Exhibit
OC-22
10-025
5/24/10

(A)

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 09-___

Petition of FairPoint Communications for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines

Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint Communications") hereby requests that the New Hampshire Public Utilities Commission (the "Commission") waive the requirements of the Performance Assurance Plan ("PAP") as amended in the November 21, 2006 filing in DT 06-168 and the associated Carrier to Carrier Guidelines Performance Standards and Reports ("C2C"), so as to remove certain of FairPoint Communications' reporting obligations under the PAP and the C2C. In support of the request, FairPoint Communications states as follows:

1. Following the acquisition of certain Verizon New England Inc. ("Verizon") assets, FairPoint Communications has continued the task of developing its own operational systems and transitioning from Verizon systems to its new systems. The cutover involved moving from Verizon's over 600 systems to FairPoint Communications' approximately 60 systems.

2. The PAP and the C2C Reporting and Guidelines were established in the context of Verizon's system capabilities. As a result of the implementation of its systems, FairPoint Communications will no longer be able to report the results of certain measures. In particular and as described more fully below, (1) information associated with corresponding retail

operations is no longer available for certain parity metrics, (2) the operations underlying other measures are no longer being performed, (3) information associated with certain metrics is no longer available under FairPoint Communications' systems, and (4) the services associated with other metrics have never been requested by the CLECs in Maine, New Hampshire and Vermont and under the new systems will no longer be available to CLECs or are processed in a manner different than the metric contemplates. FairPoint Communications respectfully requests the Commission permanently waive the reporting requirements and associated penalty requirements for these metrics.

3. FairPoint Communications further requests that the Commission grant a temporary one (1) month waiver of the reporting requirements beyond the current one month grace period as well as any associated penalties for eleven (11) of the metrics listed below, for which the data will not be available for the months of February and March, due to either systems issues where programming changes need to be implemented, a lack of data in the systems as a result of the manual processing of orders, or a lack of data as a result of the delay in the carrier billing cycle.

4. Among other grounds, the PAP provides that a waiver may be requested due to "situations beyond [FairPoint Communications'] control that negatively affect its ability to satisfy only those measures with Benchmark standards ... [where it can] demonstrate clearly and convincingly the extraordinary nature of the circumstances involved, the impact the circumstances had on [FairPoint Communications'] service quality, why [FairPoint Communications'] normal, reasonable preparations for difficult situations proved inadequate, and the specific days affected by the event." PAP Appendix C at 39-40. FairPoint Communications respectfully submits that these criteria are met in this case.

5. The need for a waiver is due to circumstances that, as a practical matter, are beyond FairPoint Communications' control. The PAP reporting requirements and metrics were designed to reflect Verizon's 600+ systems. The terms of the asset acquisition arrangements required that FairPoint Communications no longer use Verizon's systems, and therefore FairPoint Communications was required to build its own systems. Rather than duplicating Verizon's legacy systems, FairPoint Communications developed state-of-the-art systems designed for its needs and reflecting the recommendations of its consultant, Capgemini.[1] It would have been impractical and highly inefficient to replicate all of Verizon's systems subject to reporting requirements or metrics under the PAP, solely for the purpose of avoiding any change to those reporting requirements and metrics. As a result, FairPoint Communications submits that the need for a waiver is due to circumstances beyond its control. In addition, the PAP provisions concerning waiver requests should be extended to parity measures where, as here, the waiver is due to unavailability of retail results, rather than a failure to assure that wholesale results are in parity with retail results.

6. FairPoint Communications also submits that this Petition demonstrates clearly and convincingly (1) the extraordinary nature of the circumstances involved, (2) the impact the circumstances had on FairPoint Communications' service quality, (3) why FairPoint Communications' normal, reasonable preparations for difficult situations proved inadequate, and (4) the specific days affected by the event. First, the creation of FairPoint Communications' systems reflects extraordinary circumstances, involving the creation of 60 systems necessary to provide service to 1.5 million lines. FairPoint Communications is unaware of any instance in which such a large number of complex, integrated systems were created at a single time to serve

[1] "CapGemini is technically qualified to develop the required systems and insure a reasonably smooth cutover." Verizon Transfer of Assets and Sale to FairPoint, DT 07-011, Order No. 24,823 at 37 (Feb. 25, 2008) ("Transfer Order").

such a large number of customers. Second, as indicated above, the new systems do not allow FairPoint Communications to continue certain of the PAP reporting requirements and metrics. Third, the design of FairPoint Communications' systems was the result of an intensive effort by it and Capgemini; no amount of planning or preparation could have resulted in systems that continued the legacy reporting requirements and metrics without introducing increased costs and inefficiencies. Finally, as indicated below, FairPoint seeks a temporary, two-month waiver for certain requirements and a permanent waiver for other requirements.[2] Further support for the request is contained in the discussion below.

A. Permanent Waiver

7. FairPoint Communications requests a permanent waiver of the reporting requirements and associated penalties for the following metrics:

8. Corresponding Retail Results Unavailable. Certain Pre-Ordering Metrics and one Maintenance and Repair metric reported in the PAP and C2C were previously evaluated based upon parity with comparable retail results. FairPoint Communications systems will not be able to perform the retail results simulations performed by previously-used Verizon systems. FairPoint Communications proposes to substitute benchmarks as the means to evaluate these elements of its wholesale performance. Attachment 1 lists the PAP and C2C metrics involved and proposed interim benchmarks based upon estimated FairPoint Communications system performance. FairPoint Communications requests the Commission adopt these interim benchmarks as a substitute for the parity results until one year of actual system performance data is available for evaluation, at which point permanent benchmarks can be established.

[2] The waivers are requested under the terms of the PAP and therefore are consistent with the Transfer Order condition that the PAP remain in effect. Transfer Order at 30, 31. Furthermore, the temporary waiver herein comports with the spirit of the grace period provided by the Commission in the Transfer Order. Transfer Order at 76.

9. Underlying Operations No Longer Performed. The PAP and C2C require reporting of certain pre-ordering wholesale transactions performance and Interface Availability, based upon multiple interfaces which existed for CLECs to process transactions with the Verizon systems. The PAP and C2C currently reflects measures for EDI, CORBA, Web/GUI, eWPTS and EB (electronic bonding) interfaces. With the transition to FairPoint Communications systems, there are now only three interfaces: Web/GUI, eWPTS[3] and WISOR. The WISOR interface replaces EDI and EB. The CORBA interface has been eliminated; therefore, the Pre-Ordering Interface Availability, Average Response Time and Parsed CSR metrics for which CORBA results were reported can no longer be reported. In addition, results for CLECs which previously used EDI or EB interfaces and now use the WISOR interface will be reported under WISOR measurements. FairPoint requests the Commission change the reporting requirements so as to only require FairPoint Communications to report results for the systems they currently employ (WISOR Web/GUI and eWPTS). The impacted metrics are listed below:

a) Metric Number PO-2, OSS Interface Availability
b) Metric Number PO-1-01, Average Response Time- Customer Service Record
c) Metric Number PO-1-02, Average Response Time- Due Date Availability
d) Metric Number PO-1-03, Average Response Time- Address Validation
e) Metric Number PO-1-04, Average Response Time- Product and Service Availability
f) Metric Number PO-1-05, Average Response Time- Telephone Number Availability and Reservation
g) Metric Number PO-1-06, Average Response Time- Mechanized Loop Qualifications- xDSL
h) Metric Number PO-1-07, Average Response Time- Reject Query
i) Metric Number PO-1-09, Parsed CSR

10. Unavailable Information. The C2C requires reporting of certain metrics to which the Verizon systems automatically generated reports. FairPoint Communications systems are not structured to capture these reports. Since this metric cannot be reported due to system changes,

[3] FairPoint Communications' eWTPS interface is currently under development and will be available at a future date.

