STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Joint Petition of Verizon New England Inc.,	)	
d/b/a Verizon Vermont, Certain Affiliates	)	
Thereof and FairPoint Communications, Inc.	)	Docket No. DT 07-011
for approval of asset transfer, acquisition of	)	
control by merger and associated transactions	)	

INITIAL BRIEF

ON BEHALF OF

NEW ENGLAND CABLE & TELECOMMUNICATIONS ASSOCIATION, INC. AND COMCAST PHONE OF NEW HAMPSHIRE, LLC

November 20, 2007

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INTRODUCTION

A. STATEMENT OF PROCEEDINGS

On January 31, 2007, Verizon New England, Inc., d/b/a Verizon New Hampshire and certain of its affiliates ("Verizon") and FairPoint Communications, Inc. ("FairPoint") filed a Joint Petition requesting approval of a series of transactions that would result in the replacement of Verizon New Hampshire as the principal provider of telecommunications services by a subsidiary and affiliate of FairPoint.[1]

FairPoint represented that it has the financial, managerial and technical ability to carry out Verizon's existing responsibilities as an Incumbent Local Exchange Carrier and would provide the same or better level of service to Verizon's retail and wholesale customers than Verizon now provides. FairPoint also represented that it would assume Verizon's existing duties as an owner of utility poles in regard to joint pole owners and third parties that attach to such poles in order to provide cable and other services to New Hampshire consumers.

Extensive discovery was conducted by the parties to this proceeding. Pre-filed testimony was submitted by many of the parties. Evidentiary hearings were conducted by the Commission on October 22-26, October 29-31, and November 1, 2007. Multiple exhibits were introduced during the evidentiary portion of this proceeding. During hearings, the Commission was presented with and took evidence on several memoranda of understanding, as well as on one publicly filed Settlement between FairPoint and three Verizon wholesale customers ("3-CLEC Settlement"), and three confidential agreements between FairPoint and individual Verizon

[1] Under the proposed transaction, FairPoint would become the parent of two subsidiaries, Telco and Newco. FairPoint and Verizon are simultaneously requesting similar regulatory approvals in Maine and Vermont.

wholesale customers.[2] In addition, near the close of these proceedings, the Commission was provided with a FairPoint Cutover Monitoring, Statement of Scope ("3rd Party Monitoring Statement of Scope") and heard testimony on that document. Pursuant to the procedural schedule in this matter, the New England Cable and Telecommunications Association, Inc. ("NECTA")[3] and Comcast Phone of New Hampshire, LLC ("CPNH")[4], intervenors in this proceeding, submit their Initial Brief.

B. THE PROPOSED TRANSACTIONS CREATE A SUBSTANTIAL RISK OF HARM TO THE PUBLIC

The FairPoint transaction, as proposed, creates significant risks of harm to the public, given FairPoint's small size and limited capital resources in comparison to those of Verizon, its lack of experience in providing services to interconnecting parties and other wholesale customers and its adoption of a flash cutover process similar to the recent failed cutover that occurred in the

[2] None of these settlement filings eliminate the need for the Commission to address and adopt wholesale and pole attachment-related merger approval conditions recommended by NECTA and CPNH. This is especially true because: (1) the public 3-CLEC Settlement does not address all of the issues raised by NECTA and CPNH; (2) in some instances, the public 3-CLEC Settlement does not adequately address an issue raised by NECTA and CPNH; (3) the public 3-CLEC Settlement terms do not apply to all wholesale service providers; and (4) failure of the Commission to approve the public 3-CLEC Settlement in its entirety (except for wholesale OSS provisions) would nullify the Settlement. The confidential settlements apparently do not depend upon Commission approvals.

[3] NECTA is a non-profit corporation and trade association that represents a substantial number of cable system operators in New England, including New Hampshire. NECTA members attach to poles owned jointly or solely by Verizon and electric utilities. NECTA members or their affiliates provide cable, high speed Internet access and voice services in New Hampshire.

[4] Comcast represents a source of voice services competition on a wider scale than New Hampshire has experienced to date (NECTA/CPNH Exh. 1 at 10). The spread of competition from cable telephony would provide substantial benefits to the residential and small business markets (NECTA/CPNH Exh. 1 at 11; Attachment MDP-5). Reasonable interconnection arrangements, an ILEC assuming and capable of managing interconnection obligations and the continuation of interoperability between the ILEC's systems and the systems used by facilities-based service providers are critical to enable the benefits of mass market voice services competition to be realized in New Hampshire.

State of Hawaii.[5] These and other material risks have been acknowledged by FairPoint in its SEC filings and during the course of this proceeding. Several parties to this proceeding, including the Commission Staff and the Office of Consumer Advocate, have called into question the ability of FairPoint to carry out the obligations that apply to Verizon and the promises it has made to obtain approval of this transaction.[6]

Under these unique circumstances, the Commission must carefully review the proposed transactions and determine whether Verizon and FairPoint have met their burden of proving that approval of the proposed transactions would promote the public good.

C. CONCERNS RAISED BY NECTA AND CPNH

NECTA and CPNH recommend that any Commission approval of FairPoint's proposed transaction be made subject to conditions in order to safeguard the public good and avoid or mitigate obstructions and impairments of competition that would arise from the proposed transaction. There is compelling evidence that the proposed transaction, without appropriate conditions, would result in harm to the public, create unacceptable risks of harm to the public and obstruct and impair competition within New Hampshire.

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[5] Of critical importance is FairPoint's plan to replace existing Verizon back office systems with new systems. FairPoint must select and integrate these systems, obtain data from Verizon to load into these systems and then perform a cutover from Verizon's existing systems to its new systems. At the time of cutover, FairPoint must be staffed, trained and ready to operate and maintain the telecommunications network acquired from Verizon, provide service to retail and wholesale customers and meet all of the obligations that Verizon must meet today. It is clear from the hearing record that FairPoint faces a daunting task and has yet to demonstrate its readiness to replace Verizon New Hampshire.

[6] These promises include, but are not limited to: (1) providing expanded addressability and availability of DSL service within 18-24 months after merger closing; (2) curing service quality deficiencies of Verizon within 30 months after merger closing; and (3) remedying severe double poling backlogs over a 42 month period after merger closing.

FairPoint has, among other things:

1) failed to demonstrate that it has the ability to perform the statewide or regional wholesale service obligations now performed by Verizon, given its complete lack of wholesale experience and the existing uncertainty whether it will be willing and able to perform these obligations;

2) proposed to eliminate the existing stability between Verizon and interconnecting carriers that have operated under expired interconnection agreements on a month-to-month basis for periods in excess of one year;

3) sought to evade obligations that now apply to Verizon under the Telecommunications Act and that would apply going forward in the absence of the proposed transaction;

4) refused to provide the same levels of wholesale services offered by Verizon, because it will not commit to adhere to at least the specific number porting and trunking intervals that Verizon provides today;

5) proposed to degrade the existing level of service received by retail and wholesale customers during a "transition period" of at least 5 days and potentially much longer when Verizon data is extracted from Verizon's existing systems and loaded into new, yet to be integrated FairPoint systems;

6) created real and material risks that its cutover to new back office systems will result in service affecting problems for retail and wholesale customers alike, as recently occurred in the State of Hawaii in connection with a Verizon transaction strikingly similar to the present transaction in all important respects;

7) failed to demonstrate that the risks imposed by the cutover process have been effectively avoided or mitigated to the point that the Commission may conclude that the proposed transaction would promote the public good;

8) imposed costs, burdens and risks upon competitive service providers due solely to this transaction, without providing any compensation to competitive service providers for such costs or security against such risks;

9) proposed an organizational structure that combines the performance of retail and wholesale functions by the same personnel, thereby inviting anti-competitive conduct;

10) failed to demonstrate readiness to assume responsibility for the licensing and administration of its pole attachment obligations.

From the perspective of NECTA and CPNH, the proposed transaction would not promote the public good unless the Commission adopts the merger approval conditions recommended herein. NECTA and CPNH take no position on the merits of the Joint Petition with respect to many other issues raised by Commission Staff, the OCA and other parties.

SUMMARY OF ARGUMENT

NECTA and CPNH recommend that the Commission adopt the following merger approval conditions in the event that it finds and rules that the proposed merger should be approved:

1) FairPoint should be prohibited from claiming or seeking, now or in the future, any exemption from ILEC interconnection obligations as a rural telephone company pursuant to 47 U.S.C. §251(f)(1) of the federal Telecommunications Act within the Verizon footprint (or any expanded footprint if FairPoint combines existing "classic FairPoint" operations with existing Verizon operations).

2) FairPoint should be prohibited from claiming or seeking, now or in the future, any suspension or modification of ILEC interconnection obligations as a "2% carrier" pursuant to 47 U.S.C. §251(f)(2) of the federal Telecommunications Act within the Verizon footprint (or any expanded footprint if FairPoint combines existing "classic FairPoint" operations with existing Verizon operations).

3) FairPoint's entitlement to Universal Service Funding should be the same as Verizon's entitlement.

4) FairPoint should be required to offer to all wholesale service providers - as it has agreed to do in Vermont Docket No. 7270 - extensions of the terms of existing interconnection agreements (including expired interconnection agreements that have remained in effect on a month-to-month basis) for a period of three years from the date of merger closing and freeze wholesale rates during that same three year time period.

5) The Commission should require FairPoint to retain at its sole expense an independent third party consultant acceptable to the Commission to test the readiness of FairPoint's new systems, similar to the process that applied to Verizon when it sought approval under Section 271 of the Telecommunications Act to enter the long distance business. The independent third party consultant should establish system testing criteria and actually conduct testing of FairPoint's new systems, determine the readiness of the systems for cutover, evaluate FairPoint's operational cutover readiness and report to the Commission regarding FairPoint's readiness for cutover. The Commission should ultimately determine whether FairPoint is ready to give Verizon the irrevocable Notice of Readiness for Cutover provided for under the Transition Services Agreement between FairPoint and Verizon. In the alternative, the Commission should require FairPoint to retain at its sole expense an independent third party consultant acceptable to the Commission, which consultant should (a) provide input regarding, review and

evaluate FairPoint's system testing plans (including system acceptance criteria) and audit system testing results and; (b) establish with FairPoint additional cutover readiness criteria, including, at a minimum, cutover readiness criteria recommended herein by NECTA and CPNH; (c) evaluate FairPoint's readiness for cutover; and (d) report to the Commission regarding FairPoint's readiness for cutover. Under either scenario, the Commission should ultimately determine, based upon such report and other information, whether FairPoint is ready to give Verizon the irrevocable Notice of Readiness for Cutover provided for under the Transition Services Agreement between FairPoint and Verizon. This alternative can be fashioned through Commission-directed modifications to the 3rd Party Monitoring Statement of Scope (Staff Exh. 61)(as described by the Staff consultants from the Liberty Group and recommended by NECTA/CPNH witness Michael Pelcovits).

6) FairPoint should be required to provide interconnecting parties with levels of service equal to or better than Verizon provides today, including at least the following: (a) number porting intervals and practices; (b) trunk ordering intervals; (c) continued inclusion of tandem transit services as services provided under interconnection agreements; (d) dedicated account managers and account teams, who will agree to meet telephonically with interconnecting carriers as often as once each week (and who also may serve this function for more than one interconnecting party); (e) maintenance of a wholesale customer website with content comparable to that provided by Verizon; and (f) continuation of a CLEC User Forum.

7) FairPoint must be required to adopt Verizon's pole and conduit attachment rates, terms and conditions at closing and adhere to applicable law and the terms of assigned or assumed aerial and conduit license agreements.

8) FairPoint must be required to establish a license services administration group ("LSAG") comparable to Verizon's LSAG and adequately staff and train its LSAG both as a merger condition and as a cutover readiness criterion in order to ensure that pole attachment applications, make ready surveys, make ready work, billing and record-keeping will be handled on a timely, reliable, economic and accurate basis.

