

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 11-061

**FairPoint Communications, Inc. Petition for
Approval of Simplified Metrics Plan and Wholesale Performance Plan**

JOINT MOTION FOR EXPEDITED APPROVAL OF ARBITRATION PROCEDURE

Northern New England Telephone Operations LLC d/b/a/ FairPoint Communications-NNE (“FairPoint”); and Biddeford Internet Corporation d/b/a Great Works Internet; Comcast Phone of New Hampshire, LLC; CRC Communications of Maine, Inc. d/b/a OTT Communications; CTC Communications Corp., Lightship Telecom LLC, Conversent Communications of New Hampshire, Inc., all d/b/a “EarthLink Business”; Freedom Ring Communications, LLC d/b/a BayRing Communications; and National Mobile Communications Corporation d/b/a Sovernet Communications (the “CLEC Parties”) (FairPoint and the CLEC Parties, collectively “the Moving Parties”) respectfully request that the Commission approve and adopt, on an expedited basis, the Arbitration Procedure specified in Exhibit 1 hereto. The Arbitration Procedure proposes to establish a joint, three-state arbitration procedure to address and resolve issues relating to the establishment of a simplified Performance Assurance Plan, to be known as the Wholesale Performance Plan (“WPP”).¹ Concurrently, approval and adoption of the identical Arbitration Procedure is also being requested of the Maine Public Utilities Commission (“MPUC”) and Vermont Public Service Board (“VPSB”).

The Arbitration Procedure provides a process for resolving many issues in an efficient

¹ Some of the issues relating to the simplified PAP were addressed in a Settlement Stipulation filed with the Commission by the Moving Parties on October 23, 2012. The Commission issued

and expeditious manner, and is the product of extensive discussions among the Moving Parties. The list of issues the Moving Parties expect to be subject to arbitration includes, for example: whether there should be a limit (cap) on the total amount of dollars placed at risk, and if so, in what amount; rates for per unit bill credits; whether escalators should apply for repeated instances of missed performance, and if so, by what percent; change of law provisions; term of plan; remedies for late or inaccurate reports; and the inclusion or exclusion of certain metrics within the reporting and/or bill credit portions of the plan (as identified on Attachments 3a and 3b of the Stipulation filed Oct. 23, 2012). The Moving Parties will finalize an issue list upon completion of negotiations concerning plan terms and metric guidelines, which the parties will strive to complete within a month or so.

In general terms, the Arbitration Procedure provides for the following process. The Commission, the MPUC and the VPSB (collectively the “Commissions”) would provide notice to all parties in their respective simplified PAP dockets² of the Arbitration Process. Each Commission/Board will appoint a staff person to serve on the Arbitration Panel. The Moving Parties would then submit a list to the Arbitration Panel of issues to be arbitrated, which would define the scope of arbitration. Parties other than the Moving Parties would be permitted to intervene and participate as a party to the arbitration.³ All parties would thereafter have an opportunity to submit position statements on the issues to be arbitrated, which would be subject to information requests from the Arbitration Panel and limited discovery by the parties. At the arbitration hearing, the position statements would serve the purpose of pre-filed direct testimony,

an Order on December 18, 2012 approving the Settlement Stipulation.

² Maine PUC Docket No. 2009-334; Vermont PSB Docket No. 7506.

³ Issues raised by non-Moving Parties that are outside of the scope of arbitration would be addressed and resolved pursuant to procedures established by the Commissions.

other documents could be offered into evidence, and the sponsoring witnesses would be subject to cross-examination. There would also be an opportunity for live rebuttal testimony.

After the hearing, the Arbitration Panel would circulate the Panel's proposed findings of fact and conclusions of law, and after an opportunity for written comment by the parties, would adopt a final Proposed Decision. Each of the Arbitrators would file the Proposed Decision with his or her respective Commission/Board as an Examiner's Report (ME), a Hearing Examiner's Report and Recommendation (NH), and a Proposal for Decision (VT). Parties could file Exceptions with the Commissions concerning any portion of the final proposed decision based on alleged errors of law. Parties would also have the ability to petition for *de novo* review of any decision reached by the Arbitrators on issues that were outside the scope of arbitration submitted by the Moving Parties. After an opportunity to file briefs, the Commissions would adopt final decisions.

Upon completion of the above matters, the Commission would issue a final decision encompassing all issues related to the establishment of the WPP. While acknowledging the Commission's authority to resolve issues brought before it, the Moving Parties encourage the Commission and the other Commissions to keep in mind the importance of establishing, as much possible, a unified three-state WPP.

The Commission has the authority to delegate the above-described arbitration functions to a member of its Staff. *See* RSA 363:17 ("the commission may . . . appoint a qualified member of its staff as examiner to hear the parties, report the facts, and make recommendations to the commission.") Furthermore, the Arbitration Procedure preserves for the non-Moving Parties all procedural rights provided under the Commission's rules, because no hearing is required in order

to modify the existing Performance Assurance Plan (“PAP”).⁴ Consequently, approval of the Arbitration Procedure will further the orderly and efficient conduct of the proceeding, and will not impair the rights of any party to the proceeding.

WHEREFORE, the Moving Parties respectfully request that the Commission:

- A. Approve the Arbitration Procedure without modification on an expedited basis;
- B. In the alternative, in the event the Commission believes that further information is required, schedule a technical session as soon as convenient, and thereafter approve the Arbitration Procedure;
- C. Implement the procedures provided for under the Arbitration Procedure in an expeditious manner; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC, d/b/a
FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,
DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

By: 

Dated: May 13, 2013

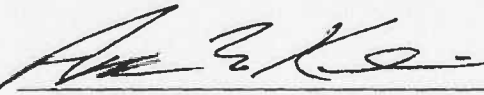
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⁴ Section K of the existing PAP relating to modifications permits Commission approval without hearing. Even so, the Arbitration Procedure also provides notice and an opportunity for hearing and therefore satisfies the requirements of procedural due process.

Comcast Phone of New Hampshire, LLC
By its Attorneys,

Dated: May 10, 2013

By: 

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FREEDOM RING COMMUNICATIONS d/b/a
BAYRING COMMUNICATIONS

CTC COMMUNICATIONS CORP.,
LIGHTSHIP TELECOM LLC, CONVERSENT
COMMUNICATIONS OF MAINE LLC, and
CHOICE ONE COMMUNICATIONS OF
MAINE, INC., all d/b/a EARTHLINK
BUSINESS

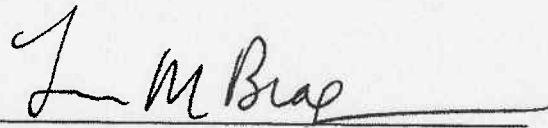
BIDDEFORD INTERNET CORPORATION
d/b/a GREAT WORKS INTERNET

CRC COMMUNICATIONS INC. and MID-
MAINE TELPLUS LLC, both d/b/a OTT
COMMUNICATIONS

NATIONAL MOBILE COMMUNICATIONS
CORPORATION d/b/a SOVERNET
COMMUNICATIONS

Dated: May 10, 2013

By: _____



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(Authorized representative of CLEC Parties
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Motion and accompanying filing letter)