FairPoint Communications requests the Commission waive the requirement to report and any associated penalties for the following metrics:

a) MR-1-05, Average Response Time- Trouble Report History (by TN/Circuit)
b) OR-3-02-1000, Percent LSR Resubmission Not Rejected

11. Inapplicable Services or Processes. The C2C requires FairPoint Communications to report certain metrics that are no longer applicable because the CLECs in Maine, New Hampshire and Vermont either do not order the services associated with these metrics or do not process their orders in the manner the metric contemplates. Since there will be no data for the following metrics because these metrics are not applicable to CLEC operations in New Hampshire, they will not be reported:

a) Metric Number OR-1-08, Percent On Time ASRC- No Facility Check (Fax/Mail)
b) Metric Number OR-1-10, Percent On Time ASRC- Facility Check (Fax/Mail)
c) Metric Number OR-2-08, Percent On Time Reject- No Facility Check (Fax)
d) Metric Number OR-2-10, Percent On Time Reject- Facility Check (Fax)
e) Metric Number Number OR-13-13523, Percent of Large Job Hot Cut Project Negotiations Completed
f) Metric Number PR-1-13-3525, Average Interval Offered-Hot Cuts-No Dispatch
g) Metric Number PR-3-12-3531, Percent Completed in 15 Business Days
h) Metric Number PR-3-12-3532, Percent Completed in 15 Business Days
i) Metric Number PR-3-13-3531, Percent Completed in 26 Business Days
j) Metric Number PR-3-13-3533, Percent Completed in 26 Business Days
k) Metric Number PR-6-02-3523, Percent Installation Troubles Reported within seven business days
l) Metric Number PR-6-02-3525, Percent Installation Troubles Reported within seven business days
m) Metric Number PR-9-01-3523, Percent On Time Performance- Hot Cut
n) Metric Number PR-9-01-3525, Percent On Time Performance- Hot Cut
o) Metric Number PR-9-04-3525, Percent On Time Performance Batch Due Date

12. FairPoint Communications systems were developed without the capability to report data regarding line sharing and line splitting in the PAP. These offerings represent a small portion of the transactions processed by the CLECs. The PAP metrics for which this data is not available are identified in Attachment 2. To the extent that they may still be applicable,

FairPoint Communications requests the Commission waive the requirement to report results and any associated penalties for these metric results.

B. Temporary Waiver

13. Following an extensive review of the wholesale data report in preparation for the March 28, 2009 February Reporting deadline in Maine and Vermont, FairPoint Communications has identified eleven (11) metrics for which data is not currently available. The data for these metrics is not available for the February report due to systems issues where programming changes need to be implemented, a lack of data in the systems as a result of the manual processing of orders, or a lack of data as a result of the delay in the billing cycle. FairPoint Communications respectfully requests the Commission grant a temporary one (1) month waiver beyond the current grace period for reporting the following metrics:

1) Metric Number NP-1-01-5000, Percent Final Trunk Groups exceeding Blocking Standard
2) Metric Number NP-1-02-5000, Percent Final Trunk Groups exceeding Blocking Standard (No Exceptions)
3) Metric Number NP-1-03-5000, Number Final Trunk Groups exceeding Blocking Standard-2 months
4) Metric Number NP-1-04-5000, Number Final Trunk Groups exceeding Blocking Standard-3 months
5) Metric Number OR-6, Percent Service Order Accuracy
6) Metric Number OR-11, Percent Resale/UNE-P Provider Notification in Days
7) Metric Number BI-3-04, Percent CLEC Billing Claims Acknowledged within two (2) Business Days
8) Metric Number BI-9-01, Percent Billing Completeness in 12 Billing Cycles
9) Metric Number BI-1, Timeliness of Daily Usage Feed
10) Metric Number BI-2, Timeliness of Carrier Bill
11) Metric Number PO-3, Percent Answered within 30 Seconds

WHEREFORE, FairPoint Communications requests that the Commission waive the C2C and PAP reporting requirements and associated penalties requested in this petition.

Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE

By their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: March 26, 2009

By: ______________________

Frederick J. Coolbroth, Esq.
Patrick C. McHugh, Esq.
Harry N. Malone, Esq.
43 North Main Street
Concord, NH 03301
(603) 226-1000
fcoolbroth@devinemillimet.com
pmchugh@devinemillimet.com
hmalone@devinemillimet.com

Attachment 1

METRIC_ID	METRIC_DESC	PRODUCT_DESC	95% within x seconds benchmark
PO-1-01-6020	Average Response Time - Customer Service Record (CSR)	EDI	20
PO-1-01-6050	Average Response Time - Customer Service Record (CSR)	WEB GUI/LSI/W	20
PO-1-02-6020	Average Response Time - Due Date Availability	EDI	14
PO-1-02-6050	Average Response Time - Due Date Availability	WEB GUI/LSI/W	14
PO-1-03-6020	Average Response Time - Address Validation	EDI	14
PO-1-03-6050	Average Response Time - Address Validation	WEB GUI/LSI/W	14
PO-1-04-6020	Average Response Time - Product & Service Availability	EDI	14
PO-1-04-6050	Average Response Time - Product & Service Availability	WEB GUI/LSI/W	14
PO-1-05-6020	Average Response Time - Telephone Number Availability & Reservation	EDI	20
PO-1-05-6050	Average Response Time - Telephone Number Availability & Reservation	WEB GUI/LSI/W	20
PO-1-06-6020	Average Response Time - Mechanized Loop Qualification - xDSL	EDI	14
PO-1-06-6050	Average Response Time - Mechanized Loop Qualification - xDSL	WEB GUI/LSI/W	14
PO-1-07-6020	Average Response Time - Rejected Query+	EDI	14
PO-1-07-6050	Average Response Time - Rejected Query+	WEB GUI/LSI/W	14
PO-1-09-6020	Parsed CSR	EDI	20
MR-1-06-6050	Average Response Time - Test Trouble (POTS Only)	WISOR	45

