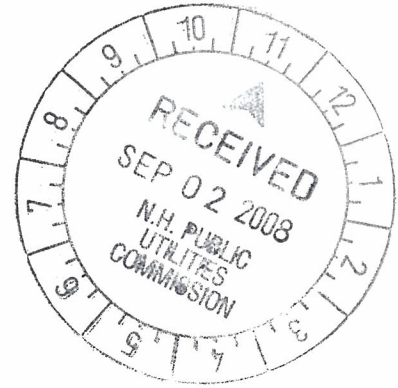


CONFIDENTIAL
MATERIAL
IN COMM FILE

August 29, 2008



Debra Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, N.H. 03301-2429

Re: Dark Fiber Arbitration Request REDACTED version

segTEL, Inc. ("segTEL") is a duly authorized CLEC in the state of New Hampshire. segTEL purchases unbundled network elements from FairPoint New Hampshire ("FairPoint") out of FairPoint's NH Tariff No. 84. The tariff offers unbundled dark fiber, under terms and conditions that include a requirement that segTEL request a record review to determine dark fiber availability prior to placing an order.

segTEL has placed several requests for records review. Several recent requests of segTEL have been denied, although it is segTEL's opinion that sufficient spare fiber may be available to meet segTEL's request. Pursuant to orders of the New Hampshire Public Utilities Commission (Commission) regarding dark fiber, in particular the final order in Docket No. DE 97-229, Order No. 22,942, in such circumstances segTEL may request that the Commission appoint an arbitrator and conduct a fast-track arbitration.

Although not required to do so, on August 13, 2008, segTEL notified FairPoint of its intent to file a request for dark fiber arbitration, in order to provide FairPoint with an opportunity to review these recent requests and respond directly to segTEL.

segTEL believes that its dark fiber requests should be provisioned for the following reasons:

1) The amount of dark fiber reserved for maintenance and FairPoint use is excessive and has the effect of denying segTEL fiber that segTEL is entitled to under Federal regulations, section 251(c)(3) of the Act, NH PUC Tariff #84, as well as by NH PUC rules and orders;

2) Verizon's previous DWDM deployment on these routes provides sufficient capacity for current projects and maintenance over the pre-existing lit fibers;

3) The actual inventory of fiber on these routes may be substantially in excess of what is recorded on the dark fiber inquiry (DFI) response;

4) Although segTEL has made more than a dozen requests for dark fiber on the <REDACTED> to <REDACTED> route over the past 4 years, another CLEC was provided dark fiber on that route, in contradiction of Tariff 84's "first-come, first-served" requirement.

The first issue of maintenance spare reservation should be sufficient for the Commission to conclude that adequate fiber resources exist to honor segTEL's requests. While the Commission has not set an absolute standard, it has determined that the number must be "reasonable". The Maine Commission has found it is reasonable that maintenance pairs be limited to one pair or 5% of the total strand count, whichever is greater (*See* Docket No. 2002-243, ME PUC, March 31, 2006). Massachusetts determined that a minimum of 2 fibers (one pair) for maintenance was sufficient (*See* Decision P.U./D.T.E. 96-73/74, 96-75, Decision P.U./D.T.E. 96-80/81, Decision P.U./D.T.E. 96-83, 96-94-Phase 4-N, Massachusetts DTE, December 13, 1999.)

Since FairPoint has been unwilling to release spare fibers to complete these orders, segTEL requested, paid for and has been awaiting a field survey to confirm dark fiber inventory on the <REDACTED> to <REDACTED> route since June 13, 2008. segTEL told FairPoint it would be willing to hold its formal request for arbitration in abeyance pending the results of the field survey, provided that the survey was completed within eight business days of its August 13th notice. Instead, FairPoint scheduled the survey for September 30, in violation of its tariff, and in violation of the Telecommunications Act provisions of non-discrimination. FairPoint would not wait more than 100 days to do a survey for itself; thus it cannot ask segTEL to wait that long.

It is segTEL's position, however, that a field survey is NOT required in order to provision segTEL's request.

Under Federal Law, dark fiber, because it is a UNE, must be provided to the extent it is technically feasible to do so. 47 C.F.R. § 51.5 defines technically feasible, stating:

"[i]nterconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is *no possibility of expanding the space available*. The fact that an incumbent LEC must modify its facilities or

equipment to respond to such request does not determine whether satisfying such request is technically feasible. *An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.*" (Emphasis added.)

segTEL believes that these two routes have adequate fiber to accommodate segTEL's request without a survey, and requests that the Commission order FairPoint to immediately provision segTEL's order for fiber on the following routes:

1. REDACTED
2. REDACTED

Accordingly, segTEL requests fast-track arbitration on these requests pursuant to Order No. 22,942.

Sincerely,



Kath Mullholand
Director of Operations

ATTACHMENT 1
segTEL, Inc.

CABLE DOCUMENTATION NH

REDACTED

ATTACHMENT 2
segTEL, Inc.

REDACTED