STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 12-337

Northern New England Telephone Operations, LLC d/b/a FairPoint Communications - NNE
Tariff Filing to Implement Certain Provisions of the Order on Remand

BRIEF REGARDING QUESTIONS OF LEGAL INTERPRETATION

NOW COMES Northern New England Telephone Operations, LLC d/b/a FairPoint Communications - NNE ("FairPoint") and hereby submits the following Brief in connection with the investigation of its tariff filing regarding the impairment status of certain of its wire centers.

I. BACKGROUND AND INTRODUCTON

On November 16, 2012, FairPoint filed revisions to its Tariff NH PUC No. 2 ("Tariff 2") which implemented certain aspects of the Federal Communications Commission's *Triennial Review Remand Order* ("*TRRO*").[1] Specifically, the revisions added 24 wire centers to the list of wire centers in Section B.21.1.1 of Tariff 2 that are non-impaired to some extent (for a total of 28) and added terms for transitioning UNE dedicated transport facilities that wholesale customers had ordered from these non-impaired wire centers to other types of wholesale arrangements. These revisions were submitted in accordance with the process established by the Commission in its 2006 *Wire Center Order*.[2]

On August 9, 2013, following a period of discovery among the parties and the Commission Staff, FairPoint filed further revisions to Tariff 2 that reduced the number of

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[1] *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd 2533 (2005) ("*TRRO*").

[2] DT 05-083, Order No. 24,598 Classifying Wire Centers and Addressing Related Matters (March 10, 2006) ("*Wire Center Order*").

unimpaired wire centers from 28 to 9, based on the number of fiber-based collocators ("FBCs"), and modified the transition periods. Of the 9 wire centers, 7 were newly classified as non-impaired or reclassified to a higher level of non-impairment (*i.e.* Tier 2 to Tier 1). These 7 wire centers are

Dover
Durham
Hanover
Keene
Nashua
Portsmouth
Salem

Beginning in July 2013, the Commission Staff conducted two rounds of discovery on CLECs believed to be collocated in FairPoint wire centers in the state. In a report of its analysis of the discovery responses, issued on August 12, 2013 (the "Staff Report"), the Staff was equivocal as to whether FairPoint had properly classified these 7 offices. The Staff advised that the ultimate determinations hinged on the legal interpretation of the FBC definition in regard to ownership of the fiber facility and the end point of the facility outside the wire center in question. Consequently, by Secretarial Letter issued on August 15, 2013, the Commission requested briefing on five questions of law suggested by the Staff. These questions are:

(a) Does a CLEC, with collocation and active electrical power, using its own optronics to activate dark fiber provided by another CLEC on an indefeasible right to use basis qualify as a fiber-based collocator?

(b) If there is one CLEC terminating fiber in a competitive access transport terminal and three additional CLECs using the same fiber cable on an indefeasible right to use basis, should this be counted as 4 fiber-based collocators? Why or why not?

(c) Does a CLEC, with collocation, active electrical power and fiber optic cable extending from the collocation facility to a termination point in the wire center area not owned or controlled by FairPoint (e.g., a fiber loop extending to a business) qualify as a fiber-based collocation?

(d) Does fiber terminated at one end in the wire center (e.g., a collocation or competitive access transport terminal) extending from the collocation facility to a termination point in the wire center area that is owned or controlled by FairPoint qualify as a fiber-based collocation?

(e) Based on the discovery responses received to date, are there other legal precedents or regulatory interpretations that should be considered by the Commission in determining the appropriate classification of the seven listed wire centers?

FairPoint submits that the answers to the first four questions are each an unqualified "**Yes**."

