January 10, 2011

By FedEx and Email

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 wish to respond to FairPoint's letter of December 22, 2010. We are evaluating the letter to determine the merit, if any, of the technical issues it raised. No doubt, the administration of the PAP has its challenges, and the disagreements between FairPoint and the CLECs regarding the accuracy of FairPoint's interpretation and implementation of the PAP (both the calculations and the underlying data) reflect this. Unlike FairPoint, however, we believe that these disagreements, as well as FairPoint's well-documented poor wholesale service quality, necessitate an evaluation and audit of the current PAP and FairPoint's wholesale service quality rather than moving forward with creating a completely different measurement system. This is particularly true when the new system proposed by FairPoint would keep many of the current PAP measures, at least in name, but, change the calculation methodology, potentially resulting in significantly lower penalty amounts than the current PAP with no improvement in service quality. Indeed, FairPoint's December 22nd reply, while replete with conclusory claims that an audit is not warranted, once again ignores the big picture: FairPoint, almost two years after cutover, has yet to achieve wholesale service quality levels that even remotely approach those provided under Verizon..

The PAP is not something that the CLECs have foisted on FairPoint. Instead, the PAP was developed by another ILEC (and BOC), FairPoint's predecessor, Verizon. It serves an important purpose, namely, to ensure that local markets are and remain open to competition. The establishment and maintenance of the PAP were key conditions of Verizon's (and now FairPoint's) entry to the in-region, interLATA market in New Hampshire.

The Telecommunications Act of 1996 requires incumbent local exchange carriers like FairPoint and Verizon 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 Act, 47 U.S.C. § 271. Accordingly, in 2002, Verizon developed, and the NH PUC approved, the PAP. *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 (March 29, 2002). In that docket, the Commission made a determination "as to the proper purposes of a performance assurance plan: assuring prompt enforcement of appropriate consequences without the delays of an adjudication and appeals process, and including incentives high enough to exceed the benefits [the ILEC] might derive by inhibiting competition." *Id.* at 73.

In DT 01-006, the Commission engaged in an eight-month, intensive analysis of at least three competing proposals: the Verizon PAP, the Staff PAPA, and AT&T's PIP. *Id.* at 9-26. While the plans shared some common features — in particular, their use of statistical methodologies to determine parity between the ILEC's retail and wholesale operations, and complex tests to ensure that statistical errors did not result in false positives or false negatives — they also differed in many fundamental characteristics. *Id.* Ultimately, the Commission decided that the Verizon PAP, with certain modifications, presented the best alternative that would accomplish the objectives of a performance assurance plan. *Id.* at 91-95.

When FairPoint succeeded Verizon in New Hampshire, it became subject to the PAP. *In re Verizon New England Inc. et al. — Petition for Authority to Transfer Assets and Franchise,* DT 07-011, Order Approving Settlement Agreement with Conditions, Order No. 24,823, at 30 (Feb. 25, 2008). FairPoint considers the PAP to be a reliable indicator of the quality of service that it provides to CLECs. When PAP credits are high, they reflect poor service quality; lower credits reflect better quality. See the Transcript of VT PSB Hearing in FairPoint Restructuring matter, Dkt. No. 7599, Dec. 9, 2010, at 13-14 (copy attached as Attachment 1.)

As the Commission well knows, FairPoint's wholesale service quality since cutover has been quite poor. Reported credits from January 2007 through the end of the use of Verizon's systems at the January 31, 2009 cutover averaged $25,638. Reported credits since the one-month waiver after cutover have averaged $1,030,221.[1] This is *over forty times* the pre-cutover average. Moreover, the four-fold increase in reported PAP credits after June 2010 is stark evidence that service quality has not stabilized, to say nothing of approaching pre-cutover levels.

No wonder FairPoint desperately seeks to escape from a process it is failing. Verizon was able to operate under the existing PAP and pay only modest credits. Even FairPoint, pre-cutover, was able to operate at relatively reasonable levels of quality. Now, however, instead of working to improve its service quality and the systems that measure it, FairPoint wishes simply to change the rules of the game.

In light of these facts, the Signatories believe that it makes no sense to spend time and effort on a simplified PAP unless and until FairPoint can show that its existing processes are working properly. These processes include FairPoint's wholesale operations in general and its implementation of the PAP in particular. In previous correspondence, we have pointed out problems with FairPoint's operation of the PAP, including its failure to calculate MOE doubling credits and, more fundamentally, the fact that it designed systems that do not even capture some of the PAP metrics. Once FairPoint can show that it can live up to its existing obligations, that might be the time to talk about changing the PAP — not before.

---

[1] A chart showing the amount of PAP credits specified in FairPoint's monthly reports is Attachment 2.

The PAP credit amounts set forth in this letter and the accompanying chart are based on FairPoint's monthly PAP reports. These amounts do not reflect MOE doubling that FairPoint failed to perform. To the Signatories' knowledge, FairPoint has not issued revised PAP reports reflecting proper MOE doubling.

To that end, the Commission should open a docket and begin the audit as soon as it is able to commence the process. Such a course of action would be consistent with the Commission's statement in the order adopting the PAP: "We are convinced that periodic audits of the PAP would be wise. . . . We find it unnecessary to establish an audit schedule at this time, but will conduct audits as we deem necessary." DT 01-006 Order at 81. The Signatories respectfully suggest that it is necessary to audit the PAP now, for the reasons stated above and in our previous letters.

The Signatories note that FairPoint recognizes that it is appropriate at this time to "address the current questions/concerns of the Wholesale Community on the existing plan." To that end, FairPoint has invited CLEC representatives to a meeting on January 13. FairPoint Accessible Letter, Jan. 3, 2011 (Attachment 3). Various of the Signatories intend to participate in the meeting, with the expectation that FairPoint will engage in a meaningful discussion of the existing PAP, its implementation of the PAP, and its performance under it. While we hope such discussions will be productive, we do not anticipate that they will obviate the need for a Commission-directed audit.

The Signatories appreciate the Commission's continuing attention to this important issue.

Respectfully submitted,

Freedom Ring Communications, LLC, d/b/a BayRing Communications

By: Benjamin P. Thayer /se
Benjamin P. Thayer
President

CRC Communications of Maine, Inc., d/b/a OTT Communications

By: Trina M. Bragdon /se
Trina M. Bragdon
Director, Legal Affairs

segTEL, Inc.

By: Kath Mullholand /se
Kath Mullholand
Director of Operations

Biddeford Internet Corp., d/b/a Great Works Internet

By: Frederick S. Samp /se
Frederick S. Samp
General Counsel

Choice One of New Hampshire, Inc., Conversent Communications of New Hampshire, LLC, CTC Communications Corp., and Lightship Telecom, LLC, all d/b/a One Communications.

By: Paula Foley /sl
Paula. Foley
Regulatory Affairs Counsel

National Mobile Communications Corp., d/b/a Sovernet Communications

By: Lawrence F. Lackey /sl
Lawrence F. Lackey
Director, Regulatory Affairs

Otel Telekom, Inc..

By: Gent Cav /sl
Gent Cav
President

Cc: Kate Bailey, P.E., NH PUC
Leszek Strachow, NH PUC
Patrick McHugh, Esq., FairPoint Communications
Service List (by email)