ATTACHMENT 2
LINESHARING/LINESPLITTING PAP METRICS

METRIC_ID	METRIC_DESC	PRODUCT_DESC
OR-1-04-3340	% On Time LSRC/ASRC - No Facility Check (Electronic - No Flow Through)	UNE 2-Wire xDSL - Line Sharing & Line Splitting (combined)
OR-2-04-3340	% On Time LSR/ASR Reject - No Facility Check (Electronic - No Flow-through)	UNE 2-Wire xDSL - Line Sharing & Line Splitting (combined)
OR-1-06-3340	% On Time LSRC/ASRC - Facility Check	UNE Line Sharing/Split
OR-2-06-3340	% OT LSR/ASR Rej - Facility Check	UNE Line Sharing/Split
PR-3-03-3340	% Completed w/in 3 Days (1-5 lines) No Disp	UNE Line Sharing/Split
PR-3-03-3340	% Completed w/in 3 Days (1-5 lines) No Disp	UNE Line Sharing/Split
PR-4-02-3340	Average Delay Days -Total	UNE Line Sharing/Split
PR-4-04-3340	% Missed Appointment -Dispatch	UNE Line Sharing/Split
PR-4-05-3340	% Missed Appointment -No Dispatch *	UNE Line Sharing/Split
PR-6-01-3340	% Installation Troubles w/in 30 Days *	UNE Line Sharing/Split
PR-8-01-3340	% Open Orders in Hold Status >30 Days *	UNE Line Sharing/Split
MR-3-01-3340	% Missed Repair Appointment -Loop	UNE Line Sharing/Split
MR-3-02-3340	% Missed Repair Appointment -CO	UNE Line Sharing/Split
MR-4-02-3340	Mean Time To Repair -Loop	UNE Line Sharing/Split
MR-4-03-3340	Mean Time To Repair -CO	UNE Line Sharing/Split
MR-4-04-3340	% Cleared (all troubles) w/in 24 Hours	UNE Line Sharing/Split
MR-4-07-3340	% Out of Service >12 Hours	UNE Line Sharing/Split
MR-5-01-3340	% Repeat Reports w/in 30 Days	UNE Line Sharing/Split

DT09-113

(B)

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 09-___

RECEIVED
JUN 10 2009
NH PUBLIC UTILITIES COMMISSION

Petition of
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE
for Waiver of Certain Requirements
Under the Performance Assurance Plan and
Carrier to Carrier Guidelines

Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") hereby petitions the New Hampshire Public Utilities Commission (the "Commission") for a waiver of the incentive payment requirements of the Performance Assurance Plan ("PAP") filed November 21, 2006 in DT 06-168, which was made applicable to FairPoint pursuant to the Order No. 24823 Approving Settlement Agreement with Conditions in DT 07-011 (Feb. 25, 2008).[1] Specifically, FairPoint requests relief from the payment of PAP bill credits to competitive local exchange carrier ("CLEC") customers for the months of March and April 2009, and prospectively for May and June 2009. For the state of New Hampshire, the amount of the bill credits due to date are as follows:

March	$639,738
April	$874,726

Due to the unprecedented and unforeseen issues related to the system cutover launched in February 2009, it is reasonable and appropriate for the Commission to grant a waiver of the payment obligations pursuant to the provisions of Section J of the PAP, relating to situations be-

[1] On March 26, 2009, FairPoint filed a petition to waive certain specific reporting and potential penalty obligations under the PAP and C2C. This request has been assigned to DT 09-059 and is currently being separately processed.

yond FairPoint's control and to data clustering, as applicable, and furthermore to modify the PAP as necessary to remove the need to make any such payments pursuant to the last sentence of Section I of the PAP and the Commission's authority to alter or amend its orders under RSA 365:28.[2]

I. BACKGROUND

In Docket No. DT 01- 006, in conjunction with its efforts to obtain relief from the Federal Communications Commission ("FCC") under Section 271 of the Communications Act, Verizon New England Inc. ("Verizon") proposed to the Commission, and eventually obtained approval of, the PAP, modeled on the performance enforcement mechanisms previously approved by the New York and Massachusetts public utilities commissions.[3] Such a plan had been held by the FCC to be convincing evidence that the regional Bell Operating Companies would continue provisioning high quality service to Competitive Local Exchange Carriers ("CLECs") after obtaining Section 271 authority, an important element of the public interest standard. As part of its settlement of various issues related to the purchase of Verizon's assets in northern New England, FairPoint agreed to adopt the terms of the Verizon PAP.

The PAP is a self-executing enforcement plan based on metrics. "Metrics" is a term of art used to refer to numeric measurements of the quality or timeliness of FairPoint's performance of individual tasks undertaken to enable interconnection between itself and other carriers. These measurements are compared to numerical standards for performance of such tasks. The metrics cover the areas of Pre-order, Ordering, Provisioning, Maintenance and Repair, Billing, Network Performance and Change Control.

---

[2] RSA 365:28 provides that the Commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it.

[3] A very similar PAP was also approved by the Maine and Vermont commissions as well.

Metrics are of two types: "Parity" measures, which require parity with FairPoint's retail operations, and "Benchmark" measures, which compare actual performance to a benchmark. Together, these two types of measures are used to determine whether FairPoint is providing non-discriminatory service to CLECs.

The PAP is divided into three sections, and each type of metric is used in each of these three sections. The three sections are: (1) Mode of Entry ("MOE"), (2) Critical Measures, and (3) Special Provisions. The MOE section of the PAP is designed to measure FairPoint's overall performance in five categories that correspond to the general modes CLECs use to obtain facilities from FairPoint to support the services that they offer in the local exchange market: Platform, Loop-Based; Resale; DSL; and Interconnection Trunks. The performance for these measurements is evaluated at the industry (aggregate CLEC) level each month for each MOE category. A pre-specified (capped) amount of annual bill credits is available to the CLECs if FairPoint's performance reaches the maximum allowable unsatisfactory performance in each of the five MOE categories. Each month FairPoint applies statistical tests to the Parity metrics, and compares Benchmark metrics (i.e. those without a retail analog) to a set standard. Payments are due to CLECs when the threshold for unsatisfactory performance in each of the MOEs is exceeded. Each month, one-twelfth (1/12) of the annual amount allotted to the MOE metrics is available for bill credits.

Another section of the PAP is Critical Measures. This includes stand-alone Critical Measures that cover FairPoint's service in areas critical to the CLECs. Should FairPoint's performance miss an applicable performance standard for even one of the Critical Measures, each eligible CLEC is entitled to a bill credit. Each month, one-twelfth (1/12) of the annual amount allotted to each Critical Measure is available for billing credits.

The final section of the PAP is Special Provisions. This includes stand-alone Special Provision Measures that cover FairPoint's service in areas determined to be most critical to the CLECs. Should FairPoint's performance miss an applicable performance standard for even one of the Special Provision measures, each eligible CLEC is entitled to a bill credit. Each month, one-twelfth (1/12) of the annual amount allotted to each Special Provision measure is available for billing credits. In New Hampshire, incentives for the MOE, Critical Measures and Special Provisions sections of the Plan total $41,450,000 annually, or $3,454,000 per month.

Beginning in February 2009, FairPoint performed a cutover of its operations from the systems provided by Verizon under the terms of the Transition Services Agreement between the two parties. Despite extensive testing by FairPoint and its systems development contractor (Capgemini), and notwithstanding tremendous efforts on its part, FairPoint experienced severe problems in servicing its retail and wholesale customer base. These problems, which have been well documented, resulted in FairPoint missing a large number of PAP metrics for the months of March and April, and it expects to miss these metrics for May and June as well. The total amount of bill credits at issue for February, March, and April, total $2,859,471 across the three Northern New England states.