9) FairPoint should be required to operate a wholesale organization that is separate from its retail organization so that employees serving wholesale customers do not have conflicts of interest and conflicting responsibilities.

10) FairPoint should be required to reimburse wholesale customers of Verizon being transferred to FairPoint for costs that they incur in connection with software, hardware and training reasonably required in order to ensure that their systems will be interoperable with the new systems of FairPoint. Such costs shall include, but are not limited to, training-related costs and costs related to e-bonding and point code activity required as a result of this transaction. They should also be

reimbursed for losses in the event that there is a material failure at cutover resulting in costs to wholesale customers, based upon a set aside of a portion of TSA payments.

11) The Commission should reject FairPoint's request for a waiver of PAP obligations; provided, however, that in the event the Commission finds any waiver reasonable, such waiver should not exceed 30 days in the case of all wholesale service providers.

12) In the event that the Commission accords FairPoint the right to seek future recovery through rates of the capitalized portion of Capgemini system development costs, the Commission should impose the following conditions: (a) no such filing for rate recovery should be permitted solely as to wholesale customers; (b) such capital costs must be allocated among and between all jurisdictions and operating systems that benefit from the capitalized work for which rate recognition is being sought; and (c) such capital costs must be allocated to non-regulated services and interstate services.

13) FairPoint should be precluded from seeking recovery through retail and wholesale rates: (a) expenses incurred under the Transition Services Agreement; (b) expensed Capgemini costs; and (c) any acquisition premium associated with this transaction.

From the standpoint of facilities-based competitors and cable operators, the above merger conditions are the minimum required to assure that the proposed transaction would promote the public good. NECTA and CPNH address below the alternatives proposed by other parties regarding wholesale and cutover issues. They take no position on the adoption of unrelated or additional conditions recommended by other parties.[7]

[7] NECTA and CPNH reserve the right to request further hearings in the event that any new settlements or memoranda of understanding are filed by and between FairPoint and any other party prior to a Commission Order in this matter.

APPLICABLE LEGAL STANDARDS

In cases that involve the merger or acquisition of New Hampshire public utilities, the Commission is charged with reviewing whether a proposed transaction will adversely affect rates, terms, service or operation of the public utility within the state (RSA 369:8).[8] A petitioner's representations are insufficient to warrant approval of a merger. A petitioner must demonstrate that the transfer of its franchise, works and system will be for the "public good' and that "no net harm" results from the proposed transaction.[9] Under the "no net harm" standard, a transaction may be approved unless the Commission finds that it will have an adverse impact on the public. [10]

In reviewing whether a proposed transaction would be for the public good, the Commission routinely examines both the benefits claimed to result from the proposed transaction and the adverse effects arising or potentially arising out of the proposed transaction.

The Commission has imposed conditions upon its approval of merger transactions in order to (1) secure benefits claimed by the petitioner to result from the transaction and (2) avoid or mitigate negative impacts that would arise due to the proposed transaction. For example, in prior merger transactions, the Commission has imposed conditions including: (1) no recovery of merger transaction costs; (2) no recovery of acquisition premiums through rates; (3) rate freeze commitments to avoid adverse impacts on customer rates; (4) quality of service commitments needed to avoid potential harms due to the changeover of systems and the reorganization of

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[8] *Re: Acquarion Water Company of New Hampshire*, DW 06-094, Order No. 24,691 (October 31, 2006).

[9] Id. (citing *New England Electric System*, 84 NH PUC 502 (1999); *Energy North Natural Gas, Inc.*, 85 NH PUC 361 (2000); RSA 374:30).

[10] *Eastern Utilities Associates*, 76 NH PUC 236 (1991).

personnel; (5) commitments to maintain adequate service and staffing levels; (6) reporting requirements; and (7) commitments regarding quality network construction and maintenance. The Commission has considered whether a proposed transaction would diminish or impair competition.[11]

The precise conditions that are needed in connection with a proposed transaction depend upon the circumstances presented, but should include conditions that secure commitments made by the petitioner and avoid or mitigate adverse impacts associated with the proposed transaction.

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[11] *Re: Acquarion Water Company of New Hampshire*, DW 06-094, Order No. 24,691(October 31, 2006)(no recovery of acquisition premium); *New England Electric System*, 84 NH PUC 502, 512 (1999)(same); *Re New England Telephone and Telegraph Company d/b/a NYNEX*, DR 96-220, Order No. 22,484 (January 20, 1997) (merger that could result in harm to ratepayers due to disruption of operations during merger implementation warranted adoption of quality of service standards); *Re Merrimack County Telephone Company*, DT 02-009, Order No. 23, 961 (May 1, 2002)(2 year rate freeze agreed to by parties and Staff factored into "not net harm" evaluation of Commission); *Re Hampton Water Works*, DF 94-215, Order No. 21,753 (July 18, 1995) (merger conditions included: effective date of order conditioned on other states approving the merger under conditions that do not modify or amend assumptions underlying the merger as represented; filing of specific reports with the Commission; maintenance of adequate staff; capital expenditure commitments; joint multi-state approval of a formula for the allocation of common expenses).

ARGUMENT

I. FAIRPOINT SHOULD NOT BE ENTITLED TO CLAIM OR SEEK ANY EXEMPTION FROM ILEC INTERCONNECTION OBLIGATIONS AS A RURAL TELEPHONE COMPANY PURSUANT TO 47 U.S.C. §251(f)(1) OF THE FEDERAL TELECOMMUNICATIONS ACT WITHIN THE VERIZON FOOTPRINT (OR ANY EXPANDED FOOTPRINT IF FAIRPOINT COMBINES EXISTING "CLASSIC FAIRPOINT" OPERATIONS WITH EXISTING VERIZON OPERATIONS)

FairPoint has stated that it will not claim or seek rural telephone company status for purposes of seeking an exemption from ILEC interconnection obligations pursuant to Section 251(f)(1) of the Telecommunications Act, as amended (FairPoint Exh. 6 at 27). FairPoint also has agreed that it will not restructure the acquired Verizon territory into separate entities that might qualify as rural telephone companies in order to circumvent its commitment not to seek exemptions as a rural telephone company within the current Verizon footprint that it proposes to acquire (FairPoint Exh. 6 at 33; Tr. 10/29/07 at 224). The Verizon footprint historically has never been subject to a rural telephone company exemption and any attempt by FairPoint to undo the status quo would set back existing and future competition in New Hampshire (NECTA/CPNH Exh.1P at 30,31; Tr. 10/ 24/07 at 100-101).[12]

On October 18, 2007 a Settlement Stipulation was entered into by FairPoint and three intervenors, BayRing, segTEL and Otel ("3-CLEC Settlement") (FairPoint Exh. 15). In that document, FairPoint also made the same commitments, and has testified that the commitment not to seek a rural exemption is applicable to all wholesale providers, not just the 3-CLEC Settlement signatories (Tr. 10/22/07 at 24). In addition, FairPoint has made these commitments

[12] NECTA and CPNH do not object to the "classic FairPoint" systems retaining any existing rural telephone company exemption at closing and prior to their combination with the Verizon New Hampshire footprint being acquired by FairPoint, but reserve their right to petition the Commission to remove such exemption pursuant to 47 U.S.C. §251(f)(1).

independent of the 3-CLEC Settlement in Mr. Nixon's testimony in this proceeding (cited above) and has agreed to a similar merger condition on brief in Vermont in Docket No. 7270 (NECTA/CPNH Exh. 83P at 89, 100). For these reasons, the Commission should impose FairPoint's commitment as a merger approval condition, independent of the 3-CLEC Settlement, in order to lend certainty to FairPoint's assumption of the existing regulatory obligations of Verizon and also enable enforcement of FairPoint's commitments. Such independent findings and rulings by the Commission are necessary in the event that the 3-CLEC Settlement is not accepted in its entirety (3-CLEC Settlement at Section 9). Moreover, the above merger conditions go beyond the terms contained in the 3-CLEC Settlement, and reflect greater commitments made by FairPoint in Mr. Nixon's direct testimony, cited above, with regard to no future restructuring of the acquired Verizon territory (FairPoint Exh. 6 at 27, 33).

II. FAIRPOINT SHOULD NOT BE ENTITLED TO SEEK ANY SUSPENSION OR MODIFICATION OF ILEC INTERCONNECTION OBLIGATIONS AS A "2% CARRIER" PURSUANT TO 47 U.S.C. §251(f)(2) OF THE FEDERAL TELECOMMUNICATIONS ACT WITHIN THE VERIZON FOOTPRINT (OR ANY EXPANDED FOOTPRINT IF FAIRPOINT COMBINES EXISTING "CLASSIC FAIRPOINT" OPERATIONS WITH EXISTING VERIZON OPERATIONS)

The Commission should adopt a merger approval condition that prohibits FairPoint from seeking any suspension or modification of ILEC interconnection obligations under Section 251 pursuant to Section 251(f)(2) of the Telecommunications Act, as amended. In Mr. Skrivan's rebuttal testimony (FairPoint Exh. 4 at 14-16), FairPoint back-pedaled on Mr. Nixon's original commitment that FairPoint would not seek any suspension or modification of ILEC interconnection obligations pursuant to Section 251(f)(2) (FairPoint Exh. 6 at 27). Mr. Skrivan's position is contrary to FairPoint's previous statements regarding its obligations pursuant to 251(c), made by Mr. Nixon at page 27 of his direct testimony. This condition is critical in order

to assure that FairPoint "steps into the shoes" of Verizon for purposes of its regulatory obligations, both retail and wholesale (NECTA/CPNH Exh. 1P at 30, 32, Attachment MDP-18).

Verizon's replacement of FairPoint as the principal ILEC in New Hampshire should not, in any respect, erode the interconnection rights upon which competitors depend. Such an erosion would not occur absent the proposed transaction and would be harmful to competition in New Hampshire. What little competition exists in New Hampshire today depends upon the ILEC performing its interconnection obligations. As Dr. Pelcovits testified, continued growth in competition requires that interconnecting parties retain the level of interconnection services that would be obtainable from Verizon absent this transaction, under reasonable rates, terms and conditions (NECTA/CPNH Exh. 1P at 28-33).

Even the *possibility* that FairPoint could petition the Commission for a suspension or modification of its interconnection obligations as an ILEC leaves competitors worse off than they would be if no transaction were to occur and would provide FairPoint leverage in future interconnection negotiations.[13] The costs and uncertainty of such potential litigation alone might

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[13] NECTA/CPNH Exh. 1P at 31. The fact that the Commission would need to approve any requested suspension or modification of ILEC interconnection obligations pursuant to a Section 251(f)(2) Petition provides no solace to interconnecting parties, given that the need for such proceedings and the risks to competition that they represent would not exist in the absence of the proposed transaction. Any Section 251(f)(2) proceeding would be costly and burdensome for wholesale service providers, public parties like Staff and OCA that have a keen interest in promoting competition within New Hampshire and even FairPoint. It is noteworthy that FairPoint itself has opposed rural telephone company efforts to seek both exemptions from interconnection obligations as well as suspensions or modifications of such obligations pursuant to Sections 251(f)(1) and 251(f)(2), respectively. In New York Public Service Commission Case 99-C-1337 (*Petition of FairPoint Communications Corp, for Negotiation/Mediation Pursuant to Section 252(a) of the Telecommunications Act of 1996 and for Approval of any Resulting Interconnection Agreement*) (Order issued and effective June 6, 2000), FairPoint engaged in lengthy and costly proceedings to challenge a rural telephone company's claims for an exemption under Section 251(f)(1) and for a suspension or modification under Section 251(f)(2) of the Telecommunications Act. FairPoint's bona fide request was made on September 23, 1999. FairPoint's challenge, led to an order that a separate proceeding be initiated to review and establish TELRIC rates to be prepared by the rural telephone company, with a TELRIC cost study to be filed no later than September 1, 2000, nearly one year after FairPoint's petition was filed. It would not promote the public good to allow for such proceedings, with their attendant costs and uncertainties, given that such proceedings would not occur in the absence of this transaction.

well lead to a contraction of competitive presence in New Hampshire, without regard to the ultimate resolution of any Section 251(f)(2) litigation by the Commission. Smaller CLECs might not have the resources to contest suspension or modification requests by FairPoint and would then be disadvantaged if their existing interconnection arrangements eroded as a result of Section 251(f)(2) proceedings (NECTA/CPNH Exh. 1P at 31, 32). Reduced competition and higher wholesale costs result in higher costs for consumers.

