

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

**DT 14-102**

**WILLIAM G. WHALEN**

**Complaint Against FairPoint Communications, Inc. – Rate Increase Dispute**

**Order Granting Relief Requested in Motion for Rehearing**

**ORDER NO. 25,706**

**August 12, 2014**

In this Order, the Commission grants the relief requested in the Motion for Rehearing filed by FairPoint with respect to the Commission's Order No. 25,679. As a result of this decision, confidential treatment will be afforded to certain company documents regarding customer basic service eligibility that were filed as exhibits in this proceeding, and the Commission clarifies the scope of its determination regarding the effect of long distance service presubscription on basic service eligibility.

**I. PROCEDURAL HISTORY**

On June 26, 2014, the Commission issued Order No. 25,679 (Order on Complaint) which ruled for William G. Whalen (Mr. Whalen) and against FairPoint Communications, Inc. (FairPoint), on a complaint filed by Mr. Whalen regarding rate increases reflected in bills received from FairPoint for two landline services provided to Mr. Whalen's residence. The Commission determined that FairPoint had improperly denied basic service eligibility for the two landlines, contrary to the applicable provisions of RSA 374:22-p, and had increased the charges for the two accounts higher than is allowed under the basic service rate increase caps set forth in RSA 374:22-p, VIII. Accordingly, the Commission ordered FairPoint to provide a refund, plus interest, to Mr. Whalen and his wife for any amounts charged to those two accounts

in excess of the amounts a residential basic service customer would have been charged for each telephone line. In addition, the Commission denied FairPoint's Motion for Confidential Treatment and Request for Protective Order regarding two internal company documents detailing the criteria that determine a customer's eligibility to be charged basic service rates. Those documents were included as Attachments 1 and 2 to Exhibit 9 admitted as evidence in the record of this proceeding (FairPoint Internal Documents).

FairPoint filed a timely Motion for Rehearing of the Order on Complaint (FairPoint's Motion), requesting that the Commission reconsider its decision to deny confidential treatment of the FairPoint Internal Documents and clarify the scope of its conclusion regarding FairPoint's initial position as to the effect of long distance service presubscription on basic service eligibility. FairPoint's Motion included as an attachment a letter from Commission Staff (Staff) assenting to confidential treatment of the FairPoint Internal Documents, subject to certain specified conditions and commitments by FairPoint. No objection to FairPoint's Motion was filed.

## **II. POSITIONS OF FAIRPOINT AND STAFF**

### **A. FairPoint's Motion**

FairPoint requested rehearing of the Order on Complaint on two grounds. First, FairPoint asserted that the Commission's denial of its request for confidential treatment of the FairPoint Internal Documents was impermissible because the Commission "has no authority [under RSA 91-A] to mandate the release of FairPoint's confidential and proprietary information if this information does not pertain to the workings of the Commission." FairPoint's Motion at 3. According to FairPoint, the Commission exceeded its legal authority to require public disclosure

because the mandated “release of the [FairPoint Internal Documents] was solely to inform the public of FairPoint’s conduct - not that of the Commission.” *Id.* at 4.

FairPoint further argued that the Commission’s denial of confidential treatment is unnecessary, acknowledging that basic service eligibility criteria may be included in the information regarding rates, fares, charges, prices, terms, and conditions of end user services required to be posted on FairPoint’s publicly available website under RSA 378:1-a. Based on those two arguments, FairPoint urged the Commission to reverse its decision regarding public disclosure of the FairPoint Internal Documents and to direct FairPoint to engage in discussions with Staff to develop a sufficiently informative web site posting regarding its end user services. The posting would include information regarding basic service eligibility criteria no less comprehensive and detailed than that contained in the FairPoint Internal Documents. FairPoint noted that Staff, without making any concession regarding the merits of FairPoint’s legal arguments, had assented to confidential treatment of the FairPoint Internal Documents, subject to certain specified conditions and commitments by FairPoint.

As a second reason for rehearing, FairPoint referenced the Commission’s conclusion in Section III.2 of the Order on Complaint that FairPoint’s initial position regarding the effect of long distance presubscription on basic service eligibility was legally incorrect. FairPoint requested the Commission clarify whether this legal conclusion covered only presubscription to long distance service provided by a third party or whether the conclusion covered presubscription to any long distance service, including that provided by FairPoint or its affiliates.

## **B. Staff's Stipulation**

As noted above, FairPoint's Motion included as an attachment a letter dated July 25, 2014, confirming Staff's assent to modification of the Order on Complaint to maintain the confidential treatment of the FairPoint Internal Documents, as requested in FairPoint's Motion. In its letter, Staff did not concede the merits of the legal arguments set forth in FairPoint's Motion. Staff's assent is contingent upon FairPoint's commitment to post on its public web site, on an easily navigable web page, information describing its policies regarding basic service eligibility that is at least as comprehensive and detailed as the information contained in the FairPoint Internal Documents. The web site posting must be completed by FairPoint after consultation with, and with the concurrence of, Staff not later than 60 days from the date of filing of FairPoint's Motion.

