

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: February 27, 2009
AT (OFFICE): NHPUC

REDACTED VERSION

FROM: F. Anne Ross, Arbitrator

SUBJECT: DT 09-007 Dark Fiber Arbitration
Arbitrator's Report and Recommendations

TO: Thomas B. Getz
Graham J. Morrison
Clifton C. Below
Debra A. Howland

CC: Kate Bailey

PROCEDURAL HISTORY

On January 22, 2009, segTEL, Inc. filed a dark fiber arbitration request and a request for confidential treatment of its requests for dark fiber on 14 routes involving 19 segments in FairPoint's New Hampshire service territory.

On January 26, 2009, the Commission appointed F. Anne Ross to serve as arbitrator and directed that a report of findings be filed by February 11, 2009.

On February 11, 2009, at the request of the arbitrator, the Commission extended the date for a report of findings until February 27, 2009.

On February 6, and 23, 2009, Staff met with FairPoint to review the requests and FairPoint's data.

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 has requested the lease of dark fiber from FairPoint along the 14 routes, described in segTEL's 14 appendices, 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, segTEL asserted that FairPoint has unreasonably reserved spare fiber for maintenance spares and for FairPoint's own projects. As a result, segTEL seeks the commission's arbitration of its dispute with FairPoint.

FACTUAL FINDINGS AND RECOMMENDATIONS

Commission staff met with FairPoint representatives at their offices at 100 Gay Street, Manchester, New Hampshire on February 6 and 23, 2009, to review the inter-office fiber records and local exchange cable plat records between the wire centers for which segTEL requested fast track arbitration. Several routes had multiple segments. This arbitration involved review of 19 disputed segments. segTEL organized its request by numbering the routes in Appendices 1 through 14. The specific wire centers and spans will be described in the factual findings set out below. Kate Bailey and Anne Ross represented Staff. Kevin Shea, Elizabeth Hackett, Mary Beth Morrill, Eric Proulx, Dave Mears, Collin Upham, Tom Maurice and Jean Kimball represented FairPoint.

At the initial meeting on February 6, 2009, Staff reviewed FairPoint's local exchange cable plat records. The records review was conducted during the blackout period of the final transition from Verizon's systems to FairPoint's systems. As a result, the interoffice records, formerly known as TIRKS were not available for review. At the second meeting on February 23, 2009, staff reviewed the interoffice records. FairPoint was able to access its new trunk inventory system, known as Metasolv, allowing Staff to corroborate the cable documentation information provided to segTEL.

Maintenance Spares

segTEL argued in the event the only available spare capacity on a fiber route were two remaining maintenance spares, it should be allowed to use them because in some cases, FairPoint had not preserved maintenance spares. FairPoint's practice of not preserving maintenance spares in all cases, according to segTEL, establishes a precedent that because the incumbent uses all fibers on a particular segment for itself when necessary, it should not be allowed to preserve two for maintenance and prevent a CLEC from using the last two remaining fibers. FairPoint pointed out that it had inherited the network from Verizon and it was not FairPoint's practice to utilize the only remaining maintenance spares. In any case where 2 maintenance spares are the only remaining unused fiber on a particular segment, the arbitrator finds it would not be in keeping with safe and reliable service requirements to require FairPoint to lease the two remaining maintenance spares. The arbitrator finds it is reasonable for FairPoint to preserve a minimum of two fibers for maintenance spares.

Findings and Recommendations as to Each segTEL Request

Appendix 1 requested fiber from [PROPRIETARY]. This involved 2 disputed segments, [PROPRIETARY].

FairPoint will provide segTEL 2 existing fibers from [PROPRIETARY] from the 6 maintenance spares.

FairPoint will provide segTEL 2 existing fibers from [PROPRIETARY] from the 6 maintenance spares.

Appendix 1: Fiber Available

Appendix 2 requested fiber from [PROPRIETARY]. This involved 3 segments, one of which was disputed, [PROPRIETARY].

Staff confirmed there are 24 continuous fibers from [PROPRIETARY] in [PROPRIETARY]. 20 fibers are in service. There are 2 maintenance spares and 2 defective fibers. FairPoint is testing the two defective fibers and expects to determine by March 6, whether the defective fibers can be repaired and made available.

A toll budget sheet has been issued to request construction be funded to add capacity to this segment. Funding for construction has not been approved, however if construction is approved FairPoint will insure enough excess capacity to meet segTEL's request.

Appendix 2: No Fiber Available

Appendix 3 requested fiber from [PROPRIETARY]. This involved 2 segments, one of which was disputed, [PROPRIETARY].

