

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 07-011

VERIZON NEW ENGLAND, ET AL.

Transfer of Assets to FairPoint Communications, Inc.

Order on Service Quality Penalties

ORDER NO. 25,331

February 6, 2012

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2007, Verizon New England and affiliated entities (Verizon) filed a joint application for merger with FairPoint Communications Inc. (FairPoint) whereby Verizon would transfer its assets and franchise in Northern New England, including New Hampshire, to FairPoint. By Order No. 24,823 (February 25, 2008), the Commission approved a settlement agreement (2008 settlement) that permitted the transfer, subject to certain conditions. Relevant to the instant matter, under the 2008 settlement and subsequent order, FairPoint agreed to abide by certain service quality standards and to self-enforcing penalties should it not meet those standards.

Verizon New England, et al., Order No. 24,823 (Feb. 25, 2008) at 33, 72. The standards and penalties were modified in a settlement agreement (2010 settlement) reached in the context of FairPoint's bankruptcy and approved by the Commission. *FairPoint Communications, Inc., et al.*, Order No. 25,129 (July 7, 2010) at 17. In particular, under the 2010 settlement, FairPoint was subject to a service quality penalty of \$6,000,000 for service quality lapses in calendar year 2009, but that amount could be reduced based upon improvements in its performance in calendar year 2010. Significantly, the penalty and reporting conditions of the 2008 settlement were, in all other respects relevant to the instant matter, retained following the 2010 settlement.

II. POSITIONS OF THE PARTIES

A. Staff

On January 25, 2012, Staff filed a memorandum and recommendation relative to the service quality penalties. According to Staff's recommendation, following the August 2011 completion of an audit of FairPoint's service quality measurement systems, practices and reporting, FairPoint reported on its performance for calendar year 2010. Staff stated that following its review of FairPoint's calculations and the potential reductions to the amount owed for lapses in 2009, it and FairPoint agreed that FairPoint was entitled to a reduction of the 2009 penalties from \$6,000,000 to \$2,400,000. In addition, Staff stated that it and FairPoint agreed that FairPoint had incurred an additional penalty of \$190,418 for service quality lapses in calendar year 2010. Accordingly, Staff's memorandum and recommendation specified that it and FairPoint agreed that FairPoint currently owes \$2,590,418 for service quality lapses that occurred in 2009 and 2010.

Staff's memorandum and recommendation noted that pursuant to the 2008 settlement, FairPoint was required to pay the accrued penalties in the form of refunds to customers. Further, Staff noted that pursuant to Order No. 25,308 (December 28, 2011) in an unrelated matter, FairPoint was permitted to impose a surcharge on retail access lines to account for municipal property taxes and that Staff believed a similar approach was appropriate for addressing the service quality payments. Staff, therefore, recommended that the Commission direct FairPoint to apply a credit of \$0.99 per month to the same access lines that would be subject to the municipal property tax surcharge beginning in April 1, 2012 and ending upon full payment of the penalty amount, which could include a final monthly credit of less than \$0.99.

B. FairPoint

On January 31, 2012, FairPoint submitted a response to Staff's memorandum and recommendation. In its response, FairPoint requested that the Commission not adopt Staff's recommendation and instead grant FairPoint and Staff a period of time to discuss the possible use of the service quality penalty funds for the expansion of broadband in northern New Hampshire. FairPoint contended that the credit recommended by Staff would have only minimal economic benefit to the residents of New Hampshire, but that expanding broadband would provide meaningful economic benefits. FairPoint stated that any broadband expansion relating to the use of service quality penalty funds would be in addition to the broadband expansion commitments it has already made. FairPoint further stated that if it and Staff could not reach an agreement on the use of the funds for broadband expansion, the Commission could then act upon Staff's memorandum and recommendation.

III. COMMISSION ANALYSIS

In the 2008 settlement and the subsequent order, FairPoint agreed that to the extent it owed service quality penalties the penalty amounts would be paid by means of customer refunds. *Verizon New England, et al.*, Order No. 24,823 at 33 ("Penalties will be refunded to retail customers through bill credits.") and 72 ("FairPoint not only agreed to achieve the [service quality] standards, but also agreed to financial consequences in the form of customer refunds, if it does not meet them."). Those provisions were not eliminated or altered by the 2010 settlement or the related order. Accordingly, except as provided below, and in adherence to Order No. 24,823, we adopt Staff's recommendation that the penalties be paid in the form of credits to customers. We also adopt Staff's recommendation that the credits begin on April 1, 2012 at the

