

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION  
DT 10-025**

**Reorganization of FairPoint  
Direct Testimony  
of  
Richard E. Thayer  
on behalf of Level 3 Communications, LLC.  
April 19, 2010**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

**DIRECT PREFILED TESTIMONY OF RICHARD E. THAYER**

**Q. Please state your name and business address.**

A. My name is Richard E. Thayer. My business address is Level 3 Communications, LLC.  
1025 Eldorado Boulevard, Broomfield, CO 80302.

**Q. Please describe your professional and educational background.**

A. I have been legal counsel at Level 3 Communications since September of 2003.  
Previously, I served in the Law and Public Policy Group of AT&T from 1989 through  
2002 in various positions including Chief Commercial Counsel for the NorthWest Region  
and Vice President for AT&T Broadband. I received my BA degree from Amherst  
College in 1976 and my JD degree from Boston University in 1981. An abbreviated copy  
of my background is attached as Attachment A.

**Q. Please describe your responsibilities at Level 3 Communications, LLC.**

A. I am Senior Corporate Counsel for Level 3 Communications, LLC. I am responsible for  
negotiating, concluding and managing of the interconnection agreements (“ICA”) that  
Level 3 requires with other telecommunications carriers pursuant to the  
Telecommunications Act of 1996. In fulfilling these responsibilities, I am required to  
acquire terms and conditions within the interconnection agreements which will allow

Level 3 to provide telecommunications and information services to its customers throughout Level 3's service territory.

**Q. Please describe Level 3 and its operations in New Hampshire.**

A. In New Hampshire, Level 3 has a deep network footprint and provides telecommunications and information services to retail and business customers. The foremost services that Level 3 provides to its wholesale customers in New Hampshire which impact the citizens of New Hampshire are dial up Internet, high speed data, wireless transit and Voice over the Internet (VoIP) services. To provide a sense of Level 3's operations in New Hampshire, Level 3 recently exchanged over 17 million minutes of voice and data traffic in New Hampshire in a single month. Further, Level 3 serves a pre-eminent education institution within the state by means of its own fiber network and provides transit services to wireless carriers, allowing them to exchange almost 10 million minutes of wireless traffic in New Hampshire.

**Q. Why is Level 3 filing testimony in this proceeding?**

A. Level 3 is filing this testimony for two reasons. The first deals with concerns about the terms and conditions that would apply to traffic exchanged between Level 3 and FairPoint if FairPoint rejects the existing interconnection agreement it has with Level 3 ("Level 3 ICA"). Rejection of that interconnection agreement would throw the economic relationship between Level 3 and FairPoint into turmoil and disrupt the ability of the companies to provide services to their respective customers – a result that could slow the expansion of Level 3's operations in New Hampshire and impair traffic flow. The

1 second deals with whether this Commission has considered how any changes in the  
2 economic relationship between Level 3 and FairPoint (or any other competitive provider  
3 and FairPoint) are reflected in the proposed Regulatory Settlement.

4 **Q. Please explain.**

5 A. As Level 3 understands the Regulatory Settlement, the Commission will allow FairPoint  
6 to adjust various commitments FairPoint has made with respect to broadband deployment  
7 and pricing, systems improvement and other areas to reflect FairPoint's economic profile  
8 when it exits Chapter 11 bankruptcy protection. As part of the Chapter 11 process,  
9 FairPoint has the opportunity to reject certain executory contracts. In so doing, FairPoint  
10 can reshape its financial obligations by shedding contracts simply because it does not like  
11 the terms and conditions of those contracts.<sup>1</sup> When a company rejects a contract, the  
12 elimination of that contract changes that company's financial profile by reducing or  
13 changing the company's obligations. In the case of an interconnection agreement,  
14 FairPoint can use the bankruptcy process to reduce or eliminate certain costs and revenue  
15 commitments it agreed to honor for three years when it acquired the Verizon franchise in  
16 New Hampshire. One example is reciprocal compensation for traffic, especially ISP-  
17 bound. Staying at a high level, if FairPoint rejects those agreements, it might reduce its  
18 network termination expenses by claiming no compensation is owed or it may argue that  
19 it is entitled to originating access on certain types of traffic thereby increasing its  
20 revenue.

---

<sup>1</sup> Level 3 understands that FairPoint must notify the bankruptcy court by April 23, 2010 of its intentions with respect to executory contracts. .