Construction from [PROPRIETARY] is in progress. The fiber was scheduled to be spliced in December, but was not completed at the time of segTEL's request for arbitration. The splice work is now complete.

Appendix 3: Fiber Available

Appendix 4 requested fiber from [PROPRIETARY]. This route involved 2 segments, one of which was disputed, [PROPRIETARY].

Staff confirmed there are 16 fibers between [PROPRIETARY]. Eight fibers are in service. There are 5 defective fibers and 3 maintenance spares. FairPoint is testing the five defective fibers and expects to determine by March 6, whether the defective fibers can be repaired and made available.

Appendix 4: No Fiber Available

Appendix 5 requested fiber from [PROPRIETARY]. This route involved 2 disputed segments, [PROPRIETARY].

FairPoint has a construction job planned for each of these segments. Toll budget sheets have been approved. FairPoint will release 2 existing fibers on each of these segments.

Appendix 5: Fiber Available

Appendix 6 requested fiber from [PROPRIETARY]. This route involved 2 disputed segments, [PROPRIETARY].

FairPoint has a construction job planned for [PROPRIETARY]. Toll budget sheets have been approved. FairPoint will release 2 existing fibers on this segment.

Two of the 4 fibers designated as maintenance spares will be made available to segTEL on the [PROPRIETARY] segment.

Appendix 6: Fiber Available

Appendix 7 requested fiber from [PROPRIETARY]. This route involved 2 segments, one of which was disputed, [PROPRIETARY].

Two of the 4 fibers designated as maintenance spares will be made available to segTEL on the [PROPRIETARY].

Appendix 7: Fiber Available

Appendix 8 requested fiber from [PROPRIETARY]. This route involved 2 segments one of which was disputed, [PROPRIETARY].

Staff confirmed there are only 8 fibers on [PROPRIETARY]. All 8 fibers are in service.

A toll budget sheet has been issued to request construction be funded to add capacity to this segment. Funding for construction has not been approved, however if construction is approved FairPoint will insure enough excess capacity to meet segTEL's request.

Appendix 8: No Fiber Available

Appendix 9 requested fiber from [PROPRIETARY]. This route involved 3 segments, one of which was disputed, [PROPRIETARY].

Staff confirmed there are 8 continuous fibers from [PROPRIETARY]. All 8 fibers are in service.

A toll budget sheet has been issued to request construction be funded to add capacity to this segment. Funding for construction has not been approved, however if construction is approved FairPoint will insure enough excess capacity to meet segTEL's request.

Appendix 9: No Fiber Available

Appendix 10 requested fiber from [PROPRIETARY]. This route involved 2 disputed segments, [PROPRIETARY].

FairPoint will provide segTEL 2 existing fibers from [PROPRIETARY] from the 6 maintenance spares.

FairPoint will provide segTEL 2 existing fibers from [PROPRIETARY] from the 4 maintenance spares.

Appendix 10: Fiber Available

Appendix 11 requested fiber from [PROPRIETARY]. This route involved 2 disputed segments, [PROPRIETARY].

Staff confirmed there are 16 continuous fibers from [PROPRIETARY].

Twelve fibers are in service. 3 fibers are reserved for maintenance spares and 1 fiber is defective. FairPoint needs 4 fibers for its broadband build out. At this time, providing 2 fibers to segTEL on this route would not maintain 2 maintenance spares and would not be in keeping with safe and reliable service requirements.

Staff confirmed there are 8 continuous fibers from [PROPRIETARY]. All 8 fibers are in service.

A toll budget sheet has been issued to request construction be funded to add capacity to each of these segments. Funding for construction has not been approved, however, if construction is approved FairPoint will insure enough excess capacity to meet segTEL's request.

Appendix 11: No Fiber Available

Appendix 12 requested fiber from [PROPRIETARY] which is a direct route.

Staff confirmed there are 16 continuous fibers from [PROPRIETARY]. All 16 fibers are in service.

A toll budget sheet has been issued to request construction be funded to add capacity to this segment. Funding for construction has not been approved, however if construction is approved FairPoint will insure enough excess capacity to meet segTEL's request.

Appendix 12: No Fiber Available

Appendix 13 requested fiber from [PROPRIETARY]. This route involved 2 segments, one of which was disputed, [PROPRIETARY].

New fiber is being constructed between [PROPRIETARY]. FairPoint will provide segTEL 2 existing fibers from the 7 maintenance spares between [PROPRIETARY].

Appendix 13: Fiber Available

Appendix 14 requested fiber from [PROPRIETARY] which is a direct route.

According to the Cable Documentation 4 fibers have been reserved for FairPoint and there are 4 maintenance spares. FairPoint will release 2 maintenance spares to segTEL.

Appendix 14: Fiber Available

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