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October 11, 2007

Debra A. Howland, Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301



RE: VERIZON NEW ENGLAND INC. AND FAIRPOINT COMMUNICATIONS, INC. Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc., DOCKET NO. DT-07-011

Dear Ms. Howland:

On behalf of Freedom Ring Communications, LLC d/b/a/BayRing Communications, LLC ("BayRing"), segTEL, Inc. ("segTEL") and Otel Telekom, Inc. ("Otel"), please accept this letter, which respectfully requests the filing for Commission review of certain so called "bilateral" settlement agreements as described in General Counsel Kreis's letter of October 9, 2005.

On Friday afternoon, October 5, BayRing, segTEL and Otel received a FairPoint response to a data request which indicated that FairPoint has entered into settlement agreements with certain wholesale customers and that it does not anticipate filing such settlement agreements with the Commission for approval. FairPoint also indicated that would not make the terms available in such settlement agreements available to all CLECs. See, FairPoint Response to CLECs' R-11.

FairPoint's response to this data request raises a number of concerns. The primary concern is the potential for discrimination in the rates, terms and conditions that FairPoint may be offering settling

CLECs, compared to the rates, terms and conditions that FairPoint is prepared to offer other CLECs. It would be unlawful for FairPoint to offer discriminatory terms to settling parties. RSA 378:10 provides as follows:

“Preferences. No public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatever or subject any particular person or corporation or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever.”

Both PAETEC and DSCI have filed and/or cosponsored testimony in this proceeding and have participated in technical sessions regarding CLEC-wide settlement discussions facilitated by Staff.

FairPoint has apparently decided that it wishes to pursue bilateral agreements instead of a CLEC-wide settlement and that such bilateral agreements do not need to be filed or approved by the Commission.

In any event, the DSCI testimony, cosponsored with COVAD, expressly requests the following conditions to guard against “devastating” competitive harms:

“Express codification in a Commission order that FairPoint may never seek a rural carrier exemption from its obligations as an incumbent local exchange carrier (“ILEC”) in New Hampshire.

- **Extension of current Verizon interconnection agreements, wholesale tariffs and wholesale pricing arrangements for not less than a 36 month period following transaction closing, and preferably, not less than a 36 month period after the cutover from the Verizon OSS to the new FairPoint OSS;**

Application of the current Verizon Performance Assurance Plan (“PAP”) and associated performance penalties to FairPoint until such time as the Commission orders a modified or replacement PAP;

- **Avoidance of a “dark period” in which wholesale systems will be off-line or diminished in the capacity or functionality with the cutover to new systems.**

Express codification in a Commission order that FairPoint’s relevant New Hampshire subsidiaries are treated as successors or assigns of Verizon for purposes of obligations imposed by 47 U.S.C. section 271, including the obligation to comply with linesharing obligations; and

- **Codification in the order that FairPoint cannot seek forbearance relief from the FCC for at least a three-year period following closing of the transaction.”**

All of these items are issues of generic interest to all CLECs in this proceeding as opposed to issues that are unique to DSCI. DSCI has stated in a recently filed motion to withdraw that “FairPoint and DSCI have entered into an agreement that resolves all outstanding issues,” which leads my clients to believe that these items may be addressed in such agreement.

BayRing, segTEL and Otel believe it would be discriminatory under RSA 378:10 if, for example, FairPoint agreed that it would not seek the rural exemption of its unbundling obligations for DSCI, but would not agree to the same condition for other CLECs in New Hampshire. It would also be discriminatory and would violate the filed rate doctrine for FairPoint to agree to freeze rates in Verizon’s wholesale tariff 84 for some carriers and not others.¹ Similarly it would be discriminatory for FairPoint to agree to i) abide by the Verizon PAP, ii) avoid a dark period for wholesale services; iii) be treated as a BOC for purposes of section 271 and iv) not seek forbearance *only for DSCI, but not for other CLECs in New Hampshire*. Finally, it would be inefficient and a poor use of the Commission’s time for carriers to litigate over issues at the upcoming hearing if FairPoint has agreed to settle them with other carriers. In short, BayRing, segTEL and Otel are very concerned that entering into bilateral contracts that are not filed and approved by the Commission will result in an opportunity for discrimination against non-settling CLECs and will not result in the efficient use of the Commission’s and the parties’ resources at the hearing.

In Vermont, FairPoint intended to take the same approach of not filing bilateral agreements that it is now taking in New Hampshire with DSCI and PAETEC. The bilateral agreement in Vermont was between FairPoint and Vermont Electric Cooperative (“VEC”). As in the case of DSCI and PAETEC in New

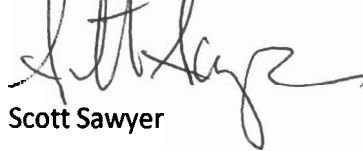
¹ Offering to freeze rates for some and not others would also appear to contradict the spirit of 378:1 which provides in pertinent part as follows: “Schedules. – Every public utility shall file with the public utilities commission, and shall print and keep open to public inspection, schedules showing the rates, fares, charges and prices for any service rendered or to be rendered in accordance with the rules adopted by the Commission pursuant to RSA 541-A.”

Hampshire, VEC had intervened and filed testimony prior to entering into a bilateral settlement with FairPoint. The Vermont Board rejected FairPoint's approach, required the VEC agreement to be filed and required that a witness be made available to explain its terms. BayRing, segTEL and Otel believe the same process of publicly filing settlements should be followed in New Hampshire.

It may be that DSCI and PAETEC should have the right to withdraw from the case. But the Commission should take steps to ensure that FairPoint does not offer discriminatory terms and conditions to DSCI and PAETEC, whether in consideration of settlement or otherwise. Accordingly, the Commission should require the settling parties to promptly file their settlement agreements with the Commission, to explain how they will be implemented, to explain whether the terms will be available to all CLECs, and to explain why they should be approved.

Thank you for your attention to this matter. Please do not hesitate to call if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Sawyer", written over a light gray rectangular background.

Scott Sawyer

cc: Donald M. Kreis

Email service list