As the ILEC, Verizon could not seek suspensions or modifications of ILEC interconnection obligations under Section 251(f)(2). In order to avoid a significant erosion of competitors' existing and future interconnection rights, the Commission must adopt a merger condition that precludes FairPoint from seeking suspension or modification of its Section 251 obligations pursuant to Section 251(f)(2) of the Telecommunications Act now or any time in the future (in the exchange territories now served by Verizon or in any existing FairPoint service areas if they are combined with the Verizon footprint) (NECTA/CPNH Exh. 1P at 31, 32).

The reasonableness of the recommended merger condition is further supported by Staff testimony (Tr. 10/30/07 at 99, 100) as well as by FairPoint's acceptance of this merger condition on brief in Vermont Public Service Board Docket No. 7270 (NECTA/CPNH Exh. 83P at 100). Further, this recommended merger condition is consistent with FairPoint's acceptance of such a merger condition under the 3-CLEC Settlement, Attachment 1, Section 1c (FairPoint Exh. 15). This merger condition should be adopted, independent of the 3-CLEC Settlement, in light of the possibility that the 3-CLEC Settlement terms may not be not approved in their entirety, as discussed above.

III. AS A CONDITION FOR APPROVAL, FAIRPOINT SHOULD NOT BE ENTITLED TO MORE UNIVERSAL SERVICE FUNDING THAN VERIZON WOULD HAVE BEEN ENTITLED IN THE ABSENCE OF THIS TRANSACTION

Mr. Nixon testified that FairPoint would receive the same High Cost Fund support that Verizon receives today (FairPoint Exh. 6 at 31, 32). In order to assure that this commitment is kept, the Commission should condition any approval of the proposed merger upon FairPoint's receiving the same High Cost Fund Support that Verizon would have received. FairPoint and its retail customers should not receive additional benefits at the expense of all other New Hampshire voice service consumers.

IV. IN ORDER TO AVOID OBSTRUCTION OR IMPAIRMENT OF COMPETITION AND TO PROMOTE THE PUBLIC GOOD, THE PROPOSED MERGER TRANSACTION SHOULD BE CONDITIONED UPON A THREE-YEAR EXTENSION OF EXISTING INTERCONNECTION AGREEMENTS (INLCUDING EXPIRED AGREEMENTS THAT REMAIN IN EFFECT ON A MONTH TO MONTH BASIS IN ACCORDANCE WITH THEIR TERMS), AND A THREE -YEAR RATE WHOLESALE FREEZE FROM THE DATE OF MERGER CLOSING

A. THE ONE-YEAR INTERCONNECTION AGREEMENT EXTENSIONS PROPOSED BY FAIRPOINT ARE LESS FAVORABLE THAN VERIZON'S ACTUAL TRACK RECORD AND FAIRPOINT'S ACCEPTANCE OF THREE-YEAR EXTENSIONS AS MERGER CONDITIONS IN VERMONT PUBLIC SERVICE BOARD DOCKET NO. 7270

1. The One-Year Interconnection agreement extensions proposed by FairPoint are less favorable than Verizon's actual track record

FairPoint has proposed to extend the terms of existing interconnection agreements for a period of one year and to extend expired agreements that have remained in effect on a month-to-month basis for a period of one year from the date of closing (FairPoint Exhs. 1 at 19, 4 at 6). A

one-year extension from merger closing is inadequate from any vantage point. It would not promote the public good and, given the record before the Commission, would actually harm the public in multiple respects.

A Commission merger approval condition requiring a three-year extension of existing interconnection agreement terms (and a three-year extension from date of merger closing for those expired, month-to-month agreements) is needed to assure that the proposed transaction promotes the public good and does not obstruct or impair competition.

A three-year extension is in keeping with Verizon's track record regarding its interconnection agreements (NECTA/CPNH Exh. 1P at 44; OCA Exh. 132). For example, CPNH has operated in New Hampshire under a 1998 interconnection agreement with Verizon on a month-to-month basis since 2003, when the agreement was adopted (OCA Exh.132). In fact, a review of Verizon's actual practice with respect to expired interconnection agreement remaining in evergreen status, indicates that Verizon has routinely left these ICAs in place for longer than one year (OCA Exh. 132).

The ability of wholesale customers to compete would be impaired if FairPoint abandoned Verizon's actual practice of allowing interconnection agreement rates and terms to remain in effect for years on a month-to-month basis after the expiration dates, as expressly contemplated by the ICAs. Such action by FairPoint would precipitate costly and resource intensive interconnection agreement negotiations, arbitrations and wholesale rate proceedings within one year after closing – before cutover even occurs –and without regard to whether service affecting problems arise as a result of the cutover (NECTA/CPNH Exh. 1P at 44,45; Tr. 10/25/07 at 128; Tr. 10/30/07 at 92). Furthermore, a lack of adoptable agreements (because FairPoint has no existing agreements with competitive carriers in New Hampshire) will require that all carriers

negotiate from a FairPoint template. In addition to the protracted negotiations that often result from such a requirement, and the greater likelihood for arbitrations, the staffs of FairPoint, its competitors and the Commission will all be called upon to devote resources to the process.

2. FairPoint's Acceptance of Three-Year Interconnection Agreement Extensions as a Merger Condition in Vermont Public Service Board Docket No. 7270 and Staff's Recommendations Support the Same Condition in New Hampshire

The Commission's imposition of the three-year interconnection agreement extension condition and rate freeze recommended by NECTA and CPNH (and by other wholesale parties) is further supported by FairPoint's own acceptance of this merger condition in Vermont Public Service Board Docket No. 7270 (NECTA/CPNH Exh. 83P at 100; Tr. 10/28/07 at 119). Staff's recommendation that there be no changes in wholesale obligations for three year period (Staff Exh. 4, Exhibit 1; Tr. 10/30/07 at 90, 91) and its acceptance of three year extensions of existing interconnection arrangements as a way to ensure that result (Tr. 10/30/07 at 91) further support the merger conditions recommended by NECTA and CPNH. In this case, FairPoint also has agreed to extend a 3 year rate free in tariffed wholesale rates to all customers (FairPoint Exh. 15).

FairPoint's claim that three year extensions of interconnection arrangements should be limited to the 3-CLEC Settlement signatories in New Hampshire, because of differences in intrastate retail ratemaking in Vermont and New Hampshire (Tr. 10/22/07 at 34, 35), is without merit. In both states, FairPoint has agreed to freezes in wholesale tariffed rates or rates under an SGAT, irrespective of the fact that Verizon operates under an incentive rate plan in Vermont and does not do so in New Hampshire (NECTA/CPNH Exh. 83P; FairPoint Exh. 15). These differences in retail rate-setting methodology have no bearing on the propriety and need for three

year extensions of existing interconnection arrangements in both states (indeed, without an alt reg plan in place, Verizon has not filed a general rate case in New Hampshire for over three years). The immateriality of FairPoint's argument is further underscored by FairPoint's option of seeking an alternative form of rate regulation in New Hampshire following merger closing (Tr. 10/23/07 at 42).

Ample justifications for the adoption of the requested merger approval conditions exist in this proceeding. Both Commission Staff and the OCA have recommended merger conditions that retail rates be frozen for a period of at least three years (OCA Exh. 2C at 15, seeking 5 year cap on basic local exchange rates; Staff Exh. 4 at Exhibit 1; Tr.10/25/07 at 127; Tr. 10/30/07 at 89). FairPoint itself, through Mr. Leach, stated that it could go along with a three year retail rate freeze so long as it was not subject to rate decreases during the same period (FairPoint Exh. 9C at 105, 106).[14] Wholesale customers could be adversely affected if wholesale rates could be increased while retail rates were frozen.

There is no basis in the record for FairPoint's assertion that some carriers should receive three year interconnection agreements extensions, while others should not, due to the "give and take" of the settlement process. Staff witnesses agreed that wholesale customers could be harmed, where, as here, FairPoint has offered three-year interconnection agreement extensions to some, but not all, wholesale service providers (e.g., Tr. 10/22/07 at 26, 27, 32; Tr.10/25/07 at 69). Moreover, in the case of the confidential settlements, the parties involved withdrew their testimony and there is no record basis upon which the Commission could now find what was "given" and what was "taken". In so far as New Hampshire is concerned, the 3-CLEC

[14] It is noteworthy that FairPoint conceded this issue of interconnection arrangement extensions in Vermont, even though the incentive rate plan that it will assume if the transactions are approved could terminate in 2008, rather than year end 2010, if it fails to satisfy the broadband expansion commitments included in that plan. *Order Amended Incentive Rate Plan,* Vt. PSB Docket Nos. 6959/7142 (Apr. 27, 2006) at 8 (Tr. 10/25/07 at 118, 119).

Settlement, Attachment 2, indicates that none of the settling intervenors have New Hampshire interconnection agreements; thus, there was nothing given by FairPoint and nothing taken by the settling intervenors on that issue for purposes of this case.

B. THREE-YEAR INTERCONNECTION AGREEMENT EXTENSIONS ARE NEEDE TO MITIGATE THE KNOWN OBSTRUCTIONS AND IMPAIRMENTS OF COMPETITION ARISING OUT OF THE PROPOSED TRANSACTION

1. A Period of Stability is Needed in Light of FairPoint's Lack of Wholesale Experience, Implementation of New Back Office Systems and the Need for FairPoint to Develop Constructive Relationships with Wholesale Customers After Cutover and Final Release

Dr. Pelcovits recommended that the Commission require FairPoint to extend the rates and terms of interconnection agreements for three years from the date of merger closing (NECTA/CPNH Exh. 1P at 44-46). Three-year extensions are necessary to provide stability between competitors while FairPoint learns to operate its new back office systems and Verizon's network (Id.). Staff also has recommended that a three year period of stability is important in order to maintain a vital competitive market in New Hampshire (Tr. 10/30/07 at 90, 91, 96, 97; Staff Exh. 4, Exhibit 1).

In addition, three-year extensions will reduce some of the potential impairments to competition that will arise from the proposed transaction. The Commission must take into account that FairPoint has no experience with the provisioning of wholesale services and has yet to staff and train a group that will deal with new back office systems, new provisioning duties and new regulatory obligations (e.g., NECTA/CPNH Exh. 4P; NECTA/CPNH 82P; Staff Exhs. 1, 4). CPNH has experienced firsthand FairPoint's lack of experience in negotiating wireline

interconnection agreements, as evidenced by the protracted negotiations that Comcast has endured with FairPoint in Washington State (NECTA/CPNH Exh. 1P at 42-44).

Given the lack of *any* track record between the newly created FairPoint wholesale operation and wholesale customers, a three-year interval for the development of working relationships - without the complications, cost and resource burdens of interconnection negotiations and arbitrations - would be constructive for all stakeholders. As discussed more fully below, FairPoint's competitors face many risks as a result of this transaction, including the risks that (1) FairPoint's new back office systems will not function as planned, (2) competitors' orders could be delayed or not be processed at all during the cutover transition period and that FairPoint's contingency plans (yet to be developed) will not function properly; and (3) FairPoint's wholesale services organization will not be adequately staffed and trained (NECTA/CPNH Exh. 82P).

