

**STATE OF NEW HAMPSHIRE**  
**Before the**  
**PUBLIC UTILITIES COMMISSION**

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC**  
**d/b/a FAIRPOINT COMMUNICATIONS-NNE**  
**Tariff Filing to Implement Certain Provisions of the Order on Remand**  
**DT 12-337**

**PETITION OF CANNE AND ITS MEMBERS FOR REVIEW**  
**OF PROPOSED WIRE CENTER RECLASSIFICATIONS**

**Introduction**

1. The CLEC Association of Northern New England, Inc. (“CANNE”) on behalf of itself and its affected members, petitions for Commission review of the attempt by Northern New England Telephone Operations, LLC, d/b/a FairPoint Communications-NNE (“FairPoint”) to reclassify certain wire centers so as to eliminate the ability of CANNE’s members to obtain unbundled high-capacity loops and transport and dark fiber transport in the reclassified wire centers under the unbundling rules that the Federal Communications Commission (FCC) promulgated in the *Triennial Review Remand Order, In the Matter of Unbundled Access to Network Elements*), WC Docket No. 04-313, Order on Remand, FCC 04-290, 20 FCC Rcd. 2533 (Feb. 4, 2005) (“*TRRO*”).

**Parties**

2. CANNE is a not-for-profit association of facilities-based CLECs in Maine, New Hampshire and Vermont. Among its members are the following carriers that are authorized to do and do business in New Hampshire:

- a. Biddeford Internet Corp., d/b/a Great Works Internet;

b. Choice One of New Hampshire, Inc., Conversent Communications of New Hampshire, LLC, CTC Communications Corp., and Lightship Telecom, LLC, all of which do business as EarthLink Business;

c. Freedom Ring Communications, LLC, d/b/a BayRing Communications;

d. G4 Telecom – NH, Inc., d/b/a Otel Telekom;

e. Mid Maine Telplus and CRC Communications of Maine, Inc., collectively doing business as OTT Communications;

f. National Mobile Communications Corp., d/b/a Sovernet Communications;

and

g. segTEL, Inc.<sup>1</sup>

3. FairPoint is an incumbent local exchange carrier in New Hampshire. It is the successor in interest to Verizon New England Inc., d/b/a Verizon-New Hampshire.

4. CANNE's members acquire unbundled high-capacity loops and transport and dark fiber transport from FairPoint in the State of New Hampshire.

### **Statement of Facts**

5. In March 2006, the Commission determined that wire center reclassifications would be effected through the mechanism of an amendment to the wholesale tariff. The Commission prescribed both the procedure to be followed and the information to be submitted to the Commission to commence the reclassification process:

Going forward, we find that, for the purposes of Tariff 84, the reclassification of any wire center shall be effective on the date the Tariff 84 revisions reflecting such reclassification are approved by this Commission.

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<sup>1</sup> Biddeford Internet Corp., d/b/a Great Works Internet; Choice One of New Hampshire, Inc., Conversent Communications of New Hampshire, LLC, CTC Communications Corp., and Lightship Telecom, LLC, all of which do business as EarthLink Business (formerly d/b/a One Communications); and segTEL, Inc., participated in one or more of the earlier dockets concerning wire center reclassifications, DT 05-083, 06-012, and 06-020.

Verizon may file its tariff revisions concurrently with its notices to the CLEC industry of changes to wire center classifications, and may true-up rate changes to the effective date of such future tariff revisions. In support of any future proposed revisions to Tariff 84 which seek to change wire center classifications, Verizon shall provide this Commission with a list of CLECs it deems to be fiber-based collocators in accordance with our determinations herein and/or with a copy of the ARMIS data supporting the number of asserted business lines, including information demonstrating that the business lines are used for switched services, whichever is relevant to the wire center's classification.

