

STATE OF NEW HAMPSHIRE

NHPUC JUL09'09 10:12

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DT 09-059

FAIRPOINT REQUEST FOR WAIVER  
OF PERFORMANCE ASSURANCE PLAN

segTEL, INC.

MOTION TO CONSOLIDATE DOCKETS

JULY 8, 2009



segTEL, Inc. (segTEL) hereby moves that the New Hampshire Public Utilities Commission (Commission) consolidate Docket Nos. DT 09-059 and DT 09-113. In support of this motion, segTEL states as follows:

On March 26, 2009, FairPoint Communications, Inc. (FairPoint) filed with the Commission a request for a) a waiver of certain requirements of the Performance Assurance Plan (PAP) and b) certain edits to the PAP. In response, the Commission opened Docket No. DT 09-059. An Order of Notice was issued June 8, 2009, in DT 09-059 scheduling a prehearing conference and technical session for July 8, 2009.

On June 10, 2009, FairPoint filed a Petition for Waiver of Certain Requirements under the Performance Assurance Plan and Carrier to Carrier Guidelines requesting a temporary waiver of all penalty obligations for five months, and recovery from CLECs for penalties already paid. The Commission opened Docket No. DT 09-113 to consider FairPoint's petition.

DT 09-059 and DT 09-113 both involve requests for the Commission to consider a waiver of the PAP credits. In addition, DT 09-059 requests certain edits to the PAP. FairPoint has notified CLECs and the Commission that it intends to work on modifications to the PAP, but has neither filed a proposal nor provided CLECs with a preliminary draft. Effectively, all of the issues in both dockets are the same, as FairPoint is requesting Commission approval to withhold PAP credits either for specific measures or for the entire PAP.

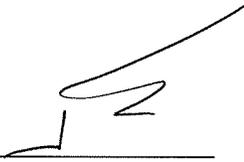
However, without waiting to receive that approval, on June 29, 2009, FairPoint issued Accessible Letter #PRC 0018-06292009, which notified the CLECs that FairPoint was taking unilateral action

regarding PAP credits. The accessible letter stated that FairPoint had placed all PAP credits in “hold status” during the pendency of its waiver requests filed with state commissions.

As a result, the extent of Commission review that will now be required to evaluate FairPoint’s PAP obligations has moved well beyond the limited scope of FairPoint’s March 26<sup>th</sup> petition. It is contrary to the interests of judicial economy to invest substantial and valuable time in order to determine whether the PAP should be “edited” (March 26<sup>th</sup> petition) when FairPoint has already notified CLECs that will not comply with its present obligations and responsibilities under the PAP. (June 10<sup>th</sup> petition and June 29<sup>th</sup> letter).

DT 09-059 and DT 09-113 are primarily of interest to the CLEC community, and so will likely involve many of the same parties. Additionally, decisions rendered in DT 09-113 could render the relief requested in DT 09-059 moot. If the dockets were combined, the parties could attend the prehearing conference and technical session scheduled for July 8, and develop a schedule that would be sufficient for both dockets.

For the forgoing reasons, segTEL moves that the Commission consolidate Dockets DT 09-059 and DT 09-113.



---

Jeremy Katz  
Chief Executive Officer