II. DEFINITIONS

To inform the discussion, it is useful to define certain terms:

a) "Competitive Alternative Transport Terminal" or "CATT" provides a shared, alternate splice point within a Telephone Company central office at which a third party competitive fiber provider (CFP) can terminate its facilities for distribution to [collocation] arrangements within that central office. [3]

b) "Fiber-based collocator" means a fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that

(1) Terminates at a collocation arrangement within the wire center;

(2) Leaves the incumbent LEC wire center premises; and

(3) Is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in [Title 47 of the Code of Federal Regulations.]

c) "Fiber-optic cable" means a facility containing individual fiber strands within a sheath.[4]

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[3] FairPoint Telephone Companies Tariff F.C.C. No. 1, Section 28.11.1(B).
[4] *See, e.g. Wire Center Order* at 37.

d) "Operates a fiber-optic cable" means to control not only the lighting of the fiber within a cable, but also the placement, capacity and configuration of the cable itself.[5]

III. ANALYSIS

For the sake of clarity and conciseness, FairPoint's analysis of each of questions (a) through (d) track the elements of the definition of a fiber based collocator, as tailored for the specifics of this inquiry. Each of these questions will be addressed in turn.

(a) Does a CLEC, with collocation and active electrical power, using its own optronics to activate dark fiber provided by another CLEC on an indefeasible right to use basis qualify as a fiber-based collocator?

- **Collocation in a FairPoint wire Center: YES**

On the stated facts of this scenario, the CLEC has a collocation in the FairPoint wire center.

- **Active electrical power supply: YES**

On the stated facts of this scenario, the CLEC has active electrical power.

- **Operates a fiber-optic cable: YES**

On the stated facts, the CLEC controls the lighting of a fiber strand or strand using its own optronics. As to whether the CLEC, also "controls . . . the placement, capacity and configuration of the cable itself," this control is implied by the ownership status inherent in the IRU arrangement, as confirmed in the last criterion in this analysis, next page. Moreover, the nature of an IRU allows for the "placement, capacity and configuration" of the facility. An IRU differs from a service like a DS3, which simply provides for end-to-end transmission at a certain speed over a facility which physical properties are transparent to the user. With dark fiber, the user is provided with access to a specifically identified physical facility along a route that the

[5] *See, e.g. id.* at 37. "We find that to operate a cable, a CLEC must be able to control not only the lighting of the fiber within [the cable], but a broader range of functions, such as placement, capacity and configuration of the cable itself."

user has specified (placement) and, by selecting and managing the optronics, can establish its overall bandwidth (capacity) and divide that bandwidth into the appropriate number of channels (configure).

- **Terminates at a collocation arrangement or qualifying CATT: <u>YES</u>**

Although not expressly stated in this fact scenario, this criterion is assumed for purposes of this analysis.

- **Leaves the wire center premises: <u>YES</u>**

Although not expressly stated in this fact scenario, this criterion is assumed for purposes of this analysis. Note that this issue is explored at length in the response to Question (c).

- **Is not owned by FairPoint or is a FairPoint-provided IRU: <u>YES</u>**

Clearly, on the stated facts of this scenario, the facility is not owned by FairPoint or its affiliates, and therefore it is fiber optic cable owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC (*i.e.* FairPoint).

While the definition is unambiguous on its face, it bears noting that any IRU not provided by FairPoint falls into the category of fiber "not owned by FairPoint." Should there be any doubt of this interpretation, the FCC answered clarified it in a footnote to the *TRRO*, in which it refined the definition of an FBC:

> [w]e find that when a company has collocation facilities connected to fiber transmission facilities obtained on an indefeasible right of use (IRU) basis from *another carrier*, including the incumbent LEC, these facilities shall be counted for purposes of this analysis and shall be treated as non-incumbent LEC fiber facilities."[6]

In other words, a dark fiber strand obtained as an IRU from *any* other carrier (and not just the ILEC) is treated as non-incumbent LEC fiber cable.

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[6] *TRRO* n. 292 (emphasis supplied).