*In re Verizon New Hampshire — Wire Center Investigation*, DT 05-083, 06-012, Order Classifying Wire Centers and Addressing Related Matters, Order No. 24,598, at 48 (March 10, 2006) (“March 2006 Order”).<sup>2</sup>

6. In DT 05-083, the Commission also interpreted the FCC's criteria for reclassifying wire centers, and made numerous determinations regarding how those criteria were to be applied in the State.

7. The Commission subsequently reinforced the determination that a wire center reclassification was not effective until the Commission approved an amendment to the wholesale tariff when it “[ou]nd that the applicable transition periods shall begin on the effective date of tariff revisions approved by the Commission.” *In re Verizon New Hampshire — Supplemental Wire Centers Qualifying for Relief from Certain Unbundled Services*, DT 06-020, Order Classifying Wire Centers and Establishing Transition Periods, Order No. 24,723, at 15 (January 5, 2007).

8. The procedures and substantive standards that the Commission established in DT 05-083 and 06-020 are applicable to FairPoint, both in their own right and because of FairPoint's assumption of Verizon's tariffs, interconnection agreements, and related obligations in connection with its acquisition of Verizon's Northern New England franchises and operations.

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<sup>2</sup> Verizon's Tariff No. 84 has been assumed by FairPoint and redesignated Tariff No. 2.

9. On November 16, 2012, FairPoint filed in this docket proposed revisions to its Tariff No. 2, seeking to reclassify numerous wire centers in the State. FairPoint's filing stated that it was accompanied and supported by certain proprietary information, which has not been made available to CANNE's members.

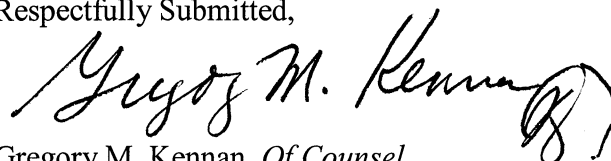
10. Also on November 16, 2012, FairPoint issued an "Industry Notification — Accessible Letter" (attached) advising of the proposed reclassifications. Among other things, the Accessible Letter states, notwithstanding the Commission's prior determination that wire center reclassifications are not effective before the effective date of revisions to the wholesale tariff, that FairPoint may seek to impose month-to-month commercial rates "retroactively and henceforth" from the date of the Accessible Letter for affected UNEs in reclassified wire centers. Any such retroactive charges would violate the Commission's determinations as to the effective date of a reclassification.

11. In DT 05-083, 06-012, and 06-020, the Commission's intervention was necessary to ensure that wire centers were properly reclassified. The Commission's assistance is required again in this case, particularly given FairPoint's claims of confidentiality for the information supporting its reclassification proposal.

12. Accordingly, CANNE and its affected members respectfully request that the Commission commence an investigation under its procedures in place for review of proposed wire center reclassifications, prohibit FairPoint from back-billing any rate increases for any period before the effective date of an approved tariff amendment implementing a wire center reclassification, and grant such other and further relief as is appropriate.

November 26, 2012

Respectfully Submitted,

A handwritten signature in black ink that reads "Gregory M. Kennan". The signature is written in a cursive style with a large, stylized initial "G" and a circular flourish at the end.

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### Industry Notification – Accessible Letter

<b>Date:</b>	<b>November 16, 2012</b>	<b>Number: TRF 0008-111612</b>
<b>Effective Date</b>	<b>November 16, 2012</b>	<b>Category: Tariff</b>
<b>Subject:</b>	<b>NH Wire Center Reclassifications- Implementation of FCC Order on Remand - REVISED</b>	
<b>Related Letters:</b>	<b>TRF 0004-11082012</b>	
<b>Attachments:</b>	<b>N/A</b>	
<b>Target Audience</b>	<b>IXC, CLEC, Wireless, UNE</b>	
<b>Area Impacted:</b>	<b>New Hampshire</b>	
<b>Wholesale Customer Response deadline:</b>	<b>N/A</b>	
<b>Contact:</b>	<b>Send all Questions to your Service Manager</b>	
<b>Conference Call/Meeting:</b>	<b>N/A</b>	