II. WAIVER OF PAP PAYMENTS IS CONSISTENT WITH THE WAIVER PROVISIONS OF THE PAP.

Recognizing that PAP data may be influenced by factors beyond FairPoint's control, Section J of the PAP permits FairPoint to petition the Commission seeking to have the monthly service quality results modified on three generic grounds. The first involves the potential for "clustering" of data, and the effect that such clustering has on the statistical models used in the PAP. The second ground for filing exceptions relates to unusual CLEC behavior. If such action negatively influences FairPoint's performance on any metric, FairPoint is permitted to petition for relief. The third ground for filing waivers relates to situations beyond FairPoint's control that negatively affect its ability to satisfy certain standards. The performance requirements dictated by these standards establish the quality of service under normal operating conditions, and do not necessarily establish the level of performance to be achieved during periods of emergency, catastrophe, natural disaster, severe storms, or other events beyond FairPoint's control.

A. FairPoint Qualifies for an Extraordinary Event Waiver.

As the Commission is aware, the terms of the FairPoint merger agreement with Verizon required FairPoint to build its own OSSs. Rather than duplicating Verizon's legacy systems (some going back four decades), FairPoint developed its own systems designed for its needs and reflecting the recommendations of its consultant, Capgemini. This involved the creation of 60 systems necessary to provide service to 1.5 million lines and was an effort long dreamed of, but still unprecedented, in industry history. There is no other instance in which such a large number of complex, integrated systems were created at a single time to serve such a large number of customers.

It is clear that the cutover problems were unforeseen and beyond FairPoint's control. PAP payments prior to cutover were negligible, and there was no reason to expect that they would not continue to be so. FairPoint has worked diligently and at great expense to resolve the problems in good faith. The cutover was an extraordinary event for which a waiver is appropriate.

B. FairPoint Qualifies for a Clustering Event Waiver

The PAP is highly statistical. At its base, the measurement model assumes that the data are independent. In some instances, events included in the performance measures of provisioning and maintenance of telecommunication services are not independent. The lack of independence contributes to "clustering" of data. Clustering occurs when individual items (orders, troubles, etc.) are clustered together as one single event. An example of a clustering problem is a cable failure. If a particular CLEC has a large number of troubles, but they are all within the same cable with a long duration failure, the performance will appear out of parity. Another example of clustering is if there is an incredible barrage of orders on a particular day that are way beyond the norm. A third example is if a particular location is down, i.e. a remote switch.[4]

Although OSS cutover problems were clearly not anticipated as a "clustering" problem, the cutover is a similar type of statistical anomaly. It has been a single (albeit large) event *when considered over the term of the business relationships with the CLECs,* and thus should be treated as a clustering problem, for which a waiver is appropriate.

C. Other Aspects of the Waiver Request are Justified

Although Section J of the PAP requires that waiver requests be filed within 45 days of the end of the month in which the triggering event occurred, this request is timely. Although the initial triggering event related to cutover, which occurred in February, the waiver request is also due to FairPoint's subsequent efforts in addressing cutover-related issues, which have been ongoing since that time. In the event there is any issue in this regard, FairPoint requests that the 45-day requirement be modified as necessary pursuant to the last sentence of Section I of the PAP or pursuant to the Commission's authority to alter its Order of February 25, 2008, in DT 07-011, under RSA 365:28.

The waiver request seeks relief from PAP payments already made, as well as prospective payments, because FairPoint was not in a position, as a practical matter, to seek the relief before now. During the period immediately after cutover, FairPoint devoted its resources to addressing

[4] *See* PAP Appendix D, Section C.

cutover-related issues. As the first post-cutover information became available, it was clear that there were reporting system issues requiring attention, leading to the prior PAP waiver request. As the impact of the PAP payments has increased, the need for a waiver became a higher priority relative to other issues. In addition, nothing in the PAP precludes relief with respect to prior PAP payments. Under the provisions of Section J of the PAP, FairPoint "may file Exception or Waiver petitions with the Commission seeking to have monthly service quality results modified." Such modifications to the results are not limited under Section J to those relating to previous PAP payments.

Finally, for all the reasons set forth in this Petition, the PAP provisions concerning waiver requests based on circumstances beyond FairPoint's control should be extended to parity measures. To the extent such relief is available only through a modification of the PAP, FairPoint hereby requests such relief pursuant to the last sentence of Section I of the PAP and the Commission's authority to alter its Order of February 25, 2008, in DT 07-011, under RSA 365:28.

III. A MODIFICATION OF THE PAP IS ALSO AN APPROPRIATE MEANS FOR GRANTING THE REQUESTED RELIEF.

The last sentence of Section II.I of the PAP provides that until a replacement mechanism is developed or the Plan is rescinded, the PAP will remain in effect "as it may be modified from time to time by the Commission." Section II.K provides that the PAP is subject to an annual review by the Commission and FairPoint, "to determine whether any modifications or additions should be made." Section II.K provides that "[a]ll aspects of the Plan ... will be subject to review," including, specifically, the measures and weights, distribution of dollars at risk, modification of exceptions and bill credit methodologies. Section II.K concludes, "Any modifications to the Plan will be implemented as soon as reasonably practical after Commission approval of the modifications."

The following considerations support a determination that modification of PAP to the extent necessary to grant the relief requested should be made.

A. The PAP is Primarily an Incentive Plan to Promote Open Competition.

To appreciate why a waiver of the bill credit payments is appropriate, it is important to understand the underlying purpose of the PAP. PAPs were developed at the instigation of the FCC to ensure that the Bell Operating Companies would continue to meet their Section 271 obligations after obtaining Section 271 relief.[5] Thus, the PAPs are primarily motivational, as opposed to punitive. In other words, PAPs are more concerned with maintaining future performance than remedying any injuries that CLECs may have incurred in the past.

At the start, the FCC characterized PAPs as incentives. "We find that these PAPs, together with our section 271(b)(6) authority and the continuing oversight of the respective state commissions, provide *reasonable assurance* that the local market will remain open after 271 authority is granted."[6] In the Maine 271 proceeding, the FCC found that "the Performance Assurance Plan (PAP) currently in place in Maine will provide assurance that the local market will remain open after Verizon receives section 271 authorization."[7] It determined that the PAP was "likely to provide *incentives* that are sufficient to foster post-entry checklist compliance."[8] The

---

[5] *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543 para. 393 (1997) ("*Ameritech Michigan Order*").

[6] *Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, CC Docket No. 02-157, Memorandum Opinion and Order, 17 FCC Rcd 18660 para. 171 ("*Verizon NH 271 Order*") (emphasis supplied).

[7] *Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02–61, Memorandum Opinion and Order, 17 FCC Rcd 11659 para. 61 ("*Verizon ME 271 Order*")

[8] *Id.* para. 61 (emphasis supplied).

