

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

**DT 07-011  
DT 10-025**

**FAIRPOINT COMMUNICATIONS, INC.**

**COMPILATION OF CONDITIONS TO APPROVAL OF MERGER**

This Compilation of Conditions to Approval of Merger, submitted on behalf of the Petitioners in Docket DT 10-025, is intended to restate the conditions imposed by the New Hampshire Public Utilities Commission (the "Commission") on FairPoint Communications, Inc. ("FairPoint") and Northern New England Telephone Operations LLC in Order No. 24,823 dated February 25, 2008 in Docket DT 07-011 (the "2008 Order"), as amended by the Post Filing Regulatory Settlement between the Staff Advocates of the New Hampshire Public Utilities Commission and FairPoint, dated as of February 5, 2010 (the "Regulatory Settlement"). The 2008 Order (i) approved with modifications the Settlement Agreement Among the Joint Petitioners in Docket DT 07-011 and the Commission Staff, dated as of January 23, 2008 (the "2008 Settlement"); (ii) the Stipulated Settlement Terms by and Among FairPoint Communications, Inc. and Freedom Ring Communications, LLC d/b/a/ BayRing Communications, LLC, segTEL, Inc., Otel Telekom, Inc. and National Mobile Communication Corporation d/b/a/ Sovernet Communications (the "CLEC Settlement"); and (iii) the Memorandum of Understanding between FairPoint Communications, Inc. and New Hampshire Legal Assistance, acting for and on behalf of Irene Schmitt (the "NHLA Settlement").

1. Definitions: The following terms are used herein with the definitions as follows:

1.1 “*Adjusted Consolidated EBITDA*” means EBITDA as adjusted by adding thereto: (i) the non-cash portion of any retirement or pension plan expense and (ii) all TSA payments and all other one-time cash operating expenditures authorized to be added back to EBITDA by FairPoint’s credit agreement entered into as of the Closing Date to finance the Merger (the “Credit Agreement”). In any event, Adjusted Consolidated EBITDA shall be calculated in accordance with the Credit Agreement. [2008 Settlement]

1.2 “*Broadband Availability*” means the ability to provide within a normal service installation interval: (i) not less than 1.5 megabits per second (Mbps) of bandwidth for distances up to 22,000 feet from a DSL-equipped central office or wire center, and (ii) not less than 764 kilobits per second (kbps) of bandwidth beyond 22,000 feet. This definition also includes the use of other technology to achieve at least the same bandwidth delivery. [2008 Settlement]

1.3 “*Business Acquisition*” means the acquisition of any business enterprise, whether through the acquisition of equity interests or assets or by merger or consolidation or otherwise. [2008 Settlement]

1.4 “*Consolidated Debt*” means all outstanding debt, guarantees and contingent obligations of FairPoint and its subsidiaries, plus overdue accounts payable of FairPoint and its subsidiaries, minus the lesser of: (a) all cash or cash equivalents or (b) \$25 million. In any event, notwithstanding the \$25 million cap on cash and cash equivalents, Consolidated Debt shall be calculated in accordance with FairPoint’s Credit Agreement. Consolidated Debt does not include: (i) preferred stock (or other obligations) issued to Capgemini pursuant to Section 4.3.1

and unpaid dividends (or interest) thereon or (ii) TSA payments deferred pursuant to Section 4.3.2 and unpaid interest thereon. [2008 Settlement]

1.5 “*Cumulative Adjusted Free Cash Flow*” [Definition deleted as being moot due to elimination of Financial Conditions in Section 2 of the 2008 Settlement.]

1.6 “*EBITDA*” means earnings before interest, taxes, depreciation and amortization. [2008 Settlement]

1.7 “*Free Cash Flow*” [Definition deleted as being moot due to elimination of Financial Conditions in Section 2 of the 2008 Settlement.]

1.9 “*Interest Coverage Ratio*” [Definition deleted as being moot due to elimination of Financial Conditions in Section 2 of the 2008 Settlement.]

1.10 “*Leverage Ratio*” means the ratio derived by dividing: (a) Consolidated Debt by (b) Adjusted Consolidated EBITDA. In any event, the Leverage Ratio shall be calculated in accordance with FairPoint’s Credit Agreement; provided, however, that the amounts contributed by Verizon, plus any interest earned or gains thereon, pursuant to Section 2.5.2 of this Agreement shall be excluded in the calculation of the Leverage Ratio. [2008 Settlement]

1.11 “*Merger Agreement*” means the Agreement and Plan of Merger dated as of January 15, 2007, by and among Verizon Communications Inc., Spinco and FairPoint, as amended. [2008 Settlement]

1.12 “*Plan*” means the Debtors’ Chapter 11 plan of reorganization, as amended, filed in the United States Bankruptcy Court for the District of New York, In re: FairPoint Communications, Inc. *et al.*, Debtors, Case Nos. 09-16335, *et al.* [Regulatory Settlement 1.1]

1.13 “*Tax Sharing Agreement*” [Definition deleted as being moot.]

1.14 “*Telco*” means and refers to the entity known as Northern New England Telephone Operations LLC, which will be a wholly owned subsidiary of FairPoint effective with the Merger closing. [2008 Settlement]

2. Financial Conditions:

FairPoint shall provide quarterly reports detailing capital expenditures in a form and in a manner approved by the Commission. [2008 Settlement 2.1.8]

3. Broadband Commitment.

3.1 FairPoint shall provide Broadband Availability to 75% of its access lines within New Hampshire within 18 months following the Closing Date. [2008 Settlement, 3.1]

3.2 FairPoint shall provide Broadband Availability to 85% of its access lines within New Hampshire by December 31, 2010. [2008 Settlement 3.2; Regulatory Settlement 2.5.1]

3.3 FairPoint shall provide Broadband Availability to 95% of its access lines within New Hampshire within 60 months following the Closing Date, which access shall include at a minimum 75% Broadband Availability to access lines in UNE Zone 3 exchanges. [2008 Settlement 3.3]

3.4 FairPoint shall expend at least \$56,400,000 within 60 months of the Closing Date on broadband infrastructure in New Hampshire, and shall be required to spend such amounts as may prove necessary beyond this amount to achieve the minimum requirements of Broadband Availability as set forth within Sections 3.1 through 3.3. [2008 Settlement 3.4] As of the date of the Regulatory Settlement (February 5, 2010), FairPoint estimates that an additional \$10.5 million is necessary to achieve 95% availability. [Regulatory Settlement 2.5.1]

3.5 None of the funds contributed by Verizon pursuant to Section 2.5.2 of the 2008 Settlement, and none of the interest or gains earned thereon, shall be counted against the

expenditures required to meet the Broadband Availability requirements set forth in Sections 3.1 through 3.3. [2008 Settlement 3.5]

3.6 To the extent that any portion of the funds described in Section 3.4 are not required to meet the minimum Broadband Availability levels, FairPoint shall remain obliged to spend the remainder. Not later than 60 days from the end of the period specified in Section 3.4, FairPoint shall submit for Commission approval a plan for spending all of the remainder on New Hampshire infrastructure improvement and broadband expansion within a period not to exceed eighty-four (84) months from the Closing Date. [2008 Settlement 3.6]

3.7 FairPoint agrees that as of the Closing Date, FairPoint will maintain all prices and speeds offered by Verizon for broadband Internet access service, including the provision of stand-alone DSL service, and that stand-alone DSL service shall continue to be available for a period of two years following the Closing Date and at a month-to-month price not to exceed \$37 per month. Unless otherwise approved by the Commission, FairPoint shall continue to offer stand-alone DSL thereafter subject to annual price increases of not more than 15%. FairPoint's pricing obligations relating to stand-alone DSL services will terminate on April 1, 2011, but FairPoint will continue to provide stand-alone DSL service and FairPoint will continue to adhere to Verizon's "for life" service offerings made as of March 31, 2008. [Historical items related to Verizon offerings deleted as moot.] [2008 Settlement 3.7; Regulatory Settlement 2.4]

3.8 FairPoint will provide reports on broadband expansion, in a manner approved by the Commission, every six months beginning six months following the Closing Date.

