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-STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: Dec 5, 2012
AT (OFFICE): NHPUC

FROM: Les Stachow, Telecommunications Division 
SUBJECT: DT 11-061,
Petition of FairPoint Communications-NNE for Approval of
Simplified Metrics Plan and Wholesale Performance Plan
TO: Commissioners
Debra Howland, Executive Director

On October 23, 2012, Northern New England Telephone Operations LLC (FairPoint), and Biddeford Internet Corporation d/b/a Great Works Internet, Comcast Phone of New Hampshire, LLC, CRC Communications of Maine, Inc. *d/b/a* OTT Communications, CTC Communications Corp., Lightship Telecom LLC, Conversent Communications of New Hampshire, Inc., all *d/b/a* "EarthLink Business", Freedom Ring Communications, LLC *d/b/a* BayRing Communications, and National Mobile Communications Corporation *d/b/a* Sovernet Communications (the CLEC Parties) (FairPoint and the CLEC Parties, collectively (the Parties) submitted a Joint Motion for expedited approval of a Settlement Stipulation, (Stipulation).

The Stipulation is one of the outcomes of the negotiation process that took place during the period September 2011 through February 2012 and included the Parties, as well as the staff of the following three regulatory bodies, New Hampshire, Maine and Vermont. The workshops and series of settlement negotiations culminated in a partial settlement between FairPoint and the CLECs on the adoption of a simplified Performance Assurance Plan (PAP). After the scheduled workshops ceased, FairPoint and the CLECs continued their negotiations and were able to make further progress concerning a simplified PAP, which they have jointly submitted as a proposed Settlement Stipulation.

The Parties have agreed that this Stipulation shall not be enforceable unless approved in its entirety by the Commission as well as the Vermont Public Service Board (PSB) and the Maine Public Utilities Commission (MPUC) and that the Parties will not seek modification of its provisions for a period of one year following its approval. The Parties have requested that in approving this Stipulation, the Commission request that discovery be waived or strictly limited, that no hearing be conducted before the Commission, and that the terms and conditions of the Stipulation be incorporated in any final order that resolves the issues of this proceeding.

Commission Rule 203.20(b) provides that “the Commission shall approve a disposition of any contested case by stipulation, consent order or default, if it determines that the result is just and reasonable and serves the public interest.”

Staff believes that this proposed Joint Stipulated Settlement, although only partially addressing the issues associated with this Petition, substantially advances consensus between the Parties over the form and content of a future simplified PAP.

At the end of February 2012, the Parties had agreed to the following features for the proposed simplified PAP: single state specific monthly performance reports comprising metrics subject to performance credits and diagnostic purposes; product consolidation for metric reporting; product eliminations; service segmentation elimination; metrics recorded simply as met or missed; performance credits to be applied based on eligible missed transactions times the dollar credit rate per miss.

Further negotiations between the Parties since February 2012 have led to this Stipulation which reflects a substantially advanced understanding and agreement between the Parties and whose salient features incorporate all the features enumerated above and include the following additional agreements: 114 proposed metrics to be reported and subject to performance credits; 80 metrics to be reported solely for diagnostic purposes; 25 metrics for which agreement has been reached on their being reported but no agreement on whether for diagnostic purposes or subject to performance credits; 10 out of the 114 metrics for which the per measure performance credit rates have been agreed; agreement on FairPoint resolution of 56 out of a list of 133 CLEC operational issues, and that the CLECs will not seek to litigate a further 66 issues; FairPoint to make a total of \$600,000 available “at risk” to insure timely completion of four major IT enhancements; FairPoint to convene workshops to consider implementing eWPTS functionality, **(eWPTS: Enhanced Global Wholesale Provisioning Tracking System is an administrative tool for managing and tracking Global Wholesale Provisioning);** CLEC’s agree, with limited exceptions, not to propose new metrics, or litigate any specific operational issues already addressed in the Stipulation; the Parties acknowledge that no agreement has been reached on a maximum dollars at risk or an annual cap for the PAP.

Staff reviewed the content of the Stipulation. It has been agreed to by FairPoint and a strong representative sampling of the CLEC community, and therefore, Staff believes that approval of the Stipulation will be conducive to further negotiation and deliberations and orderly and efficient resolution of this Petition.

Staff therefore recommends approval of this Joint Stipulation on an expedited basis via an Order Nisi, thereby affording the opportunity for any other affected carrier to be heard by the Commission before the effective date of the Order.