

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**In re Northern New England Telephone
Operations, LLC — Tariff Filing to
Implement Certain Provisions of the Order
on Remand**

DT 12-337

**CANNE’S COMMENTS SUPPORTING
EXTENSION OF THE TRANSITION PERIOD
FOR RECLASSIFIED WIRE CENTERS**

The CLEC Association of Northern New England, Inc. (“CANNE”) supports the Commission’s proposal to extend the transition period for UNEs affected by any reclassifications of wire centers in this docket. Order Granting Motion for Rehearing and Partially Granting Motion for Reconsideration, Order No. 25,514, at 8 (May 28, 2013) (“Reconsideration Order”).

This is a unique circumstance that has created extraordinary issues for CANNE’s members and other potentially affected carriers. In practical effect, CANNE’s members are faced with a transition period of only about *ten weeks* from the date of the Reconsideration Order¹ for DS1 and DS3 transport, and eight and one-half months for dark fiber interoffice transport UNEs, instead of the seven- and thirteen-month periods that the Commission established in DT 06-020. *In re Verizon New Hampshire — Supplemental Wire Centers Qualifying for Relief from Certain Unbundled Services*, DT 06-020, Order Classifying Wire Centers and Establishing Transition Periods, Order No. 24,723, at 15 (Jan. 5, 2007) (“Transition Order”).

¹ And about six weeks from today.

CANNE's members are particularly concerned that as of August 15th, they might be required to transition to other, non-UNE services or, worse, that their existing UNEs will be discontinued. This raises the prospect of service interruptions to CANNE members' customers and expenditures of time, effort, and money that cannot be recovered in the event that FairPoint's reclassifications turn out to be incorrect. And, based on the information adduced in this docket to date, as well as its experience in the other Northern New England states, CANNE believes that a substantial number of the proposed 28 reclassifications will be found incorrect.

Therefore, while the Staff is conducting the investigation that the Commission ordered in the Reconsideration Order and the Commission is deciding the issues, the best and fairest course of action is for the Commission to extend the transition period and order that no existing UNE may be discontinued or converted to another service until the extended transition period ends.

The Transition Period and Its Effect. The transition period begins upon reclassification of a wire center. During the transition period, FairPoint may charge a rate of 115% of the established UNE rate for the facilities. At the end of the transition period, competing character carriers are "to transition to alternative facilities or arrangements, including self-provided facilities, alternative facilities offered by other carriers, or special access services offered by the incumbent LEC." TRRO ¶ 142.

The FCC found that a longer transition period was appropriate for dark fiber transport than for DS1 or DS3 transport. Significantly, the longer transition period was needed "because incumbent LECS offer no tariff services comparable to dark fiber." *Id.* ¶ 144. As a consequence, "the risk of service disruption is significantly higher than for DS3 and DS1 unbundled transport, for which comparable service offerings are available under tariff." *Id.*

In light of these considerations, the Commission established transition periods of 7 months for DS1 and DS3 dedicated transport UNEs and 13 months for dark fiber transport UNEs. Transition Order at 15.

Problems If the Transition Period Remains Unchanged. The prospect of service disruptions due to discontinuance of existing UNE facilities or transition to alternative arrangements is a major concern to CANNE's members.

Other risks include significant costs of time, effort, expense, and lost revenues associated with the discontinuance of facilities and transition to alternative arrangements. The prospects of recovering expenses related to reconfiguring a network or revenue losses from service disruptions are uncertain at best. To the extent that a network has been reconfigured or facilities have been redeployed and reused for other services or purposes, it might not be possible to restore the network back to its original configuration in the event that the Commission determines that FairPoint's reclassification was in error.

This is not a trivial concern. Based on CANNE's recent experience, the probability of error is substantial. In Maine, FairPoint's November 16, 2012 accessible letter announced the reclassification of seventeen wire centers (Attachment 1). As the result of Maine Commission scrutiny at the request of CANNE, FairPoint determined that its initial reclassifications were not supportable and has revised its list downward. As a result, on June 11, FairPoint issued a new accessible letter listing four reclassified wire centers (Attachment 2).²

As the Commission recognizes, in New Hampshire, "[t]he evidence of impairment is conflicting." Reconsideration Order at 8. The Staff's investigation required by the Reconsideration Order has gotten under way, and the level of accuracy of FairPoint's New Hampshire reclassifications remains to be determined. Nonetheless, if FairPoint's error rate were

² The Maine Commission has not approved FairPoint's resubmitted list. Therefore, the list could change.