FairPoint notes that this *de jure* definition of ownership has not been universally understood. This Commission was incorrect in the *Wire Center Order* when it held that "[O]nly fiber-optic cables, not fiber strands or lit fiber-optic facilities should be counted. The rule provides for one exception: when a collocation arrangement involves dark fiber obtained by a CLEC from an incumbent LEC on an indefeasible right of use ("IRU") basis."[7] The Pennsylvania commission, in addressing the issue of dark fiber IRUs, drew the same incorrect conclusion:

> We interpret the rules to conclude that CLECs that connect to the CATT provider's dark fiber in order to use the competitive fiber transport network to serve their own end-users are not fiber-based collocators within the meaning of the FCC rules.[8]

The error in both state commissions' interpretations was later described in the federal decisions overturning the Pennsylvania commission's decision. On appeal of the federal district's rejection of the Pennsylvania decision, the Third Circuit held that:

> [T]he District Court correctly concluded that a CLEC which leases dark fiber strands from a CFP on an IRU basis through a Verizon CAT Terminal satisfies each component of the definition set forth at § 51.5.[9]
>
> In the *TRRO,* the FCC found that "fiber transmission facilities obtained on an . . . [IRU] basis from another carrier . . . shall be counted" as "non-incumbent LEC fiber-optic cable."[10]
>
> [T]he FCC provided that "[*d]ark fiber* obtained from an incumbent LEC on an indefeasible right of use basis *shall be treated as non-incumbent LEC fiber-optic cable.*"[11]

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[7] *Wire Center Order* at 37-38.
[8] Petition of Verizon Pa. Inc. and Verizon North, Pa. PUC Docket No. P-00042092, Opinion and Order at *16, 2007 WL 7232895 (Pa.P.U.C. 2007), *overruled by* Verizon Pa., Inc. v. Pa. Pub. Utils. Comm'n, 2011 WL 2111118 (E.D. Pa. 2011), *affirmed* Verizon Pa., Inc. v. Pa. Pub. Utils. Comm'n, 484 Fed.Appx. 735, 2012 WL 1995025 (3d. Cir. 2012).
[9] Verizon, 484 Fed.Appx. at 739.
[10] *Id.*, citing *TRRO* n. 292.
[11] *Id*, 484 Fed.Appx at 740, citing to 47 C.F.R. § 51.5 (emphasis added by the court).

> Nowhere in the text of the "fiber-based collocator" definition is there a requirement that a carrier own the facility it operates to qualify; the facility must only be owned by a party other than the ILEC in whose wire center the carrier collocates.[12]

Conclusion:

All aspects of the FBC definition having been confirmed, the answer to Question (a) is "**Yes**." A CLEC, with collocation and active electrical power, using its own optronics to activate dark fiber provided by another CLEC on an indefeasible right to use basis, qualifies as a fiber-based collocator.

(b) If there is one CLEC terminating fiber in a competitive access transport terminal and three additional CLECs using the same fiber cable on an indefeasible right to use basis, should this be counted as 4 fiber-based collocators? Why or why not?

As a starting point in this analysis, it must be noted that the Commission has previously established that a CATT-terminated CLEC is an FBC:

> We find that [CATT] arrangements . . . meet the requirements for a fiber-based collocator because the overall collocation arrangement maintained by the CLEC operating the fiber-optic cable includes access to active electrical power supply within the wire center to enable the provision of fiber-based services to other CLECs. To exclude stand-alone CATT collocations, that in and of themselves do not have an active power supply, but that facilitate cross-connections with other CLECs that use active power from within the wire center would be an unfairly restrictive interpretation of the rule in light of the passive technology specific to a CATT arrangement. Therefore, we will include CATT arrangements that have access to and make use of an active electrical power supply within a wire center in our qualification of fiber.[13]

With it thus established that the CATT terminated CLEC is an FBC, it remains to examine the status of the three interconnecting CLECs.

- **Collocation in a FairPoint wire Center: YES**

  Although not expressly stated in this fact scenario, this criterion is assumed for purposes

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[12] *Id.*

[13] *Wire Center Order* at 40-41.

of this analysis.

- **Active electrical power supply: YES**

Although not expressly stated in this fact scenario, this criterion is assumed for purposes of this analysis. A CATT is a splice point, not a powered collocation arrangement; therefore, it is assumed that the attaching CLEC has its own active electrical power supply.