3.9 To the extent FairPoint does not achieve the minimum Broadband Availability requirements set forth within Sections 3.1 through 3.3, it shall [pay or be liable for pursuant to Section 2.7 of the Regulatory Settlement], on an annual basis, \$500,000 for each percent by

which it has not achieved the Broadband Availability requirements set forth in Sections 3.1, 3.2 and 3.3. To the extent that FairPoint has failed to meet the requirements of Section 3.3 within 60 months following the Closing Date, then the penalty shall continue to apply, calculated at 6-month intervals (in the amount of \$500,000 per percentage point for each such interval). If the broadband milestone penalties set forth in this Section 3.9 are due and owing in excess of \$500,000, then the penalties shall be retained by FairPoint and, subject to the approval of the Commission for a particular project(s), FairPoint shall, within three years of the date of the penalty, invest or expend those penalty amounts in FairPoint's network, such to be in addition to any otherwise required capital expenditures; provided, however, that the first \$500,000 of such penalties (in the aggregate, and not annually) shall be paid to the New Hampshire Telecommunications Planning and Development Fund (established by RSA 12-A:45-a). [2008 Settlement 3.9; Regulatory Settlement 2.7]

3.10 FairPoint will adhere to the broadband coverage percentages and the minimum capital commitment (\$285.4 million) resulting from the 2008 Order, provided that all capital expenditures for New Hampshire, measured in accordance with United States Generally Accepted Accounting Principles and consistent with capital expenditures reflected in FairPoint's audited financial statements, are counted towards the minimum capital commitment of \$285.4 million to be spent by March 31, 2013. [Regulatory Settlement 2.5.2]

3.11 FairPoint may count, and therefore reduce, its other expenditure commitment ("OEC") of \$65 million by (1) amounts of up to \$10.5 million to the extent such amounts exceed \$56.4 million to achieve 95% broadband availability and are actually expended; and (2) \$4.5 million of capital expenditures already expended in excess of amounts estimated to develop the next generation network. For the avoidance of doubt, and subject to verification through a

reconciliation of FairPoint's NH 2009 capital expenditures to the consolidated capital expenditures in its 2009 audited financial statements, aggregate capital expenditures of \$157.6 million have been spent by FairPoint through December 31, 2009, against the minimum capital commitment of \$285.4 million. [Regulatory Settlement 2.5.3]

3.12 Ten Million Dollars (\$10,000,000) of the OEC shall be reallocated to and spent on recurring maintenance capital expenditures on or before March 31, 2013, resulting in a dollar for dollar reduction to the OEC and an increase in the minimum capital commitment to \$295.4 million. [Regulatory Settlement 2.5.4]

3.13 FairPoint shall have from April 1, 2010 to March 31, 2015 to meet the remaining balance of the OEC (e.g. \$40 million if the full \$10.5 million referred to in Paragraph [3.11] is spent), which shall be spent on “authorized network enhancing activities” identified in [Attachment 2 to the Regulatory Settlement]<sup>1</sup>, which include but are not limited to the physical extension of network facilities or coverage, changes to existing network facilities to improve quality of service (e.g., increase redundancy, reduce latency), and any network enhancements related to the development and launch of new products and services. All capital expenditures associated with such network enhancing activities shall count toward the remaining balance of the OEC set forth in the provisions of Section [3] hereof. In addition, for those network enhancing activities set forth in [Attachment 2 to the Regulatory Settlement] involving Video or IPTV deployment, FairPoint may count toward the remaining balance of the OEC all capital expenditures incurred plus operating costs, consistent with FASB Statement No. 51, for customer premise equipment, installation labor at customer premises, and IT development solely incurred in connection with a video product. [Regulatory Settlement 2.5.5]

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<sup>1</sup> The items listed on Attachment 2 are: Expansion of fiber to the premises network; fiber deployment and expansion of capacity; softswitch deployment; new products and services for video/IPTV VoIP and carrier Ethernet services; and other investments presented to the Staff and approved by the Commission as appropriate.

3.14 FairPoint will have the option to resell terrestrial (non-satellite) based service providers' broadband service offerings in order to fulfill FairPoint's broadband build out and/or service requirements with respect to the last eight percent (8%) of FairPoint's broadband availability requirements as contained within the 2008 Settlement, provided that the services meet or exceed all requirements of the 2008 Order, and the resold services are purchased through and serviced by FairPoint. [Regulatory Settlement 2.6]

4. Transition Services and Cutover.

4.1 FairPoint agrees to the appointment of a third party monitor selected by agreement of the Staff, the MPUC's Advisory Staff and the VT DPS to perform the services relating to the transition and cutover process specified in the scope of work attached as Exhibit 1 [to the 2008 Settlement]. [2008 Settlement 4.1]

4.2 FairPoint agrees to fund the costs of such services, as approved and administered by the Commission. [2008 Settlement 4.2]

4.3 [Historical items relating to TSA payments and issuance of preferred stock to Capgemini deleted as moot.]

5. Staffing Reports.

5.1 [Historical item related to monthly status report deleted as moot.]

5.2 After the first year following the Closing Date, FairPoint shall provide the Commission semi-annual staffing reports by function. In addition, monthly reporting obligations will resume and continue for so long as at least two service quality measures are at less than 95% of the applicable standard for three consecutive months or at less than 90% of the applicable standard for one month. FairPoint also will provide a remediation plan for review to address any continuing service quality problems. [2008 Settlement 5.2]



6. Financial Reports. FairPoint shall provide detailed quarterly and annual financial results in a manner to be approved by the Commission. FairPoint shall also provide copies of or links to all financial filings made with the FCC and SEC. FairPoint shall report annually in a form to be approved by the Commission all revenues and charges to or from its regulated ILEC operations in New Hampshire, from or to any affiliated interest. Such reports will include the data included in the ARMIS reports (so called) provided by Verizon prior to the Merger. FairPoint shall also report annually, in a form to be approved by the Commission, its allocations of revenues and costs among the three northern New England states. [2008 Settlement 6.1]

7. Cost Allocation Manual and Service Agreements. FairPoint agrees that, effective as of the Closing Date, Telco will adopt the Cost Allocation Manual of Verizon NE (Verizon CAM) and shall comply with said Verizon CAM with respect to the allocation and assignment of costs between Telco and its affiliates. Telco shall submit affiliate agreements and arrangements to the Commission in accordance with RSA 366. Within six months after the Closing Date, Telco will submit for the Commission's review its proposed, amended CAM for use in the future. The proposed CAM shall include all policies, procedures, and agreements governing services provided between and among FairPoint affiliates and the assignment and allocation of all costs thereof, in a manner consistent with RSA 366 and the Uniform System of Accounts and in a manner that reasonably assures that no improper cross subsidization among FairPoint entities occurs. Such CAM shall assure that the cost of developing the FairPoint systems used to replace the Verizon systems by Cutover are appropriately allocated to Telco and that adequate compensation is provided to Telco by any other FairPoint affiliates that might use these systems or any of Telco's facilities. FairPoint reserves the right to take the position upon submission of the CAM that there should be a single CAM effective for all three states. FairPoint's submission

shall also include a detailed budget pro forma of charges to and from affiliates for the three-state operation (and the individual states), for 2008, including the actual cost basis for the charge at its originating location. To the extent deemed necessary by the Commission to determine that there is no improper subsidization among FairPoint's affiliates, the Commission shall have access to any information regarding: (a) costs directly or indirectly charged, assigned, or allocated to Telco and other FairPoint companies, (b) the methods used to charge, assign, or allocate such costs, and (c) costs paid by or charged, assigned, or allocated to affiliates to the extent the Commission deems relevant in verifying the proper application of such methods. [2008 Settlement 7]

8. Retail Service and Rates.

8.1 FairPoint will cause Telco to continue to offer to residential retail customers a local exchange, stand-alone basic service product that includes the services listed in Puc 412.01. Telco will not seek Commission approval for an increase in New Hampshire basic exchange retail rates (above those in effect for Verizon in New Hampshire as of the Closing Date) to take effect during the five-year period following the Closing Date. The Commission will not require a decrease of any basic exchange retail rates of Telco to be effective within the five-year period following the Closing Date. These restrictions shall not prevent a revenue neutral rebalancing of access and retail basic exchange rates if otherwise approved by the Commission. Notwithstanding the foregoing, FairPoint shall have the right to petition the Commission to allow a retail rate case filing, and the Commission shall have the right to initiate a retail rate investigation, in the event of exigent circumstances (excessively low earnings claimed by FairPoint or a Commission concern of excessively high earnings) as long as the change in rates

resulting from such rate proceeding does not take effect before the fourth anniversary of the Closing Date. [2008 Settlement 8.1]

8.2 FairPoint agrees to provide the same or comparable sales and service options that Verizon makes available in New Hampshire as of the Closing Date with the exception of: (i) products and services not contributed or assigned pursuant to the Distribution Agreement or the Merger Agreement, and (ii) electronic billing during the TSA period. [2008 Settlement 8.2]

8.3 [Historical item related to pre-cutover billing format deleted as moot.]

