

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 18, 2012

AT (OFFICE): NHPUC

FROM: David J. Shulock, Staff Attorney 
SUBJECT: Docket DT 12-337 – Confidential Material

TO: Commissioners
Executive Director
General Counsel

On November 19, 2012, Northern New England Telephone Operations LLC d/b/a FairPoint Communications — NNE (FairPoint) filed a revision of its wholesale tariff NHPUC No. 2. The revision pertains to interoffice transport facilities and would reclassify a number of FairPoint's wire centers as "unimpaired" under federal law. The result of the reclassification would be that FairPoint would no longer be required to offer dark fiber, DS1, or DS3 transport between the reclassified wire centers as an unbundled network element.

The Commission has the authority to verify that FairPoint has properly identified the wire centers as unimpaired in accordance with the criteria set forth by the Federal Communications Commission ("FCC") in an order formally entitled *In the Matter of Unbundled Access to Network Elements*, 20 F.C.C.R. 2533 (Feb. 4, 2005), commonly referred to as the *Triennial Review Remand Order* ("TRRO"). These criteria have since been codified at Part 51 of Title 47 of the Code of Federal Regulations. The pertinent criterion here is whether each of the wire centers designated by FairPoint has at least four qualifying fiber-based collocators.

In support of its filing, FairPoint provided a list of companies with collocated facilities at each designated wire center. Based on the process developed in Docket No. DT 05-083, Commission Staff believe that it is important to independently verify the accuracy of FairPoint's designations by conducting discovery of the listed collocators. This discovery presents a number of challenges. First, FairPoint claims that the list of collocators constitutes commercially sensitive information and trade secrets, and has submitted the list on a confidential basis. Commission Staff is aware that collocators have considered such information to be competitively sensitive and confidential vis-à-vis each other. Second, the collocators listed by FairPoint are not parties to the docket.

Commission Staff would like to issue written requests to the non-party collocators identified in FairPoint's filing. It is all but certain that these collocators will consider their association with particular wire centers to be commercially sensitive and will request confidential treatment of information requested by Staff, particularly information about the types of facilities they maintain. Rather than require that each collocator

submit a motion for confidential treatment pertaining to substantially similar information, Staff recommends that the Commission, pursuant to Puc 201.04 and 201.05, waive the requirement that the collocators submit a motion for confidential treatment, and establish a procedure for addressing the confidential information submitted with these filings. In particular, Staff recommends that the Commission order that:

- For each request, Staff prepare:
 - A public version redacting any information identifying the collocator to whom the request is made; and
 - A confidential version that includes identifying information.

- For any collocator responding to Staff's requests, the collocator must provide:
 - A public version of the filing redacting any information identifying the collocator but otherwise showing all information requested by Staff; and
 - A confidential version of the filing showing all information requested, including any identifying information.

Each collocator must provide public and confidential copies to Staff, FairPoint, and the Office of Consumer Advocate. Pursuant to Staff's request, the confidential version of the filing would be held as confidential without a collocator being required to submit a motion for confidential treatment.

Additionally, FairPoint has filed confidential discovery requests on some, but not all collocators. FairPoint has indicated that it intends to file a motion for confidential treatment. Staff does not intend to duplicate this discovery. Staff recommends that the Commission similarly waive the filing of a motion for confidential treatment of the discovery that has been propounded by FairPoint, and order that the discovery be treated in the same manner as described above.