

ARBITRATION PROCEDURE/PROCESS

I. General

- For purposes of the Arbitration procedures set forth herein, Northern New England Telephone Operations LLC (“NNETO”) and Telephone Operating Company of Vermont LLC (“TOCV” and together with NNETO collectively being “FairPoint”) shall be considered a single “Party.” To the extent feasible, the Settling CLECs¹ will work in good faith to coordinate their positions and presentations but reserve their right to act as independent Parties. Any non-settling CLEC or other Intervenor that elects to intervene shall be considered a “Party”. Collectively, the Settling CLECs, TOCV and NNETO together with any other parties are hereinafter referenced as the “Parties”.
- Arbitration panel: One telecommunications staff member from each of the Maine Public Utilities Commission, the New Hampshire Public Utilities Commission and the Vermont Public Service Board, at least one of which shall be a lawyer (the “Arbitrators”).
- Results/decision of a majority of the Arbitrators is binding on all Parties to all proceedings and, through notice issued by the Commissions and Board, on any party potentially affected by the simplified PAP in Maine, New Hampshire and Vermont.
- Arbitrators shall not render decisions on matters outside the scope of arbitration.
- Issues outside the scope of arbitration will be preserved for Commission or Board consideration. The Commissions and Board will give weight to the agreement between the Settling CLECs, TOCV and NNETO that the simplified PAP be the same in Maine, New Hampshire and Vermont.

II. Pre-Arbitration

- Commissions/Board issue notice of arbitration in respective proceedings and designate arbitrators.
- Parties meet to negotiate in good faith unaddressed/unresolved issues, including matters contained in the NH PAP audit report that impacts the content and structure of the simplified PAP. To the extent issues remain unresolved after the negotiation process, the parties shall develop a final written list of issues for arbitration, which must be agreed upon in writing prior to any arbitration proceeding (the “scope of arbitration”). Final list of issues to be arbitrated to be agreed upon by the Settling CLECs and FairPoint.

III. Arbitration Process before Arbitrators

Step 1: Scheduling

¹ The term Settling CLECs means and consists of the following entities: Biddeford Internet Corporation d/b/a Great Works Internet, Comcast Phone Of Vermont, LLC, Comcast Phone of New Hampshire, LLC, CRC Communications of Maine, Inc. d/b/a OTT Communications, EarthLink Business, Freedom Ring Communications, LLC d/b/a BayRing Communications, National Mobile Communications Corporation d/b/a Sovernet Communications, and United Systems Access Telecom, Inc.

- Parties provide the scope of arbitration to Arbitrators and a conference call is scheduled to discuss process and schedule.

Step 2: Parties submit “Issue Briefs” on each of the in-scope issues to be arbitrated

- Brief will not be formal testimony or formal legal brief but rather an informal outline of the issue and the party’s position on the issue, generally not to exceed five (5) pages (double spaced) per issue as determined by the Arbitrators.
- Parties will identify, for each issue, the person(s) who will be responsible for addressing the issue at the arbitration hearing.

Step 3: Limited Discovery

- Arbitrators review written submissions and Arbitrators have opportunity to request written clarification(s) within the scope of the arbitration proceeding. Arbitrators’ requests and responses to be served on all Parties.
- Any Party may request limited discovery within 10 (ten) business days following issuance of requests by the Arbitrators. A discovery conference will be held as soon as practicably possible to resolve any objections related to the Parties’ requests. Responses to all discovery requests will be due 10 (ten) business days after the Discovery Conference.
- Parties shall endeavor to coordinate discovery requests and limit discovery to a combined total of no more than ten (10) written questions (said limitation to include sub-parts to any question) per in-scope issue to the Settling CLECs (five (5) written questions to/from members of CANNE and five (5) written questions to/from the Comcast entities) or FairPoint, absent leave by the Arbitrators.

Step 4: Arbitration

- Similar to Commission/Board procedure, no “direct testimony” or presentation of position is required (but a time limited summary of each Party’s position(s) is permitted, generally not to exceed ten (10) minutes per issue) as determined by the Arbitrators.
- Documentary evidence proposed for admission into the evidentiary record will be exchanged prior to Arbitration.
- Witnesses will have opportunity to rebut presentation of other Parties and proffer rebuttal evidence.
- Arbitrators decide whether to accept the evidence into the record.
- Witnesses answer questions from Arbitrators.
- Cross examination is limited to the discretion of the Arbitrators.

Step 5: Arbitrators draft and provide to each Party proposed findings of fact and conclusions of law.

Step 6: Within 10 business days of the date of the Arbitrators' proposed findings, Parties convene for final negotiating session and report any settlement to Arbitrators.

Step 7: Within twenty (20) business days of the date of the Arbitrators' proposed findings, Parties file exceptions with Arbitrators addressing the draft proposed findings.

Step 8: Arbitrators issue final decision and provide same to each Party.

IV. Proceedings before Commissions/Board

Step 1: Arbitrators' decision is jointly filed by the Arbitrators with each state within two (2) business days of issuance.

Step 2: Parties file appeal of Arbitrators' decision on errors of law or matters of law (i.e. decisions that are inconsistent with federal law and the relevant state's laws, rules or orders adopted by the relevant state Commissions or Board) or on those decisions (if any) which exceed the scope of arbitration within thirty (30) calendar days of the filing of the decision with the Commissions/Board.

Step 3: The Commissions/Board establish a briefing schedule to address issues raised on appeal.

Step 4: Each Commission/Board establishes a procedural schedule for resolution of matters outside the scope of the arbitration process.

Step 5: With regard to proceedings (if any) established by the Commissions/Board to review the Arbitrators' decision, no evidence that was available to the Parties at the time of the arbitration hearing shall be presented to the Commissions/Board.

Step 6: Commissions/Board issue final decision on in-scope arbitrated matters/issues. Matters/issues outside the scope of the arbitration hearing resolved via procedural process noted above.