1     **Q.     What distinguishes an Interconnection Agreement from other contracts?**

2     A.     In contrast to other contracts less central to the functioning of the telecommunications  
3           industry, interconnection agreements hold particular significance. First, these contracts  
4           are required by federal law. When Congress passed the Telecommunications Act of 1996  
5           (“the Act”), it imposed an obligation on the incumbent local exchange carriers to  
6           establish interconnection agreements for the exchange of traffic with the new competitive  
7           local exchange carriers. Unlike almost any other contract, federal law imposes specific  
8           obligations on incumbent local exchange carriers such as a duty to:

- 9                 1. negotiate in good faith;<sup>2</sup>  
10                2. interconnect networks;<sup>3</sup>  
11                3. provide unbundled access to network elements;<sup>4</sup>  
12                4. resell services;<sup>5</sup>  
13                5. provide notice of changes;<sup>6</sup> and  
14                6. allow for the collocation of equipment.<sup>7</sup>

15           That Congress mandated parameters for contract negotiations, established pricing  
16           mechanisms and delegated arbitration and enforcement of these contracts to state

---

<sup>2</sup> See 47 U.S.C. § 251(c)(1)

<sup>3</sup> 47 U.S.C. § 251(c)(2).

<sup>4</sup> 47 U.S.C. § 251(c)(3).

<sup>5</sup> 47 U.S.C. § 251(c)(4).

<sup>6</sup> 47 U.S.C. § 251(c)(5).

<sup>7</sup> 47 U.S.C. § 251(c)(6).

1 regulatory commissions reflects the importance of these agreements in reaching the  
2 congressional intent of establishing competitive local exchange markets.<sup>8</sup>

3 Because these interconnection agreements control the terms and conditions under  
4 which carriers interoperate, changes in interconnection agreements can have significant  
5 and substantial downstream effects. Therefore stewardship of those agreements and the  
6 operational and financial relationships between carriers remain a critical responsibility of  
7 this Commission.

8 Given the importance of interconnection agreements to the Commission's role in  
9 New Hampshire and because of the significant impact that termination of interconnection  
10 agreements (such as the Level 3 ICA) could have on the industry and the citizens of New  
11 Hampshire, Level 3 submits that it is important to understand whether the economic  
12 benefits and impact of rejecting various interconnection arrangements (including the  
13 Level 3 ICA) have been considered when the Commission evaluates the Regulatory  
14 Settlement and FairPoint's post-petition finances. Furthermore, Level 3 submits that a  
15 complete evaluation of the Regulatory Settlement cannot be completed by the  
16 Commission without full consideration of the impact of such a course of action.

17 **Q. Has Level 3 asked FairPoint whether it will reject the Interconnection Agreement**  
18 **with Level 3 as an executory contract?**

19 A. Yes.

20  
21  

---

<sup>8</sup> See generally 47 U.S.C. § 252.

1   **Q.     What was FairPoint's response?**

2   A.     FairPoint is being coy and unresponsive. While FairPoint states that the Regulatory  
3           Settlement does not change the interconnection agreements, FairPoint has either refused  
4           to state that they will continue to honor the agreements or, alternatively and more  
5           recently, that they "intend" to continue to offer wholesale services on the same terms,  
6           prices and conditions as are presently in effect until a new agreement is effectuated.<sup>9</sup>  
7           Instead, all FairPoint says is that there is a process in the bankruptcy case to review and  
8           reject executory contracts. I have attached to this testimony as Attachment B copies of  
9           the responses to Level 3's data requests. In fact, Fairpoint appears to be undercutting  
10          even the certainty of those obligations it is making within the Settlement Agreement by  
11          its statement that the effectiveness of the Settlement Agreement is subsumed to the  
12          bankruptcy proceeding.<sup>10</sup> FairPoint's statements and/or silence is troubling for a number  
13          of reasons. It reflects an intention to play a procedural game by using separate legal  
14          proceedings to dodge providing answers to questions that are important to the industry  
15          and the consumers in New Hampshire who rely on the CLECs for their communications  
16          needs. Moreover, Level 3 believes the answers must be obtained before the Commission  
17          can resolve this docket.

