STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 06-067

FREEDOM RING COMMUNICATIONS, LLC D/B/A BAYRING COMMUNICATIONS

Complaint Against Verizon New Hampshire Regarding Access Charges

Order on Tariff Change to Carrier Common Line Charge
and December 22, 2011 Tariff Filing

O R D E R N O. 25,319

January 20, 2012

I. PROCEDURAL HISTORY

The complete procedural history of this docket is set out in prior orders in this case. Therefore, only history relevant to this order is included. On October 28, 2011, the Commission issued Order No. 25,284 setting a procedural schedule for discovery and a hearing for March 8, 2012 in this docket. Rather than await the March 8 hearing, on November 10, 2011, Freedom Ring Communications, LLC d/b/a BayRing Communications (BayRing), Sprint Communications Company, L.P. and Sprint Spectrum, L.P. (Sprint), and AT&T Corp. (AT&T) (collectively the CLECs) moved for an expedited hearing on the issue of the effective date of the proposed change to the tariff of Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint) regarding the carrier common line (CCL) charge.

In their motion, the CLECs contended that an expedited hearing was appropriate on: (1) whether FairPoint's September 10, 2009 tariff filing relating to the CCL charge complied with the Commission's orders; and (2) the appropriate effective date of the proposed tariff changes covering the CCL. They contended that the changes to the CCL were ripe for determination

because no additional discovery or process was needed for the Commission to determine the issue. The CLECs further argued that the remaining issues covered by FairPoint's proposal could be addressed on the schedule set out in Order No. 25,284. On November 21, 2011, FairPoint responded to the CLECs' motion and agreed that a determination on the language and effective date of the CCL change did not require the full process set out in Order No. 25,284. FairPoint also contended, however, that no hearing was needed on the CCL question and that the Commission should instead move immediately to briefing on the matter.

On November 30, 2011, the Commission issued Order No. 25,295 concluding, in relevant part:

> The CLECs have requested that the Commission hold a hearing on the issues, while FairPoint contends that only briefing is needed. The identified issues relate to matters for which testimony and cross examination would not be needed, and both sides agree these are issues of law for which only argument is necessary. As a result, we do not find that a hearing is necessary and the matter can be decided on the basis of filings by the parties.

Freedom Ring Communications, LLC d/b/a BayRing Communications, Order No. 25,295 (Nov. 30, 2011) at 3-4. The Commission, therefore, ordered that the parties brief two questions, specifically:

> (1) Whether the changes to FairPoint's CCL tariff as proposed by FairPoint on September 10, 2009, comply with the Commission's orders requiring FairPoint to amend the CCL provisions in its tariff.
>
> (2) Presuming the changes identified in question 1 comply, or can be made to comply, with the Commission's orders, what should be the effective date of the amended language in FairPoint's switched access tariff relating to the CCL?

Id. at 4. On December 19, 2011, the Commission received briefs on the above questions from FairPoint, Sprint, AT&T, and BayRing.

In addition to the above events, on November 30, 2011, FairPoint submitted a tariff filing with the stated purpose of "officially" placing its proposed tariff changes respecting both the CCL and the Interconnection Charge before the Commission. On December 14, 2011, the Commission issued Order No. 25,301 rejecting the tariff filing without prejudice to avoid the statutory timing constraints of RSA 378:6, IV, noting that those timing constraints were incompatible with the procedural schedule that had recently been extended at FairPoint's request. On December 22, 2011, FairPoint resubmitted the tariff pages, arguing that the filing was most appropriately and lawfully addressed under RSA 378:6, I(b), which has compatible timing constraints, rather than RSA 378:6, IV. On December 27, 2011, the Commission received an objection to the December 22 filing from AT&T and, on December 28, the Commission received a letter from BayRing stating that it concurred with AT&T's objection.

