

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: January 25, 2012**AT (OFFICE):** NHPUC

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FROM: Michael Ladam, Assistant Director of Telecommunications**SUBJECT:** DT 07-011, FairPoint Communications – NNE Service Quality Penalties**TO:** Commissioners

Debra Howland, Executive Director

Kate Bailey, Director, Telecommunications

The NHPUC Regulatory Settlement of February 5, 2010 (2010 Settlement) between FairPoint Communications, Inc. & Northern New England Telephone Operations LLC (FairPoint) and the New Hampshire Public Utilities Commission Staff Advocates was approved by the Commission in Order No. 25,129, dated July 7, 2010.

The 2010 Settlement continues, with specific modifications, the Service Quality Improvement (SQI) Commitment established in Exhibit 3 of the 2008 Settlement Agreement approved in Order 24,823, dated February 25, 2008 (2008 Settlement).

In particular the 2010 Settlement stipulates that FairPoint accrued \$6,000,000 in SQI penalties during calendar year 2009 and provides for a reduction in that penalty based on SQI performance during calendar year 2010. For each of five specific performance metrics (Reduction Metrics) that FairPoint met during 2010, the penalty would be reduced by 20%, or \$1,200,000. The 2008 Settlement provision for annual SQI reports and penalties continues under the 2010 Settlement.

The Commission completed an audit of FairPoint's service quality measurement systems, practices, and reporting in August, 2011. FairPoint subsequently reported its performance for calendar year 2010, and Staff has reviewed with FairPoint its calculations for both the Reduction Metrics and the full SQI metrics. This review included assessment of the appropriateness and calculation of "Force Majeure" adjustments as provided in Section 3.1 of the 2008 Agreement.

Staff and FairPoint agree on the following:

1. FairPoint reports show that it successfully met the target for three of the five Reduction Metrics, resulting in a reduction in 2009 penalties from \$6,000,000 to \$2,400,000.
2. FairPoint incurred a penalty of \$190,418 for calendar year 2010.
3. These two penalties sum to a currently owed penalty of \$2,590,418.

The 2008 Settlement specifies that FairPoint shall “apply the Maine service quality penalty structure.” Maine requires that the service quality penalties be returned to ratepayers as reductions in monthly telephone bills.

In Order No 25,308, dated December 28, 2011, the Commission approved a request by FairPoint to assess a “surcharge” on retail access lines to recover a portion of its costs for local property tax assessments on utility poles that it owns. That docket included a specification of which lines would be assessed: those subject to E-911 surcharges, up to 25 lines per billing account. In Staff’s assessment, this approach is also appropriate for payment of the Service Quality penalty.

Staff therefore recommends that the Commission direct FairPoint to apply a credit of \$0.99 per month to such retail access lines, beginning with billing statements issued April 1, 2012, and ending once the full penalty amount has been paid. The final month of payments may be less than \$0.99 per line, as needed to complete the penalty payment. The credit is to be identified on bills as the “Service Quality Rebate.”