8.4 FairPoint agrees to negotiate in good faith contracts with the same payment agencies that Verizon uses to ensure that customers can continue paying in person at qualified third-party locations. In the event that FairPoint is not able to secure contracts with the same payment agencies, it shall be obligated to provide alternate arrangements determined by the Commission to be sufficient. If FairPoint fails to secure contracts with these agencies, it will inform Staff of alternative arrangements at least three months prior to Cutover or May 1, 2008, whichever is earlier. [2008 Settlement 8.4]

8.5 FairPoint agrees to redirect all calls from New Hampshire customers placed to Verizon customer-service numbers to one or more new FairPoint 800 numbers. [2008 Settlement 8.5]

8.6 The Signatories to the 2008 Settlement acknowledge that for the period within which rates may not be increased as provided for in this Agreement, FairPoint's rates adequately reflect the value of above-the-line margins provided by directory print and other advertising. The Signatories to the 2008 Settlement also acknowledge that this reflection renders unnecessary any treatment at this time of the consequences of the spin-off by Verizon of the directory publishing business to Idearc. [2008 Settlement 8.6]

8.7 Neither the existence of the 2008 Settlement, nor any of its terms, nor any Commission approval of the acquisition by FairPoint of the New Hampshire business shall be deemed as precedent in any proceeding addressing the propriety of an imputation reflecting the value of the margins following the period within which rates may not be increased as provided for in this Agreement. Moreover, neither the 2008 Settlement nor any Commission order approving the transfer from Verizon to FairPoint shall be deemed as: (a) consenting to or approving the elimination of directory advertising margins as an offset to revenue requirements in future rate proceedings, or (b) precluding a determination that FairPoint's agreement to continue the previously-existing directory relationship between Verizon and Idearc places FairPoint in the shoes of Verizon with respect to the imputation of directory advertising margins. FairPoint, however, reserves its right to argue in any future rate case that directory revenues should not be imputed. [2008 Settlement 8.7]

8.8 During the period within which rates may not be increased as provided for in this agreement, FairPoint agrees to impute directory revenues for purposes of the calculation of the New Hampshire utility assessment pursuant to RSA 363-A. [2008 Settlement 8.8]

8.9 In the first general rate case for rates to become effective after the period referenced in Section 8.1, the cost of capital shall be no greater than would result from a hypothetical capital structure supporting an investment grade rating for the debt component of the capital structure. Nothing in this Agreement shall be cited in support of any argument that the use of such a structure is appropriate for ratemaking purposes. [2008 Settlement 8.9]

8.10 Unless and until the FCC or a court of competent jurisdiction rules otherwise, the regulatory status and treatment of any basic telecommunications service offered by FairPoint

shall not change due to any network upgrades or other changes in network architecture involving the use of IP-based technologies. [2008 Settlement 8.10]

9. Wholesale Services.

9.1 For a period of three years following the Closing Date, FairPoint shall continue providing the wholesale services offered by Verizon as of the Closing Date. FairPoint will not seek to increase wholesale rates to take effect during the three years following the Closing Date. The Commission shall not seek to decrease such rates for effect during the three-year period following the Closing Date. [2008 Settlement 9.1]

9.2 FairPoint shall file with the Commission, on a confidential basis, all commercial agreements for services related to the provisioning of unbundled network elements in accordance with Section 271 of the Communications Act of 1934, as amended. At any time after three years from the Closing Date, FairPoint may petition the Commission for a waiver of this requirement. [2008 Settlement 9.2]

**[Section 9.3 of the 2008 Settlement adopting the CLEC Settlement terms is deleted and the specific provisions of the CLEC Settlement, as amended by the 2008 Order, are added as Sections 9.5 through 9.11 below]**

9.3 FairPoint agrees to pay for the conduct of an independent audit of its wholesale performance assurance plan. If a simplified wholesale performance assurance plan is adopted prior to June 1, 2010, the audit shall take place following the first six months during which that plan is in effect. If no simplified plan is in effect by June 1, 2010, or if efforts to develop such a plan have terminated before that date, then FairPoint agrees to such an independent audit of the

existing wholesale performance assurance plan. The Commission will be solely responsible for the choice of the independent auditor, but will afford FairPoint the opportunity to submit the names of firms to be included within the list of firms to receive requests for proposals for the provision of such services. [2008 Settlement 9.4]

9.4 Beginning one month after the Closing Date, FairPoint will file a monthly status report regarding progress in putting together its Pole Licensing and Administration Group. [2008 Settlement 9.5]

9.5 251 Obligations [CLEC Settlement 1]

9.5.1. FairPoint will not dispute that the affiliate that will own and operate the former Verizon properties in Maine, New Hampshire and Vermont (hereinafter “Telco”) will be an incumbent local exchange carrier (ILEC) subject to all of the obligations of Section 251 of the Communications Act of 1934, as amended (the “Communications Act” or the “Act”), including but not limited to the obligation to provide access to unbundled network elements (UNEs) wherever “impairment” exists pursuant to Sections 251 (c)(3) and 251(d)(2)(B) of the Communications Act, and the requirement to abide by the negotiation/arbitration process prescribed in section 252 of the Communications Act.

9.5.2. FairPoint will not now or in the future seek or assert “rural telephone company” classification for Telco for purposes of the Section 251(f)(1) rural exemption from Section 251(c) of the Act. This condition does not prevent FairPoint from seeking or accepting designation of Telco as “rural” solely for purposes of qualifying for universal service funding or similar support from federal or state programs.

9.5.3. FairPoint will not now or in the future seek any suspension or modification of any of Telco's 251(b) or (c) obligations pursuant to Section 251(f)(2) of

the Act. For avoidance of any doubt, this includes Telco's local number portability obligations under Section 251(b)(2).

9.5.4. For three years following the closing date of the Merger, FairPoint will not reclassify as non-impaired any of Telco's wire centers in Maine, New Hampshire or Vermont not currently classified as non-impaired. Furthermore, during such three-year period, Telco will not withdraw any DS1 transport unbundled network elements between the Nashua and Manchester wire centers. Thereafter, Telco will give separate notice if and when it decides to withdraw unbundled access to such transport in accordance with applicable tariff, contractual and regulatory notice requirements.

9.6. Additional Items to be Provided by FairPoint. [CLEC Settlement 2]

9.6.1. Notwithstanding any determination by the Federal Communications Commission ("FCC") in WC Docket 07-22 as to whether or not Telco is a Bell Operating Company ("BOC"), FairPoint will cause Telco to provide as "Settlement Items" all Section 271(c)(2)(B) "competitive checklist" network elements and services to the extent that the FCC rules or has ruled that BOCs in general are required to provide such elements and services, now or in the future, at rates, terms and conditions that are just and reasonable, and not unreasonably discriminatory, as if governed by Sections 201(b) and 202(a) of the Communications Act as interpreted by the FCC, subject to the rights of negotiation and of review set forth in [paragraph 9.6.3] below. If the U.S. Supreme Court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007), then Telco will provide as "Settlement Items" such Section 271(c)(2)(B) elements and services as BOCs generally may be required to provide under

applicable law. In the event the FCC through a final order delegates to the State of Vermont or the State of New Hampshire the authority to determine what elements and services must be provided by BOCs under Section 271(c)(2)(B), then this agreement shall be modified accordingly. Nothing herein shall limit the right of Telco or any of the Parties hereto to seek reconsideration or review of any such FCC order.