Commission itself succinctly describes PAPs as being designed "to *prevent backsliding* after Section 271approval is granted . . . ."[9]

When viewed in these terms, it can hardly be said that FairPoint Communications has been "backsliding." FairPoint was operating at very high levels prior to the cutover, and fully expected to continue to do so post-cutover.[10] Any problems it has experienced in the past few months are solely related to cutover issues, not "backsliding" or systemic anti-competitive practices. On the contrary, as discussed further below, FairPoint has gone to extraordinary lengths and great additional expense to remedy these problems.

B. PAPs are not Focused on Remedying Specific Injuries.

While it is true that the pending PAP payment obligations are evidence that some CLECs have been disadvantaged to a certain extent, these payments cannot be considered as money damages. As discussed above, PAP payments are designed merely to be the force underlying the incentive nature of the PAP. This is apparent by the fact that the total yearly payments are capped, and are not based on any quantifiable assessment of CLEC injuries (if any.) The amount of the payments is designed to be only enough to deter FairPoint from anti-competitive activities, not to remedy any injuries to CLECs. As the Commission explained, a good PAP only "include[es] incentives high enough to exceed the benefits Verizon-NH might derive by inhibiting

[9] Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines and Performance Assessment Plan, DT 01-006, Order No. 23,940 Regarding Metrics and Plan at 73 (Mar. 29, 2002) (emphasis supplied). *See also Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02–61, Report of the Public Utilities Commission at 88 (Apr. 10, 2002) ("*Maine 271 Report*") ("The revised PAP provides a comprehensive, self-executing enforcement mechanism intended to *deter backsliding* and the provision of substandard performance.") (emphasis supplied).
[10] *See* DT 07-011, FairPoint Stabilization Plan (Apr 1, 2009).

competition."[11] This is also consistent with the determination of the Maine Commission, which explained that "the Verizon PAP contains a sufficient dollar amount at risk and an acceptable mechanism for calculating the actual penalty amount to meet our goal of deterring backsliding."[12]

To reiterate, most PAP payments are not related to specific injuries. For example, MOE payments are not distributed based on performance for individual CLECs, but on aggregate performance. In other words, PAP metrics are not so much designed to record and remedy individual failures, but rather to paint a picture of FairPoint's overall performance. As the FCC explained, "performance monitoring establishes a benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service once a BOC is authorized to enter the in-region, interLATA services market."[13] In that regard, the Commission has stated "the underlying truth that every plan for statistically measuring Verizon NH's wholesale performance is merely a surrogate: a statistical assessment of competition that substitutes observations of Verizon NH's business processes for actual observations of the *impact on competitors and competition.*"[14]

C. The Public at Large, not CLECs, is the Primary Intended Beneficiary of the PAPs.

The PAP is designed to benefit *competition*, not individual *competitors*. As the FCC stated, a PAP "provides a mechanism by which to gauge a BOC's present compliance with its

---

[11] New Hampshire Performance Assurance Plan, DT 01-006, Order Regarding Metrics and Plan, Order No. 23,940 at 67 (Mar. 29, 2002) ("*NH PAP Order*").

[12] *Maine 271 Report* at 110.

[13] *Ameritech Michigan Order* para. 393.

[14] *Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, CC Docket No. 02-157, Consultative Comments of the New Hampshire Public Utilities Commission at 18 (July 17, 2002) ("*NH 271 Comments*") (emphasis supplied).

obligation to provide access and interconnection to new entrants in a nondiscriminatory manner."[15] The Commission reiterated that "[t]he goal of a PAP is to assure parity performance,"[16] and has further emphasized that "*the ultimate fact in question*" is the "impact on competitors and on competition in New Hampshire."[17]

D. FairPoint has Performed in the Spirit of the PAPs, and Can be no Further Motivated by Making PAP Payments.

A waiver of the PAP payments is appropriate because, notwithstanding post-cutover performance issues, no one can argue that FairPoint's problems are in any way motivated by anti-competitive intent or even competitive disregard. On the contrary, FairPoint has been operating in abundant good faith and has undertaken extraordinary efforts. For example, it has, among other things:

- hired consultants to evaluate its management structure and its information technology organization;
- assigned senior management attention to this issue;
- caused its employees to work extraordinary hours on cutover matters;
- instituted parallel manual loop qualification and CSR process while CLEC pre-ordering problems were addressed;
- increased staffing in areas of the organization that were suffering from backlogs;
- deployed "SWAT" teams to support key functions;
- conducted extensive training and/or retraining of personnel;
- established CLEC focus groups and wholesale user forums to identify problems and collaborate on solutions;
- conducted numerous audits related to facilities inventory, false positive reports, and order completion validation;
- accelerated the delivery of line loss reports by "pushing" them out to CLECs.

It should also be noted that the new FairPoint OSSs are blind to whether orders are retail or wholesale, so it is structurally impossible for the order entry function to be discriminatory.

---

[15] *Ameritech Michigan Order* para. 393.

[16] *NH PAP Order* at 77.

[17] *Id.* at 68 (emphasis supplied).

The post-cutover problems that contributed to the missed PAP metrics were an unexpected anomaly. FairPoint is, and has been, under intense pressure from retail and wholesale customers, state commissions, the press and the financial community to improve its performance.

IV. GIVEN THAT PAPs ARE DESIGNED TO ENSURE COMPETITION AND BENEFIT THE PUBLIC IN GENERAL, ANY PAP PAYMENTS ARE BETTER DIRECTED TO OPERATIONS.

This Petition is entirely consistent with FairPoint's recent efforts to focus efforts on improving its operations. The cutover issues required significant staff and senior management attention, diverting their focus from other revenue generating efforts. The cash made available by waiving the PAP payments will be directed to, among other things, providing resources to return to business as usual and meet build-out commitments.

Given the intent of the PAP, as discussed in the previous section, equitable considerations dictate that the PAP payments should be waived as requested. PAPs are ultimately intended to benefit the public, not just CLECs, and the public interest in reliable telephone service and responsive customer service must take precedence in this extraordinary situation.

Like many other companies in today's economy, FairPoint has a justifiable concern about cash flow, and this Petition is entirely consistent with FairPoint's recent efforts to conserve cash for the benefit of its primary POTS, wholesale and broadband operations. FairPoint, like most companies, has been affected by the current state of the national economy while also experiencing numerous issues related to the cutover. Cutover issues alone contributed to $19.4 million of incremental expenses in the first quarter of 2009, including third-party contractor costs and internal labor costs in the form of overtime pay.

FairPoint expects to continue to incur additional incremental costs during the second quarter of 2009, although the amount of such costs should decline as operations return to business as usual. In addition to the extra expenses, revenues have been below expectations and there have been cutover related billing issues (since resolved) that have reduced cash receipts. This in turn has led to interest coverage ratio issues, credit rating downgrades, and a search for sources of cash, most notably the tapping of the company's $50 million reserve in New Hampshire.

FairPoint assures this Commission that all available cash is being directed to critical uses for the benefit of its entire customer base. Cost containment initiatives are in place and cash is not being used for non-essential purposes. It is also important to emphasize that all of FairPoint's customers, *including CLECs*, will actually benefit more if all available cash is spent on returning to business as usual instead of making payments to individual CLECs. The cash made available by waiving the PAP payments will be directed to providing resources to return to business as usual, and maintaining other necessary operations and activities that benefit all customers. Funds devoted to PAP payments will have greatest leverage if directed at improving operations that affect all customers, rather than payments that improve the margins of a few carriers. In this way, all CLECs – and their customers – will benefit in the aggregate far more than if PAP payments are spread around to individual CLECs.

