December 7, 2010

<u>*By FedEx and Email*</u>

Ms. Debra A. Howland, Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: *Verizon New England et al. — Transfer of Assets and Franchise,* DT 07-011

Dear Ms. Howland:

The Signatories to this letter wish to respond to FairPoint's November 22, 2010 letter in response to our November 17 letter.

FairPoint's letter is remarkable for the number of times FairPoint professes that it "doesn't understand." That FairPoint doesn't understand is manifest in numerous fundamental ways, starting with the nature of the PAP itself.

As the Commission has described:

> The Telecommunications Act of 1996 (TAct) requires an incumbent local exchange carrier (ILEC) like Verizon-NH to demonstrate to the Federal Communications Commission (FCC) that its local markets are open to competition in order to obtain permission to enter the long distance market pursuant to §271 of the TAct. The FCC has determined that the fact that an ILEC will be subject to performance monitoring and enforcement mechanisms constitutes probative evidence that the carrier will continue to meet its §271 obligations and that entry is consistent with the public interest. In all §271 applications thus far granted by the FCC, the applicant was subject to a self-executing enforcement plan administered by the relevant state commission to protect against backsliding.

In re Verizon New Hampshire — Petition to Approve Carrier to Carrier Performance Guidelines and Performance Assessment Plan, DT 01-006, Order Regarding Metrics and Plan, Order No. 23,940, at 7-8 (March 29, 2002) (citations omitted).

The FCC has stated explicitly that one of the "important characteristics" of such an enforcement plan is "reasonable assurances that the reported data is [*sic.*] accurate." *See, e.g., In the Matter of the Application by Bell Atlantic New York Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* Memorandum Report and Order, CC Docket No. 99-295, FCC 99-404, ¶ 433 (December 29, 1999).

Since FairPoint implemented its home-grown systems at the February 1, 2009 cutover, there has been considerable backsliding. Wholesale service quality has been abysmal. PAP credits, an inverse indicator of wholesale service quality, were nominal in 2007, prior to the FairPoint transaction. As the Commission knows, PAP credits skyrocketed after cutover and today remain many multiples of what they were before the acquisition — or, for that matter, what they were after the March 2008 closing but before cutover.

FairPoint's failure to understand also is apparent in its consistently erroneous implementation of the current PAP. FairPoint's failure to accurately calculate and report MOE doubling credits for almost every month since cutover is an obvious example that it "doesn't understand" the PAP.[1] While spectacular in dollar amount, however, the MOE doubling fiasco was basically a matter of calculation. Further examination has revealed that FairPoint's PAP reports are riddled with mistakes, miscalculations, and misreporting.

A few examples include:

- Scoring errors within the Critical Measures part of the PAP including erroneous reports of "NA" instead of the actual poor score or erroneous reports of better scores than FairPoint actually achieved.[2]

- In the Special Provision metrics, PR 9-08-3533 is evaluated by the Z score and the time difference. For March, June and August 2010 where there was CLEC and FairPoint activity, FairPoint did not provide the statistical score on the PAP report, and the August C2C Report had a blank field in the Z Score column. Also in the Special Provision metrics, FairPoint scored 50% on metric OR-1-06-3320 against the standard of 90% in March and April of 2010. In neither month did FairPoint calculate or issue the corresponding credits.

- Also in September 2010, FairPoint neither reported nor credited approximately $86,000 based on Special Provision metric OR-5-03-3112 and OR-5-03-3121.

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[1] The CLEC community had to point out the error to FairPoint. FairPoint has taken months to acknowledge the error and inform CLECs of the corrected credits.

[2] For example, OR-1-04-1341 in September 2010 scored 75% on a 95% standard and was scored as NA (Not Applicable) rather than a -2 as per Table F-1-2 (Appendix F p.2). Similarly, MR-5-01-3112 had a parity performance score of -1.0027 and was scored as a 0 rather than a -1. Metric MR-4-08-3145 had a performance score of -1.5695 and was scored as 0 rather than -1 as specified by Table F-1-1 (Appendix F p.1) of the PAP. In the remainder of 2010, there were 6 erroneous Critical Measures scores in August 2010, 2 in July, 3 in June, 2 in May, 2 in April, 1 in March, 2 in February and 1 in January – a pattern which shows that FairPoint is getting worse, not better, in its calculations.

Most egregious is FairPoint's complete failure to build into its post-cutover systems the ability to report data for certain PAP metrics. As the Vermont Public Service Board stated:

> FairPoint committed to comply with the PAP in Vermont. This commitment was not equivocal; at no point did FairPoint state that its commitment was subject to the condition that it designed systems that could provide the requisite data. Rather, FairPoint's commitment was to comply — period. . . . Although not explicitly mandated, of necessity, this established an obligation for FairPoint to design its new systems to provide the data necessary to meet this condition; only by producing this data could FairPoint possibly ensure that it had complied with its obligations. We cannot understand how FairPoint could design a system that would meet its C2C and PAP compliance commitment without providing the measurements that were essential to evaluate such compliance.

