit 2, Attachment C describing FairPoint's installation order process was a company trade secret and was therefore properly treated as confidential.

Factual Findings

2002 Installation Request

There was not sufficient evidence to establish what service was requested by Stebbins from Verizon in connection with the move from its Elm Street Office to its Pine Street office in 2002. FairPoint has no records from 2002 because of Verizon's and FairPoint's record retention policies. Stebbins President Mr. Reed recalls instructing an employee to request a transfer of existing telephone service from the Elm Street to the Pine Street office in 2002. At that time, Mr. Reed indicated that Stebbins had a fax line, a main telephone line and two hunt lines for overflow calls from the main number. Stebbins did not produce the person who actually made the request to transfer Stebbins' existing service to the new Pine Street office.

Billing and Payment 2002-2011

I find that from 2002-2011 Stebbins was billed for and paid the costs of the fifth telephone line designated as using telephone number 603-622-0463. Both Stebbins and FairPoint testified that this was the case notwithstanding the lack of written records for the billings prior to 2007.

I find that FairPoint began billing Stebbins for the 603-622-0463 line in April 2008. From April 2008 through February 1, 2009, the bills were generated by Verizon on FairPoint's behalf as part of the transition service agreement between Verizon and FairPoint. FairPoint began generating the bills itself in February 2009 and continued billing until Stebbins terminated this line in August 2011. The written billing records support this finding.

I find that the monthly bill for the 603-622-0463 line from April 2008 to August 2011 was approximately $31.00 with a final bill in September 2011 of $38.50. The billing records support this finding.

Service on Fifth Line 2002-2011

There was not sufficient evidence to establish whether or not service for the fifth line was provisioned to the demarcation point at the Stebbins Pine Street location during the period 2002-2011. Because of its own record retention policy and that of its predecessor, FairPoint has no written records prior to 2005 (7 years prior to 2012). Regarding the period for which it has retained records, it has no evidence of any communications with Stebbins or service calls to Stebbins with the exception of the August 2011contacts during which Stebbins questioned the billing for this line.

FairPoint testified that it did not dispatch a technician to the Stebbins premises in connection with the August 2011 complaint about billing for this fifth line. Although the FairPoint customer service person did call the 603-622-0463 line in August 2011 and heard a telephone ring, there was no ring in the Stebbins offices. FairPoint testified that it did not dispatch a service technician to the Stebbins premises as Stebbins was not making a repair request in August 2011. Therefore there is no evidence that service was provisioned to the Stebbins demarcation point interface in August 2011.

There was testimony from FairPoint that a service technician would have visited the demarcation point at the time of installation in 2002; however, no records exist to confirm the installation or the technician's visit. Further, there was no evidence of any subsequent service check to the demarcation point during the 2002-2011 period. Since Stebbins was not using the line, it could not provide any evidence of whether or not service existed.

Rulings of Law

The Commission may order reparation for rates collected by public utilities which are illegal or unjust for a period of up to two years prior to a request for reparation or the date of the Commission's notice of hearing. RSA 365:29.

Stebbins complaint to the Commission's Consumer Affairs Division concerning the FairPoint billing on the 603-622-0463 line on September 7, 2011 will serve as a request for reparation.

FairPoint failed to meet its burden in establishing that it was actually providing service during the period of September 2009 to September 2011.

Stebbins failed to act in a reasonably prudent manner by paying for a telephone service that it was not receiving.

As a matter of fairness, the parties should share responsibility for this billing and service dispute.

Recommendations

I recommend that the Commission grant the Company's request for confidential treatment of Exhibit 2 Attachment C containing information on FairPoint's provisioning process for new service requests.

I recommend that the Commission order FairPoint to return ½ of the rates collected from Stebbins for the period September 2009 through September 2011 which amounts to approximately $372 without interest.

By______________________________
F. Anne Ross, Hearing Examiner