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STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE: October 3, 2008
AT (OFFICE): NHPUC

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FROM: Lynn Fabrizio, Arbitrator 
SUBJECT: DT 08-111 Dark Fiber Arbitration
Arbitrator's Report and Recommendations
TO: Thomas B. Getz
Graham J. Morrison
Clifton C. Below
Debra A. Howland
CC: Kate Bailey

SYNOPSIS

- On September 2, 2008, segTEL requested arbitration of its request to FairPoint for dark fiber on two routes: **BEGIN CONFIDENTIAL** [**END CONFIDENTIAL**]
- The Commission appointed F. Anne Ross arbitrator on September 8, 2008 and directed a report of findings be filed by September 22, 2008.
- On September 10, 2008, segTEL informed Staff informally that FairPoint had indicated that dark fiber was available on the requested routes and that, as a result, the arbitration might not be necessary.
- On September 18, 2008, segTEL notified Staff that it had been unable to obtain fiber on one of the two requested routes after all: **BEGIN CONFIDENTIAL** [**END CONFIDENTIAL**] and renewed its request for arbitration with respect to that route.

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- On September 26, 2008, the Commission extended the deadline for the arbitrator's report to October 3, 2008, due to the appointed arbitrator's unavailability.
- On September 23, 2008, Commission Staff met with FairPoint to review the request and FairPoint's data.
- Pursuant to that meeting and upon further review of its fiber records, as well as testing of the existing spare fiber strands, FairPoint was able to identify available dark fiber along the **BEGIN CONFIDENTIAL** [] **END CONFIDENTIAL** route.

INTRODUCTION

segTEL was granted authority to operate as a CLEC in New Hampshire in Commission Order No. 23,208 (May 3, 1999). As a CLEC, segTEL purchases unbundled network elements from FairPoint out of FairPoint's NH Tariff No. 84. Prior to its request for arbitration in this docket, segTEL had requested the lease of dark fiber from FairPoint along the **BEGIN CONFIDENTIAL** [

] **END CONFIDENTIAL** routes in accordance with tariff procedures, including requesting a record review to determine dark fiber availability prior to placing an order. FairPoint denied segTEL's requests, citing the unavailability of spare fiber. Based on the information provided by FairPoint to segTEL, segTEL asserted that FairPoint had unreasonably reserved spare fiber for maintenance spares and FairPoint's own projects and sought the Commission's arbitration of its dispute with FairPoint.

PROCEDURAL HISTORY

On September 2, 2008, SegTEL filed with the Commission a request for fast track arbitration of FairPoint's denial of SegTEL's requests for access to FairPoint's dark fiber facilities from **BEGIN CONFIDENTIAL** [

] **END CONFIDENTIAL** Pursuant to RSA 363:17, the Commission appointed Staff Attorney F. Anne Ross as Arbitrator, with technical assistance, as needed. The Commission directed the Arbitrator to submit a report within 20 days of the initial receipt of SegTEL's filing, in accordance with Commission Order No. 22,942, which established a fast track arbitration process for the resolution of disputes concerning dark fiber availability. On September 26, 2008, the Commission extended the deadline for filing the arbitrator's report to October 3, 2008, due to Attorney Ross's unavailability. Staff Attorney Lynn Fabrizio conducted the arbitration and files this report on behalf of Attorney Ross.

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Upon receipt of segTEL's filing on September 2, 2008, Staff confirmed with segTEL that it had followed the dispute resolution steps required under FairPoint's Tariff No. 84, Section 1.12.1(B), but had not received a response from FairPoint.

On September 3, 2008, Staff informed FairPoint of the Commission's expectations regarding the thorough review of fiber records as established during the dark fiber arbitration between Verizon and RedNET in Docket No. DT 06-044. Specifically, Staff advised FairPoint to review both the interoffice records in the Trunk Integrated Record Keeping System (TIRKS) and the local exchange records in the exchange cable plats to account for all strands of fiber on the routes in question.

