

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 09-007

segTEL, Inc.

v.

Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE

**ANSWER BY NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC  
D/B/A FAIRPOINT COMMUNICATIONS-NNE**

Now comes Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) pursuant to RSA 365.2. On May 18, 2009, segTEL, Inc. (“segTEL”) filed a Motion and Request in DT 09-007 (“Complaint”). Section III.D of that pleading requested that the Commission initiate an investigation into FairPoint’s dark fiber procedures and policies. Pursuant to its letter of June 19, 2009, the Commission styled the request for an investigation as a complaint under RSA 365.1 and directed FairPoint to respond accordingly. FairPoint states as follows:

1. FairPoint denies the allegations in paragraph III.D.1 that it does not respond to dark fiber availability requests in a timely manner. Not only is this allegation unsupported, segTEL immediately contradicts itself with the statement that “segTEL receives a yes or no response in that [prescribed 15 day] time frame.”<sup>1</sup> There is no valid basis for this allegation other than segTEL’s armchair prediction that FairPoint’s current intervals “would increase the

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<sup>1</sup> Complaint at 11.

fifteen-day interval to between 16 and 20 days.”<sup>2</sup> FairPoint also denies the allegation that the responses that it does receive are “not complete, useful or in compliance with Tariff 84.”<sup>3</sup> The applicable section of Tariff 84 only requires that FairPoint notify the requester that “no spare dark fiber is available over the direct route nor any reasonable alternate indirect route.”<sup>4</sup> segTEL implies that FairPoint is required to provide considerably more information. However, as described in the next paragraph, this information is provided only at segTEL’s *express request and expense*, and is not due within the original fifteen-day interval.

2. FairPoint denies the allegations in paragraph III.D.2 that its responses to dark fiber availability requests are incomplete. segTEL alleges that “several” recent dark fiber requests have been denied and have been unaccompanied by the information listed in Tariff 84, B.17.1.2.A.2.a - k. Nowhere, however, does segTEL allege that it requested this information or offered to pay for it, as required in the tariff. Tariff 84 provides that the information will be provided *only* if the requester has left empty a box on the dark fiber inquiry form, and also with the understanding that the requester will be charged for the additional cable documentation. Furthermore, Tariff 84 states that this information will be provided within *thirty* days from receipt of the requesting carrier’s initial dark fiber inquiry, not the fifteen that segTEL implies.<sup>5</sup> It is not surprising, then, that segTEL must “wait additional days to get the information,” particularly if this information is requested as part of a *post hoc* escalation procedure instead of on the original order.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tariff 84, B.17.1.2.A.2. The tariff also provides that, if applicable, FairPoint should indicate where the indirect route is blocked.

<sup>5</sup> *Id.*

3. FairPoint denies the allegations in paragraph III.D.3 that it does not consider all available fiber when responding to dark fiber availability requests. Tariff 84 requires FairPoint to consider a direct route and any *reasonable* alternate routes, not all possible routes.<sup>6</sup> Furthermore, FairPoint denies that it does not consider all sheaths of fiber, unterminated fiber, pending installations, and fiber that could be made available using either routine network modifications. If CLECs require confirmation of this, they can purchase this detailed information on request, pursuant to Tariff 84, B.17.1.2.A.2. segTEL has not alleged that it expressly requested this information or offered to pay for it, as required in the tariff.

4. FairPoint admits the allegations in paragraph III.D.4 that it does not consider pending projects when responding to dark fiber availability requests. To the extent that construction is scheduled within two years or is currently underway, FairPoint provides this information at the CLEC's request and expense, pursuant to Tariff 84, B.17.1.2.A.2.i. However, "pending projects" are another matter. FairPoint asserts that it is not a CLEC construction services contractor and has no obligation under its tariff or any FCC and Commission rules or orders to reveal competitively sensitive information to segTEL or other CLECs regarding its network build-out plans. This would be tantamount to making FairPoint's network planners available for "consultation on dark fiber," which the Commission has held is not required.<sup>7</sup> Pursuant to the *Dark Fiber Order*, FairPoint is only required to consider *potential* wholesale demand when specifying the capacity of new or augmented fiber routes. Furthermore, if FairPoint were to reveal this long range information on request, it would frustrate the goal of facilities-based competition, since potential competitors would merely request upgraded capacity on planned FairPoint routes instead of laying these routes themselves.