9.6.2. Telco may cease providing any Settlement Item in the event that the FCC, a state utility regulatory commission or a court (in each case having competent jurisdiction and authority) (each a “Governmental Authority”) determines that such item is not required to be provided pursuant to applicable law.

9.6.3. In the event a CLEC requests in writing that Telco provide a Settlement Item required to be provided under [paragraph 9.6.1], and not the subject of a determination described in [paragraph 9.6.2], Telco and the CLEC will engage in good faith negotiations to reach agreement on the rates, terms and conditions pursuant to which Telco will provide such Settlement Item. In the event that the Parties are unable to reach agreement within nine months from the date FairPoint receives such written request, the CLEC shall have the right to seek resolution of any disputed rates, terms or conditions from the state utility regulatory commission in the state in which the Settlement Item is sought. The Parties agree that the FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Communications Act and the rates, terms and conditions at which such item must be provided by BOCs shall govern the state's determinations in any such dispute resolution proceeding. Each Party to such dispute shall have the right to seek review in a court of competent jurisdiction of any state utility regulatory commission action relative to any



Settlement Item, including any state utility regulatory commission order asserting that Telco is required to provide an element or service pursuant to [paragraph 9.6.1] above, or setting rates, terms or conditions or asserting a pricing standard for any Settlement Item. None of the Parties will challenge the jurisdiction of the court of competent jurisdiction in which the dispute arises to apply FCC precedent to decide any such review proceeding that may be initiated hereunder. In addition, in any such review proceeding, none of the Parties will challenge the jurisdiction of the state utility regulatory commission to resolve disputes over Settlement Items as provided in this [paragraph 9.6.3] provided that the Parties have first engaged in good faith negotiations as required herein, and provided further that in any such dispute resolution process the state applies the FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Communications Act and the rates, terms and conditions at which such item must be provided by BOCs as agreed herein (or such alternative body of law, if any, as may be identified by the U.S. Supreme Court if that court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007).

9.6.4. Without limiting FairPoint's obligations under [paragraph 9.6.1], FairPoint additionally will provide wholesale DSL and line sharing where available (provided that the purchaser employs non-interfering technology) for a three-year period, under the terms set forth herein.

9.6.4.1. Wholesale DSL will be provided solely for the purpose of a CLEC's provision of end-user DSL service, for three years following the Merger

closing date, at a rate not to exceed 82% of FairPoint's lowest-priced retail rate advertised for standalone residential DSL service in the service area of the acquired properties (or in the state, if rates differ by state).

9.6.4.2. At the CLEC's option, line sharing will be provided either (A) at rates set in existing agreements, for the duration of the respective agreements and for an extended term expiring on the date which is three years following their stated expiration date (or three years following the Merger closing date in the case of agreements that remain in effect on a month-to-month basis as of the Merger closing date) at the price specified in the applicable agreement, or (B) for a period of three years following the Merger closing date (pursuant to a tariff provision providing that the offering shall expire by its own terms upon the expiration of such three-year period, unless FairPoint voluntarily extends the term) at a tariffed rate of \$30.00 per line (non-recurring charge), plus a recurring charge of \$6.00 per line per month (non-recurring charges will apply only to lines for which line sharing is not being provided by Verizon as of the Merger closing date).

9.6.4.3. The Parties agree that this offering is the product of settlement negotiations and does not constitute an admission by FairPoint or Telco that either wholesale DSL or line sharing is required to be offered by BOCs under Section 271(c)(2)(B) of the Communications Act or as a Settlement Item; if it should be determined that either offering is so required, the Parties agree that the rates provided herein shall constitute rates that are just and reasonable, and not unreasonably discriminatory, within the meaning of Section 201(b) and 202(a) of

the Communications Act and [paragraph 9.6.1] above, for the three-year term described herein.

9.6.4.4. Telco's obligations under this [paragraph 9.6.4] are independent of any obligation Telco has to provide network elements or services under applicable law and will survive any successful challenge to any obligations to provide network elements.

9.6.4.5. At the end of the three-year period referenced herein, Telco may, at its sole discretion, withdraw any offering of line sharing or wholesale DSL pursuant to this section that may then be in effect, including in any state tariff or SGAT. Telco will provide at least six months' advance notice of any withdrawal of line sharing or wholesale DSL, and the CLECs agree that such notice will constitute adequate and reasonable notice under applicable law.

9.6.5. Telco will be subject to the Performance Assurance Plan ("PAP") in effect as of the Merger closing date (see [paragraph 9.10] below) and will not challenge the jurisdiction of the state utility regulatory commission to enforce the PAP.

9.6.6. Nothing herein constitutes an admission by FairPoint that Telco is a BOC within the meaning of the Communications Act or applicable regulations or should be treated as a BOC for any purpose other than as FairPoint expressly agrees in this Settlement Agreement.

9.7 OSS [CLEC Settlement 3]

9.7.1. FairPoint has prepared a timeline for CLEC education and training, testing and cutover, a copy of which is attached [as Attachment 1 to the CLEC Settlement Agreement] and incorporated herein by reference. [Attachment 1 to the CLEC

Settlement] shall govern FairPoint's WOSS (hereinafter defined) testing, except as may otherwise be determined by the three state regulatory commissions in their approval of the Merger. As set forth in [Attachment 1 to the CLEC Settlement], FairPoint:

- i. has provided wholesale customers with a Webex demonstration of the WISOR system;
- ii. will provide wholesale customers with a preliminary wholesale operations support systems (“WOSS”) interface test plan;
- iii. will provide an opportunity for CLECs and a single regulatory staff consulting firm expected to be chosen by agreement of the three state utility regulatory commissions from among their respective consulting firms participating in the docket to provide input into the WOSS acceptance criteria (the “Readiness Criteria”), which will consist of objective test defect severity level classification criteria that the regulatory staff consulting firm and FairPoint agree will establish objective measures for testing whether FairPoint's systems are ready for Cutover and whether FairPoint's new WOSS architecture functions as proposed, and thus will indicate whether FairPoint is ready to provide Verizon with a “Notice of Readiness to Cutover” under the terms of the TSA;
- iv. will provide a final CLEC testing schedule;
- v. will develop contingency plans for specified workaround situations; and
- vi. will provide a final Cutover schedule.

9.7.2. It is the Parties' intention that a single set of Readiness Criteria will be developed for all three states. The CLECs hereby agree to (i) abide by and accept the

Readiness Criteria as may be agreed to by the Governmental Authorities of the three states and (ii) refrain from advocating for Readiness Criteria testing other than as set forth herein. In the event the Governmental Authorities of the three states can not agree on a common Readiness Criteria, then the Readiness Criteria established by the applicable state utility commission shall control.

9.7.3. FairPoint will identify the account team or single point of contact assigned to each CLEC.

9.7.4. FairPoint will be responsible for the performance of all of Telco's WOSS post-Cutover, in accordance with the terms of the PAP. All CLECs, regardless of provisions in their interconnection agreements, will have the right to seek enforcement of the PAP by the applicable state commission (see [paragraph 9.11]below).

9.7.5. Telco will not pass through to CLECs any acquisition expenses, fees and expenses under the Transition Services Agreement ("TSA") or training expenses incurred by FairPoint in connection with the Merger or the transition to new operating systems. FairPoint reserves the right to seek inclusion in future Telco rate cases and cost studies (including but not limited to a future UNE rate proceeding) those capitalized costs arising out of development of new systems which replace systems used as of the Merger closing date by Verizon or its affiliates (including those replacing systems Verizon obtains from third parties), subject to normal review and regulation by the applicable state utility lco is entitled to any inclusion of such costs in its future rates or costs.

9.7.6. FairPoint will provide, without charge, training in accordance with the training plan referenced in [Attachment 1 to the CLEC Settlement]. FairPoint will continue to make available to CLECS the types of information that Verizon currently

maintains and disseminates to CLECS regarding Verizon's systems and business rules and practices, including the CLEC Manual, industry letters and the change management process. Any CLEC that currently does not receive such materials (for example, because it takes service from the wholesale tariff without an interconnection agreement) may receive such materials upon request. FairPoint will maintain the CLEC user forum process currently employed by Verizon.