- **Operates a fiber-optic cable: YES**

Although not expressly stated in this fact scenario, it is assumed for purposes of this analysis that the CLEC has obtained access to the CATT terminated fiber on an IRU or comparable (*e.g.* dark fiber) basis. This is consistent with the assumptions that the Commission made in DT 05-083, in which the Staff Affidavit presumed that all fiber obtained on an IRU (or comparable) basis was cross-connected by the purchasing CLEC at the provider's CATT, and that all fiber obtained from a CATT terminated provider was an IRU (or comparable arrangement).[14] Moreover, the Affidavit allowed no situation in which fiber obtained from a third-party CLEC was accessed in any other manner other than through the third-party's CATT arrangement.

With this equivalency established, FairPoint invokes its analysis in Question (a) above to conclude that the three CLECs in this scenario operate a fiber optic cable.

- **Terminates at a collocation arrangement or qualifying CATT: YES**

Although not expressly stated in this fact scenario, it is assumed for purposes of this analysis that the CLEC facilities terminate at a qualifying CATT. As in the scenario to Question (a), all three CLECs have terminated fiber in their collocation arrangements, via the third-party CATT.

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[14] *See* DT 05-083, Affidavit of Kath Mulholland and accompanying exhibits (Feb. 8, 2005).

- **Leaves the wire center premises: <u>YES</u>**

Although not expressly stated in this fact scenario, this criterion is assumed for purposes of this analysis. Note that this issue is explored at length in the response to Question (c).

- **Is not owned by FairPoint or is a FairPoint-provided IRU: <u>YES</u>**

FairPoint invokes its analysis in Question (a) above to conclude that the three CLECs in this scenario own a fiber optic cable for purposes of the definition of an FBC.

<u>Conclusion</u>:

All aspects of the FBC definition having been confirmed, the answer to Question (b) is "**<u>Yes</u>**." If there is one CLEC terminating fiber in a CATT and three additional CLECs using the same fiber cable on an IRU or comparable basis, all four should be counted fiber-based collocators.

To conclude otherwise would result in illogical and perverse results and encourage "gaming" of the system. Imagine a situation in which there exists a competitive fiber provider ("CFP") with an unbounded number of fiber optic cables, conceivably equaling the entire demand in a service territory, terminating at a CATT in a single wire center. (In fact, it is not implausible that this CFP would be an LLC, the members of which are a consortium of all CLECs in the state.) Imagine then that this CATT cross connects to an unbounded number – well over four -- of CLECs with active collocation arrangements. If the non-CATT CLECS are not FBCs then, despite the massive amount of non-ILEC bandwidth emanating from the wire center, this wire center would never exceed one FBC – the CATT-terminated CLEC! To avoid this absurd result, the Commission *must* find that the interconnecting CLECs are FBCs, just as they would in Question (a), above. At the same time, the Commission *must* continue to respect its *Wire Center Order* and find that the CATT-terminated CLEC is also an FBC, in light of the

fact that the significant investment it has made in fiber deployment is a clear indicator, under FCC policy, that the wire center is unimpaired.[15] To do otherwise is to ignore a major indicator of non-impairment at that wire center.

(c) Does a CLEC, with collocation, active electrical power and fiber optic cable extending from the collocation facility to a termination point in the wire center area not owned or controlled by FairPoint (e.g., a fiber loop extending to a business) qualify as a fiber-based collocation?

- **Collocation in a FairPoint wire Center: YES**

On the stated facts of this scenario, the CLEC has a collocation in the FairPoint wire center.

- **Active electrical power supply: YES**

On the stated facts of this scenario, the CLEC has active electrical power.

- **Operates a fiber-optic cable: YES**

Although not expressly stated in this fact scenario, it is assumed for purposes of this analysis that the CLEC operates a fiber-optic cable.

- **Terminates at a collocation arrangement or qualifying CATT: YES**

Although not expressly stated in this fact scenario, it is assumed for purposes of this analysis that the CLEC fiber optic cable terminates at a collocation arrangement.