same time as the surcharge authorized by Order No. 25,308. As to the amount of the credits and the timeframe for repayment, we are mindful that the New Hampshire State Senate has recently passed Senate Bill 48 which, by its terms, substantially decreases the level of regulation to which FairPoint is subject. A consequence of that legislation may be that the ability of the Commission to enforce the payment of these previously incurred service quality penalties is diminished or eliminated. Absent an amendment to the legislation sufficient to permit the Commission to enforce the service quality penalty payment obligation, the amount of the payments may need to be increased above the amount recommended by Staff to ensure that the money owed to consumers for FairPoint's inability to meet its service quality obligations is fully paid prior to any change in FairPoint's degree of regulation. At this time, however, we do not know the timeline or impact of the proposed legislation and therefore unless and until the Commission further orders, we accept Staff's recommendation that the credits should begin on April 1, 2012 at \$0.99 per month per qualified access line until paid, with a credit for the last monthly billing cycle that may be more or less than \$0.99 to achieve a total amount of credits that is as nearly as possible equal to \$2,590,418. Should it appear that the full refund is not likely to be completed before the effective date of SB 48, and that bill has not been amended to preserve the right of the Commission to enforce that obligation, we will accelerate the refund schedule.

Notwithstanding the above conclusion that the penalty amount should be paid through credits to customers as FairPoint agreed to do in the 2008 and 2010 settlements, we recognize that there may be merit in FairPoint's contention that there would be a meaningful economic benefit in using the money to expand broadband in northern New Hampshire to customers who otherwise might not be served. Thus, we are willing to consider, as an alternative, a broadband

expansion plan that relies upon the penalty funds. For the reasons previously articulated regarding potential changes to the Commission's authority to enforce such initiatives, however, we will allow only a short period of time for FairPoint, Staff and interested parties to develop an alternative. Furthermore, because spending the money in any manner other than through credits to customers would require amending the provisions of prior Commission orders issued following hearings, under RSA 365:28 a hearing would be necessary prior to allowing the money to be expended as requested by FairPoint. Accordingly, should FairPoint, Staff and other interested parties confer and file a broadband expansion plan relying upon the penalty funds with the Commission by March 1, 2012, the Commission will consider that plan at a hearing on March 15, 2012. If an agreed upon plan is not submitted by March 1, or if a plan is submitted, but the Commission does not accept the plan following the hearing, FairPoint shall apply credits to customers' bills beginning on April 1, 2012 as set out above. In proposing a plan, the Commission will be particularly concerned with the scope of the expansion to be undertaken, how the additional broadband customers served will be accounted for beyond the 95 percent availability agreed to in the 2008 settlement, the timeframe for the work to be completed, and how the obligations of the plan would survive and be enforced until the commitments are fully achieved.

In sum, and for purposes of clarity, pursuant to this order:

1. Except as the Commission may order, FairPoint shall apply credits to customers' bills beginning on April 1, 2012 at \$0.99 per month per line, up to 25 lines per account, until the full amount is paid (with a per line credit for the final billing cycle that may

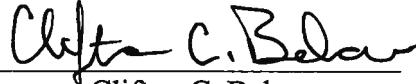
be more or less than \$0.99 to most closely achieve the total credits due of \$2,590,418);

2. If the Commission's authority to enforce the 2009-2010 service quality penalties is altered, FairPoint shall refund the 2009-2010 service quality penalty payments in full before such change is effective in a manner determined by the Commission;
3. If FairPoint and others submit a broadband expansion plan for Commission review by March 1, 2012, the Commission will review the plan at a hearing on March 15, 2012 at 10:00 a.m. and will proceed accordingly;
4. If a plan is not submitted by March 1, or if the Commission does not accept the plan following the hearing, FairPoint shall apply credits to customers' bills beginning on April 1, 2012 as set out above.

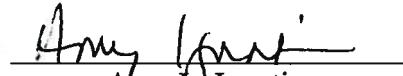
Based upon the foregoing, it is hereby

ORDERED, that except as the Commission may order, absent Commission approval of a broadband expansion plan relying upon service quality penalty funds meeting the criteria outlined in this order, FairPoint shall credit customers with service quality penalty payments beginning April 1, 2012 at \$0.99 per month per access line, up to 25 lines per account, until the full amount of the penalty is paid.

By order of the Public Utilities Commission of New Hampshire this sixth day of
February, 2012.



Clifton C. Below
Commissioner



Amy K. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director