9.7.7. FairPoint will arrange a meeting with wholesale customers approximately six months following cutover to discuss customer concerns and questions. Meeting participants will be expected to inform FairPoint of concerns and questions in advance of the meeting so as to enable FairPoint to respond at or before the meeting.

9.8 Existing Agreements, SGATs and Wholesale Tariffs [CLEC Settlement 4]

9.8.1. The applicable FairPoint affiliate will extend in writing all inter-carrier agreements in effect as of the Merger closing date for three years following their stated expiration date. Such extension shall not affect the right of a CLEC to terminate an agreement pursuant to the agreement's provisions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of such extended term.

9.8.2. For agreements that have expired or are renewed only on a month-to-month basis as of the Merger closing date, FairPoint will extend the then current rates and other terms in writing for three years following the Merger closing date. Nothing herein shall affect the right of either party to extend such agreements further on a month-to-month basis following the expiration of such three-year term, if the terms of the agreement permit such unilateral month-to-month extensions. Either party may

commence negotiation of a new agreement within nine months prior to the expiration of the three-year extension term.

9.8.3. FairPoint will cause all volume pricing provided for in either type of agreement described above, or in tariff-based volume discount programs, to be pro-rated so such volume pricing terms will be deemed to exclude volume requirements from states outside of the three-state area served by Telco following the Merger closing date. FairPoint will work with CLECs and Verizon to provide them the same benefits in the aggregate as those provided by the existing Verizon volume discount arrangement; however, in the event that a CLEC chooses to reduce its spending in the Telco service territory post-closing, the Parties acknowledge and agree that FairPoint and its affiliates will not be required to hold such CLEC “harmless” in the amount of credit it receives under such volume discount arrangement.

9.8.4. FairPoint will offer three-year agreements for tandem transit service, with rates capped at the current tandem transit rates for wholesale customers that agree to a three-year minimum term commitment.

9.8.5. FairPoint will adopt and will cap existing rates under wholesale tariffs (e.g., Tariff 84 in New Hampshire) in effect as of the Merger closing date at then-current levels for a period of three years following the Merger closing date, and FairPoint will also freeze the wholesale discount offered under total service resale (“TSR”) tariffs (e.g., Tariff 86 in New Hampshire) in effect as of the Merger closing date at then-current levels for three years following the Merger closing date, in each case unless FairPoint is required by law to modify such rates (for example, due to a mandated revenue-neutral rate rebalancing). FairPoint may make filings to initiate a proceeding to increase

wholesale rates or to decrease a wholesale discount prior to the expiration of such three-year period provided that the effective date of such rate increase or discount decrease will be on or after the expiration of such three-year period. Services available pursuant to said tariffs, as may be amended from time to time in accordance with applicable law (but subject to the terms of this agreement), shall be made available to the CLECs in accordance with the terms thereof.

9.8.6. No CLEC will advocate any of the following to be effective within the three years following the Merger closing date: (i) any decrease in any of Telco's rates for tandem transit service, (ii) any decrease in Telco's rates for wholesale services under wholesale tariffs, (iii) any decrease in Telco's rates under the Vermont SGAT, or (iv) any increase in the wholesale discount offered under TSR tariffs. This agreement shall not preclude a Party from advocating any position in a rulemaking of general applicability to the ILEC sector, such as the FCC's Docket 05-25. Further, nothing herein shall preclude a Party from challenging a new service offering in any state or federal tariff proceeding. Notwithstanding anything herein to the contrary, FairPoint shall have the same rights and obligations as Verizon in connection with and arising out of any final order which may be issued within NHPUC Docket 06-067. [However, in the event [the Commission decides] Verizon was not authorized to collect the charges in dispute in Docket No. DT 06-067, and require a refund of the charges, we will require Verizon to refund the amount collected by it. [ [2008 Order, p. 75]

9.9 Access Services Provided Under Tariff [CLEC Settlement 5]

9.9.1. Telco will not advocate any increase in any of its tariffed rates for interstate or intrastate tariffed special access circuits to be effective within the three years



following the Merger closing date, unless required by law. Telco may commence a proceeding or proceedings seeking an increase in such rates prior to the expiration of such three-year period provided that the effective date of the new rates shall not be before the end of such three-year period.

9.9.2. Telco will not withdraw any of its currently tariffed interstate or intrastate offering of special access circuits offering for three years after the Merger closing date, unless required by law. This agreement shall not prevent Telco from withdrawing other services offered under the special access tariffs, including high-speed, packetized broadband services previously tariffed by Verizon but authorized by the FCC to be withdrawn from the interstate special access tariff.

9.9.3. No CLEC will advocate any decrease in any of Telco's interstate or intrastate tariffed special access rates to be effective within the three years following the Merger closing date. This agreement shall not preclude a Party from advocating any position in a rulemaking of general applicability to the ILEC sector, such as the FCC's Docket 05-25.

9.10 Service Quality & Performance Assurance Plan [CLEC Settlement 6]

9.10.1. Telco will adhere to the applicable PAP and C2C Guidelines as implemented in each of the three states and be subject to the potential penalties and enforcement mechanisms set forth in those documents.

9.10.2. Any CLEC may seek enforcement of the applicable PAP, even if such right is not expressly incorporated in the interconnection agreement, tariff or SGAT pursuant to which the CLEC purchases service.

9.10.3. After the Merger closing date, FairPoint will work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to Telco in Maine, New Hampshire and Vermont. FairPoint agrees to begin this process by proposing for consideration by the CLECs a revised PAP that could be implemented in all three states.

9.10.4. Reporting obligations and penalties under the PAP or C2C Guidelines will be temporarily suspended on the day of the cutover (the last business day of the month in which cutover occurs) and for the following one month (i.e., a total of one month plus one to three days). All Parties to this settlement agree not to oppose a request by FairPoint for a waiver of the PAP provisions as necessary to effectuate this temporary suspension. FairPoint shall take commercially reasonable steps to ensure that adequate personnel are available to process wholesale orders during the transition period and will structure the transition so as to be able to demonstrate that parity is maintained in the processing of retail and wholesale orders.

9.10.5. FairPoint will comply with number porting intervals and trunk ordering rules and intervals as may be set forth within existing tariffs, interconnection agreements or other agreements, as the case may be. Otherwise, FairPoint will comply with industry standard number porting intervals and trunk ordering rules and intervals.

9.11 Forbearance [CLEC Settlement 7]

9.11.1. FairPoint will not file any new forbearance petition seeking relief from any of Telco's Section 251 obligations or obligations to provide access to Settlement Items in any wire center in Maine, New Hampshire or Vermont for three years after the Merger closing date. FairPoint shall not be prohibited from pursuing rights of review or

clarification or from enforcing any forbearance grant arising from a prior Verizon petition, with the exception that if the pending petition by Verizon seeking forbearance for the Boston MSA (which includes Strafford and Rockingham Counties in New Hampshire) is granted in whole or in part as to any wire centers in the acquired territory, FairPoint will not give effect to such forbearance for three years following the Merger closing date. In such event, the Parties agree that the three-year period following the Merger closing date shall be deemed to constitute a reasonable transition period, and no Party shall seek any additional transition beyond such three-year period before FairPoint may give effect to any such forbearance authority.

9.11.2. FairPoint will not file any new forbearance petition seeking non-dominant treatment for Telco in the acquired territory for three years after the Merger closing date. Nothing herein will restrict FairPoint from enforcing any forbearance from dominant carrier regulation already granted to Verizon (by operation of law or otherwise) in the acquired territory.

9.12 Jurisdiction. The [CLEC Settlement] shall be enforceable by the state utility regulatory commissions except as expressly provided [therein]. [CLEC Settlement 9]

9.12.1 Disputes over a question whether Telco is required to provide a Settlement Item or on what terms, under paragraph 9.2.1 above, will be resolved in accordance with paragraph 9.2.3 above. Jurisdiction over all other disputes arising hereunder or under the Settlement Stipulation properly lie with the state utility regulatory commission in the state which the dispute arises.

9.12.2 Any state utility regulatory commission to which a dispute is brought will resolve only those disputes arising in its state.