---

<sup>9</sup> See *Joint Petition of Northern New England Telephone Operations LLC, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, Enhanced Communications of Northern New England, Inc., and FairPoint Vermont, Inc. (collectively, "FairPoint"), for (1) approval of an indirect acquisition of a controlling interest; (2) approval of a Settlement between the Department of Public Service and FairPoint; (3) approval of the modification of certain Certificates of Public Good issued in Docket 7270; and (4) approval of certain other transactions*, Testimony of Michael T. Skrivan, State of Vermont Public Service Board Docket No. 7599, at p. 6, lines 5-7.

<sup>10</sup> See FairPoint's response 41 to staff's data requests in which FairPoint states that FairPoint will not have to honor the terms of the Regulatory Settlement unless the Commission takes it as is and unless the Plan of Organization becomes effective, attached to this testimony as Attachment C.

1    **Q.     Did Level 3 ask FairPoint whether it had conducted any studies regarding changes**  
2        **in its economic profile if it rejected Interconnection Agreements?**

3    A.     Yes. Level 3 asked FairPoint if such studies existed with respect to the Level 3 ICA.  
4        FairPoint objected to Level 3's request and did not provide any documentation.

5    **Q.     Please provide a history of the Interconnection Agreement between Level 3 and**  
6        **FairPoint.**

7    A.     The Level 3 ICA was first negotiated between Level 3 and Verizon Communications in  
8        August of 2002. It was extended in October of 2004. In July of 2007, Level 3 reached an  
9        agreement with FairPoint to operate under the agreement with Verizon and then negotiate  
10       a new agreement within one year of the closing of the Verizon/FairPoint transaction.  
11       FairPoint did not request such negotiations and as a result that agreement to negotiate was  
12       superseded when FairPoint extended the Level 3 ICA for a period of three years, capped  
13       wholesale rates for three years, and agreed not to seek changes in existing wholesale  
14       obligations for three years as a condition of securing regulatory approval for its purchase  
15       of the Verizon territories in New Hampshire.<sup>11</sup>

16   **Q.     Please provide a short summary of the Interconnection Agreement between Level 3**  
17        **and FairPoint.**

18   A.     Level 3's initial agreement with Verizon was unique in two ways. First, it provided for  
19        the payment of reciprocal compensation for all locally-dialed ISP bound traffic including  
20        what was then called virtual NXX traffic. In addition, it established a sliding scale that

---

<sup>11</sup> *Verizon New England Inc. Bell Atlantic Communications, Inc., NYNEX Long Distance Co., Verizon Select Services, Inc. and FairPoint Communications, Inc., Petition for Authority to Transfer Assets and Franchise, Order Approving Settlement Agreement with Conditions, Docket No. DT 07-011 Order No. 24,823, 93 NH PUC 24, 64 (Feb. 25, 2008).*



1 brought the rate for ISP-bound traffic down to \$0.0007 per minute of use.<sup>12</sup> In  
2 subsequent agreements, that rate was brought down to \$0.00045.

3 Second, the agreement established an interconnection architecture around  
4 Geographically Relevant Interconnection Points (“GRIPs”). The GRIP concept required  
5 the parties to meet each other at the Verizon tandems as opposed to a single location for  
6 each LATA (the preferred CLEC approach) or in each calling area (the preferred  
7 approach of the incumbent local exchange carriers). In addition to the GRIPs, Level 3  
8 agreed to pay transport at the special access rates instead of at the cost-based rates it  
9 might have been eligible to receive pursuant to Sections 251 and 252 of the  
10 Telecommunications Act.

11 Finally, the agreement provided for the combination of all mixed jurisdictional  
12 traffic over a single co-carrier trunk group between the parties. This allowed for the  
13 efficient routing and transport of all traffic types over the same facilities such that the use  
14 of those facilities was optimized from a cost and network perspective.

15 The preceding terms and conditions were established based upon Level 3 and  
16 Verizon balancing the costs savings to be gained by Verizon and Level 3 as a result of the  
17 network architecture agreed upon and the reduction in reciprocal compensation to be paid  
18 Level 3 for ISP bound traffic.

19  

---

<sup>12</sup> The Level 3-Verizon Agreement was cited as one of the contracts to support the rates adopted by the FCC when it tacked reciprocal compensation for ISP-bound traffic. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order (“ISP Remand”). (Rel. April 27, 2001).