2. A Three Year Extension of Interconnection Agreements Avoids the Diversion of FairPoint's Resources and Management Attention Away From its Major Commitments and Satisfaction of Other Merger Approval Conditions

Requiring a three-year extension of interconnection arrangements would promote the public good by ensuring that FairPoint will concentrate its resources on meeting its varied commitments, including (1) those made to the Commission affirmatively by FairPoint and upon which it relies in claiming that the proposed transaction would promote the public good; (2) additional merger approval conditions recommended by Commission Staff and the Office of the Consumer Advocate; and (3) those ultimately required by the Commission (Staff Exh. 4, Exhibit A, concerns 4,6,9-11, 14 and 16; Tr. 10/30/07 at 89-90; OCA Exh. 2C at 12-18, 95, 96, 129, 130, 144, 145). The benefit of a short extension period such as one year is almost negligible given

that termination provisions in agreements require notice to be given well in advance of the actual termination, which means that negotiations may be forced well before the one-year extension is up.

A three-year interconnection agreement extension would better enable FairPoint to "gets its arms around" the Verizon operations that it would be taking over in the event that its proposed merger transaction is approved. This is a very important consideration in light of Staff's well-presented testimony that FairPoint did not conduct adequate due diligence and likely will need to dedicate more time and resources to effectively manage ILEC operations in New Hampshire (Staff Exh. 3). OCA's valid concerns about the potential loss of experienced Verizon staff prior to closing and the need to obtain and train adequate replacements (OCA Exh. 2P) affords another reason why it would be prudent to ensure that FairPoint directs its attention and resources to what are likely to be pressing needs.

The three-year recommended extension also would also enable FairPoint to focus its resources on the multiple commitments made to the Commission to meet and exceed Verizon's performance in several areas that are of critical importance to the public good, including (1) broadband expansion, (2) retail service quality, and (3) commitments to cure double pole and address safety issues raised by joint pole owning electric companies and other witnesses.

In contrast, FairPoint's one-year year extension proposal squarely conflicts with its need to focus on immediate priorities after merger closing: retention, hiring and training of staff; development of business processes, including its business continuity plan; dedication of resources to the cutover process and final release tasks during the six month period following the cutover date; development of the capabilities to carry out emergency response plans, contingency plans, escalation plans and ready response team activities to address day-to day and post cutover

service affecting situations; and multiple merger conditions that Commission Staff witnesses have recommended and that the Commission may require. Commission Staff witnesses Antonuk, Falcone, and King proposed multiple merger conditions, several of which would require intensive work efforts by FairPoint within one year after closing, the same period of time during which FairPoint also may be dealing with cutover-related problems (Staff Exh. 4, Exh. A; Tr. 10/30/07 at 89, 90).

It would not serve the public good to have FairPoint's limited resources diverted to interconnection agreement negotiations, arbitrations and rate proceedings when there are critical matters at hand that FairPoint must address as noted above. Any diversion of resources away from FairPoint's immediate and pressing needs to hire and train staff, address all necessary pre and post cutover work[15] and carry out multiple commitments and conditions in three states would be both harmful to the public good in general and detrimental to retail and wholesale customers alike. Staff agrees that a reduction in spending requirements for arbitrations and related cost studies would enable the same funds to be expended for other purposes (Tr. 10/30/07 at 93). This consideration is very significant in light of testimony from Labor, OCA and Staff witnesses that have called into question FairPoint's financial ability and its estimates of revenues and expenses.

[15] The cutover date is far from certain. FairPoint testified that cutover can only occur on the last Friday of every other month (Tr. 10/22/07 at 145,146). Even short delays in the cutover date of 2-4 months, for example, from May 30, 2008 to July 25, 2008 or September 26, 2008) would result in diversions of FairPoint's attention to cutover matters. Even if the cutover goes forward with no or some minimal delay, FairPoint's cutover plans defer significant system work for a 6 month period between the cutover date and the final release date, when Capgemini's system development is slated for completion. Should problems arise post cutover-even if not of the severity experienced in Hawaii- FairPoint would need to apply its resources to fixing these problems. For all of these reasons, deferral of interconnection agreement arbitrations and negotiations (except where parties both choose to negotiate) for a period of three years from the date of closing would promote the public good and enable FairPoint to focus its limited resources on establishing a new business in place of Verizon, getting the cutover process right and meeting other conditions relating to service quality and public safety.

Given that FairPoint itself has requested years to address critical, high priority service affecting and public safety issues (e.g., MOUS with electric companies, broadband expansion commitments, meeting retail quality of service commitments), the public good can best be achieved by crafting conditions that direct FairPoint's resources to these matters and avoiding the diversion of these resources to burdensome ICA negotiations and arbitrations.

Under these circumstances, a three-year extension[16] of existing interconnection terms, rates and conditions is needed in order to promote the public good and avoid or mitigate against obstruction and impairment of competition stemming from FairPoint's replacement of Verizon's systems and wholesale service operations. Moreover, a three-year extension is consistent with a condition required by the FCC in its approval of the AT&T-BellSouth merger.[17] In both instances, ICA extensions mitigate against the well-documented risks of competitive harms.[18]

C. A THREE-YEAR ICA EXTENSION AND WHOLSESALE RATE FREEZE WOULD NOT HARM FAIRPOINT

A three year ICA extension and wholesale rate freeze recommended by Dr. Pelcovits (already agreed to by FairPoint for all Vermont wholesale service providers and for several wholesale service providers in New Hampshire) would not harm FairPoint, and is of minimal financial impact to FairPoint. First, Mr. Leach testified that the financial model relied upon by

[16] The three-year interconnection extension and rate freeze condition recommended by NECTA and CPNH would not prevent willing carriers from negotiating specific amendments to their interconnection agreements with FairPoint. At the same time, other carriers may prefer to develop working relationships with FairPoint, engage in cooperative discussions regarding their specific needs (such as trunk order sizes and mid span meets), and defer costly and time-consuming ICA negotiations, arbitrations and rate proceedings for a reasonable length of time, consistent with the track record that has existed with Verizon.

[17] *In the Matter of Review of AT&T Inc. and BellSouth Corporation Application For Transfer of Control, Memorandum of Opinion and Order,* WC Docket No. 06-74, *Adopted* December 29, 2006, Appendix F, p.150 (NECTA/CPNH Exh. 1P at 45,46).

[18] FairPoint witness Skrivan admitted that competitive harms may arise out of circumstances other than a concentration of market power (Tr. 10/25 /07 at 128). The principle of mitigating against material risks of competitive harm-here arising out the replacement of Verizon with a company with no wholesale experience, no working wholesale back office systems, and no trained or adequate staff-applies equally here.

FairPoint does not assume any increases in existing Verizon rates - including wholesale rates - for at least a 5 year study period (Tr. 10/23/07 at 38,39). Thus, the proposed transaction does not assume or rely upon increases in rates for interconnection services, retail rates or pole attachment rates.

Second, because the revenues derived from interconnection services and unbundling represent a small fraction of the total LEC revenues that the acquired operations are projected to generate (Tr. 10/23/07 at 40-42; NECTA/CPNH Exh. 6C at CFPNH 0007-0013), a three year rate freeze applicable to these services would not appear to have any material impact on FairPoint.[19] The amount of revenues that FairPoint would generate from rate filings to increase interconnection service rates and rates for unbundled network elements, if any, is negligible to FairPoint and would be offset by the high costs of contested rate proceedings.[20]

Third, FairPoint maintains that it expects its cost structure to be less expensive than Verizon's, as result of shedding central services cost allocations made by Verizon to New Hampshire and providing the same services at a lower cost (FairPoint Exh. 8P at 37, 38). Thus, the need for an increase in rates charged to interconnecting carriers (during a three year period of time when FairPoint has agreed to freeze wholesale tariffed rates for all service providers) is doubtful.

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[19] FairPoint already has agreed to freeze New Hampshire wholesale tariffed rates and Vermont SGAT rates, as well as rates for access services (NECTA/CPNH 83P; FairPoint Exh. 15).

[20] Staff was comfortable with FairPoint's a three year extension of existing interconnection agreements and of those agreements that remain in effect on a month-to-month basis (Tr. 10/30/07 at 91).

D. UNIFORM EXTENSIONS OF ALL INTERCONNECTION AGREEEMENTS AND OF A WHOLESALE RATE FREEZE WOULD AVOID DISADVANTAGING SIMILARALY SITUATED WHOLESSALE CUSTOMERS, PUT VERMONT AND NEW HAMPSHIRE WHOLESALE CUSTOMERS IN THE SAME POSITION AND PROVIDE GREATER CERTAINTY FOR ALL PARTIES

A merger condition providing for the extension of interconnection agreements for only three wholesale service providers- as reflected in the 3-CLEC Settlement- would be arbitrary and capricious and ignore the weight of evidence that supports the same extensions as a merger condition, applicable to all wholesale carriers, as recommended by NECTA and CPNH and found reasonable by Staff.

Wholesale service providers, including those that did not intervene in this proceeding, should not be treated differently when it comes to the need for stability in the wholesale market as a result of any replacement of Verizon with FairPoint as the major ILEC in New Hampshire. No wholesale service provider should be disadvantaged by this transaction in relation to other wholesale service providers with which they compete.

Moreover, an across the board extension of interconnection agreements for all wholesale providers would be consistent with FairPoint's agreement to such extensions in Vermont (NECTA/CPNH Exh. 83P). It would promote the public good in New Hampshire if wholesale service providers received the same treatment from FairPoint in both states. Competition in New Hampshire would suffer and the public good would be harmed if, in contrast to Vermont, New Hampshire became engulfed in resource-intensive interconnection negotiations and arbitrations and cost dockets, while Vermont did not. As noted above, these types of proceedings would divert the resources of FairPoint as well as its New Hampshire competitors from providing service to consumers. In the case of FairPoint, its ability to fund broadband expansion, cure

retail service deficiencies and remediate double poling and other outside plant problems would be compromised in New Hampshire relative to Vermont.

For all of these reasons, there is a cumulative factual basis for the Commission to find and rule that the public good requires any merger approval be conditioned upon a three-year extension of existing interconnection agreements, a three year extension from date of closing for those interconnection agreements that have remained in effect on a month-to-month basis, and a concurrent wholesale rate freeze.

V. AS A CONDITION FOR APPROVAL OF THE PROPOSED MERGER TRANSACTION, THE COMMISSION MUST REQUIRE THAT AN INDEPENDENT THIRD PARTY CONSULTANT, SATISFACTORY TO THE COMMISSION AND PAID FOR BY FAIRPOINT, BE RETAINED TO ASSESS AND REPORT TO THE COMMISSION REGARDING THE READINESS OF FAIRPOINT FOR CUTOVER, WITH THE COMMISSION RETAINING AUTHORITY TO DETERMINE THE READINESS OF FAIRPOINT FOR CUTOVER

A. INDEPENDENT THIRD PARTY TESTING SIMILAR TO THE SECTION 271 PROCESS SHOULD BE REQUIRED IN ORDER TO PROMOTE THE PUBLIC GOOD AND AVOID OBSTRUCTION AND IMPAIRMENT OF COMPETITION

The Commission should condition any merger approval upon the selection and use of an independent third party consultant to conduct actual testing, at FairPoint's expense, of FairPoint's proposed new suite of back office systems based on objective acceptance criteria, and otherwise determine FairPoint's readiness for cutover based upon, but not limited to, a number of other operational cutover readiness criteria urgently needed in light of the unique circumstances presented.

Independent third party testing has been used extensively in the telecommunications industry and relied upon by the Commission in the context of Section 271 proceedings for the testing of Verizon wholesale systems. It would afford critical protections for wholesale and retail customers alike as well as the State of New Hampshire where, as here, the cutover by FairPoint impacts customers such as hospitals, police, fire, emergency services, and schools, as well as businesses and residents. Independent third party testing would create a safeguard that did not exist in Hawaii and would increase the possibility that FairPoint's cutover to new OSS systems would occur without material customer affecting disruptions (both wholesale and retail), would promote the public good, and would not obstruct or impair competition (NECTA/CPNH Exh. 1P at 62-74).

