

February 14, 2013

HARRY N. MALONE
603.695.8532
HMALONE@DEVINEMILLIMET.COM

BY HAND DELIVERY

Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301



Re: DT 12-337; Northern New England Telephone Operations, LLC d/b/a FairPoint Communications – NNE; Tariff Filing to Implement Certain Provisions of the Order on Remand

Dear Ms. Howland:

I am writing on behalf of Northern New England Telephone Operations, LLC d/b/a FairPoint Communications – NNE (“FairPoint”). FairPoint has read with interest certain contentions by the Commission Staff, in their Response to FairPoint’s Motion for Rehearing dated February 13, 2013 (“Staff Response”), and by CANNE in their Objection to the Motion for Rehearing dated February 12, 2013 (“CANNE Objection”). FairPoint would like to respond briefly.

In regard to the official filing date of the subject tariff, Staff has claimed that “[i]n a docket such as this where review must meet certain statutory requirements based on a filing date, the Commission must rely on the date of the filing stamped on the letter in docketbook and officially noticed as the date of receipt.”¹ Staff goes on to state that “[i]n the event the filing party identifies a potential clerical error it should immediately notify the Commission and all parties of the apparent discrepancy by responding to the Executive Director’s letter establishing the received date of the filing.”² This appears to only be conjecture, as Staff does not refer to any of the Commission’s administrative rules, statutory authority or case law from the New Hampshire Supreme Court. In addition, FairPoint has not been able to find any legal support for the Staff’s assertions.

FairPoint disagrees with Staff on this issue.³ All parties must recognize that the Commission

¹ Staff Response at 3.

² *Id.*

³ Note that FairPoint disagrees with Staff and CANNE on many other issues contained in their respective filings, but is satisfied that FairPoint’s legal positions are adequately expressed in the Motion for Rehearing.

does *not* have an official electronic filing system, and thus the paper copy of any filing is the official copy. The Commission's administrative rule is clear:

[a]ny document submitted to the commission shall be deemed to have been filed *on the date* the commission receives a complete executed paper filing with the required number of copies, pursuant to Puc 203.02, except as provided in (b) below.⁴

Furthermore, the Commission's rules provide that "[u]pon request of a person submitting a document and upon receipt of an extra copy of the document with the filing, the commission shall date stamp and return the copy *as confirmation of the filing*."⁵ It is true that Docketbook has been an immense convenience to practitioners, who have come to rely on it heavily (CANNE remarks in their Objection that "[t]he public should be entitled to rely on the Commission's public postings regarding filings with the Commission, particularly when regulatory deadlines run from such publicly-posted filing dates."⁶ However there is no provision for Docketbook in the Commission's enabling statutes or its rules, and the Commission is bound to act only within its statutory authority.⁷ Therefore, Docketbook cannot be regarded as the "official record" of the Commission and cannot be a substitute for an actual review of the physical record as kept by the Executive Director. Any party seeking to ensure its rights must be expected to conduct the proper due diligence *on its own*, and not rely on unofficial records or, for that matter, an opposing party. In short, as expressed recently in Order No. 25,451, the Commission is not free to provide the CLECs with a remedy not contained in the law regardless of the remedy being at the CLECs urging or the Staff's urging.

On another issue, Commission Staff also assert, again without legal support, that "when Verizon converted this statement of what it generally offered, into a tariff, it became an obligation under state law and the SGAT ceased to exist,"⁸ and that, accordingly, "[f]ederal law is not applicable to this tariff."⁹ Again, this is only conjecture. FairPoint wishes to emphasize that there is no record

⁴ Rule Puc 202.05(a) (emphasis added). Sub-section (b) involves electronic filing of specified reports, which are not at issue here.

⁵ Rule Puc 203.02(b) (emphasis supplied).

⁶ CANNE Objection at 5.

⁷ For a recent example, *see* DM 12-276, Order No. 25,451 at 11 (Jan. 7, 2013) ("The statute is clear and under current law, the Commission is not free to provide FairPoint with another remedy, . . . [and] we may not create a different remedy." This holding must apply to all parties in all dockets and not just utilized against FairPoint.

⁸ Staff Response at 2.

⁹ *Id.*

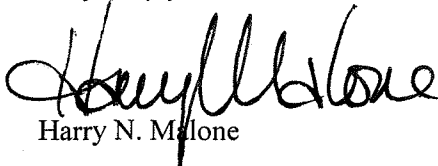
Debra A. Howland
February 14, 2013
Page 3

of Verizon ever conceding that the tariff was not an SGAT. Certainly, FairPoint makes no concession.

Finally, in the CANNE Objection, CANNE asserts that FairPoint cannot seek the protection of the federal rules regarding SGAT because, among other reasons, "FairPoint has agreed to assume all of Verizon's wholesale obligations."¹⁰ However, it is important to emphasize a point that opposing parties often tend to overlook: FairPoint inherited all of the Verizon's *rights* as well. This includes all rights under the Communications Act and New Hampshire statutes, including the preemptive effect of federal law when state law conflicts.

A compact disk containing the motion is also enclosed.

Very truly yours,



Harry N. Malone

HNM:aec

Enclosures

cc: Electronic Service List

¹⁰ CANNE Objection at 3.