1    **Q.    Was the Agreement with Verizon unique to New Hampshire?**

2    A.    No. The agreement was part of a national interconnection agreement covering all of its  
3           operating territories. The tradeoffs made by Verizon and Level 3 reflected their desire to  
4           reach a single agreement and to resolve a number of issues that were in litigation before  
5           state and federal regulatory bodies. With the separation of the FairPoint properties from  
6           Verizon, the Level 3 ICA in New Hampshire has been cleaved from what was formerly a  
7           nationwide arrangement. Thus, if the Level 3 ICA is terminated, the telecommunications  
8           market in New Hampshire will become less favorable and disadvantaged relative to other  
9           states inasmuch as such other states will enjoy certainty, greater network efficiency and  
10          lower cost structures. This is the exact opposite effect that the Commission sought to  
11          achieve when it permitted FairPoint to acquire the Verizon territories in New Hampshire  
12          in the first instance. By taking advantage of the network and business synergies inherent  
13          in treating the three-state FairPoint territory as a cohesive network, FairPoint has been the  
14          beneficiary of the predecessor territory-wide interconnection agreement between Verizon  
15          and Level 3. If the balances and trade-offs struck in this agreement are disturbed, it is  
16          unlikely that FairPoint or Level 3 will be able to achieve the same significant network  
17          and investment advantages.

18   **Q.    Why is Level 3 concerned that FairPoint will reject the Interconnection Agreement**  
19           **and the provisions for ISP-bound traffic if the rate is lower than that set by the**  
20           **FCC?**

21   A.    Level 3 wants to ascertain whether it will continue to be paid for all the traffic that it  
22          terminates for FairPoint end users or whether FairPoint will try to assess originating

1 access charges on that same traffic. Based on Level 3's experience with FairPoint in  
2 other states and its hostility to paying for ISP-bound traffic, especially virtual NXX  
3 traffic, Level 3 is concerned that the certainty of its agreement will be replaced with  
4 litigation over a new contract. Additionally, Level 3 wants to understand if its network  
5 configuration and cost structure are in jeopardy. The potential of having to re-configure  
6 Level 3's network in New Hampshire and the resultant operating and capital costs this  
7 would entail creates an unacceptable level of business uncertainty.

8 **Q. Are there other network and traffic exchange issues that could adversely affect**  
9 **competitive carriers and CLEC customers if FairPoint rejects CLEC**  
10 **Interconnection Agreements?**

11  
12 A. Yes. Interconnection agreements provide the terms and conditions which govern many  
13 aspects of the relationship between CLECs and incumbent carriers such as FairPoint in  
14 order to enable universal connectivity for all carriers. The certainty of this relationship is  
15 critical. Tandem transit service is an important example of a interconnection service that  
16 ensures that customers of all carriers can communicate with each other. It promotes  
17 efficient networks and capital investment. Interconnection agreement terms for tandem  
18 transit provide assurance that the terms and conditions for such service remain constant  
19 for the term of the agreement, and that rates cannot be unilaterally increased. Although  
20 FairPoint's tariff currently contains terms for tandem transit service, this does not provide  
21 the same level of assurance against unilateral changes by Fairpoint. Among the many  
22 other examples of negotiated and/or Commission ordered terms and conditions specific to  
23 interconnection agreements are fiber meets, dispute resolution, audit rights, taxes and

1 number portability. Peremptory changes to any of these terms and conditions along with  
2 others could negatively affect network efficiencies and competition.

3 **Q. Why should the Commission be concerned about the treatment of ISP-bound traffic**  
4 **at this time?**

5 A. There are two reasons why the Commission should be concerned. The first deals with the  
6 availability of Internet access to residents of New Hampshire. Although this state has  
7 taken an aggressive approach to finding solutions to deploy broadband to all of its  
8 citizens, not all NH citizens have broadband access. For the foreseeable future, some  
9 subset of New Hampshire residents will have to rely upon dial-up Internet access.  
10 Because of this, it is important for carriers to be able to provide competitive dial-up  
11 services to ISPs to keep the costs of those services affordable to New Hampshire  
12 residents. A change in FairPoint's position with respect to the treatment of ISP bound  
13 traffic could impair the ability of Level 3 and others to provide needed services in New  
14 Hampshire especially if FairPoint withholds payment in part to favor its own ISP.

