

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 10-025

Motion of
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE
for Interim Suspension of March 31, 2010 Broadband Deployment Deadline
Pending Decision on Regulatory Settlement

1. Pursuant to RSA 365:28, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") hereby moves for an interim suspension of the March 31, 2010 broadband deployment deadline set forth in Order No. 24,823 Approving Settlement Agreement with Conditions, issued February 25, 2008 in DT 07-011 ("Merger Approval Order") which, among other things, adopted the terms of the "Settlement Agreement Among the Joint Petitioners and the Commission Staff," effective January 23, 2008 ("Staff Settlement Agreement" or "SSA"). Specifically, FairPoint requests a suspension of the Broadband Commitment in Section 3.2 of the Staff Settlement Agreement, in which FairPoint committed to provide broadband availability to 85% of its access lines within New Hampshire within 24 months following the merger closing date of March 31, 2008.

2. Since the closing date of the merger, FairPoint has experienced unprecedented and unforeseen financial challenges that eventually led to its October 2009 bankruptcy filing. For the reasons explained below, FairPoint will not be able to meet the April 1, 2010 broadband availability deadline. As part of the "Post Filing Regulatory Settlement - New Hampshire" ("Regulatory Settlement") in DT 10-025, FairPoint has negotiated with the Staff Advocates an

extension of this deadline until December 31, 2010 and has submitted the Regulatory Settlement for approval by the Commission. Pending this approval, FairPoint respectfully requests that the current deadline be suspended.

I. BACKGROUND

3. In Docket No. DT 07- 011, in conjunction with its efforts to obtain approval of the transfer to FairPoint of Verizon New England's assets in New Hampshire, FairPoint entered into the Staff Settlement Agreement. In the Staff Settlement Agreement, FairPoint made a number of commitments and agreed to a number conditions in exchange for the recommendation of the Commission Staff for approval of the transfer. One of these commitments involved the availability of broadband services to customers in New Hampshire. Pursuant to Section 3 of the Staff Settlement Agreement, FairPoint committed to provide broadband availability to 75% of its access lines within 18 months (i.e. October 1, 2009) of the transaction closing date, 85% within 24 months (i.e. April 1, 2010) of the closing date, and 95% within 60 months (i.e. April 1, 2013) of the closing date.

4. This Commission subsequently issued its Merger Approval Order approving, with conditions, the transfer of substantially all of Verizon's landline telephone business in New Hampshire to FairPoint Communications-NNE as a subsidiary of FairPoint.

5. Following the acquisition of the NNE Operations, FairPoint faced significant short- and long-term challenges involving systems development and integration, market erosion, network upgrades. These challenges are described in FairPoint's petition and pre-filed testimony in this Docket.

6. Due to the resulting financial distress, FairPoint attempted over several months to restructure its indebtedness without resorting to bankruptcy proceedings. Ultimately, those

efforts were not successful, and on October 26, 2009, FairPoint and its subsidiaries commenced Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Southern District of New York.

7. During the course of the Chapter 11 Case, FairPoint has engaged in discussions and negotiations with key representatives authorized to negotiate on behalf of the State of New Hampshire, resulting in the Regulatory Settlement. The Office of the Consumer Advocate also participated in those discussions and executed a separate Memorandum of Understanding related to the Regulatory Settlement.

8. As indicated by testimony from a representative of the Staff Advocates, it is reasonable to allow FairPoint additional time to accomplish 85% availability, given the financial difficulties FairPoint experienced in 2009.¹ Consequently, pursuant to the Regulatory Settlement, FairPoint has agreed that following the effective date of its Chapter 11 reorganization plan, FairPoint will, among other things, meet the broadband availability commitments of the original Staff Settlement Agreement, albeit under a revised schedule. Specifically, Sections 2.5.1 - 2.5.5 of the Regulatory Settlement retarget broadband availability commitments scheduled for April 1, 2010, to December 31, 2010, and provide further clarification and specificity regarding broadband and capital investment requirements to achieve the benefits for customers under the original Staff Settlement Agreement and the Merger Approval Order.

II. REQUESTED RELIEF

9. In its “Request for Approvals in Connection with the Reorganization Plan of FairPoint Communications, Inc.” in DT 10-025, FairPoint has averred that the Regulatory Settlement is just and reasonable and has requested that the Commission approve it.

¹ See DT 10-025, Direct Testimony of Kathryn M. Bailey on behalf of Staff Advocates at 5-6 (Mar. 5, 2010)

10. Pending the Commission's decision on the Regulatory Settlement, FairPoint is requesting an interim suspension of the April 2010 broadband availability commitment in the Merger Approval Order.

11. 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.

The Commission's authority under this statute is quite broad, and limited only by the requirements of due process and legal correctness.²

12. FairPoint believes, and therefore avers, that the Regulatory Settlement is the result of earnest consultation with the Staff Advocates and is a component of a comprehensive reorganization plan that reaffirms FairPoint's broadband and minimum capital expenditure commitments, while providing FairPoint with additional time and flexibility, where necessary, to insure that the capital is deployed in a rational and economic manner.³

13. FairPoint believes, and therefore avers, that the alteration requested herein to the Merger Approval Order (and the Staff Settlement Agreement approved in the Merger Approval Order) comports with the requirements of due process and is legally correct.

14. The undersigned counsel consulted with the Staff Advocates of the Commission designated for the proceeding in DT 10-025 pursuant to RSA 363:32 with respect to the relief requested herein. The undersigned is authorized to represent that the Staff Advocates do not object to the relief requested herein.

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

³ See DT 10-025, Pre-Filed Direct Testimony of A. Giammarino, at p. 52:7-9 (February 24, 2010).

15. The undersigned counsel consulted with the New Hampshire Consumer Advocate with respect to the relief requested herein. The undersigned is authorized to represent that the Consumer Advocate takes no position on the relief requested herein.

WHEREFORE, FairPoint respectfully requests that the Commission:

- a. Suspend the April 1, 2010 broadband availability requirement, pending disposition of the request for approval of the Regulatory Settlement;
- b. Grant such other and further relief as the Commission may determine to be just and reasonable.

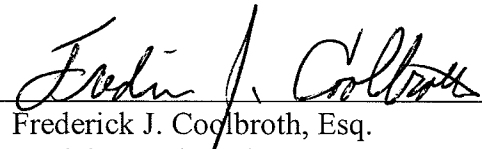
NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC
D/B/A FAIRPOINT COMMUNICATIONS-NNE

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: March 25, 2010

By: _____



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