On January 9, 2012, a group of competitive carriers filed a motion to dismiss or for summary judgment on the Interconnection Charge arguing that a recent ruling by the Federal Communications Commission (FCC) bars the change to the Interconnection Charge sought by FairPoint. Coincident with that motion, those carriers filed a motion to suspend or modify the procedural schedule contending that because the Commission was already addressing the change to the CCL following briefing, the only matters left concerned the Interconnection Charge. Therefore, they argued, the Commission's ruling on their motion to dismiss or for summary judgment would render moot the remainder of the case, including their need to file testimony on January 17, 2012. By secretarial letter dated January 13, 2012, the Commission suspended the procedural schedule pending a ruling on the motion to dismiss, and stated that it would address

further procedural matters following a ruling on that motion. On January 19, 2012, FairPoint objected to the motion to dismiss and the motion to suspend the schedule.

II. CHANGES TO CCL IN FAIRPOINT'S TARIFF

A. Positions of the Parties

1. FairPoint

FairPoint contends that its September 10, 2009 tariff filing was fully compliant with Order No. 25,002 (Aug. 11, 2009), the order requiring FairPoint to amend the CCL portion of its tariff. FairPoint further contends that the "revenue neutral" revisions it had proposed to its tariff regarding the Interconnection Charge complied with the Commission's orders because the Commission had required FairPoint, "at a minimum," to amend the CCL portion of its tariff, but did not require FairPoint to reduce its overall access revenues. FairPoint Brief at 4-5. FairPoint also stated:

> However, FairPoint submits that the September 10, 2009, tariff filing was fully compliant with the Commission's orders, as would [be] any similar filing. Moreover, as the Commission has explained, the interconnection charge and the CCL revisions "were intertwined and intended to be dealt with as a package." As such, the Commission was in error to "partially withdraw" the September 10, 2009 tariff filing in its Order [25,283], and it cannot approve the CCL revisions without also approving the Interconnection Charge. The two revisions must become simultaneously effective.

FairPoint Brief at 6.

As to the matter of the effective date of the CCL revisions, FairPoint, as stated above, contended that the effective date must be the same as the effective date of any change to the Interconnection Charge and that neither change can become effective prior to a final decision in the docket. According to FairPoint, the Commission's rules and New Hampshire law prevent the

Commission from applying the change to the CCL retrospectively. FairPoint also argues that should the Commission determine that it may apply the CCL change retrospectively, no change could be effective prior to January 24, 2011, the date upon which it emerged from bankruptcy. FairPoint then includes a lengthy paragraph stating that it reserves all rights to the positions it has taken in this proceeding.

2. Sprint

As with FairPoint, Sprint states that the tariff filing made by FairPoint on September 10, 2009 "appears to be adequate" to comply with the Commission's order. Sprint Brief at 1. Sprint also argues, however, that the Commission should specify that the tariff will be "interpreted as allowing FairPoint to impose a single CCL charge when one of its common lines is used to facilitate the transport of a call to or from a customer of a competitive carrier." Sprint Brief at 2. Sprint contends that such a specification is necessary because any other interpretation would not comply with the Commission's order.

As to the date, Sprint argues that the tariff should be made effective on the effective date of the original filing, October 10, 2009. According to Sprint, the Commission has already found that FairPoint may not bill the CCL charge and that finding led to the Commission's order requiring FairPoint to amend its tariff. Therefore, setting the effective date later than October 10, 2009 will permit FairPoint to collect on a charge the Commission has found to be unjust and unreasonable, which the Commission may not allow. In addition, Sprint contends that it is inequitable to allow FairPoint to continue to bill the CCL and thereby require other carriers to bear the cost of FairPoint's non-compliance with the Commission's orders.

Sprint also contends that the Commission must set the effective date of the filing as October 10, 2009 because doing otherwise will permit FairPoint to use its filing for the change to the Interconnection Charge to avoid compliance with the Commission's order on the CCL change and will thereby allow FairPoint to be unjustly enriched. Also, Sprint contends that the New Hampshire Supreme Court has found it to be an abuse of discretion for the Commission to permit an injury to go unaddressed for an unreasonable time. According to Sprint, this matter was resolved in late 2009, and allowing FairPoint to continue to bill the CCL charge qualifies as an abuse of the Commission's discretion.

