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# STATE OF NEW HAMPSHIRE

## Inter-Department Communication

DATE: October 3, 2013

AT (OFFICE): NHPUC

FROM: <sup>KB</sup> Kate Bailey and <sup>ML</sup> Michael Ladam

SUBJECT: Report of Staff Investigation of Fiber-Based Collocators in DT 12-337

TO: Commission  
Executive Director

**Executive Summary:** In this memo Staff recommends the Commission approve reclassification of the Keene, Dover, Nashua, Portsmouth, Salem and Hanover wire centers as proposed by FairPoint in its August 9, 2013 filing and recommends the commission reject reclassification of the Durham wire center. Staff also recommends approving extension of the transition period for DS1 and DS3 transport as proposed by FairPoint in the August 9, 2013 filing and recommends an additional 6 months to the transition period for dark fiber.

On November 16, 2012, Northern New England Telephone Operations LLC (FairPoint) filed revisions to its NHPUC Tariff No. 2 proposing to classify 24 additional wire centers and reclassify another 3 wire centers as fully or partially "unimpaired" pursuant to Federal Communications Commission (FCC) rules regarding competition levels and Unbundled Network Element (UNE) obligations. The tariff went into effect by operation of law on January 15, 2013, without a determination by the Commission on whether these wire centers meet the criteria necessary to be classified as unimpaired. On August 9, 2013, FairPoint filed further revisions to this tariff reclassifying 20 of the 27 wire centers to their previous status.

Pursuant to FCC regulations, the determination of whether a wire center is classified as impaired (Tier 3), partially impaired (Tier 2), or fully unimpaired (Tier 1) is based on the number of "fiber-based collocators" (FBCs) operating in that wire center. Wire centers with four or more FBCs are classified as Tier 1, those with three FBCs are classified as Tier 2, and those with fewer than three FBCs are classified as Tier 3. (Wire center impairment classifications may also depend on the number of business lines in the wire center, but that criterion tends to apply to more populous areas and has not been raised by any of the parties in this docket.)

In a discussion between Staff and FairPoint on September 25, 2013, FairPoint reported that Durham raises special issues regarding the status of collocators and agreed to reclassify that wire center to its previous status as fully impaired in this docket. Staff expects FairPoint to file a revision to the August 9 filing, removing Durham from consideration in this docket and possibly make a new filing on the status of the Durham

wire center sometime in the future. None of the carriers named by FairPoint as collocators in Durham confirmed they were collocated on November 16, 2012. Staff has confirmed that 2 of the 4 named collocators did not have lit fiber in Durham on November 16, 2012 and therefore, Durham does not qualify to be reclassified as of that date at this time. Accordingly, Staff recommends the Commission reject reclassification of Durham and focus consideration on the six remaining wire centers including Keene, Dover, Nashua, Portsmouth, Salem and Hanover.

Commission Staff filed a memorandum on August 12, 2013, summarizing the information that its investigation had produced regarding the count of potential FBCs for each of the seven wire centers then at issue, and identifying legal issues that may arise in the Commission's determination of whether a potential FBC meets all the requirements to be considered an FBC and included in the count. On August 15, 2013, the Commission issued a secretarial letter directing FairPoint and the CLEC Association of Northern New England (CANNE) to file briefs on these legal issues and any "other legal precedents or regulatory interpretations" that the Commission should consider in its examination of this docket. FairPoint filed a brief and CANNE filed a response addressing these legal issues on September 9, 2013.

In conducting its investigation, Staff issued two rounds of data requests to potential FBCs identified by FairPoint, specifying that answers should be provided by a responsible individual under oath, and Staff received detailed responses to these data requests from potential FBCs. Staff has worked with the potential FBCs to review and clarify these discovery responses, and has prepared a set of diagrams illustrating the reported fiber-based collocations at each of the six wire centers now under consideration for reclassification (Attachment 1). Staff has confirmed with each potential FBC that these diagrams accurately depict its facilities in the relevant wire centers. Each of these wire centers has a number of potential FBCs sufficient to trigger reclassification as proposed by FairPoint, depending on the Commission's determination of the legal issues mentioned above. Staff believes each of these six wire centers should be reclassified as proposed by FairPoint in its August 9 filing.

