

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 09-113

ORDER OF NOTICE

On June 10, 2009, Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint) filed with the Commission a petition for waiver of the incentive payment requirements of the Performance Assurance Plan (PAP), or modification thereto, which was made applicable to FairPoint pursuant to *Verizon New England*, Order No. 24,823 in Docket No. DT 07-011 (February 25, 2008), approving Verizon New England's transfer of assets to FairPoint Communications. Specifically, FairPoint requests relief from the payment of PAP bill credits to competitive local exchange carrier (CLEC) customers for the months of February through June 2009 which resulted from missing applicable performance metrics attributable, by FairPoint, to system cutover issues. FairPoint reports that New Hampshire CLEC customer bill credits total \$2,859,471, across the three Northern New England states for February, March and April, with New Hampshire bill credits alone totaling \$639,738 for March and \$874,726 for April. While FairPoint notes that it is working to correct the disruptions that the cutover has entailed, it expects to miss PAP metrics for the months of May and June as well.

In its filing, FairPoint states that due to unprecedented and unforeseen issues related to the system cutover launched in February 2009, it believes that it is reasonable and appropriate for the Commission to grant a waiver of the payment obligations pursuant to the provisions of Section J of the PAP, relating to situations beyond FairPoint's control and to data clustering, as applicable. Furthermore FairPoint asks to modify the PAP as necessary to remove the need to

make any such payments pursuant to Section II paragraphs I and K of the PAP and the Commission's authority to alter or amend its orders pursuant to RSA 365:28. Ultimately, FairPoint asks the Commission to waive PAP payments and permit FairPoint to direct those funds to what it argues are more productive uses in order to help ensure that the ultimate expectation of a successful cutover is achieved.

FairPoint's petition requested relief from the PAP filed by Verizon on November 21, 2006, in Docket No. DT 06-168. The proceedings in DT 06-168 were suspended by Secretarial Letter dated February 22, 2008, and the filing was not approved. Consequently the operative PAP, approved by Order No. 24,504 in DT 05-096, is dated February 1, 2006, and is posted on the Commission's website.

On June 26, 2009, Freedom Ring Communications, LLC d/b/a BayRing Communications (BayRing) filed a letter with the Commission in response to FairPoint's petition. BayRing requests an Order from the Commission requiring FairPoint to continue to make all required payments and/or bill credits under the PAP pending final resolution of FairPoint's request to modify the PAP in Docket No. DT 09-059 and the instant proceeding. On June 30, 2009 and July 13, 2009, One Communications and Covad Communications Company respectively filed letters concurring with BayRing's position.

The petition raises, *inter alia*, issues related to RSA 365:28 and whether FairPoint is entitled to a waiver of the payment requirements established by the performance assurance plan and the relevant requirements in Commission Order No. 24,823, or whether the PAP should be modified pursuant to section II paragraphs I and K and whether FairPoint is permitted to withhold payments in the absence of an approved waiver. Each party has the right to have an attorney represent them at their own expense.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on August 13, 2009 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, FairPoint, the Staff of the Commission and any Intervenors hold a Technical Session to establish a proposed discovery and procedural schedule; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.12, FairPoint shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than August 5, 2009, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before August 13, 2009; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to FairPoint and the Office of the Consumer Advocate on or before August 10, 2009, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before August 13, 2009.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July,
2009.



Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