75% in New Hampshire as it was in Maine, that would mean that 21 out of 28 New Hampshire wire centers were reclassified in error.

Extending the Transition Period is Sensible and Fair. The Commission's suggestion of extending the transition period in the unique circumstances presented here is sensible and fair. CANNE's members find themselves in a situation that is not of their making. CANNE's members have devoted substantial time, effort, and money seeking to ensure that FairPoint's wire center reclassifications are legally and factually justified. CANNE's members are particularly concerned that some effects of an erroneous reclassification will not be easy to undo. Extending the transition period will reduce (but not eliminate) irreversible losses of time, effort, money, and access to facilities resulting from unnecessary transitions off facilities or services at wire centers that the Commission ultimately determines will not be reclassified. In particular, maintaining the status quo, at least in terms of facilities and services currently being provided, will prevent the harms that could result from service disruptions to customers during reconfiguration of networks or transfers of service.

The Commission has the authority to modify its prior orders. RSA 365:28. That provision is to be "liberally construed." *Appeal of the Office of the Consumer Advocate*, 134 N.H.651, 657 (1991); *Meserve v. State*, 119 N.H. 149, 152 (1979). Modifying the Transition Order in the particular and unique circumstances of this docket by extending the applicable transition periods will reduce the irreversible effects and unrecoverable losses that CANNE's members potentially will suffer.

CANNE believes that an appropriate solution would be to extend the transition period by applying the seven- and thirteen-month periods of the Transition Order beginning from the date of a Commission order approving any reclassification.

Transition periods beginning earlier than that will not fully serve their purpose. The Commission has set August 1 as the deadline for the Staff to complete its investigation of the proposed reclassifications. That will not be the end of the matter; the Commission must issue an order regarding the reclassifications. Summer schedules and the time necessary for the Commission's decisionmaking must be factored in. Any transition periods must take into account the time necessary for these processes to run their course. If transition periods begin to run from a date earlier than Commission approval of a reclassification, CANNE's members will face transition periods that in reality are significantly shorter than those established by the Transition Order.

In addition, CANNE's members potentially face months of 15% transition-period surcharges in the wire centers ultimately found to be reclassified.³ Again, this is the result of a situation not of their making; CANNE's members believed the rejection of FairPoint's reclassification tariff meant that they would not be subject to the surcharges. Under the circumstances, it would be appropriate to adjust any such surcharges so that they begin on a date later than January 15th.

³ Any such surcharges in wire centers found not to be subject to reclassification should be nullified, and if they have been collected, refunded.

Conclusion

For the reasons set forth above, the Commission should implement its suggestion to extend the transition periods in this case as outlined above.

June 28, 2013

Respectfully Submitted,

A handwritten signature in black ink, reading "Gregory M. Kennan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
gmk@fhllplaw.com



1 Davis Farm Road
Portland, ME 04103

Industry Notification – Accessible Letter

Date:	November 16, 2012	Number: TRF 0007-11162012
Effective Date	November 16, 2012	Category: Tariff
Subject:	ME Wire Center Reclassifications- Implementation of FCC Order on Remand - REVISED	
Related Letters:	TRF 0003-11082012, TRF 0006-11092012	
Attachments:	N/A	
Target Audience	IXC, CLEC, Wireless, UNE	
Area Impacted:	Maine	
Wholesale Customer Response deadline:	N/A	
Contact:	Send all Questions to your Service Manager	
Conference Call/Meeting:	N/A	

Dear FairPoint Communications Wholesale Customer:

This Accessible Letter amends Accessible Letter TRF 0006-11092012, issued on November 9, 2012. This letter is to notify CLECs (Competitive Local Exchange Carriers) in Maine of the reclassification of certain wire centers in accordance with the Federal Communications Commission ("FCC") on February 4, 2005, in WC Docket No. 04-313 and CC Docket No. 01-338 (the "Triennial Review Remand Order"), the regulations promulgated by the FCC pursuant to that order, and certain provisions of Order No. 24,598 issued by the Maine Public Utilities Commission on April 19, 2007, in Docket 2002-682. Pursuant to these orders and regulations, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") will not provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport as defined in 47 C.F.R. § 51.319(e)(1) **to an extent beyond that required by 47 C.F.R. § 51.319(e)(2)**. Pursuant to the FCC's Rules, FairPoint has revised the classification of the following list of wire centers which now are designated non-impaired, based on the number of fiber-based collocators in these wire centers.