10. Network Quality.

10.1 Beginning one month after the Closing Date, FairPoint shall provide Staff monthly progress reports on its network improvement until a full plan is filed as specified in Section 10.2. [2008 Settlement 10.1]

10.2 Not later than three months following Cutover or August 1, 2008, whichever is earlier, FairPoint shall present to the Commission a full network improvement plan based on root cause analysis. [2008 Settlement 10.2]

10.3 FairPoint will be subject to the Quality of Service Requirements as set forth in Exhibit 3, attached hereto and made a part hereof. FairPoint will be subject to the penalties specified in Exhibit 3 in accordance with the required Transition Increments set forth therein; provided, however, that:

- i. SQI Penalties for the 2009 year will be deferred until December 31, 2010.

For the avoidance of doubt, the Parties agree that FairPoint has accrued \$6,000,000 in SQI Plan penalties for FairPoint's fiscal year ended December 31, 2009. If FairPoint meets the service quality objectives for each performance area specified in [Table 1 below] and as averaged over 12 calendar months ending on December 31, 2010, then SQI Plan penalties for 2009 will be waived.

[Table 1]

Table 1: Key Service Quality Metrics Measured in 2010  
for Purposes of Waiving 2009 SQI Penalties

<b>SQI Metric</b>	<b>2010 Benchmark</b>
% Installation Appointments Met	90%
% Installation Service Orders Met within 30 days	95%
Customer Trouble Reports Rate per 100 lines-Network	1.12
% OOS Troubles Cleared in 24 hours (excluding Sunday)	87%
% Repair Commitments Met	89%

If FairPoint meets the service objectives for some but not all of these performance areas as specified above, 2009 SQI Plan penalties will be reduced by 20 percent for each performance area specified in [Table 1] for which FairPoint achieves the service objective averaged over 12 calendar months ending on December 31, 2010; [2008 Settlement 10.3; Regulatory Settlement 2.1]

ii. FairPoint shall adhere to all SQI metrics during the 2010 year and all subsequent years, and FairPoint shall pay any SQI penalties which may become due and payable related to FairPoint's failure to meet such metrics during 2010 and all subsequent years; and [Regulatory Settlement 2.2]

iii. Notwithstanding anything in this Section [10.3] to the contrary, FairPoint's total annual financial exposure to Service Quality penalties as set forth within [these Restated Merger Conditions] shall not exceed \$12.5 million per year. At the end of the five (5) year basic exchange retail rate stay-out period (as set forth within Section 8.1 [hereof]), FairPoint shall be entitled to petition the Commission for a reduction in Service Quality penalties and revisions to the Service Quality standards. [Regulatory Settlement 2.3]

10.4 FairPoint's service quality performance shall be measured and reported monthly by the 20th day of the following month (*i.e.*, January performance results will be due to the Commission on February 20). FairPoint will file reports on a non-confidential basis as is the case for ILECs in Vermont and Maine. [2008 Settlement 10.4]

10.5 FairPoint agrees to pay for the conduct of an independent audit of the quality of service reporting metrics no earlier than one year following Cutover. The Commission will be solely responsible for the choice of the independent auditor, but will afford FairPoint the

opportunity to submit the names of firms to be included within the list of firms to receive requests for proposals for the provision of such services. [2008 Settlement 10.5]

10.6 FairPoint agrees to pay for the conduct of an independent management and operations audit if averaging the results of all Service Quality measures over any 12 month period commencing on or after January 1, 2009 (*i.e.*, excluding months in calendar year 2008), produces lower than 90% compliance with standards after reflecting Transition Increments. [2008 Settlement 10.6]

10.7 Double Poles.

10.7.1. FairPoint will inventory outstanding double poles located in New Hampshire and establish a detailed work plan with respect thereto within six months following the Closing Date. FairPoint agrees to reduce the number of double poles to less than 500 within 24 months following the completion of the detailed work plan but not later than July 31, 2010. FairPoint shall file with the Commission quarterly reports on the inventory and removal of double poles until FairPoint achieves a double pole inventory of 500 or less and shall file such reports thereafter on an annual basis. [2008 Settlement 10.7.1]

10.7.2. In the event that FairPoint fails to meet the requirement in Section 10.7.1 and the shortfall is 100 or more poles up to 1,000 poles, FairPoint shall set aside \$1,000 per pole of the shortfall in a fund to be used by FairPoint to complete the satisfaction of the requirement in Section 10.7.1. [2008 Settlement 10.7.2]

10.7.3. In the event that FairPoint fails to meet the requirement in Section 10.7.1 and the shortfall is 1,001 or more poles up to 2,000 poles, FairPoint shall set aside \$1,000 per pole of the shortfall in a separate interest bearing account of which 90% of the

amount by which the entire shortfall exceeds the shortfall specified within Section 10.7.2 will be used by FairPoint to complete the satisfaction of the requirement in Section 10.7.1 and 10% will be paid over to the TPDF. For purposes of clarity, the maximum payment to the TPDF shall not exceed \$100,000 under this provision. [2008 Settlement 10.7.3]

10.7.4. In the event that FairPoint fails to meet the requirement in Section 10.7.1 and the shortfall is 2,001 or more poles up to 4,000 poles, FairPoint shall set aside \$1,000 per pole of the entire shortfall in a separate interest bearing account of which 80% of the amount by which the entire shortfall exceeds the shortfall specified within Section 10.7.2 will be used by FairPoint to complete the satisfaction of the requirement in Section 10.7.1 and 20% will be paid over to the TPDF. For purposes of clarity, the maximum payment to the TPDF shall not exceed \$600,000 under this provision. [2008 Settlement 10.7.4]

10.7.5. In the event that FairPoint fails to meet the requirement in Section 10.7.1 and the shortfall is greater than 4,000 poles, FairPoint shall set aside \$1,000 per pole of the entire shortfall in a separate interest bearing account of which 75% of the amount by which the entire shortfall exceeds the shortfall specified within Section 10.7.2 will be used by FairPoint to complete the satisfaction of the requirement in Section 10.7.1 and 25% will be paid over to the TPDF. For purposes of clarity and as an example only, a 5,000 pole shortfall equates to a payment of \$1,000,000 to the TPDF under this provision. [2008 Settlement 10.7.5]

10.7.6. Any money set aside pursuant to Sections 10.7.2 through 10.7.5 shall be expended (in capital expenditures or operating expenditures) by July 31, 2011. In the event the double pole removal work has not been completed by July 31, 2011, then: (i) the remaining set aside money will be paid over to the TPDF; (ii) FairPoint will provide a

monthly report of pole removals until the requirement in 10.7.1 is satisfied; and (iii) FairPoint may be subject to the provisions of RSA 365:41 and 365:42 for failure to comply with a Commission order. [2008 Settlement 10.7.6]

10.8 Limits on Business Acquisitions.

FairPoint shall make no Business Acquisitions except in compliance with both the following financial and service quality limits:

10.8.1. Financial Limits on Business Acquisitions. Absent prior Commission approval, FairPoint may not close on Business Acquisitions except as follows:

10.8.1.1. [Historical item related to one year limitation deleted as moot.]

10.8.1.2. For the period between one and three years following the Closing Date, FairPoint may close on Business Acquisitions not exceeding an aggregate amount of \$250 million, provided that, at the time of such closing, FairPoint's average Leverage Ratio for the trailing three fiscal quarters has not exceeded 4.5 times.

10.8.1.3. For the period between three and five years following the Closing Date, FairPoint may close on Business Acquisitions not exceeding an aggregate amount of \$500 million, provided that, at the time of such closing, FairPoint's average Leverage Ratio for the trailing three fiscal quarters has not exceeded 4.75 times.

10.8.1.4. For the period beyond five years following the Closing Date through termination of this limitation as provided in Section 10.8.1.6, FairPoint may close on Business Acquisitions not exceeding an aggregate amount



of \$750 million, provided that, at the time of such closing, FairPoint's average Leverage Ratio for the trailing three fiscal quarters has not exceeded 4.75 times.

10.8.1.5. The value of any Business Acquisitions made shall be counted against the aggregate limits for the period in which they are consummated and in all following periods as well. (For example, if a \$50 million Business Acquisition is made in the first year following the Closing Date and a \$220 million Business Acquisition is made in the period between one and three years following the Closing Date, the aggregate Business Acquisitions that count against the limit for the period between one and three years following Closing Date shall be calculated as \$270 million, which would exceed the applicable limit.)

