

**STATE OF NEW HAMPSHIRE**

## Inter-Department Communication

**DATE:** July 25, 2013**AT (OFFICE):** NHPUC

*ML*

**FROM:** Michael Ladam, Assistant Director of Telecommunications

**SUBJECT:** DT 12-337, Northern New England Telephone Operations, LLC  
d/b/a FairPoint Communications – NNE Tariff Filing for Revisions Consistent  
with Triennial Review Order: Clarification

**TO:** Commissioners  
Debra Howland, Executive Director

On November 16, 2012, Northern New England Telephone Operations, LLC d/b/a FairPoint Communications – NNE (FairPoint) submitted a filing to revise its Miscellaneous Network Services Tariff No. 2 so as to reclassify 27 specific wire centers in New Hampshire as exempt from certain Unbundled Network Element (UNE) requirements based on their competitive status purportedly having changed to “partially or fully unimpaired”. In Order 25,514 issued on May 28, 2013, the Commission concluded that these tariff revisions had taken effect on January 15, 2013 “without any determination that the wire centers described in the tariff revision are unimpaired” (page 9) and directed Staff to conduct an investigation of the status of wire center impairment, reporting to the Commission no later than August 1, 2013. This memo reports on the investigation to date.

In a confidential filing accompanying its tariff submission, FairPoint asserted that specific Competitive Local Exchange Carriers (CLECs) and Inter-Exchange Carriers (IXCs) maintained collocated fiber optic facilities at particular FairPoint wire centers. During the technical session of June 5, 2013, FairPoint asserted that two additional CLECs maintain collocated fiber optic facilities. Staff has submitted data requests to each of these carriers regarding fiber that the carrier owns, or leases from FairPoint, to validate FairPoint’s claims, and each of these parties has now responded. (One of these parties responded only through e-mail correspondence and not through a formal data request response, because the company had filed bankruptcy and ceased operations.)

FairPoint claimed that there were 111 separate collocation instances, with each instance representing a distinct carrier at a particular wire center. (FairPoint actually listed a somewhat higher number, because it listed affiliated companies as separate collocators. FCC rules treat affiliated companies as one, for purpose of collocation counts, and combining such affiliates in the original FairPoint list reduces the count to 111.)

The responses from the parties confirm 32 of these collocation instances and do not support 79 such instances. Based on the confirmed results, the following 23 wire centers appear to have fewer than three collocators owning fiber, or leasing fiber from FairPoint:

Bedford  
Charlestown  
Claremont  
Derry  
Dover  
Durham  
Exeter  
Goffstown  
Hampton  
Keene  
Laconia  
Lebanon  
Meredith  
Merrimack  
Milford  
Peterborough  
Plaistow  
Rochester  
Salem  
South Nashua  
Suncook  
Walpole  
Wolfeboro

The tariff revisions of January 15<sup>th</sup> asserted that the Concord wire center is now properly classified as “Tier 1”, or fully unimpaired. (Prior to January 15<sup>th</sup>, these wire centers had been classified as “Tier 2”, or partially impaired.) The verified collocation list shows that Concord has three known fiber collocators owning fiber, or leasing FairPoint fiber, which would result in Concord remaining in the Tier 2 classification.

In three wire centers, the implications of the responses we have received will require further review:

- The Hanover wire center, previously classified as fully impaired, was listed as Tier 2: partially impaired (three collocators). Two parties confirm that in the FairPoint Hanover wire center they maintain collocated fiber optic facilities which terminate outside the Hanover wire center area. One additional party confirms that in the FairPoint Hanover wire center it maintains a collocated fiber optic facility which terminates at a non-FairPoint facility inside the Hanover wire center area. Whether this collocation instance is properly included in the impairment count according to FCC rules requires additional analysis of both facts and law and will likely require adjudication.
- The Portsmouth wire center, previously classified as Tier 2: partially impaired, was listed as Tier 1: fully unimpaired (four collocators). Three parties confirm that in the FairPoint Portsmouth wire center they maintain collocated fiber optic facilities which terminate

outside the Portsmouth wire center area. One additional party confirms that in the FairPoint Portsmouth wire center it maintains a collocated fiber optic facility which terminates at a non-FairPoint facility inside the Portsmouth wire center area. As in Hanover, whether this collocation instance is properly included in the count as a fiber based collocator according to FCC rules requires additional analysis of both facts and law and will likely require adjudication.

- The Nashua wire center, previously classified as Tier 2: partially impaired, is listed as Tier 1: fully unimpaired (four collocators). Three parties confirm that in the FairPoint Nashua wire center they maintain collocated fiber optic facilities which terminate outside the Nashua wire center area. One additional party confirms that in the FairPoint Nashua wire center it maintains a collocated fiber optic facility which terminates at a FairPoint facility inside the FairPoint wire center area. Whether this collocation instance is properly included in the impairment count as a fiber based collocator according to FCC rules requires additional analysis of both facts and law and will likely require adjudication.

There are two additional categories of possible fiber collocators regarding which we do not yet have data: providers leasing dark fiber, typically attached to Competitive Alternate Transport Terminals (CATTs), from non-FairPoint providers, and possibly these competitive providers themselves. In the previous wire center investigation of 2005, Staff identified one such competitive fiber provider with CATT facilities in five wire centers. In its confidential filing accompanying its 2012 tariff submission, FairPoint identified this provider as a collocator in the same wire centers but not in other locations.

Nonetheless, it is possible that other competitive fiber providers now offer services to other providers, and those other providers or the competitive fiber providers themselves might thereby be classified as fiber-based collocators. Staff is collecting data to quantify this possibility. These results could support FairPoint's claims of unimpairment in any of the 27 wire centers at issue in this docket.

In summary, of the 27 wire centers that were claimed to have transitioned to partially or fully unimpaired, there is as yet no evidence to support the claims for 24 wire centers. Staff will gather information regarding potential CATT-based collocators; such information could provide additional support. Staff will also continue to gather facts and review FCC rulings regarding the status of the Hanover, Portsmouth, and Nashua wire centers; we are currently unable to confirm that any of these is unimpaired.

In light of the additional information needed to complete our assessment, Staff requests an extension to Monday, August 12<sup>th</sup> to file its complete report of our investigation.