The tradeoff for true third party testing - some potential delay and additional TSA payments - is well worth the additional protections afforded to the public and to competing service providers.

1. The significant risks associated with a flash cutover of new back office systems warrant true third party testing to safeguard against obstruction and impairment of competition arising out of the proposed cutover

The FairPoint cutover process poses substantial risks of public harm that warrant merger conditions to mitigate against these risks. Of grave concern is FairPoint's planned three-state flash cutover. The material risks associated with this plan have been acknowledged by FairPoint in its SEC S-4 filing:

> FairPoint may be unable to integrate the Spinco business into its operations in an efficient, timely and effective manner. FairPoint's inability to complete this

> integration successfully could have a material adverse effect on the combined company's business, financial condition and results of operations.
>
> All of the risks associated with the integration process could be exacerbated by the fact that FairPoint may not have a sufficient number of employees to integrate FairPoint's and Spinco's businesses or to operate the combined company's businesses.
>
> In addition, if the combined company continues to require services from Verizon under the transition services agreement after the one year anniversary of the closing of the merger, the fees payable by the combined company to Verizon will increase significantly...The aggregate fees expected to be payable by the combined company under the transition services agreement for the six-month period following the merger will be approximately $132.9 million.[21] However, if the combined company requires twelve months of transition services following the merger, the aggregate fees expected to be payable will be approximately $226.9 million.

The creation of a suite of totally new systems to provide telephone services to retail and wholesale customers in New Hampshire, as FairPoint has proposed, is a daunting task that poses many risks for consumers and the State as a whole (NECTA/CPNH Exhs. 82P, 1P at 19-27; Staff Exhs. 1 at 37-72, 4 at 5-7).

[21] Note that FairPoint's planned cutover date of May 30, 2008, assumes only four months of TSA payments, which would require FairPoint to provide Verizon with the irrevocable Notice of Readiness for Cutover under the TSA between February 28, 2008-March 31, 2008, or 1-2 months after FairPoint's targeted merger closing date. This timetable leaves no room for an independent third party consultant to provide the safeguards against a premature cutover that are desperately needed here, given the disastrous experience that occurred in Hawaii (NECTA/CPNH Exh. 1P at 20-27). Nor does it afford reasonable time for wholesale customer inputs for review and consideration by an independent third party consultant and FairPoint or assure adequate time for staffing and training. FairPoint has testified that it does not expect to have a complete list of cutover readiness criteria developed by January 31, 2008 (Tr. 10/22/07 at 126; NECTA/CPNH Exh. 44P). It is critical for the public good and for avoidance of obstruction and impairment of competition that any independent third party consultant be afforded adequate time to assure that in its best judgment, FairPoint is ready to give Verizon the irrevocable Notice of Readiness for Cutover and that the Commission has received adequate assurances and evidence of such readiness. The 3rd Party Monitoring Statement of Scope includes work and steps that require additional time that has not been built into the FairPoint proposal included in its rebuttal testimony. Given that FairPoint disclosed a six month TSA period in its SEC S-4 filing, the additional time that appears needed for an effective third party monitor and for wholesale customer input and internal system work and training appears both feasible and reasonable, in addition to being necessary (NECTA/CPNH 82P at 26; Tr. 10/30/07 at 113, 114-119, 122-123, 129-131, 136-137, 141-142).

These risks are concrete and serious. The only recently attempted flash cutover even close to the magnitude and nature contemplated by FairPoint in New England is the disastrous flash cutover from Verizon systems in Hawaii. As discussed above, the Hawaiian Telcom cutover was completed with the assistance of Bearing Point, an international consulting firm – like Capgemini, and a buyer that also had no wholesale experience. Additionally, Hawaiian Telcom, like FairPoint, hired experienced employees from the telecommunications industry at the same time it was seeking regulatory approvals for its proposed transaction. The buyer's leadership team included a former FCC Chairman and a number of individuals with telecommunications industry operating experience. Just as FairPoint has done, the buyer in Hawaii arranged for as Transition Services Agreement to cover the period of operations between merger closing and the flash cutover to the buyer's new back office systems (NECTA/CPNH Exh.1P at 19-21, 24-25, 63, 65, 66). As in the case of Hawaii, Verizon is under *no contractual obligation* to ensure that the new systems of its successor will function properly (Exhibit NECTA/CPNH 77P).

As acknowledged by FairPoint, in Hawaii a detailed cutover plan was put in place, with testing protocols to ensure that the new systems would perform properly to serve both retail and wholesale customers. Conditions were imposed to ensure that the risks of system changes would be minimized. The Hawaii PUC approved Verizon's asset sale to the Carlyle Group in Docket No. 04-0140 on March 16, 2005, and the cutover to new systems occurred on April 1, 2006. Multiple problems became apparent immediately. Hawaiian Telcom (the buyer) reported that on the cutover date:

> "...critical systems related to back-office functions, such as customer care, order management, billing, supply chain, and other systems interfacing with our financial systems, lacked significant

> functionality. This led to deficiencies in billings and collections, revenue assurance, and order entry flow-through."[22]

Problems were reported continuing in 2006, with significant incremental expenses being incurred and continuing deficiencies in many areas. As Hawaiian Telcom further reported:

> "The lack of full system functionality following the Transition Period substantially impacted both customer satisfaction...and collection efforts in 2006....We continue to work to improve our system functionality."[23]

Hawaiian Telcom identified several risks associated with this undertaking, among which were the company's limited experience operating as a stand-alone provider of telecommunications services, the significant capital expenditures and transition expenses incurred in the process of the takeover, and the potential unavailability of funds if revolving credit loan conditions were not met. In particular, Hawaiian Telcom noted:

> "Our lack of critical back-office systems and IT infrastructure has negatively impacted our ability to operate as a standalone provider of telecommunications services, which has had an adverse effect on our business and results of operations."[24]

Recognizing the tasks still in front of it, Hawaiian Telcom stated that "there is no assurance ... when we will achieve fulfill functionality."[25]

The parallels between the Hawaiian Telcom debacle and the present case are startling. As in the Hawaiian Telcom example, Verizon has entered into a transition services agreement

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[22] NECTA/CPNH Exh. 1P at 21-23; Attachment MDP-15.
[23] Id.
[24] Id.
[25] Id.

with a less-experienced, much smaller entity and that entity (here, FairPoint) has stated its intention to develop new systems to replace Verizon's existing systems.

Also as in Hawaii, FairPoint is relying upon a service agreement with an outside consulting firm to develop these new systems. At this stage, the newly-created systems have not been fully integrated or comprehensively tested. FairPoint has not yet fully staffed its operations to replace Verizon. It has not developed or provided detailed training plans. It has not developed the contingency plans for dealing with service affecting problems that emerge after cutover, or material failures during the cutover process. It has not developed training plans for interconnecting carriers that will depend upon the functionality and interoperability of its yet to be assembled and never before integrated systems (NECTA/CPNH Exhs. 4P, 6P, 13P, 14P, 18P, 19P, 20P, 25P, 32P, 34P, 36P, 44P, 46P, 47P). Also, FairPoint has no pre-existing wholesale experience (NECTA/CPNH Exhs. 1P at 6, 82P at 25; Staff Exh. 3P at 106).[26]

Retail and wholesale customers require a level of protection against the risks associated with the replacement of existing Verizon systems with new, untested systems to be put in place by FairPoint. FairPoint's lack of wholesale experience and the uncertainties regarding adequacy of its wholesale staffing size and qualifications to take the place of Verizon exacerbate the risks that face wholesale customers of Verizon and the resulting harms identified by Dr. Pelcovits.

As the Hawaii experience indicates, a failed cutover could take years to fix. The ability of FairPoint to meet its multiple commitments to the Commission, other states and various stakeholders would vanish if it encountered large scale problems affecting simultaneously three different states. No contingency plans for dealing with the material and admitted cutover risks

[26] For these reasons, and given the lack of any FairPoint proven systems, hired and trained staff and established business practices, The Commission must ensure that a third party monitoring plan provides for the monitoring and reporting on integration testing, user acceptance testing, conversion testing and business processes. The 3rd Party Cutover Monitoring Statement of Scope (Staff Exh. 61) recognizes the need for these safeguards, which would apply equally to NECTA/CPNH's preferred position -271 type testing by an independent third party.

have been provided by FairPoint. Nor have documented escalation procedures been created to deal with any material breakdowns during or after transition. Safeguards such as a third party independent testing as well as review of the adequacy of such plans and processes must be put in place to avoid these risks and to safeguard the interests of consumers and competitors.

2. The "transition period" compounds public and competitive harm

Further, FairPoint has failed to adequately acknowledge the harm that this transaction will impose upon competitors as a result of the so-called "transition period" during which competitors have been told that they must cease the placement of orders electronically as well as reduce the number of orders that they can submit. This transition period has been estimated to last five days, although FairPoint admits that it will not really know the length of the transition period until after it has conducted a second Verizon data extract and has a better appreciation for the amount of time required to transfer accurately and completely Verizon data into the new systems that FairPoint has yet to build and integrate (NECTA/CPNH Exh. 1P at 76-78, Attachments MDP-46, 47, 48; NECTA/CPNH Exh. 72P).

A longer "transition period" would further degrade the level of service that wholesale customers (and by association, their customers) receive today and would continue to receive in the absence of this "transition period." FairPoint has not established that it will be able to provide adequate manual resources during the transition period or avoid the degradation of service that results from the use of manual in place of existing electronic ordering and processing activity.

The transition period is especially harmful to residential service providers that require prompt placement of orders from consumers that are willing to switch service providers. Transition period delays and other service–affecting problems could result in lost business, which has a disproportionate negative impact on competitors than upon the ILEC. Both Staff witnesses Falcone and King and Dr. Pelcovits explained how the business reputation of a competitor to the ILEC can be irreparably harmed by delays in disruptions in the provisioning of services as might be expected during the "transition period" and in the event of a failed cutover (NECTA/CPNH Exh. 1P at 78,79; Staff Exh. 3P at 109).

No system or assurance is in place to determine the extent to which competitor orders will be blocked or slowed as FairPoint gears up for cutover. Nor is there any system or assurance in place to achieve parity with FairPoint treatment of its retail customers during this period. The extra costs incurred by competitors during this transition period also are not being assumed by FairPoint. For these reasons, involvement by an independent 3rd party monitor is critical to assure that adequate manual resources are being dedicated by FairPoint to reduce the adverse impacts of the cutover process upon retail and wholesale customers alike.

B. IN THE ALTERNATIVE, THE COMMISSION SHOULD ACCEPT THE THREE STATE STAFF PROPOSAL - CONCURRED IN BY FAIRPOINT - WITH SEVERAL MODIFICATIONS, AS PART OF ITS MERGER CONDITIONS

If the Commission does not require that back office system testing be performed by an independent third party, similar to the testing regime that applied to wholesale OSS for Section 271 purposes, then at a minimum, an independent third party consultant must be retained, at FairPoint's sole expense, to: (1) verify the readiness of FairPoint's system for cutover, based

upon the independent third party's input to FairPoint regarding adequate system acceptance criteria; (2) verify the operational readiness of FairPoint with direct input from wholesale customers; (3) report its findings to the Commission; and (4) leave it to the Commission to determine, based upon such reports and other information, if FairPoint is not ready to give Verizon the irrevocable Notice of Readiness for Cutover. The Commission must retain the ability and authority to determine that FairPoint is not ready for cutover and require the deferral of the Cutover Date. FairPoint must pay for all costs associated with the retention of the independent third party.

On Oct. 29, 2007, the parties to the proceeding were presented with the 3rd Party Cutover Monitoring Statement of Scope (Staff Exh. 61). The document is the result of the Staffs of the New Hampshire and Maine Public Utilities Commission and the Vermont Department of Public Service coming together to create a proposal for a Scope of Work for a neutral third party consultant, Liberty Consulting, to review, monitor and participate in the testing and implementation of FairPoint's back office systems and processes, as well as report back to the parties, Staffs, and Commissions.