Given the intent of the PAP, as discussed in the previous section, equitable considerations dictate that PAP payments should be waived. In fact, if payments are made to CLECs, there is no assurance that the funds will even be applied to benefit New Hampshire business and residential consumers. Furthermore, waiving the PAP payments will have virtually no effect on CLEC finances, since PAP payments prior to the extraordinary event of the cutover were at most a few hundreds of dollars per month per CLEC.

PAPs are ultimately intended to benefit the public, not just CLECs, and the public interest in reliable telephone service and responsive customer service must take precedence in this extraordinary situation.

V. CONCLUSION

The events of the last few months have been extraordinary and unprecedented in the history of the telecommunications industry. FairPoint is as disappointed as any other stakeholder by the unexpected disruptions that the cutover from Verizon to FairPoint systems has entailed. However, the Commission should not lose sight of the ultimate expectation, shared by most, that the transition of Verizon's wireline business to FairPoint will result in significant benefits to all customers, retail and wholesale, that would not have been achieved otherwise. By waiving the PAP payments and permitting FairPoint to direct those funds to more productive uses, the Commission will help ensure that those benefits arrive as soon as possible.

WHEREFORE, FairPoint requests that the Commission waive the PAP payment requirements for the months of February through June, 2009.

Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE

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

Dated: June 10, 2009

By: Patrick C. McHugh

Frederick J. Coolbroth, Esq.
Patrick C. McHugh, Esq.
Harry N. Malone, Esq.
43 North Main Street
Concord, NH 03301
(603) 226-1000
fcoolbroth@devinemillimet.com
pmchugh@devinemillimet.com
hmalone@devinemillimet.com

C

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 09-113

Supplement to Petition of
Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE
for Waiver of Certain Requirements
Under the Performance Assurance Plan and
Carrier to Carrier Guidelines

Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") hereby Supplements the Petition for Waiver that was filed June 10, 2009 in the above captioned docket. Rather than the relief requested in the original Petition, FairPoint instead requests that the Commission join other state commissions and approve, within thirty days, a modification to the PAP to reduce the total dollars at risk in the Performance Assurance Plan ("PAP") by approximately 65%, to $29.96 million across the Northern New England ("NNE") states, effective as of January 1, 2009. This reduction conforms with that approved in 2006 by the New York PSC, and since adopted and implemented in almost all of the states that have implemented the New York PAP,[1] with the exception of Maryland and the NNE states.

I. INTRODUCTION

In Docket No. DT 01- 006, in conjunction with its efforts to obtain relief from the Federal Communications Commission ("FCC") under Section 271 of the Communications Act, Verizon New England Inc. ("Verizon") proposed to the Commission and eventually obtained approval of

[1] *See* Connecticut, Docket No. 97-01-23; Delaware, Docket No. 02-001; District of Columbia, Formal Case No. 990; Maryland, Case No. 8916; Massachusetts, DTE 03-50; New York, Case No. 99-C-0949; Pennsylvania, Docket No. M-00011468; Rhode Island, Docket No. 3256; Virginia, Case No. PUC-2001-00226; West Virginia, Case No. 06-1834-T-P.

a PAP modeled on the one originally developed in cooperation with the New York Carrier Working Group ("NYCWG")[2] and approved in New York. The PAP approved by the Commission in DT 01-006 contemplated (in Section K and in the NH PAP Order) that any future revisions approved by the NY PSC would likewise be filed for approval with the Commission (and those of other legacy Verizon/Bell Atlantic states).[3] Indeed, there have been a number of revisions since that time which, with very slight modifications in some cases, have been adopted by New Hampshire and other states.

II. THIS REQUEST IS CONSISTENT WITH THE CURRENT PAP AS ADOPTED THROUGHOUT MOST OF THE VERIZON REGION.

The latest iteration of PAP amendments was introduced beginning in late 2006, when Verizon filed amended PAPs in all of the relevant states.[4] The changes to these amended PAPs (generally referred to as "Version 4") were comprehensive and significant. They eliminated several sections of the PAP, changed how some of the metrics were scored and reformulated the calculation of the penalties.

One notable revision was a reduction – by approximately 65% – in the total dollars at risk as billing credits. Verizon's reasons for proposing this reduction were mainly two-fold. First, as a result of the FCC's decisions in the Triennial Review proceeding, Verizon was no longer required to provide a number of services, including UNE-P, line splitting and line sharing. This,

[2] The NYCWG is a group representing various segments of the industry, primarily Verizon and the CLECs.

[3] *See* DT 01-006, *Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines and Performance Assessment Plan*, Order Regarding Metrics and Plan, Order No. 23,940 at 26-27 (Mar, 29, 2002) ("The on-going amendment process occurs, via NYPSC approval of amendments to the NYPSC-approved metrics, after Verizon-New York files a compliance filing with the NYPSC reflecting the final order of the NYPSC.") ("NH PAP Order").

[4] *See, e.g.* DT 06-168, Letter from V. del Vecchio, Verizon, to D. Howland, Commission (Nov. 21, 2006).

in addition to changes in the marketplace, resulted in significantly fewer lines for which measurement and performance reporting were applicable under the current PAP.[5]

Second, Verizon explained that changes in the marketplace have replaced competition, rather than regulation, as the major driver of wholesale service quality and that these competitive forces further justified a reduction in the dollars at risk under the PAP. Competition from all modes of providers is increasing, particularly from cable voice offerings and wireless,[6] and this market pressure alone provides sufficient incentives for the ILEC to provide good service to its CLEC customers. As the FCC has recognized, there are "very high levels of retail competition that do not rely on the [ILEC's] facilities – and for which [the ILEC] receives little to no revenue," thus giving an ILEC "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]."[7] FairPoint concurs, and is on record in its support of CLECs' ability to compete.[8] It would much prefer to receive wholesale revenues from its CLEC customers than to receive no revenue at all when end-user customers leave its network entirely.

[5] FairPoint is also not required to provide UNE-P as a UNE, per the Triennial Review proceeding. This service is now provided pursuant to "Wholesale Advantage" commercial agreements. However, approval to remove UNE-P from the PAP has not been granted by the Commission, although it has granted approval to remove UNE-P from the C2C guidelines. In the meantime, retaining the UNE-P measurements in the PAP results in the current high level of dollars at risk.

[6] Indeed, wireless subscribers now outnumber wireline subscribers services nationwide by a 2 to 1 margin and account for more single service households than wireline service. In NNE, wireless subscribers now outnumber all local exchange carrier lines by 35%. *See* FCC Wireline Competition Bureau, Local Telephone Competition: Status as of June 30, 2008 (rel. July 23, 2009) (available at <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.doc>). Furthermore, wireline carriers are losing subscribers to VoIP services (over-the-top and via cable "digital phone" services) that were only on the horizon when the PAPs were established eight years ago.

