

FairPoint Communications, Inc.
State of New Hampshire
Docket No. DT 07-011

Respondent: William E. King
Title: President, JSI Capital Advisors,
LLC and JSI Transaction
Advisors, LLC

REQUEST: Office of Consumer Advocate - Rebuttal

DATED: September 19, 2007

ITEM: OCA R-5 Refer to page 22 of the Rebuttal Testimony of William E. King. Please provide any studies, data, work papers or calculations Mr. King and/or his staff prepared or relied upon to make the conclusion that the broadband penetration rate predicted for year-end 2015 is "conservative."

REPLY: **OBJECTION:** FairPoint objects to Data Request R-5 on the grounds that it is overbroad, unduly burdensome, and seeks highly confidential and proprietary commercial and strategic information that would provide competitors a business advantage if disclosed. The information sought pertains to the provision of competitive services and includes trade secret information that required significant effort and cost to produce and/or confidential, research or commercial information, including customer, geographic, market and product-specific data. FairPoint further objects to Data Request R-5 to the extent it seeks information protected from production by the attorney-client privilege and/or attorney work product doctrine. Subject to and without waiving these objections, FairPoint will produce non-privileged responsive information in its custody, possession or control. [Objection served September 25, 2007.]

Mr. King's assessment that the DSL penetration rate for 2015 reflected in the NNE Projections is conservative is based on his general knowledge, experience and observations of broadband penetration levels within the industry. Based on its annual analysis of DSL penetration rates for publicly traded ILECs, JSI Capital Advisors, LLC has observed average DSL penetration rates increase from 10.1% as of December 31, 2004 (see The ILEC Advisor, June 2006, page 9), 14.5% as of December 31, 2005 (see The ILEC Advisor, June 2006, page 9) and 19.2% as of December 31, 2006 (see attached Linear Obiter

Dictum – Phone Lines 2007.pdf). Penetration rates as of December 31, 2006 ranged from a high of 26.6% to a low of 10.1%.

Mr. King's assessment that the DSL penetration rate for 2015 reflected in the NNE Projections is conservative is based on two fundamental trends. First, as noted in the above cited analyses, the number of DSL subscribers continues to grow. Second, access line counts are continuing to decline. As the numerator of the DSL penetration formula – DSL lines in service - continues to increase and the denominator – access lines in service – continues to contract, Mr. King believes the realization of DSL penetration rates well in excess of that reflected in the NNE Projections is probable and, indeed, likely.

Also, Mr. King's assessment was made, in part, with reference to estimates of future broadband Internet penetration by JupiterResearch (see response to OCA R-17 for copy of article) and, in part, based on observations and trends gleaned from the Federal Communications Commission's January 2007 report entitled "High-Speed Services for Internet Access: Status as of June 30, 2006" (see response to OCA R-09 for copy of report).

Please refer to FairPoint's response to Data Request OCA R-23 (The ILEC Advisor, June 2006) and FPNH 1262 - FPNH 1273 (Linear Obiter Dictum – Phone Lines 2007.pdf).