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<sup>6</sup> *Id.*

<sup>7</sup> DT 01-206, Order 23,948 at 7, 56 ("*Dark Fiber Order*").

5. FairPoint denies the allegations in paragraph III.D.5 that it fails to consider routine network modifications when responding to dark fiber availability requests. Any routine network modifications that FairPoint would perform for its own needs will be performed for CLECs as well. FairPoint does not discriminate in this regard.

6. FairPoint denies the allegations in paragraph III.D.6 that it does not consider network efficiency when responding to dark fiber availability requests. FairPoint constantly seeks to improve network efficiency and is in the process of upgrading to a “next generation” network that includes, among other things, deploying dense wavelength division multiplexing (“DWDM”) to increase the carrying capacity of its new and legacy fiber. This involves considerable advance planning and capital expenditure, and cannot be performed on a case-by-case basis. To the extent that FairPoint has upgraded a fiber facility, this capacity will be available to CLECs in accordance with Tariff 84.

7. FairPoint denies the allegations in paragraph III.D.7 that it gives preference to itself over competitors when responding to dark fiber availability requests. This allegation, generally phrased as a discrimination complaint, is actually a specific allegation that FairPoint does not relinquish maintenance spares to fulfill CLEC dark fiber requests. segTEL fails to acknowledge that maintenance spares are always subject to being used as circumstances demand, and dismisses FairPoint’s explanation that converting spares is an unusual and undesirable practice. On the one hand, segTEL strikes the alarm that FairPoint has been “leaving routes without maintenance spares for two years and possibly longer,”<sup>8</sup> but on the other hand it demands that FairPoint nonetheless “exhaust all maintenance spares”<sup>9</sup> for the benefit of requesting CLECs. In essence, segTEL criticizes FairPoint for leaving some routes without

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<sup>8</sup> Complaint at 14-15.

<sup>9</sup> *Id.* at 15.

spares for long periods, but then argues that the appropriate response is to exacerbate this problem by further depleting spare capacity by giving it to requesting CLECs. This is highly inadvisable, as the Arbitrator in DT 09-007 found when she held that “where 2 maintenance spares are the only remaining unused fiber on a particular segment, the arbitrator finds it would not be in keeping with safe and reliable service requirements to require FairPoint to lease the two remaining maintenance spares. The arbitrator finds it is reasonable for FairPoint to preserve a minimum of two fibers for maintenance spares.”<sup>10</sup> This “discrimination” complaint, then, is merely a back door request for reconsideration of an issue previously decided in DT 09-007. It does not merit further investigation by the Commission.

8. FairPoint denies the allegations in paragraph III.D.8 that it does not have any mechanism for taking CLEC demand into account when deploying new interoffice fiber. FairPoint recognizes that materials costs are small in comparison to the labor costs for laying fiber and thus is engineering its new and upgraded fiber facilities for capacities that far exceed the requirements of *all* anticipated usage along that route for the reasonably foreseeable future. In addition to ensuring the future needs of FairPoint’s customers, FairPoint expects to have ample available fiber for its wholesale customers.

9. segTEL has failed to present a *prima facie* case that FairPoint’s dark fiber practices and policies require investigation. It would be a waste of Commission and FairPoint time and resources to open yet another proceeding on such weakly supported allegations as segTEL has presented.

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<sup>10</sup> DT 09-007, Arbitrator’s Report at 2.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE  
OPERATIONS LLC, d/b/a  
FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys

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Dated July 10, 2009

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