

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 14-102

**Northern New England Telephone Operations LLC d/b/a FairPoint Communications –
NNE Complaint Against FairPoint Communications, Inc.
Rate Increase Dispute**

**OBJECTION TO MOTION FOR CONFIDENTIAL TREATMENT AND REQUEST
FOR PROTECTIVE ORDER**

NOW COMES New Hampshire Legal Assistance (NHLA) in objection to the motion of Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE's (FairPoint) for confidential treatment and a request for protective order for Exhibits 7 and 7A. In support thereof, NHLA states the following:

1. FairPoint request confidential treatment of Exhibits 7 and 7A (Exhibits). FairPoint asserts these exhibits contain internal processes, procedures, and analysis, which are allegedly proprietary, confidential and/or commercial information owned and used by FairPoint and its employees only. FairPoint further argues this information should be treated as highly confidential and commercially sensitive.
2. Under N.H. Admin. Code Puc 203.08, FairPoint's "...motion for confidential treatment submitted pursuant to this rule shall contain:

(1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;

(2) Specific reference to the statutory or common law support for confidentiality; and

(3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.”

N.H. Admin. Code Puc 203.08(b) (Emphasis added). With respect to the requirements of N.H. Admin. Code Puc 203.08(b)(2) & (3), FairPoint’s motion does not reference any specific statutory or common law authority favoring confidentiality, other than RSA 91-A:5, IV, and FairPoint’s motion does not provide “[a] detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.”

3. As a legal reference, FairPoint relies solely on RSA 91-A:5, IV. Here, “[t]he party [FairPoint] resisting disclosure bears a heavy burden to shift the balance towards nondisclosure.”

Lamy v. New Hampshire Public Utilities Com’n, 152 N.H. 106, 109 (2005)(citation omitted).

FairPoint did not meet this burden of proof in its Motion.

4. The New Hampshire Supreme Court conducts a three-step analysis under RSA 91-A:5,

IV:

First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure. Next, we assess the public’s interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual’s privacy interest in nondisclosure.

Union Leader Corp. v. New Hampshire Retirement System, 162 N.H. 673, 679 (2011)(citations omitted); *see also Re Public Service Company of New Hampshire*, DE 10-195; Order No. 25,158; 2010 WL 4358360, at 6 (N.H.P.U.C., 2010).

5. With respect to the first part of the test under RSA 91-A:5, IV, “[w]hether information is exempt from disclosure because it is private is judged by an objective standard and not by a

party's subjective expectations” *Union Leader Corp.*, at 679. While FairPoint may have preferred that every aspect of telecommunications regulation were removed, the Legislature actually took a different path. For example, the Legislature expressly set forth price caps for basic service for ILECs like FairPoint in the plain language of RSA 347:22-p, VIII(b), which provides:

Rates for basic service of incumbent local exchange carriers which qualify as excepted local exchange carriers may not increase by more than 5 percent for Lifeline Telephone Assistance customers and by more than 10 percent for all other basic service customers in each of the 8 years after the effective date of this paragraph...

(Emphasis added). Accordingly, FairPoint has no privacy interest in refusing disclosure of information and procedures concerning its determination of what customers are entitled to price caps for basic service, as FairPoint’s basic service is under price cap regulation (at least until 2020). The Legislature put ILECs like FairPoint under price cap regulation for basic service, and Exhibits 7 and 7A go directly to the heart of how FairPoint is applying the rate caps for basic service. Therefore, FairPoint has failed to meet its burden to demonstrate any privacy interest exists; to the contrary, the plain language of the statutory scheme makes clear that pricing for basic service for FairPoint customers remains under public scrutiny and regulation.