15 The second, and more important issue, is the impact on FairPoint's commitments  
16 to deploy broadband in New Hampshire if FairPoint challenges the treatment of ISP-  
17 bound traffic by rejecting the interconnection agreements as executory contracts. As  
18 Level 3 understands the Regulatory Settlement, FairPoint is revising its previous  
19 commitments to deliver broadband to New Hampshire residents in large part to align the  
20 promise of its build-out with its new economic realities. Understanding how FairPoint  
21 plans to use any money it refuses to pay out is important. While all parties support

1 broadband deployment, FairPoint should not be allowed to use its market position to stop  
2 paying parties and use that withheld revenue for other corporate purposes.

3 **Q. Why should the Commission be concerned about the potential network impact at**  
4 **this time?**

5 A. When planning and deploying network infrastructure, a carrier looks not only to its  
6 customer base, but also to the efficiencies and costs in establishing its facilities and  
7 routes. This planning process, and the attendant investment, is dependent upon the  
8 certainty and confidence a carrier derives from its agreements with the carriers with  
9 which it is interconnecting both as to what the deployments will cost but also as to what  
10 revenues it can expect to receive from the interconnecting carrier. In the event that this  
11 confidence is shaken, not only are both the planning and investment processes stalemated  
12 to a degree, but the current operations are also thrown into jeopardy. For example, if a  
13 carrier has built out facilities to a certain point based upon the understanding that it was  
14 to be paid for traffic received from that location, and the payment for that traffic becomes  
15 uncertain, the carrier's commitment to maintaining those facilities would need to be  
16 questioned. This can have a significant detrimental impact on those customers in New  
17 Hampshire who are being served by those facilities.

18 Level 3 is also concerned about who will bear the costs of any network reconfiguration  
19 that FairPoint seeks to impose in a new interconnection agreement. That question will  
20 most likely end up before this Commission as part of an arbitration of the new agreement.  
21 If FairPoint is going to seek reconfiguration of the networks, then it should pay the  
22 competitive carriers for any new costs it will impose. However, the Commission may

1 find its ability to resolve those disputes constrained by the revised Regulatory Settlement.  
2 If FairPoint has to spend money to reconfigure its network interconnection, will it have  
3 the funds available to meet its broadband commitments?

4 **Q. Under what terms will Level 3 and FairPoint exchange traffic if FairPoint rejects**  
5 **the Agreement in the bankruptcy process?**

6 A. That is unknown. Thus far, FairPoint's position remains elusive, instead referencing the  
7 process in the bankruptcy. A copy of FairPoint's response is included in Attachment B.

8 FairPoint's refusal to disclose its intentions makes it almost impossible to assess  
9 the future business environment in New Hampshire.

10 One possible scenario that could result is a stalemate. That would occur if  
11 FairPoint rejected the interconnection agreements and then was unable to reach terms  
12 with the competitive providers. Since FairPoint can not compel arbitration under the  
13 Telecommunications Act of 1996 without the consent of the CLEC, it would be up to  
14 CLEC to take that step. But if the terms FairPoint was trying to impose were not  
15 acceptable to the competitive carrier, the parties would have to operate without an  
16 agreement for some extended period of time unless Fairpoint explicitly agrees to operate  
17 under the very agreement it rejected in the bankruptcy court for a definite term.

18 Another plausible scenario is that FairPoint may attempt to push a carrier to  
19 operate under FairPoint's SGAT or interconnection tariff. Those terms may be more  
20 draconian than the existing interconnection agreement terms. We predict that any  
21 attempt to force a carrier into an SGAT will result in that carrier initiating an arbitration  
22 under the Act, in which case the dispute would end up before this Commission.

1           Either of these two scenarios could result in the need for the Commission to  
2           expend scarce resources to resolve complex and time consuming interconnection  
3           disputes. Level 3 submits that the Commission should not permit that result when the  
4           interconnection issues can best be resolved in the first instance through this proceeding.

5   **Q.   What would Level 3 like the Commission to do with respect to the Interconnection**  
6   **Agreements between FairPoint and CLECs?**

7   A.   It is imperative that the Commission understand not only how the proposed Regulatory  
8       Settlement will impact customers and the telecommunications industry in New  
9       Hampshire, but also how the rejection of executory contracts impacts the finances and  
10      financial position of FairPoint. After all, that is what this proceeding is all about. Level  
11      3 believes that the Commission should make sure that certainty will result from the  
12      Regulatory Settlement and not regulatory and economic chaos. Level 3 submits that the  
13      Commission can achieve those goals by either:

- 14          a.   Conditioning the Regulatory Settlement on a commitment from FairPoint that it  
15              will honor the interconnection agreements in place and the three-year extension  
16              that it agreed to in the previous acquisition approval process; or
- 17          b.   Delaying a final decision in this proceeding until such time that FairPoint has  
18              completed the bankruptcy review process for the interconnection agreements  
19              FairPoint proposes to reject as executory contracts. By doing so, the Commission  
20              will have the most accurate picture of FairPoint's financial situation and  
21              intentions. This in turn will enable the Commission to conduct a complete

1 evaluation of the Regulatory Settlement and the impact that Regulatory

2 Settlement will have on New Hampshire.

3 **Q. Does this conclude your testimony?**

4 A. Yes.



**ATTACHMENT A**

**BACKGROUND**

Attachement A

***Richard E. Thayer***  
***725 14<sup>th</sup> Street***  
***Boulder, CO 80302***  
***720-470-7303***  
***E-Mail rick.thayer@level3.com***

**2003 – Present      Level 3 Communications**  
Senior Corporate Counsel

**Broomfield, CO**

- Responsible for management and conduct of interconnection transactions with other telecommunications carriers.

**1996 – 2002      AT&T**  
2000-2002      AT&T Broadband      VP - Local Government Affairs

**Denver, CO**

- Responsible for managed of Northwest division of government affairs to maintain cable franchises and introduction of telephony over the cable plant.

1996-2002      Chief Commercial Counsel, Northwest

- Responsible for managed of Northwest division intercarrier transactions including interconnection services.

**1989-1996      AT&T American Transtech Inc.**  
Managing Counsel and Assistant Secretary

**Jacksonville, FL**

- Responsible for overall legal department management for telecommunications company focused on customer service and internet transactions.

**Affiliations**      Massachusetts Bar  
Florida Bar  
Colorado Bar

**Education**      Boston University School of Law      JD  
Amherst College      BA, cum laude

**ATTACHMENT B**

**FAIRPOINT RESPONSES TO LEVEL 3 DATA REQUESTS**

**State of New Hampshire  
Public Utilities Commission**

**Docket No. DT 10-025  
FairPoint Communications, Inc., et al.**

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs  
**Objection:** By Counsel

**REQUEST:** Level 3 Communications, LLC  
Set 1

**DATED:** March 17, 2010

**ITEM: LEVEL3-1** Please state whether the proposed Regulatory Settlement changes, revises or in anyway alters the commitment made by FairPoint to extend by three years the interconnection agreement between Verizon and Level 3 Communications ("Level 3 ICA") that Frontier [sic] assumed in its purchase of the New Hampshire properties from Verizon.

**REPLY:** OBJECTION. FairPoint objects to Level 3-1 on the grounds that it seeks a legal conclusion and the Regulatory Settlement speaks for itself. Subject to and without waiving this objection, FairPoint will provide information responsive to Level 3-1.

FairPoint is proposing no changes in this docket to the Commission's Approval Order related to the conditions applicable to the Level 3 ICA. In addition, please refer to the response to Level 3-4.

State of New Hampshire  
Public Utilities Commission

Docket No. DT 10-025  
FairPoint Communications, Inc., et al.

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs  
**Objection:** By Counsel

**REQUEST:** Level 3 Communications, LLC  
Set 1

**DATED:** March 17, 2010

**ITEM: LEVEL3-2** If the answer to Question 1 is yes, please explain in detail the changes imposed by the Settlement Agreement.

**REPLY:** OBJECTION. FairPoint objects to Level 3-2 on the grounds that it seeks a legal conclusion and the Regulatory Settlement speaks for itself. Subject to and without waiving this objection, FairPoint will provide information responsive to Level 3-2.

Please see the response to LEVEL3-1.

State of New Hampshire  
Public Utilities Commission

Docket No. DT 10-025  
FairPoint Communications, Inc., et al.

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs  
**Objection:** By Counsel

**REQUEST:** Level 3 Communications, LLC  
Set 1

**DATED:** March 17, 2010

**ITEM: LEVEL3-3** In response to Question 2, please explain the network and economic impact of those changes on both FairPoint and Level 3 and provide all work papers, documents, memoranda and studies detailing those changes.

**REPLY:** OBJECTION. FairPoint objects to LEVEL3-3 on the grounds that it seeks a legal conclusion, is overly broad and unduly burdensome in that it would require FairPoint to search for and to assemble a voluminous amount of information not ordinarily compiled in the normal course of business, and that it is not reasonably calculated to lead to the discovery of admissible evidence the Regulatory Settlement speaks for itself. Subject to and without waiving this objection, FairPoint will provide information responsive to LEVEL3-3.