On September 10, 2008, segTEL informed Staff that FairPoint had indicated that fiber was available on the requested routes. On September 18, segTEL renewed its request for arbitration on the **BEGIN CONFIDENTIAL** [] **END CONFIDENTIAL** route because it had been unable to successfully obtain dark fiber on that route.

FACTUAL FINDINGS

NHPUC staff met with FairPoint representatives at FairPoint's 100 Gay Road, Manchester offices on September 23, 2008 to review fiber records for the inter-office (IOF) span between the **BEGIN CONFIDENTIAL** [] **END CONFIDENTIAL** wire centers. Kate Bailey and Lynn Fabrizio represented Staff; Kevin Shea, Colin Upham, and Dave Mears represented FairPoint.

Before beginning the actual records review, FairPoint explained to Staff that the fiber in question had been installed in 1988 and that exchange cable plats revealed 20 fiber strands along that route. The record review provided to segTEL was based on TIRKS and accounted for 16 fiber strands. FairPoint explained that the four fiber strands unaccounted for in TIRKS had been assigned for local use within the wire centers, that they were not likely to be continuous and that the connectors in the central office on these four strands were obsolete. Staff requested FairPoint to conduct a light test on the four strands to determine whether the fiber was continuous from the **BEGIN CONFIDENTIAL** [] **END CONFIDENTIAL** wire centers or whether it had been severed for use within the local exchange areas. On September 25, 2008, FairPoint informed Staff that the light test had revealed that three of the four fibers were continuous between the requested wire centers and agreed to use these to provision segTEL's request.

The parties have confirmed that the dispute has been resolved.

CONCLUSION AND RECOMMENDATIONS

As the dispute at issue in this docket has been resolved, the docket may be closed. However, the Commission may wish to remind the parties of the proper procedures required on the part of both requesting and responding carriers before seeking fast track arbitration in the future, as noted below.

It appears that segTEL properly followed the dispute resolution procedures required under FairPoint's Tariff No. 84, Section 1.12.1(B) prior to filing for fast track arbitration with the Commission. Upon receiving no response from FairPoint in the 10-day timeframe set forth in the tariff, segTEL properly filed its request for arbitration.

Staff recognizes that FairPoint's tariff does not require FairPoint to provide a response to a CLEC seeking dispute resolution under Section 1.12.1(B) of Tariff No. 84 with respect to a denial of dark fiber. However, the previous two fast-track arbitration findings as approved by the Commission in Docket Nos. DT 06-044 and DT 08-001 have made clear that the Commission expects a responding carrier to conduct a careful and thorough review of both the TIRKS and local exchange cable plat records in response to a carrier requesting dispute settlement of a dark fiber query under Tariff No. 84. The record review conducted at Staff's behest during its September 23, 2008 meeting with FairPoint was no more than FairPoint is expected to do within 10 business days upon the receipt of a dark fiber dispute settlement request from a CLEC. In other words, the same review should have been conducted in August, upon receipt of segTEL's request made pursuant to Section 1.12.1(B) of Tariff No. 84.

Staff is fully supportive of all parties following established business procedures – in this case, the dark fiber ordering process FairPoint has assumed from Verizon. However, in this case, it appears that FairPoint failed to adhere to the Commission's directive to implement a careful and thorough records review upon receipt of a request for dispute settlement from a carrier seeking dark fiber under Tariff No. 84. If it had done so in this case, the need for the Commission's intervention through arbitration would not have arisen.

As this is the first dark fiber arbitration to arise since FairPoint's acquisition of Verizon's landline assets and operations in New Hampshire, Staff recommends the Commission reiterate to FairPoint the request it made to Verizon in Docket No. DT 06-044 to file a copy of detailed written guidance for the appropriate employees in the event of dispute settlement requested under Section 1.12.1(B) of Tariff No. 84.