Wire Centers Non-Impaired 11-8-12 – Yes or No				
Wire Center	Tier 1	Tier 2	DS1 LOOP	DS3 LOOP
AGSTMEST	Yes	Yes	No	No
BNGRMEPA	Yes	Yes	No	No
BDFRMEJE	Yes	Yes	No	No
BRWKMEEV	Yes	Yes	No	No
ELWOMEMA	Yes	Yes	No	No
LSTNMEAS	Yes	Yes	No	No
PTLDMEFO	Yes	Yes	No	Yes
SCBOMEBP	Yes	Yes	No	No
RKLDMELI	Yes	Yes	No	No



Wire Center	Tier 1	Tier 2	DS1 LOOP	DS3 LOOP
SPLDMEES	Yes	Yes	No	No
WTVLMEAP	Yes	Yes	No	No
WSBKMEAS	Yes	Yes	No	No
SNFRMECH	Yes	Yes	No	No
NDRGMEAU	No	Yes	No	No
CMDNMEEL	No	Yes	No	No
BATHMEHI	No	Yes	No	No
BLFSMEWA	No	Yes	No	No

Transition-

DS1 Dedicated Transport- Effective thirty days from the date of this letter, any DS1 dedicated transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(ii)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the applicable rates in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 6 months. After 6 months, the CLEC will no longer be eligible to receive the unbundled DS1 dedicated transport network element.¹

DS3 Dedicated Transport- Effective thirty days from the date of this notice, any DS3 dedicated transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 and/or Tier 2 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(iii)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the applicable rates in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 6 months. After 6 months, the CLEC will no longer be eligible to receive the unbundled DS3 dedicated transport network element.²

Dark Fiber Transport- Effective 30 days from the date of this notice, any dark fiber transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 and/or Tier 2 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(iv)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the applicable rate in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 12 months. After 12 months, the CLEC will no longer be eligible to receive the unbundled dark fiber dedicated transport network element.

Post-transition Arrangements- CLECs that have unbundled DS1 dedicated transport arrangements, DS3 dedicated transport arrangements, or dark fiber transport in place at

¹ Pursuant to Paragraph 85 of the Triennial Review Remand Order, EELs with these transport elements are subject to the same treatment.

² Pursuant to Paragraph 85 of the Triennial Review Remand Order, EELs with these transport elements are subject to the same treatment.



the end of the transition periods described above, must discontinue such arrangements or convert them to alternative serving arrangements, where such alternative arrangements are available from FairPoint. Orders for such discontinuance or conversion must be placed early enough, in light of the applicable provisioning intervals, to ensure that the orders can be fulfilled by the end of the transition period. If the CLEC does not place timely orders to discontinue or convert any such unbundled dark fiber loop or unbundled dedicated transport arrangements by 30 days prior to the end of the transition period, the arrangements will be disconnected at the end of the transition period.³

Ordering new unbundled network elements- Pursuant to the Triennial Review Remand Order, any requesting carrier seeking access to dedicated transport between wire centers designated non-impaired, "must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the [impairment] requirements . . . and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3)."⁴ Accordingly, as of this date, no order will be accepted without such self-certification. Furthermore, FairPoint will consider invalid any self-certified order for unbundled DS1 dedicated transport arrangements, DS3 dedicated transport arrangements, or dark fiber transport from any of the above listed wire centers, notwithstanding any self-certification, unless the CLEC has established a good faith basis, based on verifiable criteria, to assert that FairPoint's list of non-impaired wire centers is incorrect. Nevertheless, in accordance the Triennial Review Remand Order, FairPoint will process and provision self-certified orders and then initiate appropriate legal and regulatory dispute actions for every such order.⁵ If the resolution of the dispute determines that the wire center in question is non-impaired then, along with any other relief that may be granted, FairPoint's month-to-month commercial rates, terms and conditions will be applied retroactively and henceforth to any DS1 or DS3 dedicated transport arrangements, and all dark fiber arrangements will be disconnected.

CLECs in the first instance shall be required to self-certify using the "Remarks" field of the ASR submitted to FairPoint.