NECTA and CPNH appreciate the hard work that went into the creation of this document and applaud the Staffs and DPS for recognizing the significant need for the technical and operational readiness required for a seamless transition of back office systems from Verizon to FairPoint. Such a transition is important in order to safeguard competition, as well as end user quality and reliability of service, in New Hampshire. According to testimony by President Nixon, FairPoint consents to this Consultant Proposal and is willing to cooperate in carrying it out (Tr. 10/30/07 at 172,173). FairPoint also has agreed to pay for the cost of the cutover

monitor and will not seek recovery of these costs from any ratepayers, retail or wholesale (Tr. 10/30/07 at 173, 174).

While NECTA and CPNH support the efforts of the Staff and recognize the significance of the 3rd Party Cutover Monitoring Statement of Scope, important modifications to the 3rd Party Cutover Monitoring Statement of Scope, as described below, are required in order to promote the public good and safeguard the public from the material risks associated with the multi-faceted cutover readiness process.

In light of FairPoint's concurrence in the more comprehensive 3rd Party Cutover Monitoring Statement of Scope that regulators be provided with adequate proof - in advance - of FairPoint's system and operational readiness for cutover, FairPoint's OSS monitoring proposal, as described in its rebuttal testimony, is deficient and obsolete (FairPoint Exh. 3P at 37-40). At the same time, many of the cutover readiness requirements that FairPoint acknowledged during hearings must be undertaken, but had refused to incorporate into a cutover readiness monitoring process, are now built into the process envisioned by the 3rd Party Cutover Monitoring Statement of Scope, especially as clarified during hearings.

1. The Board should require FairPoint to meet operational readiness criteria as condition of cutover

The 3rd Party Cutover Monitoring Statement of Scope recognizes that in addition to the requiring that an independent third party monitor and determine technical system readiness, based upon readiness criteria discussed above, the Commission should require FairPoint to meet other critical operational cutover readiness criteria, many of which FairPoint and Staff witnesses have acknowledged during hearings as important (e.g., Tr. 10/25/07 at 54-56; Tr. 10/30/07 at 119, 124-131, 142). These acknowledged operational cutover readiness criteria include: (a)

adequate levels of trained FairPoint staff to carry out retail and wholesale service obligations; (b) establishment of adequate contingency plans and adequate emergency restoration plans; (c) training of wholesale customers; (d) provision of job aids and reference materials to wholesale customers; (e) preparation of escalation plans for day-to-day operations as well as for the cutover process; (f) provision of reasonable time for wholesale customers to modify their software and equipment in order to be interoperable with FairPoint's new systems (including e-bonding); (g) provision of reasonable time for wholesale customers to conduct internal training; (h) provision of reasonable time for wholesale customers to test the ability of their systems to interoperate with FairPoint's new systems; (i) development of plans to address wholesale customer data losses occurring during the cutover, including contingency plans and escalation procedures; and (j) establishment of a pole and conduit license services administration group.

Because of FairPoint's lack of wholesale experience, lack of adequate levels or experienced and trained staff, lack of proven systems and lack of business processes, the material risks associated with cutover and the significant impacts of a failed cutover on retail and wholesale customers, the Commission must condition any merger approval to mitigate the risks that FairPoint will not be equipped to take over Verizon's wholesale operations and that the proposed transaction would result in the impairment and obstruction of competition. It bears repeating:

> Spinco offers services that ***FairPoint has no experience in providing*** (emphasis added), the most significant of which are competitive local exchange carrier wholesale services. FairPoint's failure or inability to hire or retain employees with the requisite skills and knowledge to run the combined business may have a material adverse effect on FairPoint's business (NECTA/CPNH Exh. 82P).

It would be patently unreasonable for the Commission to require wholesale customers to simply trust that FairPoint will be capable of starting from scratch and building a wholesale

operation equal to that provided by Verizon today, after 11 years of experience under the Telecommunications Act of 1996. Accordingly, the Commission should condition approval of the merger transaction on FairPoint proving to the satisfaction of an independent third party consultant, after input from wholesale customers, that it has an adequately staffed and trained wholesale services organization prior to cutover, as well created adequate contingency plans and escalation procedures. The approach of "trust-but-verify" is a prudent approach for the Commission to take in dealing with the adoption of merger conditions relating to the transition period and cutover.[27]

Moreover, given that FairPoint plans to build an ILEC operation from the ground up and the preliminary nature of its efforts to date, the Commission must require a demonstration, subject to independent third party participation and review, as to FairPoint's readiness to give Verizon the irrevocable Notice of Readiness for Cutover. At this late stage in this proceeding, FairPoint has not completed a number of critical actions. FairPoint has not (1) completed selection of all new systems and provided system specifications; (2) developed testing plans for review; (3) established system testing criteria for review; (4) established internal training plans for review; (5) developed a detailed checklist and timeline covering necessary interactions with interconnecting parties, including the provision and exchange of information, training, testing of compatibility of systems (not just the use of the WISOR gateway, but the actual flow through of ordering and provisioning requests, billing and other back office functions); (6) established cutover acceptance criteria for review; (7) determined the actual length of the so-called dark period or transition period when Verizon ceases taking orders, data is transferred from Verizon to FairPoint and FairPoint systems are ready to operate; (8) developed escalation plans to address dark period and cutover problems; (9) developed contingency plans for review; (10) disclosed in

[27] Such conditions also are important in the case of FairPoint's readiness to provide retail services.

full detail the "final release" activities of Capgemini that are not due to occur until after the flash cutover and the effects of performing these activities after the flash cutover; and (12) agreed to provide remedies to competitors if the cutover process experiences significant problems.

Accordingly, NECTA and CPNH recommend that the Commission require, as merger conditions and as part of the FairPoint's cutover readiness criteria, the following, subject to review by the independent third party cutover readiness monitor, and with an opportunity for stakeholder input, prior to such third party monitor's evaluation of the adequacy and satisfaction of these operational cutover readiness criteria:

1) adequate number of trained and experienced staff to conduct wholesale operations

2) adequate number of trained and experienced staff to conduct pole attachment license services administration group functions

3) adequate number of trained and experienced staff to perform make ready survey and make ready work in accordance with Board rules

4) confirmation of receipt of pole attachment records from Verizon and identification of the records received

5) development and conduct of adequate training programs for wholesale customers, including training content, number of individuals to be trained, amount of training and use of qualified trainers

6) development of contingency plans for use before, during and after the cutover date, subject to review and approval of an independent third party consultant

7) development of escalation plans to address service affecting problems in a timely manner

8) proof of ability to provide number porting in the same manner and upon the same intervals as Verizon

9) proof of ability to meet trunk orders within the same intervals as Verizon

10) establishment of a wholesale customer website equivalent in functionality and utility as that operated by Verizon

11) assignment of dedicated account managers and account teams prior to closing for wholesale customers that have such arrangements with Verizon today

12) completion of all e-bonding work needed to enable the same level of service provided by Verizon today for wholesale customers than use e-bonding

13) satisfactory work regarding the employment of new point codes required by wholesale customers and FairPoint as a result of this transaction

14) provision of information in advance regarding any change in the length of the 5 day "transition period" that precedes the cutover date and supplementation of workforce needed to handle orders manually during an extended "transition period"

15) provision to wholesale customers of test results and any information provided to the third party consultant regarding any claim of readiness for cutover, including any information regarding known service affecting or other system problems that FairPoint expects to address after cutover, the seriousness of such problems, the length of time expected to cure such problems and the rationale for cutover in advance of curing such problems

16) complete description of all work to be performed during the 6 month period between the cutover date and final release[28]

17) development of all business rules and codes of conduct

18) development of all conduit license forms and procedures

19) development of adequate business continuity plans and proof of FairPoint's ability to implement such plans

20) conversion testing and business processes (Tr. 10/30/07 at 131)

[28] Any third party consultant should be retained to cover the period after the cutover date and through the date of final release. If service affecting problems are continuing at the time of final release, the third party consultant should remain in place until these service affecting problems have been cured.

2. Important Modifications to the Consultant Agreement are required, and should be adopted as conditions to the Proposed Merger

During the proceedings, the Commission afforded the parties an opportunity to cross witnesses on the newly released 3rd Party Cutover Monitoring Statement of Scope, as well as offer direct testimony. Dr. Pelcovits testified that while the 3rd Party Cutover Monitoring Statement of Scope was a significant improvement over FairPoint's rebuttal testimony proposal, it did not adequately address key concerns and left open key questions. The most critical item is that despite the much-needed addition of a third-party consultant, the ultimate decision as to whether FairPoint is ready, both technically and operationally, for cutover to the new systems remains solely with FairPoint. The Commission not only must have visibility into the progress of FairPoint with key technical and operational readiness criteria, there must be a mechanism in place by which FairPoint may proceed with the Irrevocable Notice of Cutover Readiness only if the Commission is satisfied it is ready to do so, based upon the Consultant's reports and feedback from the key stakeholders, including wholesale customers. Towards that end, Dr. Pelcovits recommended important modifications to the 3rd Party Cutover Monitoring Statement of Scope that he testified would provide a stronger safeguard of the public good and better address mass market wholesale service provider concerns.

The principal modifications include the following:

1) As a condition of the merger, the Commission expressly should retain the authority to preclude FairPoint from giving Verizon the irrevocable Notice of Readiness for Cutover, regardless of whether any other state retains or exercises such authority, if FairPoint has not adequately demonstrated both technical and operational readiness for Cutover;[29]

[29] Staff also envisions the Commission having an opportunity to defer the cutover notice if it does not believe that FairPoint is ready to give Verizon the irrevocable Notice of Readiness for Cutover (10/25/07 at 57).

2) As a condition of the merger, the independent 3rd party consultant should be required to file a final report to the Commission, with a recommendation as to whether FairPoint is operationally and technically ready for cutover, based on the previously established criteria in the Proposal;

3) Wholesale stakeholders must be given direct access to the third party consultant and should not be required to filter their concerns through FairPoint;

4) A Ready Response team approach should be established prior to FairPoint's giving Verizon the irrevocable Notice of Readiness for Cutover;

5) The Commission must assure that adequate amounts of time are allowed for the third party consultant and wholesale service providers for review, input, testing of wholesale systems for interoperability with FairPoint's new systems (including e-bonding), training of FairPoint and wholesale service provider employees; and

6) The independent third party consultant should develop, as soon as practicable, a revised cutover timeline and list of cutover readiness criteria, in order to allow for (a) adequate time for the consultant to conduct its obligations to assess and report on FairPoint's system readiness and operational readiness to provide Verizon with the irrevocable Notice of Readiness for Cutover; (b) meaningful time for wholesale service providers for making their own system changes, testing, and training; and (c) an ability for FairPoint to reduce its internal costs and minimize duplication with TSA expenditures until it is time to ramp up for the Cutover Date (Tr. 11/1/07 at 248-252).

NECTA and CPNH recommend that if the Commission adopts a merger condition providing for an independent third party monitor, it expressly requires the inclusion of the items identified above as cutover readiness criteria and modify the 3rd Party Cutover Monitoring Statement of Scope proposal to include the six elements described above. The Commission also should expressly retain oversight of Fairpoint post closing with regard to cutover readiness and in order that the Commission can direct FairPoint to resolve any issues that may arise prior to or as a result of the cutover.[30]

[30] FairPoint acknowledges that it would be reasonable for the Commission to take steps to assure itself that FairPoint is completely ready before it gives Verizon the irrevocable Notice of Readiness for Cutover (Tr. 10/29/07 at 223).