- **Leaves the wire center premises: YES**

This criterion is the crux of Question (c). The fact scenario in this question does not expressly state that the fiber leaves the "wire center premises," but instead states that the fiber terminates at a point within the "wire center area," an ambiguous term. Consequently, a definition of the phrase "wire center area" must be established in order to determine whether the

[15] *TRRO* ¶ 97. "Fiber-based collocation in a wire center very clearly indicates the presence of competitive transport facilities in that wire center and signals that significant revenues are available from customers served by that wire center sufficient to justify the deployment of transport facilities."

phrase implies that a fiber optic terminating in a wire center area has by necessity left the "wire center premises."

To begin with, the FCC rules define a "wire center" as "the location of [an ILEC] local switching facility containing one or more central offices."[16] This definition is consistent with the one found a widely used dictionary of telecommunications terms, which defines a wire center as

> [t]he *physical structure* where the telephone company terminates subscriber outside cable plant (i.e. their local lines) with the necessary testing facilities to maintain them. Usually the same location as a class 5 central office.[17]

In describing a wire center, the FCC has further explained that,

> [b]y "wire center," we mean any incumbent LEC switching office that terminates and aggregates loop facilities. Thus, line counts derived on a wire center basis include all loops that terminate in *that location*, even if they terminate on separate switches. To the extent that an incumbent LEC switching office exists that has no line-side function, such as an access tandem located in *a building* apart from line-side switching facilities, we provide for such offices in our analysis, below. This definition also includes any incumbent LEC switches with line-side functionality that terminate loops that are "reverse collocated" in non-incumbent LEC collocation hotels."[18]

As to wire center *areas*, telephone engineering professionals have long distinguished between a wire center, on the one hand, and a wire center area on the other:

> All customers connected to a local switching system (central office) in a particular central office building [which may contain one or more switching systems] are said to be located in a *wire center area*, and the location of the building is called the *wire center*. Customers located within a wire center area communicate with each other through the local switching system, or systems, at the wire center."[19]

In conducting its second round of discovery, the Commission Staff defined a "wire center area" similarly:

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[16] 47 CFR § 51.5.
[17] Newton's Telecom Dictionary 1233 (25th ed. 2009) (emphasis supplied).
[18] *TRRO* fn. 251
[19] Engineering and Operations in the Bell System 104, R.F. Rey, editor (2nd ed. 1983) (emphasis original) (excerpted at Attachment A).

> "Wire center area" means the geographic area served by the wire center, inclusive of both FairPoint-owned and managed facilities and other locations within the service area not managed by FairPoint (for example, private businesses and residences). A location that lies beyond the area served by the wire center is not included, regardless of who owns or manages it.[20]

There is little question then, that if a cable terminates anywhere in a "wire center area," then it has by definition also left the "wire center" from which it extends. The only question then, is whether it has left the wire center "premises" as well. FairPoint submits that this is a distinction without a difference and that the answer is self-evident.

First, the currently accepted definition of "premises" for telephone regulatory purposes in this state describes a "premises" as "a building or buildings on continuous property (except railroad right-of-way, etc.) or an occupied structure not separated by a public highway."[21] Furthermore, there is no apparent reason to confuse a wire center "premises" with an "area." The FCC did not confuse these terms in the *TRRO*, where it used both words separately and distinctly, often employing the phrase "wire center *service area*" rather than "wire center premises" when referring to the geographic area within which customers are located.[22] Furthermore, the FCC's discussion in the *TRRO* makes clear that the qualifying fiber in an FBC is contemplated to provide service *within* the confines of the wire center area:

> [T]he record indicates that wire centers satisfying these thresholds have an average of ten fiber-based collocators each, and that 75 percent of these wire centers have six or more fiber-based collocators. These figures indicate that competitors are likely to have deployed extensive fiber *in* such wire centers' service areas, resulting in more splice points located *throughout* the wire center serving area and therefore shorter distances between buildings *within* that service area and splice points on those rings. This proximity will generally reduce the

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[20] Staff Data Requests – Set 2 at 6 (Jul. 25, 2013). The Staff did not further specify the actual geographical boundaries of any wire center area or give guidance on any method for determining those boundaries. Presumably, all responses were based on each collocating CLEC's perception of what the wire center area might be.