3. BayRing

BayRing contends that the tariff pages regarding the CCL submitted by FairPoint on September 10, 2009 do comply with the Commission's order. Similar to Sprint, BayRing further argues that to the extent there may be an interpretation of the language of the filing that does not comply, the Commission should make clear in its order that the tariff is to allow FairPoint to impose a CCL charge only when one of its common lines is used to facilitate the transport of a call to or from a FairPoint end user.

Also similarly to Sprint, BayRing contends that the effective date of the tariff filing should be October 10, 2009. According to BayRing, because the Commission has accepted the filing but suspended it, "[i]n effect, the Commission has made FairPoint's current tariff language 'temporary' pending a final determination of whether the language complies with the Commission's directives." BayRing Brief at 4. Thus, argues BayRing, because the change is temporary the Commission can declare the tariff change in effect as of the effective date of the filing, October 10, 2009. Much like Sprint, BayRing also argues that putting the changes into

effect later than October 10, 2009 will result in FairPoint being unjustly enriched, and would be an abuse of the Commission's discretion.

4. AT&T

As with all other parties filing briefs, AT&T first states that it believes FairPoint's submission regarding the CCL complies with the Commission's order. In lieu of further argument on the issue, AT&T notes that it concurs with the arguments made by BayRing in its brief.

As to the effective date of the tariff change, AT&T also contends that the effective date should be October 10, 2009. According to AT&T, the Commission has "extensive flexibility" on matters within its jurisdiction and that as part of that flexibility the Commission has been able "to fashion effective, and sometimes equitable, relief to deal with situations that may not fit exactly within the precise provisions of the public utilities statute." AT&T Brief at 4. AT&T contends that there is precedent for the Commission to craft a "remedy in a situation where it has been determined that the utility has been charging rates that are improper," AT&T Brief at 5, and that the Commission may, therefore, set the effective date at October 10, 2009 in this case.

AT&T further contends that FairPoint's bankruptcy does not stand in the way of setting the effective date at October 10, 2009. Citing *In re Public Service Co.*, 98 B.R. 120, 122 (Bankr. D.N.H. 1989), AT&T argues that a utility may not overcharge for its services and then use the shield of bankruptcy to avoid recovery of the overcharge. Furthermore, AT&T contends that the Commission's prior conclusion that the CCL change could not become effective because the hearing requested by FairPoint was not held does not bar the Commission from ordering the

effective date to be October 10, 2009 because FairPoint has now conceded that no hearing is needed on the CCL issue.

B. COMMISSION ANALYSIS

1. Hearing on CCL Tariff Change Not Necessary

On page 7 of its brief, FairPoint cites, with emphasis, the section of RSA 378:7 that states that the Commission may set rates following a hearing; FairPoint then notes that in Order No. 25,283 the Commission concluded that a hearing on the CCL was not held, though it had been requested. It is not clear from this reasoning whether FairPoint argues that a hearing is necessary to impose the changes proposed to the CCL charge pursuant to the Commission's prior order. The CLECs, believing a hearing was needed, requested that the Commission hold one, and FairPoint instead argued a hearing was not necessary and contended due process would be satisfied without a hearing. FairPoint's Response to CLECs' Motion for Hearing at 3. Thus, the Commission now rules upon the changes to the CCL portion of the tariff and its effective date without a hearing pursuant to FairPoint's specific request that a hearing not be held. Accordingly, in the event that FairPoint seeks to argue that the Commission may not order the imposition of the changes to the CCL portion of FairPoint's tariff without a hearing on that specific issue, we would have to conclude that FairPoint is intentionally trying to delay a decision through procedural maneuvers.

2. Compliance of the CCL Tariff Change Language and its Status Relative to the Proposed Interconnection Charge Tariff Change

In its brief at page 6, FairPoint contends that "the Commission was in error to 'partially withdraw' the September 10, 2009 tariff filing in its Order [25,283], and it cannot approve the

CCL revisions without also approving the Interconnection Charge." Order No. 25,283 was issued October 28, 2011 and no motion for reconsideration was received relative to that order. Therefore, our finding in Order 25,283 that the portion of the filing relative to the Interconnection Charge would be withdrawn and treated as illustrative pursuant to FairPoint's request has not been challenged and remains in effect.