Petition of Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, for waiver of certain requirements under the Performance Assurance Plan and Carrier to Carrier Guidelines, Dkt. No. 7506, Order Re: Waiver of Performance Assurance Plan and Carrier-to-Carrier Measures, at 10 (Aug. 6, 2009).

The Vermont Board's concerns are equally valid in New Hampshire. FairPoint's systems in New Hampshire are the same as those in Vermont. The data missing in Vermont are missing here as well.

All this demonstrates why an audit is necessary. While the Signatories discovered the examples above, in all likelihood these only scratch the surface. An in-depth audit by trained examiners will reveal whether the errors above are anecdotal or part of a much larger pattern.

For the PAP to provide the necessary incentives to reduce backsliding, it must be implemented properly. The very integrity of the data, operation, and reporting of the PAP has been shown to be lacking. The proper response is to restore that integrity, not to scrap the system.

But, scrapping the system is just what FairPoint would do. It refers to the existing PAP as "obsolete." Multiple times, it has sought to escape the incentives to which it is subject by seeking waivers from PAP requirements large and small. *See Petition of FairPoint Communications for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines,* DT 09-059 (filed March 26, 2009); *Petition of Northern New England Telephone Operations LLC, d/b/a Communications for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines,* DT 09-113 (filed June 10, 2009).[3]

[3] FairPoint filed waiver petitions corresponding to both of these in Maine and Vermont as well.

The PAP is only as good as its data. If the data are unreliable, the PAP cannot function and backsliding can go undetected. Thus, ensuring the reliability and integrity of the C2C data and PAP calculations and reporting are crucial to the maintenance of effective telecommunications competition for the citizens of New Hampshire.

Whatever the merits of a streamlined PAP, the environment was very different in late 2007 and early 2008, when the FairPoint acquisition was being considered. Now, nearly two years after cutover, FairPoint's PAP remains riddled with data reporting, scoring and reporting errors. Thus, FairPoint's suggestion that it expend considerable time and effort on the part of itself and the CLEC community negotiating a new PAP makes no sense in light of the glaring problems with its implementation of the existing PAP to which it is subject. FairPoint should devote its resources to remedying the problems in both its service quality and its implementation of the current PAP.

It is not the case, as FairPoint suggests, that the Signatories are just in it for the money, that we wish to delay the simplification of the PAP so as to reap the windfall of the current high level of PAP credits.[4] None of the Signatories is dependent on PAP credits as a revenue stream. We did not depend on PAP credits prior to FairPoint's acquisition, such as in 2007 when reported PAP credits were nominal, and we do not depend upon them now that they are much higher.

FairPoint points out in its November 22 letter that the only two New Hampshire CLECs with average monthly PAP credits above four figures will not, as the result of settlements, benefit if an audit determined that additional credits were owed for the period prior to August 2010. *Both of those CLECs are Signatories to this letter.* Similarly, numerous other CLECs that qualify for only modest amounts of New Hampshire PAP credits have joined. The Signatories' motivation, therefore, is not mercenary. It is not to receive additional credits, but to receive excellent wholesale service. The Signatories would rather have excellent wholesale service and no PAP credits than the poor service they have received since cutover, even with the credits. When it is functioning properly, the existing PAP provides a strong incentive for an incumbent to provide good service.

FairPoint should be embarrassed for suggesting that the Signatories' prime motivation is simply financial when it is crystal clear that FairPoint's own motivation has been and is to reduce PAP payments without any actual improvement of wholesale service. In this regard, FairPoint's accusation speaks volumes in its implied premise that a streamlined PAP will substantially reduce payments for poor service quality, and, therefore, incentives for good service quality.

It also ill-suits FairPoint to complain that the Signatories have no intention of working cooperatively with FairPoint or to accuse us of a boycott. The simplified PAP was suggested toward the end of 2007, some three years ago. FairPoint had initial, preliminary discussions with

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[4] The effective answer to this problem, of course, is for FairPoint to fix its service quality issues and achieve pre-cutover levels of performance.

the CLECs regarding a simplified PAP in the summer of 2009 but has been silent on the subject until just recently. Indeed, it is only now, when the Commission has begun to look at the question of an audit, that FairPoint has taken any significant steps to advance the simplified PAP agenda. Thus, any delay in developing a simplified PAP is of FairPoint's making, not the CLECs.

Contrary to FairPoint's suggestion, it is not the Signatories that have their priorities backwards. FairPoint should have learned the obvious lesson from its last decision to jettison established systems that were working well in favor of new, untested designs. Instead of spending resources to develop a novel, untried PAP with grossly reduced incentives for excellent wholesale performance, it is far more appropriate to ensure that the existing, well-established PAP — which worked quite well in the pre-cutover era — continues to do the job it was designed to do.

The audit is justified and it is the right thing to do. The Commission should ensure the integrity of FairPoint's implementation of the current PAP and the C2C metrics on which the PAP depends before embarking on a course of substantial modification. The Signatories reiterate that they would be willing to consider further discussions of a simplified PAP once FairPoint's compliance with the PAP currently in effect is audited and assured.

Respectfully submitted,

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