

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 11-061

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC d/b/a
FAIRPOINT COMMUNICATIONS – NNE**

**Petition for Approval of Simplified
Metrics Plan and Wholesale Performance Plan**

Order Approving Amendment to Wholesale Performance Plan

ORDER NO. 25,705

In this Order, the Commission approves a Second Stipulation and Settlement Agreement amending the Wholesale Performance Plan to resolve the remaining outstanding issue in this proceeding, which is the level of penalty for FairPoint's failure to revise monthly performance reports to correct a material error due to issues within its control.

I. PROCEDURAL HISTORY

The Commission opened this docket in response to a March 24, 2011, petition by Northern New England Telephone Operations, LLC d/b/a FairPoint Communications NNE (FairPoint), for approval of a simplified Wholesale Performance Plan to replace its current Performance Assurance Plan. After a lengthy process of technical sessions and settlement negotiations, a Joint Motion for Approval of a Wholesale Performance Plan Stipulation and Settlement Agreement (WPP Settlement) was filed on October 11, 2013, by the following parties:

- FairPoint;
- Comcast Phone of New Hampshire LLC (Comcast); and
- the following carriers, referred to as the Competitive Carriers:

- CTC Communications Corp., Lightship Telecom LLC, Choice One of New Hampshire Inc., and Conversent Communications of New Hampshire LLC, all d/b/a EarthLink Business;
- Freedom Ring Communications LLC d/b/a BayRing Communications;
- Biddeford Internet Corporation d/b/a Great Works Internet;
- CRC Communications LLC d/b/a OTT Communications; and
- National Mobile Communications Corporation d/b/a Sovernet Communications.

FairPoint, Comcast, and the Competitive Carriers are referred to collectively herein as the Settling Parties.

The Commission approved the WPP Settlement and resolved three outstanding issues for which the parties requested resolution in Order No. 25,623 issued on January 24, 2014 (WPP Approval Order). FairPoint filed a Motion for Rehearing, Reconsideration or Clarification of the WPP Approval Order, regarding late and inaccurate reporting penalties and related issues and commercial contract waivers of WPP bill credits. In Order No. 25,662 issued on May 6, 2014 (WPP Reconsideration Order), the Commission clarified certain aspects of its decision in the WPP Approval Order regarding the late and inaccurate reporting penalties, granted reconsideration of and set for hearing the issue regarding the appropriate level of penalty for FairPoint's failure to correct inaccurate reports under certain circumstances, and denied FairPoint's other requests for reconsideration of the WPP Approval Order.

On June 27, 2014, the Settling Parties filed a Joint Motion for Approval of Wholesale Performance Plan Second Stipulation and Settlement Agreement (WPP Amendment), which resolves the sole remaining issue regarding the appropriate level of penalty for FairPoint's failure to correct inaccurate reports due to issues within its control. On July 29, 2014, Commission Staff (Staff) filed a memorandum recommending approval of the WPP Amendment.

II. SETTLEMENT AGREEMENT

The Settling Parties agreed on a penalty structure for FairPoint's failure to revise monthly performance reports to correct a material error due to issues within its control, based on a system of surrogate credits. The WPP Amendment includes agreed-upon language for Section D (Late and Inaccurate Reports) in FairPoint's Wholesale Performance Plan. (Section D was previously left blank.) According to the Joint Motion for Approval of the WPP Amendment and Staff's memorandum, the language in Section D specifies the system of surrogate credits and conforms to the terms as approved and clarified in the WPP Approval Order and the WPP Reconsideration Order.

The WPP Amendment also includes a revision to WPP Section G (Exceptions Process), in which Paragraph G.1.c has been amended to permit FairPoint to petition the Commission for a waiver from monthly performance reporting if a *force majeure* event impedes its ability to report performance results.

The Joint Motion for Approval of the WPP Amendment requested that the Commission waive discovery and forego a hearing, as was done in connection with approval of the WPP Settlement.

III. STAFF RECOMMENDATION

Staff concluded that the agreed-upon provisions of the WPP Amendment resolve the sole outstanding issue in this docket and appear to be reasonable as written. In Staff's assessment, the WPP Amendment would not disadvantage any competitive local exchange carriers (CLECs) that might enter the market in the future. Staff also recommended that the Commission grant the Settling Parties' request for approval of the WPP Amendment without discovery and hearing,

consistent with the precedent in this docket, because there is no need for factual discovery or an evidentiary hearing with regard to the agreed-upon changes set forth in the WPP Amendment.