Further, on November 30, 2011, the Commission received a tariff filing from FairPoint which stated, in relevant part, "Consistent with the Commission's determination [in Order No. 25,283], and to ensure that both questions are officially before the Commission, FairPoint is refiling the revised tariff incorporating both charges while continuing to reserve all rights to dispute the Commission's authority to impose any of these revisions." Cover Letter to FairPoint's November 30, 2011 Tariff Filing at 2. A similar letter was received on December 22, 2011. Because no motion for reconsideration was received regarding Order No. 25,283, and because FairPoint has already acted in a manner indicating its understanding that the portion of the filing covering the Interconnection Charge has been withdrawn and will be treated as illustrative for the purpose of further investigation of the charge and whether FairPoint is entitled to a revenue increase in light of the change to the CCL charge, the Commission will proceed as contemplated in Order No. 25,283. Thus, the portion of the September 10, 2009 filing that revises the Interconnection Charge is withdrawn, but considered illustrative for further proceedings in this docket.

With respect to the changes to the CCL language that were the subject of the parties' briefs, we agree with the parties that the amendments to the language of FairPoint's tariff originally submitted on September 10, 2009 are sufficient to comply with the Commission's

directive that FairPoint amend its tariff. For clarity, the Commission reiterates that in ordering FairPoint to amend its tariff, the Commission sought changes clarifying 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." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,002 (Aug. 11, 2009) at 2. To the extent any interpretation of the changes to the CCL tariff would diverge from the conclusion that the tariff is to permit the imposition of the CCL charge only when a carrier uses FairPoint's common line and the common line facilitates the transport of calls to or from a FairPoint end user, they are expressly rejected.

3. Effective Date of CCL Charge

As to the effective date of the changes to the tariff, FairPoint contends that the Commission may declare the effective date only on a "going-forward" basis and that the effective date may not be applied retrospectively. For the reasons that follow we conclude that the changes to the CCL portion of the tariff, specifically the First Revision to Section 5, pages 1 and 4 of FairPoint's Tariff No. 3, take effect on January 21, 2012 as stated on the tariff pages included in FairPoint's December 22, 2011 tariff filing. The Commission shall use these tariff pages for administrative efficiency in lieu of requiring FairPoint to file conforming tariff pages at some later date. Moreover, the Commission places the December 22, 2011 pages regarding the CCL in effect, though it had previously rejected the November 30, 2011 pages which were all but identical. Since November 30, 2011, we have had the opportunity to consider the briefs regarding conformance of the tariff and the appropriate effective date of the CCL change. Thus,

with the record complete on those issues, we make effective the CCL tariff pages filed December 22, 2011.

RSA 378:7 provides that the Commission may fix rates and charges that are to be observed following a determination from the Commission of the just and reasonable or lawful rates and charges following a complaint that a rate or charge is unjust or unreasonable. By virtue of the various delays in this docket, the Commission had not, until this order, affirmed that the proposed changes to the CCL charge complied with Order No. 25,002 so as to cure what had been found to be an unjust or unreasonable rate.

BayRing argues that the Commission, in effect, instituted a temporary charge by accepting and suspending the filing. We find, however, the acts of accepting and suspending the filing insufficient to conclude that a temporary rate was established. To conclude otherwise would be to conclude that in each instance the Commission receives a compliance tariff affecting rates or charges and orders its suspension, it is thereby establishing a temporary rate or charge. Such a result would not be permitted by RSA 378:27.

The remaining arguments from the CLECs all reason that the Commission has authority – either through some inherent flexibility on matters within its jurisdiction, or through equitable authority to remedy an inequity or unwind an unjust enrichment – to set the effective date at October 10, 2009. The Commission, however, is bound by its governing statutes and, therefore, must make a determination before the change proposed here may take effect.

