# STATE OF NEW HAMPSHIRE

**Inter-Department Communication**

**DATE:** August 12, 2013
**AT (OFFICE):** NHPUC

MC

**FROM:** Kate Bailey and Michael Ladam

**SUBJECT:** Report of Staff Investigation of Fiber Based Collocators in DT 12-337

**TO:** Commission
Executive Director

On November 16, 2012, FairPoint filed revisions to its NHPUC Tariff No. 2 proposing to reclassify 27 wire centers. The tariff went into effect by operation of law on January 15, 2013 and at that time a 7 month transition period began for CLECs to make alternate arrangements for DS1 and DS3 transport and a 13 month transition period began for dark fiber transport. The 7 month transition period ends on August 15, 2013.

As a result of Staff's investigation to date, into FairPoint's assertions of the number of fiber-based collocators in each of the 27 wire centers, FairPoint filed revised tariff pages on August 9, 2013, for effect on September 9, 2013. The August 9 filing revised the list of reclassified wire centers from 27 to 7. In its cover letter, FairPoint committed it would not disconnect any DS1 or DS3 UNEs from August 15, 2013 to the proposed effective date of the tariff and it would not charge any increased rate for offices removed from the reclassified list from January 15, 2013 to the effective date of the proposed tariff. The revised tariff extends the transition period for DS1 and DS3 transport for the 7 offices FairPoint now proposes to reclassify for an additional 6 months.

The following summarizes Staff's analysis of the seven wire centers which FairPoint proposed to reclassify in its August 9, 2013 filing. The summary assigns each wire center collocation into one of four categories:

- A: The collocator uses its own fiber optic cable, with active electrical power, and its fiber optic cable terminates outside the wire center area. In Staff's assessment, such collocations clearly qualify as "fiber-based collocations" that should be counted toward the competition threshold.

- B: The collocator uses an unlit fiber optic cable ("dark fiber") from a third-party provider (that is, a provider other than FairPoint or the collocator itself), obtained on an indefeasible right-to-use basis, and provides electrical power and optronics facilities to light and operate the fiber. In Staff's assessment, such arrangements

may or may not qualify as "fiber based collocations" that should be counted toward the competition threshold, but there has been no ruling on this question by the Commission.

- C: The collocator uses its own or leased fiber optic cable, and that cable terminates at a location beyond the FairPoint central office facilities but inside the wire center area, at a non-FairPoint location (for example, at a business facility). In Staff's assessment, such arrangements may or may not qualify as "fiber based collocations" that should be counted toward the competition threshold, but there has been no ruling on this question by the Commission.

- D: The collocator uses its own or leased fiber optic cable, and that cable terminates at a location beyond the FairPoint central office facilities but inside the wire center area, at a location owned or controlled by FairPoint. In Staff's assessment, such arrangements may or may not qualify as "fiber based collocations" that should be counted toward the competition threshold, but there has been no ruling on this question by the Commission.

None of the seven wire centers proposed for reclassification is supported by enough "Category A" responses to clearly qualify; questions of fact and law surrounding the other categories must be resolved in each case.

**Keene and Dover** The August 9, 2013 filing proposes to reclassify these wire centers as Tier 2 based on the presence of 3 fiber-based collocators. Each wire center has two Category A collocators and one Category B collocator. If these category B collocators count, both Keene and Dover would be reclassified as Tier 2 wire centers.

**Nashua** The August 9, 2013 filing proposes to reclassify Nashua from Tier 2 to Tier 1 based on the presence of at least 4 fiber-based collocators. Nashua has 3 Category A collocators, one Category B collocator, and one Category D collocator. If either of these collocators counts as a fiber-based collocator, the Nashua wire center would be reclassified from Tier 2 to Tier 1.

**Portsmouth** The August 9, 2013 filing proposes to reclassify Portsmouth from Tier 2 to Tier 1, based on the presence of at least 4 fiber-based collocators. Portsmouth has 3 Category A collocators, one Category B collocator, and one Category C collocator. If either of these latter two counts as a fiber-based collocator, Portsmouth would be reclassified from Tier 2 to Tier 1.

**Salem** The August 9, 2013 filing proposes to reclassify Salem from Tier 3 to Tier 1 based on the presence of at least 4 fiber-based collocators. Salem has one Category A collocator, four Category B collocators, one Category C collocator, and one Category D collocator. No CLEC reported being a competitive fiber provider. Staff will follow up with questions to the CLECs who reported fiber in this office to determine the facts more clearly.

**Hanover** The August 9, 2013 filing proposes to reclassify Hanover from Tier 3 to Tier 2, based on the presence of 3 fiber-based collocators. Hanover has two Category A collocators, one Category C collocator, and one Category D collocator. If either of these latter two counts as a fiber-based collocator, Hanover would be reclassified as Tier 2 and if both count, Hanover would be reclassified as Tier 1.

**Durham** The August 9, 2013 filing proposes to reclassify Durham from Tier 3 to Tier 1, based on the presence of at least 4 fiber-based collocators. There were no confirmed fiber-based collocators on November 16, 2012; however, based on its own investigations, FairPoint currently continues to claim fourfiber based collocators and that the office should therefore be classified as Tier 1.

Staff plans to speak with each of the CLECs located in these wire centers to determine the arrangements more precisely. Staff recommends the Commission request briefing on the following questions to resolve whether certain types of arrangements should be counted as qualifying fiber based collocators:

**Legal questions which need to be briefed**

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?

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, are there 4 fiber-based collocators? Why or why not?

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, for example a fiber loop extending to a business, qualify as fiber-based collocation?

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?

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?