With respect to the timing for filing a final version of the approved WPP and the effective date of the final WPP, Staff noted that neither Maine nor Vermont has taken final action to approve, reject, modify or condition the WPP, and Staff recommended that the Settling Parties be directed to propose a definitive effective date for the final WPP at the time they file the final revised version of the WPP compliant with the Commission's orders, such filing to occur within the timeframe contemplated by the WPP Reconsideration Order.

IV. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of a contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 (May 29, 2009) at 48. Nonetheless, even when all parties join a settlement agreement, N.H. Code Admin. Rules Puc 203.20(b) requires the Commission to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest.

We have reviewed the WPP Amendment and find that it represents a reasonable compromise of the sole remaining issue set for hearing in this proceeding. In this case, agreement among the Settling Parties is an adequate indication that the proposed penalty will have the desired effect of encouraging accurate and timely reporting, as well as appropriate data

collection and retention. In addition, it does not appear that the WPP Amendment will disadvantage CLECs that might enter the market in the future. Accordingly, we find that the WPP Amendment is just and reasonable and will serve the public interest.

According to the Joint Motion for Approval of the WPP Amendment, all parties in this case were aware of the process that resulted in the WPP Amendment and had the opportunity to participate in that process. The Commission has received no objection to the WPP Amendment. Consistent with our approval of the WPP Settlement earlier in this proceeding, we hereby waive any requirement under our procedural rules for any additional process, including discovery and hearing before the Commission, pursuant to our authority under N.H. Code Admin. Rules Puc 201.05.

In the WPP Reconsideration Order, we addressed the timeline for filing of a final version of the approved WPP and the effective date of the final WPP. The Settling Parties were directed to develop specific language for inclusion in the WPP to effect the required modifications to the WPP, and to file conforming language for review by the Commission. We required this filing to be made on or before the *earlier* of 90 days following the date of this order, or 30 days following the entry of final orders by both the Maine Public Utilities Commission and the Vermont Public Service Board approving the WPP. We note that the Settling Parties have made substantial progress on development of the required final WPP language. Section D, approved by this order, is now complete. We approved specific language to be inserted in Section K for the Change in Law provisions in the WPP Approval Order. The remaining language to be developed is a provision to incorporate the Commission's decision regarding the waiver of bill credits through FairPoint's commercial contracts with CLECs.

While we see no need to modify our prior order regarding final completion and filing of the WPP, we recognize it may be difficult to implement the new WPP before it is acted on in both Maine and Vermont. If the Maine Commission and the Vermont Board have not entered final orders within 90 days from the date of this order, the Settling Parties are directed to file the complete and final WPP compliant with our orders in this docket and to include in such filing a recommendation as to when the WPP should be implemented in New Hampshire.

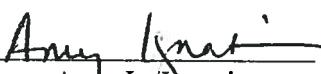
Based upon the foregoing, it is hereby

ORDERED, the Joint Motion for Approval of Wholesale Performance Plan Second Stipulation and Settlement Agreement is GRANTED; and it is

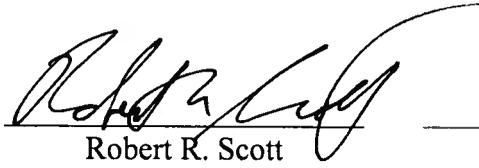
FURTHER ORDERED, that the complete and final Wholesale Performance Plan compliant with the Commission's orders in this docket shall be filed on or before the earlier of either (1) 90 days following the date of this order, or (2) 30 days following the entry of final orders by both the Maine Public Utilities Commission and the Vermont Public Service Board approving the Wholesale Performance Plan; and it is

FURTHER ORDERED, that, if the Maine Public Utilities Commission and the Vermont Public Service Board have not entered final orders approving the Wholesale Performance Plan within 90 days from the date of this order, the Settling Parties shall file a recommendation as to when the Wholesale Performance Plan should be implemented in New Hampshire.

By order of the Public Utilities Commission of New Hampshire this eighth day of
August, 2014.



Amy L. Ignatius
Chairman



Robert R. Scott
Commissioner



Martin P. Honigberg
Commissioner

Attested by:



Debra A. Howland
Executive Director