> The PUC, when it determines rates to be charged by public utilities, is performing essentially a legislative function and accordingly cannot exceed the limitations imposed upon the exercise of that function under our State and Federal Constitutions. . . . Moreover, it is a basic legal principle that a rate is made to operate in the future and cannot be made to apply retroactively.

Appeal of Pennichuck Water Works, 120 N.H. 562, 565-66 (1980) (quotations and ellipsis omitted).

Further, using equity to avoid a statutory requirement is inappropriate in the current situation. In 2009, the Commission issued Order No. 25,002 ordering FairPoint to amend its tariff to comport with the Commission's determination that the CCL charge should only be applied to certain calls: those that use a common line. FairPoint filed amendments aimed at complying with the Commission's order, and which the parties admit did comply with the Commission's directive. FairPoint also, as the parties are aware, filed for an increase in the Interconnection Charge to offset the change to the CCL charge and contended that it was within its rights to do so because the Commission had not ordered an overall reduction in FairPoint's revenues. Further, FairPoint requested that the Commission hold a hearing as had been specifically provided for in Order No. 25,002. Though it may have been inadvertent, the requests to amend the Interconnection Charge and to hold a hearing had the effect of lengthening the process so that it extended into the time FairPoint declared bankruptcy, which effectively halted any further action on the matter. The facts that FairPoint made a request – a request it was entitled to make – and that the request resulted in a significant delay in a decision as to compliance on the CCL charge due to occurrences beyond the Commission's control, does not now give the Commission the authority to invoke equity to avoid the limitations of its enabling statutes. As a result, we are not persuaded that the use of equitable authority to set the effective date of the CCL change at October 10, 2009 is appropriate in this case. Further, because we find

the change should be prospective, we take no position on the impact of FairPoint's emergence from bankruptcy on the effective date.

We find that there is no basis to apply the change to the CCL retrospectively, and we therefore conclude that the earliest effective date is the date of this order. Because, however, FairPoint has provided tariff pages effective as of January 21, 2012, one day after this order, the Commission concludes that the changes shall be effective on that date as a matter of administrative efficiency. As noted, however, FairPoint contends that the Commission may not implement any change to the CCL without simultaneously implementing a change to the Interconnection Charge. We disagree for several reasons. First, although the Commission has agreed that the CCL and the Interconnection Charge tariff change submissions were made as a single filing, we also concluded "that there is a basis for treating portions of the filings differently based upon the distinction drawn by FairPoint and others." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,283 (Oct. 28, 2011) at 30. Thus, resolution of the compliance portion of the filing does not depend upon resolution of the voluntary portion of the submission which has been withdrawn, but is being treated as illustrative for purposes of investigation in this docket. Similarly, FairPoint's claim that the changes must occur together presupposes that the Interconnection Charge will, or should be, implemented, and that it is to be implemented in a manner intended to offset the CCL change. Whether the change to the Interconnection Charge is permitted at all, and if it is, how that change would operate, are not clear. Under FairPoint's logic, should the Commission, for example, determine that the change to the Interconnection Charge is either not allowed, or only allowed in an amount less than that sought by FairPoint, or that revenue would more appropriately be recovered through

some other wholesale or retail charge or rate, it would then mean that the Commission could not implement the change to the CCL charge as proposed. The Commission is not bound by such *quid pro quo* assertions.

In addition, FairPoint contends that no change can be ordered to the CCL that would reduce CCL revenue without a corresponding increase in the Interconnection Charge because "[t]o do otherwise would further contribute to FairPoint's well-documented under earnings in New Hampshire" FairPoint Brief at 6-7. The mere fact that FairPoint is under-earning, however, is not a basis to declare that the two tariff changes must happen simultaneously.

Also, FairPoint contends, citing its August 28, 2009 Comments and Conditional Request for Rehearing, that failing to implement the two changes simultaneously would be unconstitutionally confiscatory. In that document, FairPoint contended that the change to the CCL in the manner required by the Commission would be confiscatory because:

> The Commission would effectively be setting a rate of zero for a significant portion of FairPoint's access service at a time when the financial pressure on FairPoint is already immense. FairPoint is currently losing money while at the same time facing major financial commitments related to its acquisition of Verizon's assets. It has committed to $200 million in capital expenditures over the next four years, a cap on its rates for basic local exchange, wholesale and special access services, a double pole removal program, and it is still subject to millions of dollars in penalties under the Performance Assurance Plan.