In addition to individual wire center classifications, this docket raises a question of what event should trigger the start of a fixed-duration transition period: for example, should the transition period begin on the effective date of the proposed tariff, based on original claims of unimpairment made by the ILEC or on the date the Commission determines unimpairment. Once a transition period for a given wire center starts, carriers using UNE facilities pay a 15% premium for such usage and are expected to develop contingency plans for the loss of those UNE facilities at the conclusion of the transition. Staff notes that, if the original "industry accessible" letter or tariff filing is used as a trigger, more than 75% of the planning that CLECs performed – that is, the planning for 21 of the 27 wire centers originally identified – would have proven unnecessary. In Staff's assessment, that would be an unreasonable burden on the CLECs.

In Order No. 24,598, the Commission found that "for 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.” Tariff 84 was adopted by FairPoint in Docket No. DT 07-011 and replaced with FairPoint’s Tariff No. 2, in a filing dated August 19, 2011.

In its August 9, 2013, filing, FairPoint reduced the wire centers at issue and proposed a new transition schedule ending February 8, 2014 for DS1 and DS3 transport UNEs, but left the dark fiber transition period to end after 13 months from the January effective date. If approved as currently proposed by FairPoint, the transition period would expire on February 8, 2014 for DS1 and DS3 transport and on February 15, 2014, for dark fiber transport.

The Commission considered and addressed transition periods in Order No. 24,723 in Docket No. DT 06-020 and established a 7 month transition period for DS 1 and DS 3 UNEs and a 13 month transition period for dark fiber transport. In addition, the order was specific about when the transition period would begin:

We further find that the applicable transition periods shall begin on the effective date of tariff revisions approved by the Commission. Any effective date for transition set before such a determination could create undue confusion and financial burden if a proposed reclassification is, in fact, not approved.

A transition schedule in this docket should acknowledge the unusual conditions that have arisen due to the tariff taking effect without Commission approval, while giving CLECs a reasonable opportunity to accomplish the work necessary to effect such transition. CLECs had the ability to begin preliminary transition planning in November 2012, and the ability to focus that planning on the six wire centers at issue, starting in August 2013. Although a February, 2014 end to the transition would provide only four months since the expected Commission order, the “extra warning” time that resulted in this situation may justify such compression for DS1 and DS3 transport UNEs. However, the proposed transition period may be too compressed for dark fiber UNEs. In Order No. 24,723, the Commission established an additional 6 month transition for dark fiber because a tariffed alternative is not available for dark fiber. Staff therefore, recommends the transition period for dark fiber be extended an additional 6 months from February 2014, to provide CLECs the reasonable opportunity to make alternate arrangements necessary for dark fiber, as contemplated by Order No. 24,723.

With regard to future dockets, Staff agrees with some commenters that the process for wire center reclassification is unnecessarily burdensome on many, and perhaps all, parties. There are many potential approaches that might offer improvements. Staff is prepared to conduct an investigation into such alternatives but cannot recommend a specific new process at this time. Accordingly, Staff recommends that the Commission require interested parties to work with Staff to develop and recommend an appropriate process to be used in similar proceedings in the future.

# DT 12-337: Collocation Deployments

Version 1.07 of Sept 26, 2013

NHPUC: MCL

## Reading the Diagrams

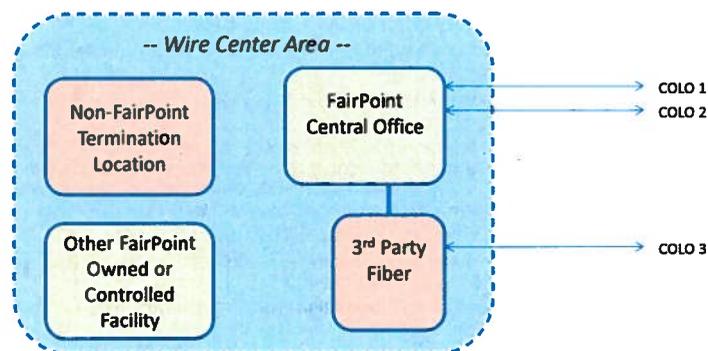
- These diagrams show fiber-based collocations (FBCs) operational as of November 16, 2012, according to discovery responses received to date.
- Each collocation appears as a line, representing a fiber cable, with two terminations.
- One termination is depicted either:
  - At the FairPoint central office, which here includes a connection made at the "manhole 0" vault, or
  - At a third party fiber provider location directly attached to the FairPoint central office – whether the collocator connects its own fiber to the third party fiber, or instead uses dark strand[s] of the third party's fiber pursuant to an "indefeasible right to use" (IRU) agreement with that third party.
- The other termination of the fiber cable is located either:
  - Outside the "wire center area" (meaning, the geographic area served by the central office), for example in a different town; or
  - Inside the wire center area at a location owned or controlled by FairPoint – for example, in a FairPoint building remote from the central office, or on a utility pole, or in a conduit; or
  - Inside the wire center area at a location that is not owned or controlled by FairPoint – for example, a facility owned by the collocator, or owned by a customer of the collocator
- The collocator controls the configuration and operation of the fiber cable or strand(s) between the two termination points

