

**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 OBJECTION TO FAIRPOINT'S MOTION  
FOR REHEARING AND/OR RECONSIDERATION  
OF ORDER NO. 25,456**

The CLEC Association of Northern New England, Inc. ("CANNE") objects to the motion of Northern New England Telephone Operations LLC ("FairPoint") for rehearing and/or reconsideration of the January 17, 2013 order in this docket, in which the Commission appropriately dismissed FairPoint's attempt to reclassify certain wire centers.

**Discussion**

**I. The Commission Should Reject FairPoint's Attempt to Circumvent Long-Established Procedure.**

**A. The Wholesale Tariff Is a Tariff.**

The Commission should reject FairPoint's attempt to transform the wholesale tariff into something that it is not. FairPoint's motion ignores a decade of history, a history that includes at least two major agreements that FairPoint and its predecessor, Verizon, made with the Commission regarding the wholesale tariff.

In 2002, as part of its application to obtain approval under § 271 of the Telecommunication Act to enter the long-distance market in New Hampshire, FairPoint's predecessor, Verizon, agreed to "explicitly convert the existing SGAT [Statement of Generally

Available Terms and Conditions] into a CLEC [Competitive Local Exchange Carrier] tariff from which competitors may directly order anything contained in the SGAT, without the need to negotiate an interconnection agreement or amend an interconnection agreement.” *In re Application of Verizon New England Inc., d/b/a Verizon New Hampshire, for a Favorable Recommendation to Offer InterLATA Service Under 47 U.S.C. § 271*, DT 01-151, Secretarial Letter dated June 14, 2002, at p. 2, Condition 1. The Commission approved Verizon’s wholesale tariffs (then known as Verizon’s Tariff No. 84 and 86) by order *nisi* issued in June, 2004. *In re Verizon New Hampshire — Section 271 Inquiry; Conversion of Statement of Generally Available Terms and Conditions to a Tariff*, DT 01-151, Order Nisi Approving Revisions to Tariff 84 and New Tariff 86, Order No. 24,337 (June 18, 2004).

Nearly two years later, the Commission issued an order regarding Verizon’s proposed reclassification of wire centers under the *Triennial Review Remand Order*. *In re Verizon New Hampshire — Wire Center Investigation*, DT 05-083, Order Classifying Wire Centers and Addressing Related Matters, Order No. 24,598 (March 10, 2006). In that order, the Commission noted its objective “to verify the reasonableness of Verizon’s determinations with respect to wire center classifications pursuant to the *TRRO* and FCC rules and, where feasible, to clarify the appropriate guidelines and procedures for determining any future changes in wire center impairment classifications that may arise under the terms of the *TRRO*.” *Id.* at 34. The Commission, noting that CLECs in New Hampshire were allowed to obtain services from Verizon under the wholesale tariff without the need to enter an interconnection agreement, determined that it would review Verizon’s proposed wire center reclassifications as an amendment to the wholesale tariff. *Id.* With respect to future reclassifications, “Going forward, we find that, for the purposes of Tariff 84, the reclassification of any wire center shall be

effective on the date the Tariff 84 revisions reflecting such reclassification are approved by this Commission.” *Id.* at 48.

Verizon sought clarification of a very limited aspect of the Commission’s ruling that future wire center classifications would take effect only upon the approval of amendments to the wholesale tariff — the applicability of that ruling to a supplemental proposed reclassification that Verizon had announced during the pendency of DT 05-083. *In re Verizon New Hampshire — Wire Center Investigation*, DT 05-083, Verizon New Hampshire’s Motion for Reconsideration, Rehearing and/or Clarification, and Opposition to Conversent et al. Motion for Reconsideration, at 15-16 (filed Apr. 4, 2006).<sup>1</sup> Other than with respect to those specific pending reclassifications, however, “Verizon NH does not take issue with the Commission’s determination concerning the effective date of future classifications.” *Id.* at 15.

Accordingly, seven years ago, it was established as the law in New Hampshire and as part of the body of wholesale obligations of Verizon that future wire center reclassifications would be considered and reviewed as amendments to the wholesale tariff.

Two years later, FairPoint acquired Verizon’s operations in New Hampshire. As part of that transaction, “FairPoint has agreed to assume *all* of Verizon’s wholesale obligations.” *In re Verizon New England, Inc. et al. — Petition for Authority to Transfer Assets and Franchise*, DT 07-011, Order Approving Settlement Agreement with Conditions, Order No. 24,823, at 73 (Feb. 25, 2008) (emphasis added).