[21] NNETO Tariff NH PUC No. 3 § 1.3.2.

[22] *See, e.g. TRRO* ¶¶ 156, 161, 166-168, 172.

> costs associated with deployment of competitive laterals. In contrast, more than 80 percent of the wire centers that do not meet our DS3 threshold have zero fiber-based collocators. It is therefore unlikely that the buildings *within* these non-qualifying wire centers' serving areas will be sufficiently close to splice points along competitive fiber rings to permit construction of short fiber laterals.[23]

FairPoint's research has found no instance of "premises" and "area" being equivalent in usage. In that vein, it should be noted that the Vermont DPS (which responses to CANNE's data requests in a companion proceeding are attached) has itself expressly distinguished the two, stating that a wire center premises has a "narrow definition" as "the central office building itself, along with associated land, vaults, and related properties that adjoin it."[24]

When considered as a practical matter, a "wire center area" is really an abstract concept without relevance to the FCC's definition of an FBC. The geographical boundary of a "wire center area" is the locus of all customer locations at the end of all facilities emanating from a particular wire center. This dataset cannot be known unless the identity and physical location of each customer in the wire center is plotted, and even then, it will vary in real time as customers add and drop facilities from that wire center. For all practical purposes, a "wire center area" cannot be determined on an objective basis and the concept is antithetical to the FCC's objective criteria for defining and FBC.

Accordingly, the fiber-optic facility in this fact scenario meets the criterion of having left the wire center premises.

- **Is not owned by FairPoint or is a FairPoint-provided IRU: <u>YES</u>**

Although not expressly stated in this fact scenario, it is assumed for purposes of this analysis that the CLEC owns the facility or has a FairPoint-provided IRU.

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[23] *TRRO* ¶ 174 (footnotes omitted) (emphasis supplied).
[24] *See* Petition for Review of Proposed Wire Center Reclassifications, Vt. PSB Docket No. 7958, Response of DPS Staff to CANNE-DPS-3 (June 19, 2013) (Attachment B).

Conclusion:

All aspects of the FBC definition having been confirmed, the answer to Question (c) is "**Yes**." A CLEC, with collocation, active electrical power and fiber optic cable extending from the collocation facility to a termination point in the wire center area not owned or controlled by FairPoint (e.g., a fiber loop extending to a business) qualifies as a fiber-based collocation.

Moreover, it should be emphasized that once the facility has left the premises, *it is immaterial* where it terminates, or what the nature of that termination is, or who the terminating entity is. In other words, the fact that the termination point in the wire center area not owned or controlled by FairPoint is superfluous. Nothing in the FCC's definition of an FBC specifies the location, nature or type of service of the other end of the fiber optic cable once it has left the wire center premises.

To hold otherwise would replace an objective and bright-line test (*i.e.* property boundary) with a fact intensive and geographically ambiguous investigation (*i.e.* service area) that is antithetical to the *TRRO* intent of objective and administrable criteria for determining the existence of a fiber based collocator and smacks of the "qualifying service" criterion that the *TRRO* expressly rejected.[25] The FCC described the FBC test as:

> one of the most objective indicia of competitive deployment available to us. . . . We are acutely aware of the need to base any test we adopt here on the most objective criteria possible in order to avoid complex and lengthy proceedings that are administratively wasteful but add only marginal value to our unbundling analysis. Most parties seem to agree that long, extended proceedings add significant costs as well as uncertainty about the future state of the rules and an easily administrable test will avoid that uncertainty.[26]

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[25] *TRRO* ¶ 22.
[26] *Id.* ¶ 99.

(d) Does fiber terminated at one end in the wire center (e.g., a collocation or competitive access transport terminal) extending from the collocation facility to a termination point in the wire center area that is owned or controlled by FairPoint qualify as a fiber-based collocation?

