

# STATE OF NEW HAMPSHIRE

## Inter-Department Communication

**DATE:** March 27, 2009  
**AT (OFFICE):** NHPUC

**REDACTED**

**FROM:** F. Anne Ross, Arbitrator

**SUBJECT:** DT 09-007 Dark Fiber Arbitration  
Supplemental Arbitrator's Report and Recommendations

**TO:** Thomas B. Getz  
Graham J. Morrison  
Clifton C. Below  
Debra A. Howland

**CC:** Kate Bailey

### **PROCEDURAL HISTORY**

See original report dated February 27, 2009.

### **INTRODUCTION**

See original report dated February 27, 2009.

### **FACTUAL FINDINGS AND RECOMMENDATIONS**

See original report dated February 27, 2009. As a result of FairPoint's testing and repair of certain segments of fiber described in Appendices 2 and 4, the Arbitrator's initial findings and recommendations for those two appendices must be supplemented.

## **Supplemental Findings and Recommendations as to Two segTEL Requests**

**Appendix 2** requested fiber from **(Proprietary)**. This involved 3 segments, one of which was disputed, **(Proprietary)**.

Staff confirmed there are 24 continuous fibers from **(Proprietary)** in Cable **(Proprietary)**. 20 fibers are in service. There were 2 maintenance spares and 2 defective fibers. FairPoint repaired and tested the two defective fibers. FairPoint's broadband expansion or next generation network ("NGN") plan indicates a need for 4 fibers on this route. FairPoint has determined that it can use the 4 fibers (2 maintenance and 2 repaired) for its build out. FairPoint will subsequently roll traffic from 2 other fibers onto the 4 NGN fibers freeing up those other 2 fibers as maintenance spares.

A toll budget sheet was issued requesting that construction be funded to add capacity to this segment, however, FairPoint engineering is requesting cancellation of this funding request as a result of the testing, repair and proposed use of the 4 fibers.

Tariff 17.4.1 A. allows for FairPoint's reservation of dark fiber "for growth or survivability in a particular part of its network as demonstrably necessary to meet its individual short-term service needs, ..." In those cases FairPoint is not required to make its dark fiber available for lease to requesting carriers.

On this segment FairPoint had not tested the 2 defective fibers prior to segTEL's request. At the time of the initial Arbitrator's report, FairPoint did not know whether the fibers could be repaired or whether they would support FairPoint's roll out of NGN. Although segTEL's request for fiber on this route may have accelerated FairPoint's testing and repair of the defective pair, such testing and repair is an appropriate use by FairPoint of its network. The Arbitrator finds the reservation of the 2 newly repaired fibers for FairPoint's NGN reasonable and does not recommend that FairPoint be required to lease the 2 repaired fibers. Accordingly, no fiber can be made available to segTEL on this route.

### **Appendix 2: No Fiber Available**

**Appendix 4** requested fiber from **(Proprietary)**. This route involved 2 segments, one of which was disputed, **(Proprietary)**.

Staff confirmed there are 16 fibers between **(Proprietary)** in Cable **(Proprietary)**. Eight fibers are in service. There are 5 defective fibers and 3 maintenance spares. FairPoint has tested the five defective fibers and has determined that 3 are cut and do not go from point to point. Of the remaining 5 fibers, 2 can be made available to segTEL.

### **Appendix 4: Fiber Available**