10.8.1.6. The limits set forth in Sections 10.8.1.2 through 10.8.1.5 shall cease to be effective on the earliest of the following dates:

- i. After FairPoint has achieved an average Leverage Ratio for the trailing three fiscal quarters that has not exceeded 4.0; provided that the earliest date that cessation under this provision shall be effective is as of the end of the first quarter following the second anniversary of the Closing Date; or
- ii. At such time as all dividend-affecting provisions of this Agreement end. [2008 Settlement 10.8.1]

10.8.2. Service Quality Limits on Business Acquisitions. FairPoint may not, without prior Commission approval, close on any Business Acquisitions exceeding \$100 million in aggregate until FairPoint has achieved for four consecutive quarters, at least

95% of the standards for each of the measures set forth in Exhibit 3 that are known as of the date of this Agreement and at least 90% of the standards for each of the measures set forth in Exhibit 3 that are determined after the date hereof. Any service quality standards to be determined after the date [of the 2008 Settlement], not mutually agreed upon in good faith by FairPoint and Staff, shall be determined by action of the Commission.

10.8.2.1. If at any time after the second anniversary of the Closing Date, FairPoint fails to meet these service quality limits on Business Acquisitions, FairPoint may file a remediation plan for Commission approval and set aside money necessary to complete the plan within 12 months. Before filing with the Commission, the remediation plan shall have been reviewed by Staff and Staff shall have agreed that the plan and money set aside are sufficient to remediate the service quality issue(s) within 12 months. If the Commission takes no action within 60 days of filing, the remediation plan will be deemed satisfactory and FairPoint shall be deemed, for purposes of Business Acquisitions, to be in compliance with the service quality limits on such acquisitions.

10.8.2.2. Despite non-compliance with Section 10.8.2, FairPoint shall be permitted to close on one Business Acquisition in the amount of not more than \$500 million, provided that: (i) FairPoint meets the financial conditions on Business Acquisitions under Section 10.8.1, (ii) such proposed Business Acquisition is not publicly announced prior to the second anniversary of the Closing Date, and (iii) FairPoint has achieved the standards indicated by the Transition Increments, which for this purpose shall be prorated (on a monthly basis) for partial years (for example, for a Business Acquisition closing on July 1,

2010, the applicable Transition Increment would be 2/3rds). If FairPoint elects to close on a Business Acquisition under this Section 10.8.2.2, its service quality penalties shall be doubled for each sub-standard metric, until all service quality metric(s) are at or above the relevant standard.

10.8.2.3. These service quality limitations on Business Acquisitions shall end when FairPoint has achieved for a period of four consecutive quarters 100% of the applicable standard on all service quality measures except for one and at least 80% of the applicable standard for the one measure under standard.

[2008 Settlement 10.8.2]

11. Board of Directors.

11.1 FairPoint shall provide for the appointment of a new Board of Directors for reorganized FairPoint consisting of a supermajority of newly appointed independent directors. The Plan shall further provide that the new Board of Directors will appoint a “regulatory subcommittee” (the “Regulatory Sub-Committee”) which shall be charged with monitoring compliance with the 2008 Order, as modified by the Regulatory Settlement, and all other regulatory matters involving the States of Vermont, New Hampshire and Maine. Either the Lead Director or the Independent Chair of the Board of Directors, at FairPoint's option, shall be available to voluntarily speak or meet with the Staff or the Commission where appropriate and lawful. [Regulatory Settlement 4.2]

11.2 At least one member of the revised FairPoint Board of Directors will reside in a northern New England state. In addition, FairPoint will maintain a state president who shall provide a senior regulatory presence in New Hampshire able to reasonably respond to various

future FairPoint based Commission dockets or regulatory issues relating to telecommunications.

[Regulatory Settlement 4.4]

11.3 In all cases where actions of FairPoint involve any obligation under this Agreement, any action by the board of directors shall be taken by the board as a whole and not by any committee or other sub-group of the board. [2008 Settlement 11.2]

12. Subsidiary and Transfer Obligations:

12.1 If FairPoint establishes a separate subsidiary for its ILEC operations in either Maine or Vermont, through the formation of a Telco subsidiary or otherwise, FairPoint agrees to establish thereafter a separate subsidiary for its ILEC operations in the remaining northern New England states at the request of the Commission, the MPUC or the VT PSB, as applicable. [2008 Settlement 12.1]

12.2 No sale, lease, assignment, or other transfer (collectively referred to as “Transfers” for purposes of this Section 12) of Telco assets (whether or not located in New Hampshire) used to provide telecommunications service in New Hampshire shall be made by or among any of FairPoint’s parent and subsidiaries or otherwise except upon prior approval of the Commission.

12.2.1. Notwithstanding this limitation, FairPoint may make Transfers of such assets in the ordinary course of business up to a maximum annual aggregate value by asset type of \$10 million and \$20 million annually in total. FairPoint shall file a notice informing the Commission when the annual amount of Transfers in any class exceeds \$5 million. FairPoint will advise the Commission of such sales on a quarterly basis by filing an asset-type schedule, the form of which will be agreed upon in good faith between FairPoint and Staff after the Closing Date. In the event FairPoint and Staff are unable to

agree on the form of the asset-type schedule, the form of the schedule shall be determined by action of the Commission. [2008 Settlement 12.2]

12.3 Absent prior Commission approval, no FairPoint entity shall cause Telco to: (a) guarantee or otherwise be liable for any financing obligation of any other entity, (b) provide any mortgage, pledge, or other encumbrance of Telco assets, or (c) provide credit support for the benefit of any non-Telco entity obligations (other than agreements subordinating intercompany obligations to bank credit agreements). [2008 Settlement 12.3]

12.4 No FairPoint entity shall, without prior Commission approval, enter into any credit or other financial agreement that: (a) conflicts with or overrides the provisions of [the 2008 Settlement], or (b) can reasonably be read to induce an expectation that any FairPoint entity will or may cause [the 2008 Settlement] or any Telco credit or finance agreement (if any) not to be enforced or applied in full compliance with its terms and conditions. [2008 Settlement 12.4]

12.5 No FairPoint entity shall make any agreement or provide any representations or assurances that: (a) any dividends or any other equity capital or cash distributions provided by Telco shall or may be made available to or pledged as a security interest for the benefit of any entity other than FairPoint, or (b) that such dividends, equity capital or cash distributions shall or may be used in any way inconsistent with the obligations of FairPoint under [the 2008 Settlement]. For so long as the dividend-affecting provisions of [the 2008 Settlement] apply, each future credit or financing agreement, other than the Credit Agreement or the Bond Documents, entered into by any FairPoint entity, to the extent that such agreement imposes an obligation in excess of \$100 million, shall include a provision providing for the limitations of this Section 12.5, or be accompanied by a written acknowledgement of such limitations by all parties to such an agreement. [2008 Settlement 12.5]

13. Employment Matters

13.1 FairPoint must establish an external trust fund within a year after close to receive, invest, and disburse funds to help meet accrued OPEB liabilities for employees who work primarily in the provision of regulated telephone services in FairPoint affiliates serving New Hampshire, excluding Vermont Telco to the extent it has employees who primarily serve only Vermont. FairPoint shall annually make contributions to the external trust fund in an amount not less than FairPoint's current cash disbursements for OPEB obligations through 2011. Disbursements from the trust, including earnings thereon, shall be used only to pay expenses of the trust through 2011. The trustee must be independent of FairPoint and authorized to make only those investments consistent with sound investment policies for funds of this nature. By 2010, the Commission will open a proceeding to determine the appropriate level of funding for OPEB obligations and management of disbursements for the trust to meet those obligations going forward. The Commission does not expect to allow recovery of OPEB expenses that are greater than the current fully accrued FAS 106 expenses in future regulated rates. [2008 Order p. 64]

13.2 FairPoint may not, without Commission approval, eliminate or reduce the workforce of the call center it is developing in Littleton or the data center it is developing in Manchester. [2008 Order p. 81]