This Question is identical to Question (c), except that the fiber terminates at a point owned or controlled by FairPoint. As explained in the analysis of Question (c), this characteristic is immaterial and superfluous. For that reason, FairPoint concludes that all aspects of the FBC definition are present in this factual scenario, and thus the answer to Question (d) is also "**Yes**."

(e) Based on the discovery responses received to date, are there other legal precedents or regulatory interpretations that should be considered by the Commission in determining the appropriate classification of the seven listed wire centers?

FairPoint has no comment that is pertinent to the current discovery responses.

IV. CONCLUSION

Reviewing the Staff Report in light of the preceding analysis, it is evident that all 7 wire centers at issue are non-impaired to the extent that FairPoint has claimed, if not more:

- According to the Staff Report, both **Keene and Dover** have two unquestioned FBCs (Category A) and a third collocator that leases dark fiber from a third party (Category B). In accordance with the analysis to Questions (a) and (b), the third collocator is an FBC. With three FBCs, FairPoint's Tier 2 classification is therefore **correct**.

- According to the Staff Report, **Nashua** has three unquestioned FBCs (Category A), a fourth collocator that leases dark fiber from a third party (Category B), and a fifth collocator that terminates a facility at a FairPoint location within the geographic area that the collocator believes is served by that wire center, *i.e.* the "wire center area" (Category D). In accordance with the analysis to Questions (a) and (b), the fourth collocator is an FBC. In accordance with the analysis to Question (d), the fifth collocator is also an FBC. With five FBCs, FairPoint's Tier 1 classification is therefore **correct**, with room to spare.

- According to the Staff Report, **Portsmouth** has three unquestioned FBCs (Category A), a fourth collocator that leases dark fiber from a third party (Category B), and a fifth collocator that terminates a facility at a non-FairPoint location that the collocator believes is within the wire center area (Category C). In accordance with the analysis to Questions (a) and (b), the fourth collocator is

an FBC. In accordance with the analysis to Question (c), the fifth collocator is also an FBC. With five FBCs, FairPoint's Tier 1 classification is therefore **correct**, again with room to spare.

- According to the Staff Report, **Salem** has one unquestioned FBC (Category A), four collocators that lease dark fiber from a third party (Category B), a sixth collocator that terminates a facility at a non-FairPoint location that the collocator believes is within the wire center area (Category C), and a seventh collocator that terminates a facility at a FairPoint location that the collocator believes is within the wire center area (Category D). In accordance with the analysis to Questions (a) and (b), the second through fifth collocators are FBCs. In accordance with the analysis to Question (c), the sixth collocator is also an FBC. In accordance with the analysis to Question (d), the seventh collocator is also an FBC. With seven FBCs, FairPoint's Tier 1 classification is therefore **correct**, again with considerable room to spare.

- According to the Staff Report, **Hanover** has two unquestioned FBCs (Category A), a third collocator that terminates a facility at a non-FairPoint location that the collocator believes is within the wire center area (Category C), and a fourth collocator that terminates a facility at a FairPoint location that the collocator believes is within the wire center area (Category D). In accordance with the analysis to Question (c), the third collocator is an FBC. In accordance with the analysis to Question (d), the fourth collocator is also an FBC. With four FBCs, FairPoint's Tier 2 classification is actually ***incorrect***. The classification should upgraded to Tier 1.

- According to the Staff Report, **Durham** has no FBCs. FairPoint disagrees with this assessment, and looks forward to the results of the further questioning of CLEC respondents that Staff committed to undertake in the Staff Report. Based on the evidence gathered by FairPoint, there is a CATT arrangement in the Durham wire center, there are two collocators that lease dark fiber from a third party (Category B), and one collocator that is at least a Category C/D, if not Category A, collocator. Consequently, with four FBCs, FairPoint's Tier 1 classification is **correct.**

WHEREFORE, FairPoint requests that the Commission APPROVE FairPoint's revisions to Tariff 2 as issued on August 9, 2013.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC, D/B/A FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,
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Dated: September 9, 2013

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