

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 11-061

Northern New England Telephone Operations, LLC d/b/a
FairPoint Communications - NNE
Petition for Approval of Simplified Metrics Plan
and Wholesale Performance Plan

**RESPONSE OF CLEC PARTIES TO MOTION OF FAIRPOINT COMMUNICATIONS
FOR REHEARING, RECONSIDERATION OR ANNULMENT OF ORDER NO. 25,538**
AND
**REQUEST TO SUSPEND PROCEDURAL ACTIVITY PENDING OUTCOME OF
SETTLEMENT NEGOTIATIONS**

The undersigned CLEC Parties (Biddeford Internet Corporation d/b/a Great Works Internet; Comcast Phone of New Hampshire, LLC; CRC Communications LLC d/b/a OTT Communications; CTC Communications Corp., Lightship Telecom LLC, Choice One of New Hampshire, Inc. and Conversent Communications of New Hampshire, Inc., all d/b/a "EarthLink Business"; Freedom Ring Communications, LLC d/b/a BayRing Communications; and National Mobile Communications Corporation d/b/a Sovernet Communications) hereby respond to the *Motion for Rehearing and/or Reconsideration of or, in the Alternative, to Annul and Set Aside Order No. 25,538* ("Motion") filed by Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") on July 26, 2013 in the above-captioned proceeding. As set forth in greater detail below, because the Motion provides no basis for rehearing, reconsideration or annulment of Order No. 25,538 ("Procedural Order"), *see* RSA 541:3-5, the CLEC Parties respectfully request that the FairPoint Motion be denied. However, as explained below, recent negotiations between the parties have resulted in significant

progress towards a comprehensive settlement, potentially negating the need for the process established by the Procedural Order. Given that positive development, the CLEC Parties also hereby request that the Commission suspend procedural activity in this docket pursuant to that Procedural Order.

As the Commission is aware, the CLEC Parties and FairPoint have continued to negotiate the proposed terms of the forthcoming Wholesale Performance Plan in furtherance of the objective to narrow or eliminate issues to be resolved by the Commission, the Maine Public Utilities Commission or the Vermont Public Service Board. During meetings earlier this week, the parties made significant progress towards reaching a comprehensive settlement. However, until such time as all issues may be fully memorialized in a settlement stipulation, the parties must each seek to preserve their respective rights. Accordingly, and in consideration of the statutory deadline for Commission action on the FairPoint Motion, the CLEC Parties file this Response to the Motion but at the same time request that procedural activity be suspended pending the outcome of settlement negotiations to both allow the parties to focus on settlement and prevent the expenditure of resources that will hopefully prove to be unnecessary. The parties will keep the Commission apprised of the status of settlement negotiations through communication with Staff, and ultimately through formal filings.

In the interim, however, the Commission must rule on the merits of the FairPoint Motion, with which the CLEC Parties are not in agreement. As such, the CLEC Parties respectfully request that the FairPoint Motion be denied as having provided no basis for rehearing, reconsideration or annulment of the Procedural Order. *See* RSA 541:3-5. The CLEC Parties understand that parties cannot dictate a procedure for a particular proceeding and that the Commission naturally reserves the right to adopt appropriate procedures and review evidence to

ensure compliance with the Commission's responsibilities under governing law. The CLEC Parties are thus in accord with the Commission's decision to adopt, with conditions, the process that had been proposed in the Joint Motion of FairPoint and the CLEC Parties dated May 13, 2013, and support the process established by the Procedural Order.

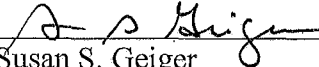
The CLEC Parties note that the objective of the arbitration procedure proposed by the Joint Motion was to streamline the litigation process and foster uniformity among the three Northern New England States in the FairPoint Wholesale Performance Plan that will result from the completion of this process. The Procedural Order, which acknowledges the parties' agreement to limit themselves with respect to the scope of the arbitration and the issues that may be addressed in exceptions and briefs, and adopts the arbitration procedure (with an understandable reservation of rights), is consistent with that objective. Moreover, the Commission's decision to adopt the process that had been proposed, with conditions, is both judicious and consistent with governing law, and there has been no showing to the contrary. Indeed, the Commission could have established the process adopted by the Order on its own. The Procedural Order is thus in no way unreasonable or unlawful (*see* RSA 541:4) and therefore should not be set aside.

WHEREFORE, the CLEC Parties respectfully request that the Commission deny the FairPoint Motion, and concurrently suspend procedural activity pending the outcome of settlement negotiations.

Respectfully submitted,

Comcast Phone of New Hampshire, LLC
By its Attorneys,

Dated: August 2, 2013

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FREEDOM RING COMMUNICATIONS d/b/a
BAYRING COMMUNICATIONS

CTC COMMUNICATIONS CORP.,
LIGHTSHIP TELECOM LLC, CHOICE ONE
OF NEW HAMPSHIRE, INC. AND
CONVERSENT COMMUNICATIONS OF NEW
HAMPSHIRE, INC., ALL d/b/a EARTHLINK
BUSINESS

BIDDEFORD INTERNET CORPORATION
d/b/a GREAT WORKS INTERNET

CRC COMMUNICATIONS INC. d/b/a OTT
COMMUNICATIONS

NATIONAL MOBILE COMMUNICATIONS
CORPORATION d/b/a SOVERNET
COMMUNICATIONS

Dated: August 2, 2013

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by electronic mail to the parties named on the service list for this docket.

Dated: August 2, 2013

By: A. A. Huizer

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