

**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 Change of Fund Recipient for
Certain Payments under Wholesale Performance Plan**

ORDER NO. 26,051

August 28, 2017

In this Order, the Commission designates the Telecommunications Relay Service Trust Fund as the recipient for payments in lieu of bill credits under the FairPoint Wholesale Performance Plan. The prior recipient of such payments, the Telecommunications Planning and Development Fund, was dissolved by the legislature.

I. PROCEDURAL HISTORY

In Order No. 25,623 (February 19, 2014), the Commission approved a Wholesale Performance Plan (WPP) for Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint). The WPP is designed to measure FairPoint's performance in providing federally-mandated wholesale services to competitive exchange carriers (CLECs).¹ The WPP requires FairPoint to pay penalties, in the form of bill credits, to CLECs when FairPoint fails to meet specified performance standards. In Order No. 25,623, the Commission

¹ The term "competitive local exchange carrier" is no longer a primary designation under state law, having been replaced by the term "excepted local exchange carrier," as defined in RSA 362:7, I(c). The term remains in use in the federal regulatory context, however, such as with respect to the intercarrier obligations that are the subject of the WPP. In this Order, the term CLEC is used to refer to competitive local exchange carriers to which the WPP applies.

directed FairPoint to pay any bill credits waived by CLECs to the Telecommunications Planning and Development Fund established under RSA 12-A:45-a (TPDF). The funds paid to the TPDF were to be used for the purposes of and subject to the procedures specified in the Telecommunications Planning and Development Initiative, RSA 12-A:45-:49. The Commission expressly reaffirmed that payment requirement in Order No. 25,662 (May 6, 2014). Effective July 1, 2017, the legislature repealed the statutory authorization for the TPDF. House Bill 517, 2017, N.H. Laws Chapter 156. Given the repeal of the TPDF, the Commission determined that an appropriate alternative payee should be identified and that one alternative to be considered should be the Telecommunications Relay Service Trust Fund (TRS Fund). *Secretarial Letter* (July 21, 2017). Commission Staff (Staff) filed a memorandum on August 3, 2017 (Staff Memo), in which Staff opined that the TRS Fund would be a reasonable substitute recipient for FairPoint's payments and that such additional funding of the TRS Fund would prove beneficial. Staff Memo at 1.

A public comment hearing was held on August 4, 2017, and written comments regarding appropriate alternative payees were accepted until August 11, 2017. FairPoint offered public comment during the hearing. A group of CLEC representatives (collectively referred to as the CANNE CLECs)² filed written comments by letter dated August 10, 2017, that was received by the Commission on August 14, 2017. The Commission waived its filing deadline, *sua sponte*, and considered those comments.

The Commission's prior orders, the July 21st secretarial letter, the Staff Memo, the written comments, and other filings and documents in this matter, can be found at <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-061.html>.

² These parties include Bayring Communications, Inc., and National Mobile Communications Corp., collectively d/b/a FirstLight, and CRC Communications LLC d/b/a OTT Communications.

II. STAFF'S PROPOSAL

Staff's view is that "the goal of maintaining incentives for FairPoint's wholesale performance still appears to be appropriate." Staff Memo at 1. Staff therefore recommended that the Commission specify a substitute recipient of the WPP bill credit payments which have averaged approximately \$950 per month. *Id.* In its Memo, Staff confirmed its belief that the TRS Fund would be a good candidate to receive those funds; reviewed the background and current status of the TRS Fund; and considered the potential benefits of directing monies to the TRS Fund that were previously paid into the TPDF. *Id.*

Staff explained that the TRS Fund is supported through an assessment paid by wireline telephone providers. The assessment is based on each provider's number of lines in service. *Id.* The goal in setting TRS assessment rates is to ensure that the TRS Fund maintains a "cushion" of six months' fund expenses, and to raise or lower the per-line assessment accordingly. *Id.* Staff maintained that the TRS Fund is currently below that target "cushion" level. Although trends in funds inflow and outflow appear sufficient to obviate the need for a near-term rate increase, for the reasons described in its Memo, Staff believes that incremental support for the TRS Fund would be beneficial in reducing the risk that future rate increases would become necessary. *Id.*

III. SUMMARY OF COMMENTS

FairPoint supported Staff's proposal. Hearing Transcript at 5. The CANNE CLECs agreed. CANNE CLECs' Comments at 1. Although they "continue to believe the funds should be paid to CLECs," the CANNE CLECs recognized that "the Commission has already made a determination to designate the monies to a state fund." *Id.* The CANNE CLECs characterized the TRS Fund as "a competitively neutral choice and, accordingly, request[ed] that the Commission adopt Staff's recommendation." *Id.*

IV. COMMISSION ANALYSIS

Under RSA 365:28, the Commission may, at any time after the making and entry of an order, “after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify” such order, provided that a hearing is not required when the prior order “was made under a provision of law that did not require a hearing and a hearing was, in fact, not held.” Because no evidentiary hearing was required and none was held in connection with the Commission’s approval of the WPP in 2014, we are not required to conduct such a hearing prior to modifying Order No. 25,623 and Order No. 25,662. We instead conducted a public comment hearing and received written comments from interested stakeholders.

We continue to believe that an “effective wholesale performance assurance plan must expose FairPoint to potential financial penalties that are meaningful, significant, and actual rather than theoretical.” *See* Order No. 25,662 at 17. Payments in lieu of waived bill credits serve that necessary deterrent purpose. We find that substitution of the TRS Fund for the TPDF as the designated recipient of FairPoint payments in lieu of waived CLEC bill credits is reasonable and appropriate. Additional funding of the TRS Fund may serve to defer or eliminate the need for future increases in the TRS assessment rate, to the benefit of all landline telephone service providers.

Designation of the TRS Fund as the substitute recipient of those payments is a logical and justifiable alternative, and is supported by those stakeholders that provided comments. We therefore approve a change in the designated recipient of payments in lieu of waived CLEC bill credits under the FairPoint WPP from the TPDF to the TRS Fund, and accordingly modify Order No. 25,623 and Order No. 25,662.³

³ We expect such payments to be accounted for and made to the TRS Trust Fund separately from FairPoint’s assessment payments that are based on its access lines.

Based upon the foregoing, it is hereby

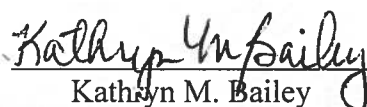
ORDERED, that the designated recipient of payments in lieu of certain CLEC bill credits under the FairPoint Wholesale Performance Plan is changed from the Telecommunications Planning and Development Fund to the Telecommunications Relay Service Trust Fund, and Order No. 25,623 and Order No. 25,662 are accordingly modified under RSA 365:28; and it is

FURTHER ORDERED, that a conforming amendment to the Wholesale Performance Plan compliant with this Order shall be filed within 30 days of the date of this Order.

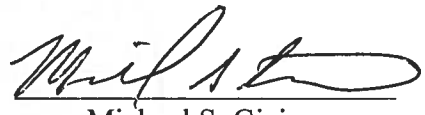
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of August, 2017.



Martin P. Honigberg
Chairman

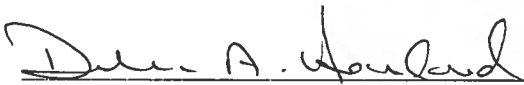


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director