Dear FairPoint Communications Wholesale Customer:

This Accessible Letter amends Accessible Letter TRF 0004-11082012, issued on November 8, 2012. This letter is to notify CLECs (Competitive Local Exchange Carriers) in New Hampshire of the reclassification of certain wire centers in accordance with the Order on Remand issued by the Federal Communications Commission ("FCC") on February 4, 2005, in WC Docket No. 04-313 and CC Docket No. 01-338 (the "Triennial Review Remand Order"), the regulations promulgated by the FCC pursuant to that order, and certain provisions of Order No. 24,598 issued by the New Hampshire Public Utilities Commission on March 10, 2006, in Docket Nos. DT 05-083 and DT 06-012 and Order No. 24,723 issued January 5, 2007 in Docket No. 06-020. Pursuant to these orders and regulations, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") will not provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport as defined in 47 C.F.R. § 51.319(e)(1) **to an extent beyond that required by 47 C.F.R. § 51.319(e)(2)**. Pursuant to the FCC's Rules, FairPoint has revised the classification of the following list of wire centers, which now are designated "non-impaired," based on the number of fiber-based collocators in these wire centers.

Revisions to FairPoint Tariff NHPUC No. 2 that reflect this action are being filed this date with the New Hampshire Public Utilities Commission, bearing an effective date of December 17, 2012.

<b>Wire Centers Non-Impaired 11-8-12 – Yes or No</b>				
<b>Wire Center</b>	<b>Tier 1</b>	<b>Tier 2</b>	<b>DS1 LOOP</b>	<b>DS3 LOOP</b>
CNCRNHSO	Yes	Yes	No	No
MNCHNHCO	Yes	Yes	No	No
NASHNHWP	Yes	Yes	No	No
PTMONHIS	Yes	Yes	No	No
SALMNHNB	Yes	Yes	No	No



Wire Center	Tier 1	Tier 2	DS1 LOOP	DS3 LOOP
DOVRNHTH	Yes	Yes	No	No
EXTRNHCE	Yes	Yes	No	No
LBNNNHBA	Yes	Yes	No	No
KEENNHWA	Yes	Yes	No	No
DRRYNHEB	Yes	Yes	No	No
DRHMNHMC	Yes	Yes	No	No
LACNNHNM	Yes	Yes	No	No
NASHNHGR	Yes	Yes	No	No
MRMCNHYA	Yes	Yes	No	No
MLFRNHSD	Yes	Yes	No	No
PTRBNHCO	Yes	Yes	No	No
ROCHNHWE	Yes	Yes	No	No
WLBONHGS	Yes	Yes	No	No
BDFRNHAM	No	Yes	No	No
HMPNNHWI	No	Yes	No	No
MRDTNHWA	No	Yes	No	No
HNVRNHSC	No	Yes	No	No
PLSTNHMA	No	Yes	No	No
CLMTNHBR	No	Yes	No	No
GFTWNHWH	No	Yes	No	No
CHTWNHBR	No	Yes	No	No
SNCKNHPA	No	Yes	No	No
WLPLNHWP	No	Yes	No	No

**Transition-**

**DS1 Dedicated Transport-**As of the effective date of the revisions to Tariff NHPUC No. 2<sup>1</sup>, any DS1 dedicated transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(ii)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the rate set forth in the New Hampshire wholesale tariff or other applicable rate in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 7 months. After 7 months, the CLEC will no longer be eligible to receive the unbundled DS1 dedicated transport network element.<sup>2</sup>

<sup>1</sup> FairPoint will not act in accordance with these revisions until the Commission approves the tariff filing. However, consistent with Commission Order No. 24,598, such revisions will be effective as of the effective date of the tariff revision and all charges will be trued up accordingly.