## Confidential Keys

- This slide, and only this slide, contains CONFIDENTIAL information
- Collocator codes:
  1. REDACTED
  2. REDACTED
  3. REDACTED
  4. REDACTED
  5. REDACTED
  6. REDACTED
  7. REDACTED
  8. REDACTED
  9. REDACTED
  10. REDACTED
  11. REDACTED

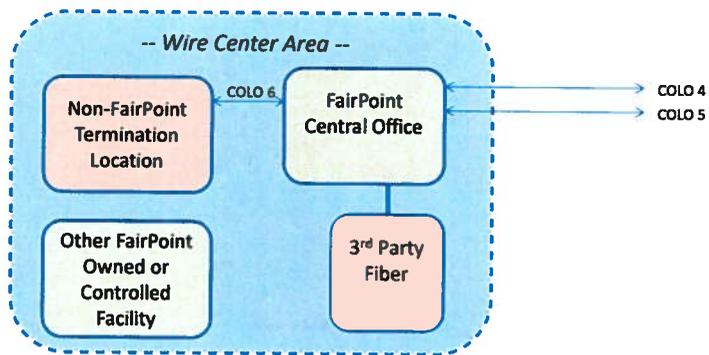
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## Dover: 3 Candidate FBCs



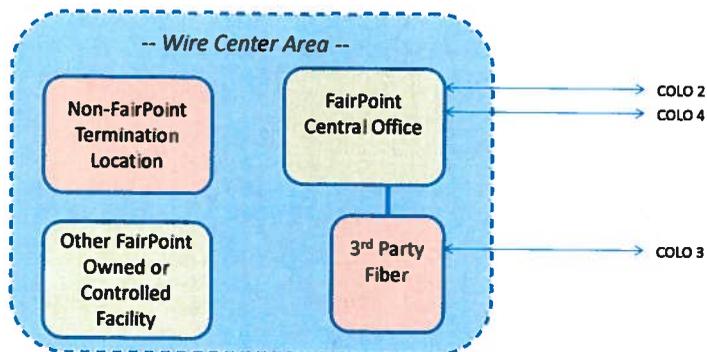
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## Hanover: 3 Candidate FBCs



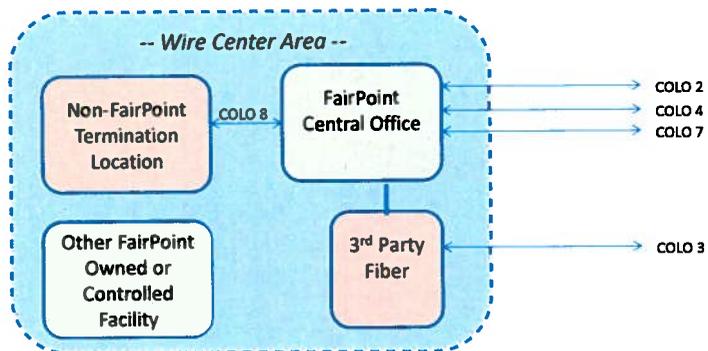
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## Keene: 3 Candidate FBCs



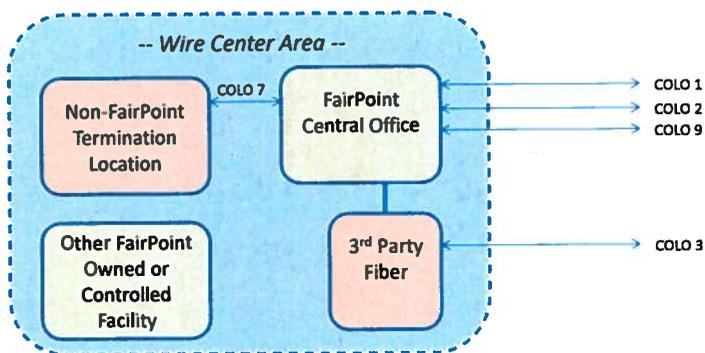
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## Nashua: 5 Candidate FBCs



7

## Portsmouth: 5 Candidate FBCs



8

## Salem: 7 Candidate FBCs