14. Miscellaneous Matters

14.1 Subject to the jurisdiction of the Bankruptcy Court for claims arising prior to the Effective Date of the Plan, in the event a CLEC incurs substantial and extraordinary costs directly related to the transition from Verizon to FairPoint, it may petition the Commission for reimbursement. The burden will be on the petitioner to demonstrate the costs were: substantial

and extraordinary, incurred as a result of this transaction, and would not have been incurred in the ordinary course of business. Consideration of a request for reimbursement will be subject to an adjudicative process. [2008 Order p. 78]

14.2 What had been contemplated in the Commission's order in Docket DT 02-165 as a second phase of the Yellow Pages proceeding will occur in FairPoint's first rate case. [2008 Order p. 66]

14.3 FairPoint agrees to establish the position of Chief Information Officer with a goal of having a Chief Information Officer in place by June 30, 2010. [Regulatory Settlement 4.1]

14.4 Subject to Bankruptcy Court approval, during and solely in furtherance of the process of negotiating the terms of this Regulatory Settlement and any proceedings to obtain approval thereof, and no less frequently than monthly through and ending on the ninety-first (91st) day after the Effective Date of FairPoint's Chapter 11 Reorganization Plan (the "Plan"), FairPoint shall reimburse the State of New Hampshire for all of its actual reasonable out-of-pocket expenses and costs in connection with FairPoint's chapter 11 case and post-petition regulatory proceedings, including without limitation, the reasonable fees and expenses of all professionals, including legal and financial advisors retained by the State in connection with the chapter 11 cases, plus any other direct costs reimbursable by FairPoint under applicable New Hampshire law. In addition, the State's pre-petition out-of-pocket costs, fees, and expenses, up to \$50,000, shall be deemed allowed under the terms of the Plan and, as part of this Regulatory Settlement, shall be paid in full on the Effective Date of the Plan. For the purpose of clarity, any request made within the time set forth herein shall be deemed timely notwithstanding that Bankruptcy Court approval may require additional time. [Regulatory Settlement 4.3]

14.5 FairPoint shall not agree to or accept any term in a proposed settlement with the Maine Public Utilities Commission, the Maine Office of Public Advocate, the Vermont Department of Public Service or the Vermont Public Service Board pertaining to the Plan or, if applicable, to any related approval for a change in control without offering the same term to the Staff Advocates and/or the Commission in connection with the Regulatory Settlement, a change in control, or the approval of either by the Commission. FairPoint only shall be required to offer such term(s) to the Staff Advocates or the Commission in the event that such term(s) represent a material difference in the benefits of the Regulatory Settlement, on one hand, and the regulatory settlement effectuated in the jurisdiction of Vermont or Maine (as the case may be), on the other hand, considering each such Regulatory Settlement in the aggregate. [Regulatory Settlement 4.5]

14.6 Any management bonuses shall be based on a combination of EBITDAR (EBITDA plus restructuring costs) and service quality metrics goals, and the weighting for each of these categories shall be computed and clearly stated for the incentive and bonus plans for each individual and for the company in total. It is the Staff Advocates' expectation that compliance with service quality metrics shall be afforded significant consideration in the weighting of those categories. [Regulatory Settlement 4.6]

14.7 FairPoint and the Staff Advocates agree to support the Regulatory Settlement and the application for a change of control and not take any action in any case or proceeding involving FairPoint that would breach or violate the terms set forth in the Regulatory Settlement for so long as the Regulatory Settlement is in force. [Regulatory Settlement 4.7]

14.8 For a period of two (2) years following the Effective Date of the Plan, FairPoint shall not pay any dividends during any period of time while FairPoint is in breach of any of the



material terms of the Regulatory Settlement, but such dividend restriction shall apply only for so long as FairPoint has not cured any such material breach(es). For the avoidance of doubt and for example purposes only, in the event FairPoint fails to achieve the material requirements of the SQI Plan metrics or broadband availability requirements as set forth in the Regulatory Settlement and FairPoint pays any penalty related to such failure when due, FairPoint shall be deemed to be in compliance with the Regulatory Settlement. [Regulatory Settlement 4.8]

14.9 FairPoint represents that it intends for the “New Term Loan Agreement” and the “New Revolving Facility” (collectively with all related loan documents, the “New Credit Agreements”) to contain substantially the same material terms and conditions as contained in the Plan Support Agreement on file with the Bankruptcy Court as of October 26, 2009. Copies of the New Credit Agreements will be filed with the Bankruptcy Court as part of the Plan Supplement and the Commission pursuant to Section 1.2 hereof. The New Credit Agreements will provide that Northern New England Telephone Operations LLC (or its successors or assigns, if any) shall not guarantee or otherwise be liable for, nor shall any of its assets be mortgaged or pledged (excluding only the membership interests of Telephone Operating Company of Vermont LLC) to secure, the obligations of FairPoint thereunder. [Regulatory Settlement 4.9]

15. Requirements from Schmitt Settlement:

15.1 FairPoint and New Hampshire Legal Assistance (“NHLA”) agree to work together in good faith to develop processes and procedures that will be intended to increase participation by eligible persons in the Lifeline and Link-up programs. Initially, for the first three years following the Merger closing, those steps will consist of the following:

15.1.1 Not later than three months following the Merger closing, FairPoint will initiate contacts with New Hampshire’s Community Action Programs, the New

Hampshire Department of Health and Human Services and the New Hampshire Municipal Association to discuss ways to coordinate the dissemination of information regarding the Lifeline and Link-up programs. Any dissemination efforts that require use of FairPoint operating systems will be implemented on a mutually agreed to schedule after the cutover from the Verizon operating systems to the new FairPoint systems (the “Cutover”).

- 15.1.2 Based on the discussions referenced in Section 14.10, FairPoint will develop a Lifeline and Link-up outreach plan, including annual financial assistance to social service agencies in an aggregate amount to be negotiated not to exceed \$50,000. Any mutually agreed outreach initiatives that require use of the FairPoint billing or other operations systems shall be implemented after the Cutover on a mutually agreed schedule.
- 15.1.3 Commencing three months after the Cutover, FairPoint will report Lifeline and Link-up participation levels monthly to the Commission Staff, the Office of Consumer Advocate (“OCA”) and NHLA. Such reports shall be provided not later than fifteen days following the close of the prior month and shall include (i) the total number of New Hampshire Lifeline customers, (ii) the net change in the number of Lifeline customers from the prior month and (iii) the percentage that Lifeline customers comprise of the total number of residential basic service customers.
- 15.1.4 FairPoint will meet with the Commission Staff, the OCA and NHLA every six months to discuss progress and results of the outreach efforts. FairPoint will provide the Commission Staff, the OCA and NHLA the opportunity to review and

comment on new Lifeline and Link-up outreach pamphlets and brochures and the disclosures regarding Lifeline and Link-up to be included in disconnect notices.

15.2 Commencing not later than nine months following the Cutover, FairPoint will institute a “soft disconnect” process whereby consumers disconnected for non-payment of telephone bills will continue to have access to dial tone for the limited purposes of calling 911 for emergencies and for calling the FairPoint business office for a period of at least ninety days. Soft disconnects (i) will only be available where facilities and telephone numbering resources are available, (ii) will be subject to technical, provisioning and activation considerations and (iii) will not be available to customers who port their telephone numbers to other wireline, wireless or broadband service or other provider.

15.3 For a minimum of three years following the Merger closing, FairPoint will continue to offer a separate stand-alone basic telephone service offering including the functionalities set forth in Rule Puc 412.01(b).

15.4 FairPoint makes the following undertakings regarding payphones:

15.4.1 For a period of two years following the merger closing, FairPoint will maintain a process (except as may be otherwise required by an existing contract) by which it will provide not less than thirty (30) days advance notice in writing to the Commission Staff, the OCA and NHLA of its intent to remove any FairPoint payphone that could be eligible for consideration as a public interest payphone based on the criteria set forth in Puc 406.04(b).

15.4.2 Within six months following the Cutover, FairPoint will install, fund and maintain in place for at least three years five public interest payphones at locations to be determined in consultation with Staff, the OCA and NHLA. If maintenance costs

of any public interest payphone are unusual due to misuse or vandalism, the parties will negotiate the relocation of such payphone.