<sup>2</sup> Pursuant to Paragraph 85 of the Triennial Review Remand Order, EELs with these transport elements are subject to the same treatment.



**DS3 Dedicated Transport-** Effective as of the proposed effective date of the revisions to FairPoint's wholesale tariff in New Hampshire<sup>3</sup>, any DS3 dedicated transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 and/or Tier 2 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(iii)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the rate set forth in the New Hampshire wholesale tariff or other applicable rate in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 7 months. After 7 months, the CLEC will no longer be eligible to receive the unbundled DS3 dedicated transport network element.<sup>4</sup>

**Dark Fiber Transport-** Effective as of the proposed effective date of the revisions to FairPoint's wholesale tariff in New Hampshire<sup>5</sup>, any dark fiber transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 and/or Tier 2 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(iv)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the rate set forth in the New Hampshire wholesale tariff or other applicable rate in the interconnection agreement between a CLEC and FairPoint for the dark fiber dedicated transport element for a period of 13 months. After 13 months, the CLEC will no longer be eligible to receive the unbundled dark fiber dedicated transport network element.

**Post-transition Arrangements-** CLECs that have unbundled DS1 dedicated transport arrangements, DS3 dedicated transport arrangements, or dark fiber transport in place at the end of the transition periods described above, must discontinue such arrangements or convert them to alternative serving arrangements, where such alternative arrangements are available from FairPoint.<sup>6</sup> Orders for such discontinuance or conversion must be placed early enough, in light of the applicable provisioning intervals, to ensure that the orders can be fulfilled by the end of the transition period. If the CLEC does not place timely orders to discontinue or convert any such unbundled dark fiber or unbundled dedicated transport arrangements by 30 days prior to the end of the transition period, FairPoint will issue a notice of disconnection and the arrangements will be disconnected at the end of the transition period.

**Ordering new unbundled network elements-** Pursuant to the Triennial Review Remand Order, any requesting carrier seeking access to dedicated transport between wire centers designated non-impaired, "must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the [impairment] requirements . . . and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3)."<sup>7</sup> Accordingly, as of this date, no order will be accepted without such self-

<sup>3</sup> FairPoint will not act in accordance with these revisions until the Commission approves the tariff filing. However, consistent with Commission Order No. 24,598, such revisions will be effective as of the effective date of the tariff revision and all charges will be trued up accordingly.

<sup>4</sup> Pursuant to Paragraph 85 of the Triennial Review Remand Order, EELs with these transport elements are subject to the same treatment.

<sup>5</sup> FairPoint will not make the change until the Commission approves the tariff filing, however consistent with the Commission Order No. 24,723 in Docket No.06-020, such change will be effective back to the proposed effective date of the tariff revision.

<sup>6</sup> This includes EELs containing these transport elements.

<sup>7</sup> See *Order on Remand*, FCC Docket No. 01-338 (February 4, 2005) para. 234.





certification. Furthermore, FairPoint will consider invalid any self-certified order for unbundled DS1 dedicated transport arrangements, DS3 dedicated transport arrangements, or dark fiber transport from any of the above listed wire centers, notwithstanding any self-certification, unless the CLEC has established a good faith basis, based on verifiable criteria, to assert that FairPoint's list of non-impaired wire centers is incorrect.

Nevertheless, in accordance with the Triennial Review Remand Order, FairPoint will process and provision self-certified orders and then initiate appropriate legal and regulatory dispute actions for every such order.<sup>8</sup> If the resolution of the dispute determines that the wire center in question is non-impaired then, along with any other relief that may be granted, FairPoint's month-to-month commercial rates, terms and conditions will be applied retroactively and henceforth to any DS1 or DS3 dedicated transport arrangements, and all dark fiber arrangements will be disconnected.

CLECs in the first instance shall be required to self-certify using the "Remarks" field of the ASR submitted to FairPoint.

Should you have any questions or require additional information please feel free to reach out to your Service Manager.

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<sup>8</sup> See *id.*