

STATE OF NEW HAMPSHIRE**Inter-Department Communication**

DATE: July 29, 2014
AT (OFFICE): NHPUC

FROM: Kate Bailey, Director Telecommunications *KB*
SUBJECT: DT 11-061, Petition for Approval of Simplified Metrics Plan and Wholesale Performance Plan, Staff Recommendation to Approve Second Stipulation and Settlement Agreement
TO: Commission
Debra Howland, Executive Director

Executive Summary

Staff recommends the Commission approve the second stipulation and settlement agreement filed by FairPoint and the CLECs in this docket on June 27, 2014. The agreement resolves the single outstanding issue for which the Commission granted rehearing.

Background

Order No. 25,662, issued on May 6, 2014, granted reconsideration regarding an appropriate penalty level for FairPoint's inability to revise a monthly report to correct a material error due to issues within FairPoint's control. The order scheduled a hearing on June 6, at which time FairPoint and the CLECs were to present evidence and argument on the appropriate level of penalty. On June 3, the parties filed a request to postpone the hearing because they believed the matter could be settled which would obviate the need for a hearing. The second stipulation and settlement (Second Settlement), intended to augment the original settlement agreement approved by the Commission, was filed on June 27, 2014.

The Second Settlement resolves the parties' differences regarding the appropriate level of penalty for failure to revise monthly performance reports to correct a material error due to issues within FairPoint's control, based on a system of surrogate credits. The settlement includes agreed-upon language for Section D (Late and Inaccurate Reports) in FairPoint's Wholesale Performance Plan (WPP) which was previously left blank. The Commission decided penalties for late and inaccurate reporting in Order No. 25,623, but granted rehearing on this one limited issue. The parties have agreed upon language which is consistent with the Commission's decisions and includes language settling the issue for which rehearing was granted, thereby completing the Late and Inaccurate Reports section of the WPP.

In addition, the Second Settlement includes a revision to Section G (Exceptions Process). Paragraph c of this Section has been revised to allow FairPoint to petition the Commission for a

waiver from monthly performance reporting if a *force majeure* event impedes FairPoint's ability to report performance results.

Recommendation

The Second Settlement was signed by FairPoint and each of the CLECs that signed the original settlement agreement. The agreed-upon provisions resolve the sole outstanding issue and appear reasonable as written. According to the parties' motion requesting approval of the Second Settlement, all affected carriers had the opportunity to participate in the settlement negotiation process. In Staff's assessment, the Second Settlement does not disadvantage CLECs that might enter the market in the future.

The motion also requested that discovery be waived and that no hearing be conducted, as was done in connection with approval of the original settlement. Staff recommends that the Second Settlement be approved and that the parties' motion for waiver of discovery and approval without hearing be granted, consistent with the precedent in this docket, because there is no need for factual discovery or evidentiary hearing with regard to the agreed-upon changes to the WPP provided for in the Second Settlement.

Order No. 25,662 required the parties to file a revised version of the complete WPP consistent with the Commission's orders on or before the earlier of 30 days following a final order of the Maine and Vermont Commissions or 90 days following the date of the order issued to resolve the sole outstanding issue which has been resolved by the Second Settlement. With the agreement on Section D, Late and Inaccurate Reports, FairPoint and the CLECs need only make two additional revisions to complete the WPP. First, specific language approved in Order No. 25,623 for the Change in Law provisions should be inserted into Section K. The second and final step in completing the WPP for New Hampshire, is the addition of a provision to incorporate the Commission's decision regarding waiver of bill credits through commercial contracts. Once the WPP is complete within about 90 days, it may not make sense to implement it if Maine and Vermont have not concluded their proceedings. Staff believes it would be difficult for FairPoint to implement the WPP for New Hampshire while continuing to use the PAP in Maine and Vermont. Staff therefore recommends that the Commission direct the parties 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 specified in Order No. 25,662.

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Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

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- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
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