

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 09-113

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC
D/B/A FAIRPOINT COMMUNICATIONS-NNE

Waiver of Certain Requirements Under the
Performance Assurance Plan and Carrier to Carrier Guidelines

**Reply of Northern New England Telephone Operations LLC d/b/a FairPoint
Communications - NNE to Reply to Opposition to Motions to Dismiss**

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications - NNE ("FairPoint") and, pursuant to the Commission's Secretarial Letter dated October 13, 2009, hereby replies to the Reply of Freedom Ring Communications d/b/a BayRing Communications and segTEL, Inc. dated October 16, 2009 ("BayRing/segTEL Reply").

Most of the issues raised in the BayRing/segTEL Reply have already been thoroughly addressed by FairPoint in prior pleadings, particularly those issues concerning the relationship of this proceeding to the simplified Performance Assurance Plan ("PAP") collaborative, the CLEC Settlement Agreement in DT 07-011, the Merger Order in DT 07-011, the New York PAP and the Wholesale Advantage Agreements ("WAAs). However, two issues raised in the BayRing/segTEL Reply do warrant a brief reply.

First, BayRing/segTEL assert that FairPoint's request for a reduction in the PAP total dollars at risk is outside the scope of the proceeding and thus should be dismissed. "[T]his proceeding was never established to undertake a review of PAP modifications at all. This proceeding, according to FairPoint's initial petition, was merely to consider whether to allow

FairPoint a ‘waiver’ of PAP penalties.”¹ However, the issue of the PAP modification requested in FairPoint’s Supplement to Petition was discussed at length in the Technical Session of August 14, 2009. That same day, a Supplemental Order of Notice was issued by the Commission announcing FairPoint’s Supplement to Petition, describing the issues, reopening the proceeding to interveners, and establishing a revised schedule. Thus, it is indisputable that the current matter has been properly noticed by the Commission and has not been disposed of or withdrawn. Consequently, the proceeding cannot be dismissed.

Second, BayRing/segTEL revisit the issue of the WAAs and assert that “the argument that FairPoint should be allowed to reduce the PAP bill credits at risk to BayRing and segTEL as a consequence of WAAs with other CLECs fails.”² It is unclear to FairPoint as to whose argument this is, but it is indefatigably *not* FairPoint’s. At no point has FairPoint invoked the WAAs as justification for its request to reduce the total dollars at risk. In fact, FairPoint has been emphatic that the WAAs are unrelated to the PAP and has rejected any attempts to smuggle them into this proceeding. FairPoint explained in its Objection to Motions to Dismiss (“FairPoint Objection”) that the PAP and the WAAs are separate agreements, related only in that they are agreements concerning wholesale services.³ The WAAs do not act on the PAP in any way and are immaterial to this proceeding.

As FairPoint observed in the FairPoint Objection, legitimate issues of law and fact are before the Commission for which FairPoint is entitled to be heard. As long as there are “sufficient questions remain unanswered to provide reasonable grounds to conduct a full and

¹ BayRing/segTEL Reply at 4.

² BayRing/segTEL Reply at 11.

³ FairPoint Objection at 5.

formal investigation,”⁴ the Commission must deny a motion to dismiss. Numerous questions of fact and law remain to be considered by the Commission regarding PAP modifications, settlement terms, the public interest, and the relevance of other proceedings and agreements. In the face of all of these issues, and notwithstanding their motions and the BayRing/segTEL Reply, the CLECs have not met their burden of establishing that there is no basis for any of the relief that FairPoint has requested. FairPoint respectfully reiterates its request that the CLECs’ motions to dismiss be denied.

Respectfully submitted,

Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE
By their Attorneys,
DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: October 23, 2009

By: 

Frederick J. Coolbroth, Esq.

Patrick C. McHugh, Esq.

Harry N. Malone, Esq.

43 North Main Street

Concord, NH 03301

(603) 226-1000

fcoolbroth@devinemillimet.com

pmchugh@devinemillimet.com

hmalone@devinemillimet.com

⁴ DE 01-023, Guillemette v. Public Service Company Of New Hampshire, Order Denying Motion to Dismiss at 10-11 (June 28, 2001).

CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing Reply was forwarded this day to the parties by electronic mail.

Dated: October 23, 2009

By: 

Harry N. Malone, Esq.