Should you have any questions or require additional information please feel free to reach out to your Service Manager.

³ This includes EELs containing these transport elements.

⁴ See *Order on Remand*, FCC Docket No. 01-338 (February 4, 2005) para. 234.

⁵ See *id.*



1 Davis Farm Road
Portland, ME 04103

Industry Notification – Accessible Letter

Date:	June 11, 2013	Number: TRF 0011-06112013
Effective Date	June 11, 2013	Category: Tariff
Subject:	ME Wire Center Reclassifications- Implementation of FCC Order on Remand - REVISED	
Related Letters:	TRF 0003-11082012, TRF 0006-11092012, TRF 0007-11162012	
Attachments:	N/A	
Target Audience	IXC, CLEC, Wireless, UNE	
Area Impacted:	Maine	
Wholesale Customer Response deadline:	N/A	
Contact:	Send all Questions to your Service Manager	
Conference Call/Meeting:	N/A	

Dear FairPoint Communications Wholesale Customer:

This letter is to notify CLECs (Competitive Local Exchange Carriers) in Maine of the implementation of certain provisions of the Order on Remand issued by the Federal Communications Commission ("FCC") on February 4, 2005, in WC Docket No. 04-313 and CC Docket No. 01-338 (the "Triennial Review Remand Order"), the regulations promulgated by the FCC pursuant to that order, and certain provisions of Order No. 24,598 issued by the Maine Public Utilities Commission on April 19, 2007, in Docket 2002-682 and subsequent activity in Docket 2012-00570. ON November 16, 2012, in a revised accessible letter notified CLECs of its designation of certain wire centers as non-impaired. Based on activity that has occurred in Docket 2012-00570 FairPoint has revised its designations to remove certain wire centers to which parties dispute their status as fiber based collocators.

Wire Centers Non-Impaired 06-11-13 – Yes or No

Wire Center	Tier 1	Tier 2	DS1 LOOP	DS3 LOOP
<i>BNGRMEPA</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>No</i>
<i>BDFRMEJE</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>No</i>
<i>BRWKMEEV</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>	<i>No</i>
<i>PTLDMEFO</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>

Transition-

DS1 Dedicated Transport- Effective the date of this notice, any DS1 dedicated transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(ii)(A), shall be available for lease from FairPoint at a rate equal



to 115 percent of the applicable rates in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 6 months. After 6 months, the CLEC will no longer be eligible to receive the unbundled DS1 dedicated transport network element.¹

DS3 Dedicated Transport- Effective the date of this notice, any DS3 dedicated transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 and/or Tier 2 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(iii)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the applicable rates in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 6 months. After 6 months, the CLEC will no longer be eligible to receive the unbundled DS3 dedicated transport network element.²

Dark Fiber Transport- Effective the date of this notice, any dark fiber transport or network element that a CLEC leased prior to the date of this notice from FairPoint between any Tier 1 and/or Tier 2 wire centers, but which FairPoint is not obligated to unbundle pursuant to 47 C.F.R. § 51.319(e)(2)(iv)(A), shall be available for lease from FairPoint at a rate equal to 115 percent of the applicable rate in the interconnection agreement between a CLEC and FairPoint for the UNE DS1 dedicated transport element for a period of 12 months. After 12 months, the CLEC will no longer be eligible to receive the unbundled dark fiber dedicated transport network element.

Post-transition Arrangements- CLECs that have unbundled DS1 dedicated transport arrangements, DS3 dedicated transport arrangements, or dark fiber transport in place at the end of the transition periods described above, must discontinue such arrangements or convert them to alternative serving arrangements, where such alternative arrangements are available from FairPoint. Orders for such discontinuance or conversion must be placed early enough, in light of the applicable provisioning intervals, to ensure that the orders can be fulfilled by the end of the transition period. If the CLEC does not place timely orders to discontinue or convert any such unbundled dark fiber loop or unbundled dedicated transport arrangements, the arrangements will be disconnected at the end of the transition period.³

Should you have any questions or require additional information please feel free to reach out to your Service Manager.

¹ Pursuant to Paragraph 85 of the Triennial Review Remand Order, EELs with these transport elements are subject to the same treatment.

² Pursuant to Paragraph 85 of the Triennial Review Remand Order, EELs with these transport elements are subject to the same treatment.

³ This includes EELs containing these transport elements.