VI. AS A CONDITION FOR APPROVAL OF THE PROPOSED MERGER TRANSACTION, FAIRPOINT SHOULD BE REQUIRED TO PROVIDE INTERCONNECTING CARRIERS WITH AT LEAST THE SAME LEVELS OF SERVICE NOW PROVIDED BY VERIZON

1. FairPoint Should be Required Through Merger Conditions to Provide Critical Interconnection Services Provided by Verizon Today, Including but Not Limited to Number Porting, Trunk Ordering and Tandem Transit Services

As Dr. Pelcovits has testified, it is critical that FairPoint be required to provide wholesale customers with levels of service equal to or better than the levels of service provided by Verizon today. FairPoint has no existing wholesale experience according to its own disclosures. The limited interaction between Comcast and FairPoint in Washington State, which has turned into a protracted interconnection negotiation, does not breed confidence.[31] While Mr. Lippold's faith in his new wholesale organization is understandable, he is just starting to hire new staff and the number and composition of staff that he will inherit from Verizon is unknown. The entire group will need to be trained on new systems that have not been previously integrated. There is a substantial risk of public harm and obstruction or impairment of competition unless the Commission makes it very clear, through some baseline conditions, that FairPoint must be positioned and capable of delivering at least the following services.

a. Number Porting

NECTA and CPNH recommend that the Commission impose a merger condition that FairPoint adhere to specific number porting policies that Verizon follows today. These policies include FairPoint's adherence to issuing a Firm Order Commitment (FOC) within 24 hours, and 3 business day interval for simple ports, which include ports where the subscriber is canceling

[31] NECTA/CPNH Exh. 1P at 42-44.

FairPoint DSL service and weekend porting (NECTA/CPNH Exh. 1P at 57-59, Attachment MDP-1 at 2).

Dr. Pelcovits has explained the critical importance of number porting to Verizon's competitors and to future competitors of FairPoint if the proposed merger transaction is approved by the Commission:

> Number porting is at the very core of competition. Failure to seamlessly port a telephone number reflects poorly on the competitor, regardless of whether the breakdown is due to the ILEC or the competitive provider. Porting requires a well-functioning interaction between FairPoint and competitors.

(NECTA/CPNH Exh. 1P at 58, also setting forth the specific number porting practices with which FairPoint must be required to comply). The FCC has continued to reaffirm that "...it is critical that customers be able to port their telephone numbers in an efficient manner in or for LNP to fulfill its promise of giving 'customers flexibility in the gravity, price, and variety of telecommunications services'" (NPRM, Local Number Portability Porting Interval and Validation Requirements (WC 07-244)(Nov 8, 2007) at ¶ 54).

FairPoint has made several commitments regarding compliance with industry number porting intervals, but not in each case with the specificity requested by NECTA and CPNH that is necessary to assure at least parity with what Verizon does today[32] (e.g., Exhibit NECTA/CPNH dealing with 4 day interval for simple ports; Exhibit NECTA/CPNH, committing to Verizon porting policy, but failing to respond to specific question as to Verizon's "Due Date +

[32] In fact, on November 8, 2007 the FCC opened an NPRM which tentatively concluded the porting interval for simple ports should be set at 48 hours (***Local Number Portability Porting Interval and Validation Requirements, WC 07-244***). Even more recently, on November 13, 2007, the Board of NARUC adopted a proposal to further shorten the porting window for electronically requested ports to 24 hours (or a longer period only if carriers individually demonstrate that they cannot accomplish reliable ports within that limit, after all reasonable cost-effective efforts to upgrade electronic systems). ***TC-1 Resolution Regarding Revising Guidelines for Number Porting***

1" number porting policy (which enables weekend porting); Exhibit NECTA/CPNH , stating that FairPoint planning is not sufficiently advanced to enable it to commit to a FCC requirement regarding the porting of a DSL customer's phone service to competing facilities-based providers).

Given these circumstances, and in order to avoid any obstruction or impairment of competition as a result of the proposed transaction, the Commission should adopt the merger condition recommended by NECTA and CPNH.

The general commitments made by FairPoint in the 3-CLEC Settlement also are insufficient. The terms relating to number porting are not objective and do not tie directly to Verizon's specific practices. The Commission should require that the specific practices of Verizon be adopted by FairPoint. To the extent that those practices improve as a result of any change in law, FairPoint would be bound to comply with the law.

b. Trunk Ordering Intervals

NECTA and CPNH recommend that the Commission condition any approval of this transaction upon FairPoint's adoption, at a minimum, of Verizon's standard business rules and intervals on trunk ordering (NECTA/CPNH Exh. 1P at 48-50, Attachment MDP-1 at 1).[33] For the same reasons stated above regarding number porting intervals, the Commission should require that FairPoint meet or do better than the trunk ordering intervals met by Verizon today.

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[33] NECTA/CPNH advocated for a change to the threshold of trunk orders deemed to trigger a "project" and thus, non-standard trunking intervals (NECTA/CPNH Exh. 1P at 49, Attachment MDP-1 at 2). NECTA/CPNH agree that this item can be reserved for future discussion with FairPoint if the proposed merger transaction is approved. Accordingly, they do not seek a merger approval condition requiring the expansion of the number of DS1s in a standard trunk order from 9 to 28, as previously requested.

The 3-CLEC Settlement reference to industry standards is not objective and specific enough to be enforceable, as a condition specifically based upon Verizon's current practices.

c. Dedicated Account Manager and Account Team

NECTA and CPNH have recommended that as a merger condition FairPoint be required to provide a dedicated account service manager and a dedicated account team for interconnecting carriers, as Verizon does today (NECTA/CPNH Exh. 1P at 61,62, Attachment MDP-1 at 3).

This recommendation does not mean that such an account manager and account team would perform services for a single interconnecting carrier. Rather, it means that an interconnecting carrier would have a "go to" service manager handling its account as well as a "go to" account team to handle its service issues. Such arrangements would provide continuity of service, consistent with Verizon's current practices and assure that there will be no impairment in competition as the result of degrading the level of interaction between the ILEC and interconnecting carriers following this transaction (NECTA/CPNH Exh. 1P at 61-62).[34]

d. Tandem Transit Services

Transit or tandem transit services are provided by Verizon to interconnecting parties to enable their interconnection to other service providers, including smaller ILECs, wireless carriers and other competitors. Transit service enables a competitor to offer universal connectivity to its

[34] NECTA and CPNH submit that their recommended merger approval condition is a more precise assurance that wholesale customers will receive the same level of service that they have received from Verizon. The "single point of contact" language contained in the 3-CLEC Settlement while applicable to all wholesale customers, does not provide the same level of assurance as the merger approval condition recommended by NECTA and CPNH. If this is a matter of semantics, then NECTA and CPNH prefer their semantics over the verbiage in the 3-CLEC Settlement.

own customers, which means that its customers can make and receive local calls from any other telephone subscriber.

Competitors are dependent upon Verizon today because it is the only entity that is able to provide transmit service capable of enabling indirect connection and universal connectivity between and among all carriers in the State of New Hampshire. There are no competitive transit service providers that can provide this service ubiquitously. Competitive service providers are unable to compel other service providers to connect directly with them. Further, the large scale and scope economies that characterize telecommunications networks make direct connections between carriers uneconomic and inefficient. Due to its historic monopoly position, Verizon is the only provider that can efficiently connect all the local providers in New Hampshire (NECTA/CPNH Exh. 1P at 38-41).

As a successor to Verizon, FairPoint must be required to provide transit service as an interconnection agreement service in the same manner as Verizon does today. FairPoint refused to commit to assuming Verizon's existing practices when asked to do so during discovery (NECTA/CPNH Exh. 1P at 41, Attachments MDP-20, 21). In rebuttal testimony, FairPoint misleadingly implied that it has no bottleneck control over transit and that direct connections could readily supplant transit service. It claimed no need for a merger condition (FairPoint Exh. 1 at 28).

Dr. Pelcovits explained why FairPoint's refusal to commit to the continued availability of transit service would harm the public good and impair competition in New Hampshire. Simply put, there is no evidence of any viable alternatives to transit service in New Hampshire. Mr. Lippold failed to offer any specific evidence of an alternative ubiquitous transit service provider. Nor did he refute the fact that direct connections between competing carriers cannot be

compelled and remains economically impracticable given the small amount of traffic exchanged between individual service providers (NECTA/CPNH Exhs. 1P at 38-41 and 8P).

For these reasons, the Commission must impose a merger condition requiring that FairPoint offer tandem transit services pursuant to interconnection agreements based on the same terms and conditions as Verizon for at least a three year period following the merger closing date.[35]

e. Wholesale Website

A merger condition is required to assure that FairPoint offer a wholesale website comparable to what Verizon makes available today. A merger condition remains enforceable and provides a greater degree of certainty for wholesale customers that service levels now provided by Verizon will not be degraded by FairPoint (NECTA/CPNH Exh. 1P at 60-62, Attachment MDP-1 at 3).

f. CLEC User Forum

FairPoint has agreed that it will conduct CLEC User Forums, as Verizon does today (FairPoint Exh 15). This commitment must be made a merger condition (apart from the 3 CLEC Settlement) in order to remain enforceable and provide a greater degree of certainty for wholesale customers that service levels provided by Verizon will not be degraded by FairPoint (NECTA/CPNH Exh. 1P at 60-62, Attachment MDP-1 at 3).

g. Parity with Retail Services

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[35] The 3-CLEC Settlement does not achieve this result. The provisions referencing tandem transit agreements refer to separate commercial agreements and not existing interconnection agreements and tariffs.

FairPoint must provide wholesale customers with parity in all respects – service, provisioning, order processing, and escalation – in comparison to its retail customers. The provision of parity is critical to the competitive marketplace and must be maintained at all times, through the Transition Services Agreement stage post closing, during the currently estimated 5 day "transition period" that precedes the Cutover Date and following the Cutover Date.

The "transition period," where orders must be processed manually, is of great concern, especially if this manual work period continues for an extended period of time, as it did in Hawaii. Similarly, wholesale customers must be provided assurances that any post cutover system failures that require manual work in place of electronic ordering and processing of orders will not cause their businesses to suffer as a result of this transaction. The risk of an extended period of manual intervention due to failures during and after cutover underscores the need for comprehensive contingency planning, wholesale escalation, and trouble resolution procedures, including ready response team requirements. Given the potential for service-related problems that may result from the proposed transaction, the Board should reinforce through a merger condition that FairPoint be required to maintain parity between wholesale and retail services, and retain continuing jurisdiction to resolve disputes that arise during this period.

VII. AS A CONDITION FOR APPROVAL OF THE PROPOSED TRANSACTION, THE COMMISSION MUST REQUIRE FAIRPOINT TO SEPARATE ITS RETAIL AND WHOLESALE ORGANIZATIONS IN ORDER TO AVOID OBSTRUCTION OR IMPAIRMENT OF COMPETITION

NECTA and CPNH strenuously object to FairPoint's proposal to combine its retail and wholesale organizations under the leadership of a single manager. FairPoint's proposed organization would have the very same individuals who handle interconnection agreement

negotiations with wholesale customers also involved with retail business customers, including the negotiation of retail contracts (NECTA/CPNH Exh. 1P at 41, 42; NECTA/CPNH Exh. 6P; Tr. 10/22/07 at 41, 42). This organizational structure appears to create a conflict of interest that will impact wholesale customers engaged in interconnection negotiations or ordering facilities from FairPoint.

The type of organizational structure proposed by FairPoint, which invites anti-competitive abuses, is unnecessary. Mr. Nixon, who originally testified that wholesale and retail organizations were expected to be separate, admitted that these organizations could be kept physically separate (FairPoint Exh. 6 at 14; Tr. 10/29/07 at 221, 222).

The risks of anti-competitive harm that FairPoint's proposed organization would create can be easily avoided or mitigated by separating wholesale management from retail management, as Verizon historically has done. No sound reason exists for the Board to permit the type of organizational structure for wholesale operations proposed by FairPoint.

