

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-120

FAIRPOINT COMMUNICATIONS, INC.

**OBJECTION TO MOTION TO AMEND PROCEDURAL SCHEDULE
ON INTRASTATE ACCESS RATE REFORM**

The Staff of the New Hampshire Public Utilities Commission (Staff) hereby objects to the Motion to Amend Procedural Schedule submitted by Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint). In support of its objection, the Staff states as follows:

1. On April 20, 2012, Staff filed with the Commission a memorandum and recommendation noting that on November 18, 2011, the FCC released its order *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, (rel. Nov. 18, 2011) (CAF Order). That order and the associated rules require, in relevant part, that telecommunications carriers begin transitioning intrastate switched access to a “bill-and-keep” framework. Further, under the first step of the transition, carriers, both incumbent local exchange carriers (ILECs) and certain competitive local exchange carriers (CLECs), are required to file tariff revisions with state commissions setting forth the rates that will apply to intrastate switched access services during the first part of the transitional period – July 1, 2012 to June 30, 2013. The calculations required to establish the revenues that will form the basis of the rates in those tariffs are set out in 47 C.F.R. §§ 51.907, 51.909, and 51.911.

2. Staff’s April 20, 2012 memorandum requested that the Commission require carriers to file certain calculations by May 15, 2012 showing the calculations required by the CAF Order and its attendant rules. Staff further requested that the Commission require carriers

to file new tariffs based upon those calculations on or by June 1, 2012 for implementation on July 1, 2012. The Commission agreed with Staff's recommendation and issued an undocketed secretarial letter on April 23, 2012 directing carriers to supply the information described by Staff within the timeframe outlined by Staff. The letter also provided that as filings were received they would be individually docketed.

3. On May 3, 2012, FairPoint filed a motion requesting that the Commission extend the deadline for providing the calculations by two weeks, from May 15, 2012 to May 29, 2012. That motion was docketed as DT 12-120. The basis for FairPoint's request was that it has 30 operating companies in 18 states that all must supply this information, and that producing this information was the province of a single department within FairPoint's parent company. FairPoint also stated that if it was granted the extension, it would still file proposed new tariffs by June 1, 2012.

4. Staff hereby objects to FairPoint's motion. First, FairPoint's motion is phrased generally such that granting it as it is written would extend the deadline for reporting the required information not only for FairPoint but for all carriers. In that the motion was generated to address issues internal to FairPoint, there is no basis to grant the motion as written.

5. Presuming the motion can be limited in application to FairPoint, the Commission should not grant the motion because FairPoint has not shown why the extension is necessary. Completing the calculations required by the CAF Order and its rules requires the use of certain rate and demand information. The rate information is readily known to FairPoint as it is stated in its publically available state and federal tariffs. The demand information that FairPoint must use is that from Fiscal Year 2011. *See* 47 C.F.R. §§ 51.907(b), 51.909(b) (requiring the use of Fiscal

Year 2011 data). Fiscal Year 2011 is defined as the period October 1, 2010 through September 30, 2011. *See* 47 C.F.R. § 51.903(e). Given that this period closed more than 6 months ago, any data collection and verification related to it should be complete. Thus, FairPoint should already have in its possession all information necessary to complete the calculations required by the FCC. Moreover, the FCC set out a specific methodology for doing the required calculations using this data. *See* 47 C.F.R. §§ 51.907(b), 51.909(b). Accordingly, because FairPoint has the data available to do the calculations as well as the required methodology, it is not clear why those calculations cannot be done and there is no basis to grant the motion. By extension, FairPoint's motion also does not explain why FairPoint is unable to file the required information by May 15, 2012, but will then be in a position to file both the calculations as well as proposals for an updated and revised tariff by May 29, 2012 and June 1, 2012 respectively.

6. Staff requested that carriers provide the information required by the FCC to allow Staff an opportunity to review the information and confirm that the calculations conform to the FCC's requirements. By completing this review prior to receiving tariff submissions, Staff will be in a position to confirm that the tariff changes properly execute the required changes prior to July 1, 2012. If Staff must wait an additional two weeks to review the calculations and then to confirm that the submitted tariff changes comport with the calculations, Staff is not certain it will be able to complete the necessary review prior to the July 1, 2012 implementation date. In such a case, Staff may be required to request that the Commission extend the review period for these filings beyond July 1, 2012 pursuant to RSA 378:6. An extension may mean that FairPoint's tariff would not comply with the FCC's requirements on July 1, 2012.

7. As a final point of emphasis, Staff notes that New Hampshire is not the only state requesting the advance filing of information on this issue. Based upon Staff's knowledge, and as examples: Maryland required carriers to provide tariff submissions by May 1, 2012; Missouri required the tariff and supporting information be filed at least 60 days before July 1, 2012, that is, by May 1, 2012; and Ohio required all affected ILECs to file by March 21, 2012 and all affected CLECs by April 4, 2012. The Commission's decision to require this information – information that the FCC has mandated the carriers produce – on the timetable sought by Staff is not unreasonable nor is it out of line with the requirements of other states. Therefore, without a more compelling reason than has been provided by FairPoint, there is no basis for the Commission to alter the schedule.

8. Despite the above, Staff is respectful that the requirements of the FCC have placed burdens on the affected carriers. Further, Staff appreciates that as the largest ILEC in New Hampshire FairPoint may have a breadth of services greater than other carriers. Accordingly, should the Commission be inclined to grant the motion, Staff would request that the Commission grant an extension of one week, until May 22, 2012, rather than May 29, 2012 as requested by FairPoint. Staff would further request that if the motion is granted the Commission specify that the ruling applies only to FairPoint and no other carrier. Lastly, Staff would request that if an extension is granted, FairPoint be required to file both the calculations and the new tariff on the same day.

WHEREFORE, Staff respectfully requests that the Commission deny FairPoint's motion for an extension of the procedural schedule or, if the motion is not denied, Staff requests that the extension be limited as described.

Respectfully submitted,

Staff of the New Hampshire Public Utilities Commission
By its attorney,

Dated: May 7, 2012

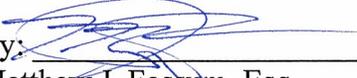


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CERTIFICATE OF SERVICE

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

Dated: May 7, 2012

By: 

Matthew J. Fossum, Esq.