[7] *Petition of Qwest Corporation for Forbearance,* WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 para. 67 (2005).

[8] *See* DT 09-059, Prehearing Conference, Tr. 26:7-13 (July 8, 2009).

Another aspect, which was not raised in the other state proceedings but is still pertinent, is that the reduction in the number of UNEs, coupled with competitive changes in the market, has produced the effect of decreasing the number of CLECs over which the PAP penalties are spread. This is particularly true with UNE-P, since that service was typically an exclusive mode of entry for the CLECs who used it. To the extent that these providers moved to commercial agreements, they no longer participate in the PAP and have left the "pool." (To a lesser extent, the same can be said for line-sharing customers.) Consequently, the remaining CLECs are eligible for larger maximum payments on a per-CLEC basis. Moreover, when the considerable CLEC consolidation/dissolution over the last eight years is taken into account, the pool of CLECs has become even smaller -- but the total dollars at risk remains at the same level. Thus, the current PAP makes individual CLECs eligible for much larger maximum payments than were originally contemplated and found sufficient.

Almost all of the respective states agreed with Verizon's primary reasoning and approved the proposed reduction.[9] In approving the reduction in New York, the New York commission stated:

---

[9] *Application of New York Telephone Co.*, Ct. DPUC Docket No. 97-01-23, Decision (Apr. 11, 2001); *Verizon Delaware LLC Compliance with the Conditions Set Forth in 47 U.S.C. § 271*, De. PSC Docket No. 02-001, Order No. 7595 (July 7, 2009); Development of Local Exchange Carrier Quality of Service Standards for the District, D.C. Formal Case No. 990, Order No. 14199 (Feb. 2, 2007); *Verizon Revised Performance Assurance Plan*, Ma. D.T.E. 03-50, Order (Mar. 29, 2007); *Petition filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan*, NY PSC Case 99-C-0949; Order Amending Performance Assurance Plan (Sep. 25, 2006); *Performance Metrics and Remedies - November 2006 Changes*, Pa. Docket No. M-00011468, Order (Jan. 26, 2007); RI *Verizon Rhode Island's Performance Assurance Plan,* RI Docket No. 3256, Order (Jan. 11, 2007); *Establishment of a Performance Assurance Plan for Verizon Virginia Inc.*, Va. PUC Case No. PUC-2001-00226, Order Approving the Proposed Revisions (Apr. 20, 2007) (approving 55% reduction in dollars at risk); *Verizon's Submission of New York Performance Assurance Plan Revisions*, W.Va. PSC Case No. 06-1834-T-P, Commission Order (May 23, 2007). *See also Consideration Of The Maryland Carrier To Carrier Guidelines, Performance Standards And Reports Of The Performance Assurance Plan*

> The overall at risk dollars represents the amount necessary to reasonably ensure that Verizon continues to offer nondiscriminatory wholesale service to competitors. The current amount was established over six years ago and does not reflect the telecommunications market in New York today. With the incorporation of the TRO/TRRO changes and the emergence of intermodal competition, the number of lines covered by the PAP has been substantially reduced and the amount of overall bill credits should likewise be adjusted downward. . . . .
>
> [W]e do not agree with the CLECs who argue that a reduction in overall at risk dollars will lead to backsliding. The Proposal attempts to allocate at risk dollars consistent with the penalties under the current Plan for the remaining products. The net effect of those penalties should be roughly the same. . . . .
>
> Accordingly, we find that the Proposal to decrease the overall at risk amount is justified by the decrease in the number of lines covered by the PAP and Verizon's decrease in UNE revenue as well as the emergence of intermodal competition.[10]

Maine, New Hampshire and Vermont did not act on the proposed PAP amendments because the filings coincided with the Verizon–FairPoint asset transfer proceedings. Instead, the Commission held the matter in abeyance pending the completion of the transfer proceedings. As the transfer proceedings progressed, the PAP amendment filing was obviated by FairPoint's agreement to adopt the then-current PAP while it collaborated with the CLECs on a simplified three-state NNE PAP.[11] Even though FairPoint agreed to abide by the current PAP, however, it always assumed that Version 4 would serve as the basis for the collaborative discussions.[12]

Of Verizon Maryland, Inc., Md. PSC Case No. 8916, Response of the Staff (May 1, 2007) (recommending approval).

[10] *Petition filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan*, NY PSC Case 99-C-0949; Order Amending Performance Assurance Plan at 13-16 (Sep. 25, 2006) (footnotes omitted) ("NY PAP Order").

[11] The Company has begun efforts to develop a simplified PAP for its NNE operations.

[12] FairPoint does not suggest, however, that reduction in dollars at risk should be deferred to the PAP simplification effort. That proceeding is broader, as it is devoted to reconsidering the number of metrics and the redistribution of penalties to those metrics. This filing is intended to address the urgent need for reduction in the PAP dollars at risk to a reasonable level and is best considered in the context of the existing PAP waiver proceeding.

III. PUBLIC POLICY AND THE UNDERLYING INTENT OF THE PAP SUPPORT THIS REQUEST.

Over and above the fact that this request is fully consistent with Version 4 of the PAP as adopted by the other states, there are strong policy reasons, related to FairPoint's earnings, that support this request. If the formula originally used to establish total dollars at risk in 2001 was applied today, the amount at risk would be significantly less than the current PAP. In the New York 271 Order, the FCC found that an appropriate benchmark for the amount at risk was the potential retail profits that Verizon could seek to protect from competition.[13] The FCC compared the amount at risk under the NY PAP to Verizon New York's net return. The FCC determined that the amount at risk represented 36% of Verizon New York's ARMIS net return and that this was sufficient to motivate Verizon to provide good service to the CLECs. The dollars at risk under the NY PAP were subsequently increased by the NYPSC to approximately 39% of the ARMIS net return. For subsequent PAPs, including New Hampshire,[14] Maine,[15] and Vermont,[16] Verizon used this percentage of ARMIS to calculate the amounts that should be at risk under the respective PAPs.

If this test were applied today on a consolidated NNE basis, substantially fewer dollars would be at risk under the revised PAP. Attachment 1 to this filing shows the unseparated ARMIS net return for the NNE region, based on ARMIS 43-01 reports. (The summary page of

---

[13] *See Application by Bell Atlantic - New York for Authorization to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 para. 436 (1999) ("New York 271 Order").

[14] The Commission found this methodology appropriate for the original NH PAP. *See* NH PAP Order at 79.

[15] *Entry of Verizon-Maine into the InterLATA Telephone Market,* Me. PUC Docket 2000-849, Letter from D. Keshl, PUC Administrative Director to E. Dinan, Verizon, at 4 (Mar. 1, 2002).

[16] *Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. § 271*, Vt. PSB. Docket No. 6533, Report at 12 (Feb. 6, 2002).

the Attachment provides data for the year 2000 and the period 2005 through 2007. This page is followed by detailed reports for the years 2000 through 2007. NNE 2008 ARMIS data is not included in this analysis, as it was not filed with the FCC and is not publicly available.)[17] In 2000, the benchmark year for calculating the original PAP dollars at risk in the NNE states, the ARMIS net return for Verizon in those three states was $222 million and the PAP put approximately 39% of this amount, or $86.7 million, at risk. By 2005 (the base year for the Version 4 PAP), the ARMIS net return in the NNE states had fallen drastically to $73 million. If the NNE commissions had approved the Version 4 PAP, as most other states did, only $29.96 million would now be at risk across all three states.

