

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 11-061

**FairPoint Communications, Inc. Petition for
Approval of Simplified Metrics Plan and Wholesale Performance Plan**

MOTION TO ALTER ORDER NO. 25,623

Pursuant to RSA 365:28, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”), hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to alter Order No. 25,623 dated January 24, 2014 (the “WPP Approval Order”) to extend the time for the filing of a complete Wholesale Performance Plan. In support of this Motion, FairPoint states as follows:

I. INTRODUCTION AND BACKGROUND

On October 11, 2013, FairPoint and certain competitive local exchange carriers (“CLECs”) filed a Joint Motion for Expedited Approval of Wholesale Performance Plan Stipulation and Settlement Agreement (“Joint Motion”). The Motion requested that the Commission approve the Wholesale Performance Plan (“WPP”) and resolve three outstanding issues among the parties. In the WPP Approval Order, the Commission approved the WPP and issued decisions on the three outstanding issues. In its ordering clauses, the Commission directed that the “Joint Movants shall file a revised version of the complete Wholesale Performance Plan, modified based on the conditions of this Order and specifying the effective date of the Plan, within 30 days of the date hereof,” which date would be on or before February 24, 2014.

II. STANDARD OF REVIEW

RSA 365:28 provides that:

At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the commission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held.

This statute should be “liberally construed”¹ and the Commission’s authority under this statute is limited only in that the modification must satisfy the requirements of due process and be legally correct.²

III. DISCUSSION

As the Commission is aware, the negotiation of the WPP is a three-state process in which the parties seek to arrive at a standard WPP across the states of Maine, New Hampshire, and Vermont. On the same day that the parties filed the Joint Motion in New Hampshire, substantially identical motions were filed in Maine and Vermont. Those two states have yet to issue decisions on those motions.

FairPoint respectfully requests that the Commission alter the WPP Approval Order to require the parties to file the complete revised version of the WPP within 30 days of the last order issued in response to the Maine and Vermont motions. This request is justified for two reasons. First, the parties will be able to develop a single, more easily administered, document that incorporates the directives of all three state regulators, and which can be submitted to the state regulators at the same time and with a single effective date.³ This conformity will serve the interests of all parties and will contribute to the orderly and efficient resolution of matters before

¹ Meserve v. State, 119 N.H. 149 (1979).

² Appeal of Office of Consumer Advocate, 134 N.H. 651 (1991).

³ To the extent any provisions differ among states, those differences can be still segregated by state within the single, comprehensive document.

the commission.

Second, FairPoint has filed, contemporaneously with this Motion, a Motion for Rehearing or Clarification of the WPP Approval Order. In the Motion for Rehearing, FairPoint has asked the Commission to reconsider or clarify certain decisions, as well as decide certain issues that the Commission overlooked. It is highly likely that, however the Commission disposes of the Motion for Rehearing, this will affect the final language in the WPP. Accordingly, it is in the interest of administrative economy for the Commission to grant an extension of time for at least some period after it decides the Motion for Rehearing, if not for the requested period of time following decisions by all three states.

FairPoint submits that, pursuant to RSA 365:28, no hearing is necessary on this motion, as the WPP Approval Order itself was issued without a hearing. FairPoint also represents that it has conferred with counsel for those CLECs who were parties to the Joint Motion, and that they do not assent to this request.

IV. CONCLUSION

For the reasons described herein, FairPoint respectfully requests that the Commission alter its Order No. 25,623 to extend the time for the filing of a complete Wholesale Performance Plan.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC, D/B/A
FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,
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Dated: February 19, 2014

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