FairPoint August 28, 2009 Comments and Conditional Request for Rehearing at 6. At its core, FairPoint claims that changing the application of the CCL would be confiscatory because it would result in a revenue decrease at a time when it is losing money as a result of its purchase of Verizon's assets and the commitments it made in the course of that acquisition, along with penalties for performance failures. We do not agree that a reduction to FairPoint's revenue is, of

necessity, unconstitutionally confiscatory because FairPoint is financially insecure as a result of its voluntary acts.

While it is true that the Commission may not force a utility to serve the public at rates that are confiscatory, it is likewise the case that public utilities, like other businesses, must monitor the costs of doing business and employ sound business judgment in determining when they should seek rate increases for future services. *Appeal of Pennichuck*, 120 N.H. at 567. FairPoint has not made any request or attempt to undo any restrictions on rate relief in the agreements it has made, nor has it made any other attempt to revise its rates that would allow the Commission to investigate whether the rates under which it currently operates are, in fact, confiscatory. Instead it merely asserts that change to the application of a single charge – a charge that, prior to 2006, had not been applied for at least 10 years, *see, e.g.*, Verizon New Hampshire's September 10, 2007 Post-Hearing Brief at 3-4, in a tariff that had not changed since 1993 – is a confiscation of constitutional dimension. The New Hampshire Supreme Court has stated that there is "no constitutional requirement that mandates the PUC to correct, retrospectively, past errors in judgment made by the utility." *Id*. Further, "The right of a utility to receive just and reasonable rates is *not a guarantee of net revenues regardless of circumstances*." *Public Service Company of New Hampshire v. State*, 113 N.H. 497, 501 (1973) (emphasis added). For these reasons, we conclude as we have previously in this docket that "the state and federal constitutions do not require us to indemnify [FairPoint] for failing to revise its tariff to the extent this was necessary to compensate the company for certain wholesale services provided in connection with calls that involve neither a [FairPoint] end-user nor a [FairPoint] local loop." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No.

24,886 (Aug. 8, 2008) at 9. Accordingly, for the reasons stated, we conclude that the implementation of the change to the CCL charge in FairPoint's tariff need not occur simultaneously with any potential change to the Interconnection Charge. Therefore, the changes to Section 5 pages 1 and 4 of FairPoint's Tariff No. 3 covering the CCL charge as originally proposed on September 10, 2009, and contained in FairPoint's December 22, 2011 tariff filing, will take effect on January 21, 2012. FairPoint is not be required to file a conforming tariff since the Commission shall place into effect Section 5, first revision of pages 1 and 4 on their previously proposed effective date of January 21, 2012.

III. REMAINDER OF DECEMBER 22, 2011 TARIFF FILING

A. POSITIONS OF THE PARTIES

1. FairPoint

In making its tariff filing on December 22, 2011, FairPoint contended that the filing was identical to the one it had submitted on November 30, 2011, and which the Commission had rejected by Order No. 25,301 (Dec. 14, 2011) in order to avoid the timing constraints of RSA 378:6, IV. FairPoint contended, however, that it presumed the Commission made the assumption that RSA 378:6, IV completely superseded RSA 378:6, I(b) and the extended timeframe under the latter statute. According to FairPoint, its research into legislative history indicated that RSA 378:6, IV was not intended to operate in that manner and that RSA 378:6, I(b) was the appropriate statute under which to address the filing. Accordingly, FairPoint presumed the Commission would suspend this filing pursuant to RSA 378:6, I(b) pending the outcome of this proceeding.