Further, Verizon's net return in NNE for 2006 was $67 million and for 2007 was $75 million. With the 2005 results, these numbers represent, respectively a 67%, 70% and 66% reduction in net return from the benchmark year, clearly justifying a corresponding level of reduction in the PAP dollars at risk across the three states.

What is all the more stunning is that the net return for the most recent years is *less* than the current total dollars at risk of $86.7 million! While the dollars at risk penalties may originally have represented only 39% of *Verizon's* regulated earnings, they now represent well over 100% of *FairPoint's* regulated earnings in the NNE states. This is not a mere academic concern. Recent monthly PAP penalties have been in excess of $3 million per month for NNE. At that rate on an annualized basis, this will exceed 50% of the NNE's unseparated net return for 2005, 2006 and 2007 – obviously far beyond the 39% maximum that this Commission originally found sufficient in 2002. To put this is a different perspective, FairPoint's performance, as

[17] Based on ARMIS filing requirements, per Part 43 of the FCC rules, ARMIS data is not required to be collected until the calendar year after notice that the carrier has exceeded the revenue threshold, with corresponding reports filed the year after that. FairPoint anticipates the first year it will file financial ARMIS reports will be in 2011, for the 2010 year of operations.

unsatisfactory as it was in the first half of this year, would still only have resulted in penalties amounting to 16% of net return if its net return was still at the 2000 level. However, it is not at that level now, and therefore this calculation demonstrates the urgent need to reduce the dollars-at-risk amounts of the PAP penalty structure. Accordingly, FairPoint requests that the Commission approve an amount of total dollars at risk of $14.7 million, as proposed in the Amended PAP filed on November 21, 2006 in DT 06-168.[18] (FairPoint is requesting a reduction to $9.99 million in Maine and $5.18 million in Vermont, for a NNE total of $29.96 million. It should be noted that this figure is comparable to the amount that would result if the average net income for the years 2005-2007, *i.e.* $71.7 million, was used as the new basis for calculating the total dollars at risk. Applying the factor of 39% to this figure results in a revised amount of $28 million for total dollars at risk.)

The PAP is an incentive plan, designed to deter "backsliding."[19] It was never designed wipe out all of the ILEC's earnings. This would plainly be unfair and overly punitive. As the New York Commission noted "[t]he current amount [at risk] was established over six years ago and does not reflect the telecommunications market in New York today."[20] The same is true for the NNE states, where much has changed locally and industry-wide since the PAPs were implemented eight years ago.

[18] Verizon NH Revised PAP Guidelines, DT 06-168, Letter from V. del Vecchio, Verizon to D. Howland, Commission, Attachment: Performance Assurance Plan § II.C.

[19] NH PAP Order at 73 (emphasis supplied). *See also Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02–61, Report of the Public Utilities Commission at 88 (Apr. 10, 2002) ("*Maine 271 Report*") ("The revised PAP provides a comprehensive, self-executing enforcement mechanism intended to *deter backsliding* and the provision of substandard performance.") (emphasis supplied).

[20] NY PAP Order at 13.

While FairPoint recognizes that the circumstances as they apply to Verizon in New York may or may not now be directly applicable to FairPoint in New Hampshire, it has always contemplated that the New York process would apply to New Hampshire. At the very least, the New York PAP serves as an independent test of reasonableness. The fact that net return in NNE has declined more than 65% since the PAPs were originally established strongly indicates that the proposed reduction in dollars at risk is reasonable and will continue to provide the necessary ongoing motivation to FairPoint to provide services to CLECs in parity with its own customers. In spite of recent service problems, FairPoint is firmly committed to the wholesale community in New Hampshire.

IV. THE COMMISSION IS AUTHORIZED TO GRANT EXPEDITED RELIEF.

The Commission can grant this request without a lengthy deliberative process because this road has already been plowed by other commissions, most notably New York. Section II.K.2 of the current PAP in New Hampshire provides that "Verizon will file changes to the New York Plan adopted by the New York PSC with the New Hampshire Commission within 30 days of the compliance filing in New York for review and inclusion in the New Hampshire upon the Commission's approval."[21] When it approved the original PAP, the Commission established a two track approval process, depending on whether the New York changes concerned "consensus" items or "non-consensus" items. Consensus items are those amendments approved by the NYPSC that were supported by consensus agreement of the New York Carrier Working Group. Non-consensus items are amendments on which the New York Carrier Working Group did not reach consensus agreement to support.[22] Consensus items become effective in New Hampshire *immediately upon filing* in New Hampshire. For non-consensus items, the

[21] The changes at issue were filed with the Commission in November 2006 in DT 06-168.

[22] NH PAP Order at 27 n.3.

Commission has *thirty days after the filing* in New Hampshire to determine whether to adopt, reject, or modify the items that the NYPSC considered and approved.[23]

Although the New York PSC approved the reduction in dollars at risk in 2006, the reduction did not enjoy the full support of the CLEC community, making the reduction a non-consensus item.[24] Consequently, while the Commission is certainly not prohibited from granting immediate relief, it should still place this request on an expedited track for decision in at most thirty days.[25]

V. CONCLUSION

Considering the significant decrease in lines covered by the PAPs, the galloping increase in intermodal competition, the drastic decline in FairPoint's net return in the NNE states, and the potential for overpayments to CLECs, it should be clear that a reduced level of $29.96 million at risk is more than sufficient to motivate FairPoint to continue to provide CLECs with the best possible service. Accordingly, FairPoint requests that the at-risk amounts in New Hampshire be reduced from $42.8 million to $14.7 million on an annual basis. Furthermore, given that similar reductions were approved in all other respective states in early 2007, such a reduction is approximately two years behind schedule. Accordingly, FairPoint requests that the revised

---

[23] *Id.*

[24] NY PAP Order at 12.

[25] FairPoint takes no position in this proceeding regarding the status of the PAP Amendments that were filed with the Commission in November 2006 in DT 06-168, and which included a substantial reduction in the total dollars at risk. According to the procedure established by the Commission, the amended PAP should have become effective in December 2006. In light of the current parallel effort to develop a simplified PAP, FairPoint sees no reason to revisit the November 2006 amendments outside the specific relief requested in this Supplement. However, FairPoint does not concede that the November 2006 amendments should not currently be effective, and reserves all rights to take this position.

dollars-at-risk amounts be approved within thirty days of this request and implemented effective as of January 1, 2009.

Respectfully submitted,

Northern New England Telephone Operations LLC
d/b/a FairPoint Communications-NNE

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

Dated: August 7, 2009

By: ____________________

Frederick J. Coolbroth, Esq.
Patrick C. McHugh, Esq.
Harry N. Malone, Esq.
43 North Main Street
Concord, NH 03301
(603) 226-1000
fcoolbroth@devinemillimet.com
pmchugh@devinemillimet.com
hmalone@devinemillimet.com