6. FairPoint fails to meet its burden of proof under the second part of the test under RSA 91-A:5, IV, involving an analysis of whether: “Disclosure of the requested information should inform the public about the conduct and activities of their government.” *Union Leader Corp.*, at 679. The plain language of RSA 347:22-p, VIII(b), provides:

Rates for basic service of incumbent local exchange carriers which qualify as excepted local exchange carriers may not increase by more than 5 percent for Lifeline Telephone Assistance customers and by more than 10 percent for all

other basic service customers in each of the 8 years after the effective date of this paragraph...

(Emphasis added). The exact universe of FairPoint customers entitled to the rate caps for basic service is the issue in this docket. It is an issue of distinct public importance to the Legislature, which expressly set forth the above price cap regulation. Here, "[t]he purpose in our examination is whether the disclosure of the information would inform the public of the Commission's conduct of its authority." *Re Public Service Company of New Hampshire*, at 6. The Commission's authority post-partial deregulation is directly at issue in this case. Moreover, if Exhibit 7 and 7A are not publicly available, FairPoint's basic service rate practices, the public will have no understanding of how the Commission applies these basic service rate practices to the statutes at issue..

7. Under the third part of the test under RSA 91-A:5, IV, we must "...balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure." *Union Leader Corp.*, at 679. As stated earlier, FairPoint has no privacy interest in its basic service rates/rate practices because FairPoint's basic service rates remain under price cap regulation.

8. Finally, FairPoint's motion fails on its face to provide "[a] detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment." Nevertheless, FairPoint alleges a generalized concern about the impact of disclosure because "...the telecommunications industry is highly competitive..." See FairPoint Motion, para. 3. However, every one of FairPoint's competitors knows FairPoint is under price cap regulation for basic service, as outlined in the statute. As a consequence of the Legislature's expressed language, FairPoint is the only company in its service territory with carrier of last

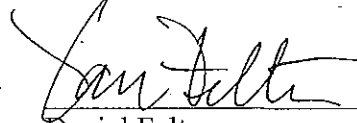
resort obligations for basic service. FairPoint is the only company in its service territory susceptible to the price cap regulation for basic service. *See* RSA 347:22-p, VIII. FairPoint made no showing or allegation in its motion that any other company is seeking to overtake FairPoint, or even be competitive with FairPoint, as a carrier of last resort providing stand-alone basic service. In fact, the restriction on access to information on basic service rates and policies only serves an anti-competitive effect, running counter to the underlying purpose of the Legislature's partial deregulation promoting competition. Moreover, based on the plain language of the statutory scheme in RSA 347:22-p, VIII, the Legislature is concerned with the lack of competition for basic service, as evidenced by the carrier of last resort requirement for FairPoint, and the safeguard against FairPoint having unabated authorization to increase its basic service rates.

9. FairPoint's continued effort to hide its basic service rate practices from the public is tiresome and contrary to its regulatory status. The public has a clear interest in the disclosure of these Exhibits, and in the Commission providing clarity on the universe of customers eligible for the price caps. Customers have a right to know and understand the standards in which their eligibility for basic service rate caps are being assessed by FairPoint. Because these Exhibits will be used by the Commission in making a decision in this case, disclosure of these Exhibits is warranted as information which informs the public of the conduct and activities of its government. Furthermore, the economic hardships which will result if individuals seeking to access basic service plans are denied these rate caps, far outweigh any economic hardship FairPoint feels may result if the Exhibits are made public, as every competitor is already aware of FairPoint's regulatory status.

WHEREFORE, NHLA respectfully requests the Commission deny FairPoint's Motion for Confidential Treatment and Request for Protective Order.

Respectfully submitted,

New Hampshire Legal Assistance



Daniel Feltes

Director, Housing Justice Project

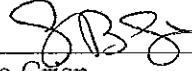
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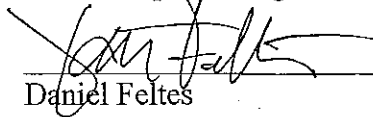
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Certification of Service

I certify that on May 30, 2014 copies of this Objection were hand delivered to the Commission and emailed to the service list.

New Hampshire Legal Assistance



Daniel Feltes