## **III. COMMISSION ANALYSIS**

Pursuant to RSA 541:3 and RSA 541:4, the Commission may grant rehearing when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011) at 9. Good reason may be shown by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal, *see Dumais v. State*, 118 N.H. 309, 311 (1978), or by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14.

### **A. Confidential Treatment of FairPoint Internal Documents**

In the Order on Complaint, we denied FairPoint's Motion for Confidential Treatment and Request for Protective Order based on our evaluation of the FairPoint Internal Documents under the

three-step balancing test adopted by the New Hampshire Supreme Court. *See, e.g., Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 552-54 (1997); *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008). FairPoint's Motion has brought to our attention two changed circumstances that have caused us to reconsider the application of this balancing test to the FairPoint Internal Documents.

First, FairPoint has effectively conceded it is required to post on its public web site detailed information regarding customer basic service eligibility criteria, as well as its other rates, prices, charges, terms and conditions of end user service, under RSA 378:1-a. Second, FairPoint and Staff have agreed to work together to develop the content and format for this web site posting.

Based on these changed circumstances, we believe the balance has shifted in favor of maintaining the confidentiality of the FairPoint Internal Documents. We will grant FairPoint's request for rehearing on this ground, while directing FairPoint to work with Staff to develop the content and format of information regarding FairPoint's basic service eligibility policies to be posted on its public web site, on an easily navigable web page. The posted information on basic service eligibility criteria and other rates, prices, charges, terms and conditions of end user service must be at least as comprehensive and detailed as the information contained in the FairPoint Internal Documents. Consistent with the stipulation between FairPoint and Staff, the web site posting must be completed by FairPoint after consultation with, and with the concurrence of, Staff not later than 60 days from the date of filing of FairPoint's Motion (i.e., September 23, 2014).

Having decided this issue based on the changed circumstances described in FairPoint's Motion, it is not necessary for us to reach FairPoint's legal arguments regarding confidential treatment of public utility documents, and we therefore decline to do so.

**B. Scope of Legal Conclusion on Effect of Long Distance Presubscription**

In the Order on Complaint, we addressed the specific factual circumstances of the two landlines serving Mr. Whalen's residence. Each of the two accounts includes presubscription to long

distance service provided by AT&T, a third party carrier not affiliated with FairPoint. We stated in Section IV of the Order on Complaint that, in view of the limited record in this proceeding, we had not “decide[d] whether presubscription to long distance service provided by FairPoint, or by any affiliate of FairPoint, renders a customer ineligible for basic service rate classification.” Order on Complaint at 16.

Referencing our conclusion in Section III.2 of the Order on Complaint that FairPoint’s initial position regarding the effect of long distance presubscription on basic service eligibility was legally incorrect, FairPoint’s Motion for Rehearing asks us to clarify whether that legal conclusion covered only presubscription to long distance service provided by a third party such as AT&T, as indicated in Section IV of the Order on Complaint, or whether the conclusion covered presubscription to any long distance service, including that provided by FairPoint or its affiliates.

We hereby clarify that the limitation stated in Section IV of the Order on Complaint, as quoted above, applies as well to the legal conclusion stated in Section III.2 of the Order on Complaint. Based on the limited record developed in this proceeding, we have made no decision on whether presubscription to long distance service provided by FairPoint, or by any affiliate of FairPoint, renders a FairPoint customer ineligible for basic service rate classification.

**Based upon the foregoing, it is hereby**

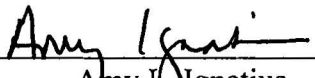
**ORDERED**, that FairPoint’s request for relief is GRANTED; and it is

**FURTHER ORDERED**, that Attachments 1 and 2 to Exhibit 9 shall be afforded confidential treatment, and FairPoint shall not be required to file unredacted copies of said Attachments 1 and 2 to Exhibit 9; and it is


**FURTHER ORDERED**, that FairPoint shall consult with Staff to develop the content and format of information regarding FairPoint’s basic service eligibility policies to be posted on its public web site, on an easily navigable web page, that is at least as comprehensive and

detailed as the information contained in Attachments 1 and 2 to Exhibit 9, which web site posting shall be completed by FairPoint, after consultation with and with the concurrence of Staff, not later than September 23, 2014.

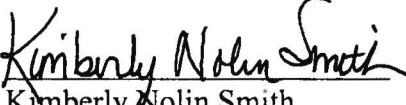
By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 2014.

  
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Amy Ignatius  
Chairman

  
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Robert R. Scott  
Commissioner

  
\_\_\_\_\_  
Martin P. Honigberg  
Commissioner

Attested by:

  
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Kimberly Nolin Smith  
Assistant Secretary