VIII. FAIRPOINT SHOULD BE REQUIRED TO REIMBURSE WHOLESALE CUSTOMERS FOR COSTS THAT THEY INCUR IN CONNECTION WITH SOFTWARE, HARDWARE, AND INTERNAL TRAINING RESAONABLY REQUIRED IN ORDER TO ENSURE THAT THEIR SYSTEMS WILL BE INTEROPERABLE WITH THE NEW SYSTEMS OF FAIRPOINT AND SHOULD REIMBURSE WHOLESALE CUSTOMERS FOR ANY HARMS ARISING OUT OF THE PROPOSED TRANSACTION

A. FAIRPOINT SHOULD BE REQUIRED TO REIMBURSE WHOLESALE SERVICE PROVIDERS FOR COSTS CAUSED BY THE PROPOSED TRANSACTION AND CUTOVER TO NEW SYSTEMS

NECTA and CPNH recommend that the Commission require FairPoint to reimburse wholesale customers for costs that they incur in connection with software, hardware and internal training reasonably required in order to ensure that their systems will be interoperable with the

new systems of FairPoint. Such costs should include, but not be limited to, costs related to e-bonding and point code activity required as a result of this transaction.

Interconnecting carriers will incur costs to modify software and equipment and conduct internal training. Even more complicated work efforts necessitated by this transaction, such as e-bonding work and point code changes, which FairPoint admits will occur, result in additional costs for wholesale customers that would not be incurred in the absence of this transaction (NECTA/CPNH Exh. 1P at 18, 53, 56, 57, 74-75; Attachment MDP-45; Tr. 10/22/07 at 51-57; NECTA/CPNH Exh. 21P; Staff Exh. 3 at 110).

FairPoint should be required to reimburse wholesale customers for these costs pursuant to a merger condition in order to avoid impairment of competition due to the proposed transaction. Indeed, FairPoint's future competitors are incurring costs even before the Commission approves the transaction, given that FairPoint has set timetables for interaction with Verizon's wholesale customers prior to having any customer relationship of its own and on the assumption that this Commission will accept FairPoint's putting the cart before the horse. Wholesale customers are being asked by FairPoint to assume that the proposed transaction will be approved, participate in system testing and take steps to get ready for new systems, without any reimbursement from FairPoint, and with the assumption of risk that the proposed transaction may be disapproved or fail to close. Failure to cooperate and assume these risks could, if the Commission allowed, put a wholesale customer in an untenable position of not having adequate time to establish the interoperability of its systems with those of FairPoint, conduct testing, receive training, address e-bonding requirements and conduct other necessary internal work caused by this transaction.[36]

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[36] Wholesale service providers can readily provide FairPoint with the costs that they incur and invoice FairPoint for these costs in the same manner that FairPoint invoices other parties for services provided.

B. A FUND SHOULD BE ESTABLISHED TO SAFEGUARD WHOLESALE SERVICE PROVIDERS AGAINST CUTOVER-RELATED HARMS

In addition, wholesale customers face enormous risks of harm in the event of a lengthy transition period before cutover-when orders must be limited or stopped- and a poorly executed cutover that results in service-affecting problems. FairPoint has refused to reimburse wholesale customers for any harms that they incur as a result of the proposed transaction and cutover activity (FairPoint Exh. 1 at 23, 24; NECTA/CPNH Exh. 12P). The Commission should adopt Mr. Ball's recommendation related to compensation for any damages suffered by competitors in the event of a material failure of FairPoint's new OSS systems (CLECs Exh. 1 at 14)(establishment of a fund based on ten percent of the amounts billed by Verizon to FairPoint under the TSA, to be administered by an independent third party consultant across the three Northern New England States).

C. WHOLESALE SERVICE PROVIDERS MAY LACK ADEQUATE REMEDIES

1. No Adequate Remedies Have Been Shown by FairPoint

FairPoint witness Lippold claimed that wholesale customers already have remedies in the event of such harms (FairPoint Exh. 1 at 24; NECTA/CPNH Exh. 26P). The existence and sufficiency of these remedies has not been established. The Commission may lack authority to award damages.[37] The PAP does not constitute an adequate remedy and was not designed to deal with a flash cutover to an entirely new set of systems by an entity without prior wholesale

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[37] *Appeal of Granite State Electric Co.*, 121 NH 787, 792 (1981); *Nelson v. Public Serv. Co. of NH*, 119 NH 327, 329-330 (1979); *Re Verizon NH*, Order No. 24,440 (March 4, 2005) at 8. Verizon has cited these cases for the proposition that the Commission cannot award contractual damages and lacks jurisdiction regarding contractual damage claims of joint pole owners.

experience. Furthermore, FairPoint has asked for a waiver from PAP obligations for 30 days as to 3 CLECs and for 60 days as to all other wholesale service providers.[38]

The Commission has authority to impose merger approval conditions to assure that public harm due to the proposed transaction is avoided or mitigated. The Commission should impose conditions to safeguard competition beyond the terms of the PAP or any other existing remedies that it may deem to exist, but which may be insufficient to address the substantial harms and risks of harms arising out of the proposed transaction.

2. The PAP Should not be Waived or Waived on a Discriminatory Basis

NECTA and CPNH submit that there is no basis for waiving the PAP requirements for FairPoint-the fact that it is asking for such a waiver is an admission that it expects service-affecting impacts from its cutover. Nor is there any basis for a longer waiver for some wholesale service providers than others. The Commission should deny the PAP waiver request or limit any waiver to 30 days in the case of all wholesale service providers.

IX. FAIRPOINT SHOULD BE REQUIRED TO ADOPT AND MAINTAIN VERIZON'S CURRENT POLE ATTACHMENT RATES, TERMS AND CONDITIONS AT CLOSING AND FOR A REASONABLE TIME THEREAFTER

The Commission should accept Dr. Pelcovits' recommendation that FairPoint be directed to maintain for a reasonable time frame Verizon existing rates, terms and conditions for pole and conduit attachments. This type of continuity would enable the switch from Verizon to FairPoint to be more seamless to parties that have existing attachment arrangements with Verizon. It also

[38] In the event that any PAP waiver is permitted, it should be uniformly applied to all wholesale service providers.

would afford FairPoint and attaching parties an opportunity to work collaboratively on improvements in existing practices (NECTA/CPNH Exh. 1P at 79-81).

X. AS A CONDITION FOR APPROVAL OF THE PROPOSED MERGER TRANSACTION, FAIRPOINT SHOULD BE REQUIRED TO CREATE AND ADEQUATELY STAFF A POLE AND CONDUIT LICENSE SERVICES ADMINISTRATION GROUP COMPARABLE OR BETTER THAN THE VERIZON LICENSE SERVICES ADMINISTRATION GROUP

The Commission should adopt a merger condition and include among FairPoint's cutover readiness criteria the establishment, staffing and training of a license services administration group that handles the functions provided by Verizon's existing License Services Administration Group (NECTA/CPNH Exh. 1P at 81). FairPoint has agreed upon the need to establish this type of group to manage the responsibilities that Verizon manages as a pole owner (NECTA/CPNH Exh.1P, Attachment MDP-50; FairPoint Exh.14P at 19, 20).

This merger condition is needed in order to insure that FairPoint is capable of administering the pole and conduit license agreements that it will assume at closing and that it can carry out Verizon's contractual and legal obligations relating to the receipt of requests for attachments, the timely conduct of make ready surveys and make ready work and the performance of outside plant work that impacts attaching entities. FairPoint also must develop the capability of managing the large amount of paper records that Verizon will be providing to FairPoint (NECTA/CPNH Exhs. 62P-66P, 68P).

Attaching entities depend upon joint pole owners such as Verizon in order to deliver service to customers. Any drop of performance by FairPoint would have an adverse impact upon the public good and also could obstruct or impair competition to the extent that FairPoint

adversely affects existing attachments or impedes the expansion of the availability of services offered by attaching entities.

Because of the importance of this issue to facilities-based competitors, NECTA and CPNH recommend that the establishment, training and readiness of a license services administration group be regarded as one among other cutover readiness criteria and not merely a matter for complaint proceedings if FairPoint is unable to meeting ILEC pole owner performance obligations after cutover.

XI. THE PROPOSED TRANSACTION SHOULD BE CONDITIONED UPON RATEMAKING CONDITIONS APPLICABLE TO ANY FUTURE ATTEMPT BY FAIRPOINT TO CHARGE RATEPAYERS FOR CAPITAL COSTS ASSOCIATED WITH ITS CAPGEMINI AGREEMENT SYSTEMS DEVELOPMENT

After having committed not to pass through Capgemini-related costs to wholesale ratepayers and attaching entities (NECTA/CPNH Exh.37P), FairPoint has backpedaled on its commitment and asserted the right to seek rate recognition of these costs from both retail and wholesale customers (FairPoint Exh. 3 at 12-13).

In order to promote the public good and prevent the obstruction or impairment of competition, the Commission should, at the very least, condition any merger approval upon the following requirements:

1) FairPoint shall not seek wholesale rate recognition of capitalized Capgemini costs prior to its seeking rate recognition from retail customers;

2) Capitalized Capgemini costs should be allocated among the Northern New England States service areas now served by Verizon and any other jurisdictions or service areas that benefit from these new systems;

3) Capitalized Capgemini costs should be allocated between regulated and non-regulated services.

FairPoint does not appear to disagree that any future rate filing seeking recognition of these costs would need to comply with these basic cost allocation requirements set forth in recommendations 2 and 3 above (Tr. 10/25/07 at 130, 131).

Such conditions would help avoid an impairment of competition and also promote the public good by assuring that FairPoint is committed to adhering to these basic requirements, thereby simplifying any future rate filing by FairPoint in which it seeks rate recognition for these costs.

The requested conditions complement and are not inconsistent with the 3—CLEC Settlement approach to future rate filings relating to rate recognition of capitalized Capgemini costs (FairPoint Exh. 15).

XII. FAIRPOINT SHOULD BE PRECLUDED BY MERGER CONDITION FROM SEEKING RECOVERY FROM RATEPAYERS OF ANY TSA-RELATED EXPENSES, ANY ACQUISITION PREMIUM AND THE EXPENSED PORTION OF CAPGEMINI'S WORK

FairPoint's commitment that it will not seek to recover from wholesale and retail ratepayers any expenses paid to Verizon under the TSA, any expensed portion of payments made to Capgemini and any acquisition premium associated with the proposed transaction must be made merger approval condition by the Commission so it remains a binding and enforceable obligation of FairPoint and to ensure that ratepayers do not pay more than they would have paid in the absence of this transaction (NECTA/CPNH Exh. 1P at 16,17, Attachment MDP-1 at 1).

Recovery of these expenses from ratepayers would be unreasonable. Ratepayers are paying for the cost of Verizon's provision of services through existing rates that will be in effect

during and after the expected term of the TSA. The disallowance of the recovery of acquisition premiums is a common merger condition.[39]

The proposed merger condition is consistent with the 3 CLEC Settlement's terms relating to this issue and FairPoint's commitments in testimony (FairPoint Exh. 8P at 36; FairPoint Exh. 15).

[39] *Re: Acquarion Water Company of New Hampshire*, DW 06-094, Order No. 24,691(October 31, 2006)(no recovery of acquisition premium); *New England Electric System*, 84 NH PUC 502, 512 (1999)(same).

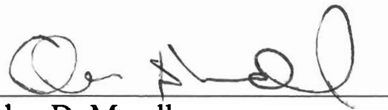
CONCLUSION

For the reasons stated above, the Commission should not approve the proposed transaction between Verizon and FairPoint unless it adopts as merger conditions the conditions and requirements recommended by NECTA and CPNH in their Initial Brief. NECTA and CPNH do not oppose the Commission's imposing additional conditions upon any approval of the proposed transaction as it deems necessary in order for it to find that the proposed transaction would promote the public good and not obstruct or impair competition in New Hampshire.

Respectfully submitted,

NEW ENGLAND CABLE AND
TELECOMMUNICATIONS ASSOCIATION, INC. AND
COMCAST PHONE OF NEW HAMPSHIRE, LLC

By their attorney,



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