2. AT&T – CLECs

On December 27, 2011, the Commission received a letter from AT&T, in which AT&T contended that FairPoint's submission should be deemed null and void for three reasons. First, AT&T contended that the filing was an attempt to obtain reconsideration without filing a proper motion for reconsideration. Second, AT&T contended that by making the filing FairPoint was ignoring the Commission's direction about the procedure for this docket. Lastly, AT&T argued that FairPoint was engaging in a form of "gamesmanship" that the FCC had advised state commissions to guard against in its recent order overhauling the intercarrier compensation regime, including revisions to switched access charges such as those at issue here. According to AT&T it was authorized to state that Choice One of New Hampshire Inc., Conversent Communications of New Hampshire. LLC, CTC Communications Corp., and Lightship Telecom, LLC, all of which do business as EarthLink Business; and Global Crossing Telecommunications, Inc. (a Level 3 company) all joined in its objection. On December 28, 2011, the Commission received a letter stating that BayRing also concurred with AT&T's objection.

B. COMMISSION ANALYSIS

As noted above, the Commission finds that the portion of the December 22, 2011 filing covering the CCL, specifically the revisions to Section 6 page 1 and Section 30 page 4, shall take effect on January 21, 2012. Therefore, in this section we address only that portion of the tariff filing covering the Interconnection Charge, specifically the revisions to pages 5 and 9 of Tariff No. 3. In Order No. 25,301, the Commission specifically found that "in order to avoid the time constraints on review of tariffs contained in RSA 378:6, IV, we believe a better path, given the

terms of the statute, is to reject the tariff and treat it as illustrative." *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,301 (Dec. 14, 2011) at 2. This statement reiterated a prior conclusion of the Commission to grant FairPoint's request to withdraw the portion of its filing that had been made pursuant to RSA 378:6, IV covering the Interconnection Charge. *Freedom Ring Communications, LLC d/b/a BayRing Communications*, Order No. 25,283 (Oct. 28, 2011) at 30-31. Only now does FairPoint claim that treating the Interconnection Charge filing under RSA 378:6, IV was in error. We disagree. We note that FairPoint's request relies upon the legislative history of these statutes, which is not necessary because the statutes are clear on their face. RSA 378:6, IV provides "[a]ny tariff for services filed for commission approval by a telephone utility, except a tariff reviewed pursuant to RSA 378:6, I(a) [dealing with general rate increases] shall become effective as filed 30 days after filing, unless the commission amends or rejects the filing within the 30-day period. . . ." Thus, by express language the statute only allows an exception to the process for telephone utility tariffs under RSA 378:6, IV for a rate schedule representing a general rate increase pursuant to RSA 378:6, I(a), and not for any tariff changes pursuant to RSA 378:6, I(b). In fact RSA 378:6, I(b) begins by stating "[e]xcept as provided in RSA 378:6, IV, for all other schedules . . ." which steers all telephone utility tariff filings that do not represent a general increase in rates to RSA 378:6, IV rather than RSA 378:6, I(b).

For the reasons stated, the Commission concludes that RSA 378:6, I(b) does not apply to the Interconnection Charge portion of the filing, and to the extent the Interconnection Charge filing may be considered properly made under RSA 378:6, IV, the Commission amends the filing by rejecting the portion covering the Interconnection Charge for the same reasons as set

out in Order Nos. 25,283 and 25,301, but the pages shall continue to be treated as illustrative in the pending adjudication. For clarity, the Commission reiterates that there is a pending motion to dismiss or for summary judgment relative to the Interconnection Charge and that the procedural schedule has been suspended until there is a ruling on that motion. At the time of a ruling on that motion the Commission will address further procedural matters as appropriate.

Based upon the foregoing, it is hereby

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; and it is

FURTHER ORDERED, that the changes to Section 6 page 5 and Section 30 page 9 of FairPoint's Tariff No. 3 originally filed by FairPoint on September 10, 2009 and refiled on December 22, 2011covering the Interconnection Charge are rejected, but shall remain illustrative as set forth above; and it is

FURTHER ORDERED, that the Commission shall address further procedural matters following a ruling on the pending motion to dismiss or for summary judgment.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 2012.

Clifton C. Below
Commissioner

Amy L. Ignatius
Commissioner

Attested by:

Debra A. Howland
Executive Director