Please see the response to LEVEL3-1.

**State of New Hampshire  
Public Utilities Commission**

**Docket No. DT 10-025  
FairPoint Communications, Inc., et al.**

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs  
**Objection:** By Counsel

**REQUEST:** Level 3 Communications, LLC  
Set 1

**DATED:** March 17, 2010

**ITEM: LEVEL3-4** If the answer to Question 1 is no, please state whether FairPoint intends to reject the Level 3 ICA as part of the resolution of its Chapter 11 bankruptcy proceeding now pending in the United States Bankruptcy Court for the Southern District of New York in Case Nos. 09-16335-BRL, et al.

**REPLY:** OBJECTION. FairPoint objects to Level3-4 on the grounds that it seeks a legal conclusion. Subject to and without waiving this objection, FairPoint will provide information responsive to Level3-4.

FairPoint is not proposing any changes in this docket to the terms and prices of wholesale services in its interconnection agreement with Level 3 in this docket. A process is underway in the bankruptcy court pursuant to which FairPoint is reviewing all of its executory contracts, which include interconnection agreements. That process permits parties to such executory contracts to submit claims against FairPoint under those contracts and provides FairPoint with the opportunity to determine, in its business judgment, whether to assume those contracts and cure all defaults under such contracts or to reject those contracts, subject to the procedures set forth in Section XI of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated March 10, 2010 (the "Plan"). Level 3 is aware that this process exists, as a Level 3 has appeared in the proceedings before the bankruptcy court and filed a claim against FairPoint.

**State of New Hampshire  
Public Utilities Commission**

**Docket No. DT 10-025  
FairPoint Communications, Inc., et al.**

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs  
**Objection:** By Counsel

**REQUEST:** Level 3 Communications, LLC  
Set 1

**DATED:** March 17, 2010

**ITEM: LEVEL3-5** If the answer is yes to Question 4, please explain the terms and conditions, including pricing, that FairPoint would propose to govern the exchange of traffic between Level 3 and FairPoint in New Hampshire as well as the terms and prices for wholesale services provided by FairPoint to Level 3.

**REPLY:** OBJECTION. FairPoint objects to Level 3-5 on the grounds that it seeks a legal conclusion. Subject to and without waiving this objection, FairPoint will provide information responsive to Level 3-5.

Please see the response to LEVEL3-4.



**State of New Hampshire  
Public Utilities Commission**

**Docket No. DT 10-025  
FairPoint Communications, Inc., et al.**

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs  
**Objection:** By Counsel

**REQUEST:** Level 3 Communications, LLC  
Set 1

**DATED:** March 17, 2010

**ITEM: LEVEL3-6** If the answer to Question 4 is yes, please provide a copy of any new model interconnection agreement FairPoint intends to use or to propose to govern its relationship with Level 3 or any other CLEC in New Hampshire.

**REPLY:** OBJECTION. FairPoint objects to Level 3-6 on the grounds that it seeks a legal conclusion. Subject to and without waiving this objection, FairPoint will provide information responsive to Level 3-6.

Please see the response to LEVEL3-4.

**ATTACHMENT C**

**FAIRPOINT RESPONSE TO STAFF 1-41**

**State of New Hampshire  
Public Utilities Commission**

**Docket No. DT 10-025  
FairPoint Communications, Inc., et al.**

**Respondent:** Michael Skrivan  
**Title:** Vice President, Regulatory  
Affairs

**REQUEST:** NHPUC Staff  
Set 1

**DATED:** March 17, 2010

**ITEM: STAFF-41** Reference New Hampshire regulatory settlement section 1.1: Please explain the meaning and effect of the last clause of the last sentence that states, "such obligations shall be binding on the Parties only once the terms of this Regulatory Settlement are approved by the Commission and upon the Effective Date of the Plan."

**REPLY:** While I am not a lawyer, I understand that the above referenced clause means that neither the Staff Advocates nor FairPoint will have to honor the terms of the Regulatory Settlement unless the Commission approves of the Regulatory Settlement absent any changes. The Regulatory Settlement, if approved by the Commission, does not take effect until the Plan of Reorganization (as amended) becomes effective.