Thus, FairPoint’s obligation to propose and obtain approval for wire center classifications through the mechanism of amendments to the wholesale tariff is the product of no less than two

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<sup>1</sup> <http://www.puc.nh.gov/Regulatory/CaseFile/2005/05-083/MOTIONS/Verizon%20Motion%20for%20Reconsideration%20Rehearing%20and%20Clarification%20of%20Order%2024,598%2004-04-06.pdf>.

agreements with the Commission: Verizon's agreement, applicable to FairPoint as Verizon's successor, to convert the SGAT to a wholesale tariff, and FairPoint's agreement to assume all of Verizon's wholesale obligations.

In light of FairPoint's agreements, the Commission need not tarry long over FairPoint's convoluted arguments regarding the meaning of the wholesale tariff. The wholesale tariff is a tariff.

**B. FairPoint Must Justify Its Proposed Tariff Revisions.**

Since wire center reclassifications are to be submitted, reviewed, and evaluated as proposed changes to FairPoint's wholesale tariff, it is incumbent on FairPoint to justify the relief it seeks. N.H. Admin. Rules Puc 203.25. The Commission may and does require that FairPoint — like other utilities that file tariff amendments — provide “information . . . sufficient to enable the commission to properly evaluate the proposed change in tariff.” Puc 1605.02(c). Unless and until all such information is provided, the filing is not deemed complete. *Id.* § 1605.02(e).

CANNE has not been permitted to see what supporting documentation FairPoint submitted along with its proposed tariff amendments. However, FairPoint states in its motion that it provided the names of alleged fiber-based collocators. If that is the extent of the documentation on which FairPoint relies, it is woefully deficient. To be deemed a “fiber-based collocator,” an entity must satisfy a number of criteria. DT 05-083, Order Reclassifying Wire Centers, at 3-4. The absence of any one of those criteria disqualifies a collocator as a fiber-based collocator. FairPoint's submission of the names of collocators, without more, does not provide justification for the Commission to determine that a collocator is a fiber-based collocator. In addition, as the Staff recommendation pointed out, the discovery taken to date shows that there is substantial disagreement over the accuracy of FairPoint's proposed reclassifications. January

17<sup>th</sup> Order at 4-5.<sup>2</sup> The Commission, therefore, was correct in determining that FairPoint's submission was insufficient for a determination whether any entity was a "fiber-based collocators" for purposes of wire center reclassification.<sup>3</sup>

## **II. Time Frames Should Be Based on the Commission's Publicly-Announced Filing Date.**

The Commission has publicly posted in the Docketbook section of the Commission's web site an image of FairPoint's tariff filing bearing a stamp that states: "Received, November 19, 2012." The 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. FairPoint has not demonstrated why the time period for review of its proposed tariff revisions should not run from the receipt date indicated in Docketbook.

In addition, if the issue is whether FairPoint's filing went into effect automatically, the balance of prejudices strongly disfavors FairPoint. As noted, the discovery responses to date cast substantial doubt on FairPoint's claims regarding CANNE members' status as fiber-based collocators. It is fair to assume that the results would be the same for collocators who are not CANNE members. Therefore, there is every reason to believe that FairPoint's reclassification is in error. To allow an erroneous filing to go into effect would only require the Commission to undo the errors later. It is far more efficient and effective to reject the filing and allow the Commission to undertake a fair and appropriate investigation of the substantive validity of FairPoint's proposed reclassifications.

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<sup>2</sup> All CANNE members had fully responded to FairPoint's discovery requests on or before January 9, 2013.

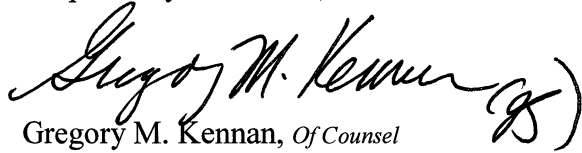
<sup>3</sup> FairPoint's reliance on *Covad Communications Co. v. FCC*, 450 F. 3d 528 (D.C. Cir. 2006), is misplaced and its quotation from that case is out of context and inapposite. In *Covad*, the D.C. Circuit upheld the TRRO. The language FairPoint quotes appears in a section rejecting a challenge to the FCC's determination, on a nationwide basis, that mass-market local switching no longer would be subject to unbundling. It has nothing to do with the Commission's review of a tariff amendment proposed by FairPoint and subject to review by the Commission.

**Conclusion**

For the reasons set forth above, the Commission should deny FairPoint's motion for rehearing and/or reconsideration, and should proceed with the reasonable, deliberate inquiry into wire center classifications outlined in its January 17<sup>th</sup> order.

February 12, 2013

Respectfully Submitted,

A handwritten signature in cursive script that reads "Gregory M. Kennan" followed by a stylized initial or flourish in parentheses.

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](mailto:gmk@fhllplaw.com)