

THE STATE OF NEW HAMPSHIRE

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CONCORD, NEW HAMPSHIRE 03301-2429

May 3, 2007

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



Re: **DT 07-011 Verizon New England/FairPoint Communications**
OCA's Notice of Reservation of Rights

Dear Ms. Howland:

Enclosed for filing with the Commission please find an original and seven copies of the Office of Consumer Advocate's (OCA's) Notice of Reservation of Rights Concerning FairPoint's Responses to Group III, Set 1 Data Requests. A copy of this filing has been served electronically on all parties in this docket.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Hatfield".

Meredith A. Hatfield
Consumer Advocate

cc: Service List

NHPUC MAY03:07 PM 2:25



BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DT 07-011

**VERIZON NEW ENGLAND, INC., BELL ATLANTIC COMMUNICATIONS, INC.,
NYNEX LONG DISTANCE CO., VERIZON SELECT SERVICES, INC.,
AND FAIRPOINT COMMUNICATIONS, INC.**

Transfer of Assets to FairPoint Communications, Inc.

**OFFICE OF CONSUMER ADVOCATE'S
NOTICE OF RESERVATION OF RIGHTS CONCERNING
FAIRPOINT'S RESPONSES TO GROUP III, SET 1, DATA REQUESTS**

The Office of Consumer Advocate (OCA) hereby notifies the N.H. Public Utilities Commission (Commission), FairPoint Communications, Inc. (FairPoint), the other parties and Commission Staff that the OCA reserves its rights to compel the responses of FairPoint Communications, Inc. (FairPoint) to Group III, set 1, data requests and to propound additional data requests concerning the subjects covered by these data requests. In support, the OCA states the following:

1. The procedural schedule in this docket provides for the filing today of motions to compel responses to disputed Group III data requests.¹
2. In addition to eight "General Objections," FairPoint specifically objected in whole or in part to the following data requests: OCA III 1-1, 1-2, 1-3, 1-4, 1-6, 1-12, and 1-13.²
3. Within its written objections, FairPoint agreed to provide some response to all of these data requests.

¹ Order 24,733, March 16, 2007, pp. 6-7, and 20.

² See Attachment A. FairPoint referred to these data requests as 3-1, 3-2, 3-3, 3-4, 3-6, 3-12, and 3-13. The OCA, however, considers the present set of data requests as set one of Group III. If the OCA propounds a additional sets of Group III data requests, it would use the prefix "2-" to refer to the second set (e.g., OCA III 2-1, OCA II 2-2, etc.), "3-" to refer to a third set (e.g., OCA III 3-1, 3-2, etc.) and so forth. As such, and in hopes of avoiding any confusion about possible future sets of Group III data requests, the OCA refers to the disputed set-one data requests in this motion using the prefix "OCA III 1-".

4. FairPoint's responses, however, are due after the deadline for filing a motion to compel.

5. In agreeing to accept, for the time being, FairPoint's offer to provide some response to its Group III, set 1, data requests, the OCA does not waive its rights to compel further responses to these data requests or to propound additional data requests concerning the subjects covered by the OCA's Group III, set 1.

6. As such, the OCA reserves these rights and hereby notifies the Commission, FairPoint, other parties and Staff of this reservation of rights.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

May3, 2006



Meredith A. Hatfield

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-011

VERIZON NEW ENGLAND, INC., BELL ATLANTIC COMMUNICATIONS, INC.,
NYNEX LONG DISTANCE CO., VERIZON SELECT SERVICES, INC.,
AND FAIRPOINT COMMUNICATIONS, INC.

Transfer of Assets to FairPoint Communications, Inc.

**Objections of FairPoint Communications, Inc. to
Group III, Set 1 Data Requests of the Office of Consumer Advocate**

NOW COMES FairPoint Communications, Inc. ("FairPoint") and pursuant to New Hampshire Public Utilities Commission (the "Commission") Procedural Order No. 24,733, objects to the following Group III data requests as follows:

General Objections

1. FairPoint objects to these data requests (including their instructions and definitions) to the extent that they purport to impose obligations beyond the applicable law and Commission rules and decisional law.
2. FairPoint objects to any data request that seeks information or data protected by the attorney-client privilege and attorney work product doctrine. In this regard, FairPoint waives no privilege or objection by (i) inadvertent, unintentional or unauthorized disclosure of such information or documents; and (ii) any information or documents provided by the requesting party to establish a basis for any privilege asserted.
3. FairPoint objects to any request to produce data other than in the form in which FairPoint stores or maintains data in the ordinary course of business.

4. FairPoint objects to any definition or instruction which provides for definitions of terms at variance with their common meaning. In responding to these data requests, FairPoint shall apply the common meanings of such terms.

5. FairPoint objects to any data request that seeks all documents concerning a particular subject as overbroad and unduly burdensome in that FairPoint can and will only produce such documents reasonably relating to a particular subject within FairPoint's custody, possession and control.

6. FairPoint objects to any data request that characterizes any statement, document or transcript of testimony and states that such documents or transcripts speak for themselves.

7. FairPoint objects to any data request the response to which requires disclosure, response or production of confidential or proprietary information of FairPoint, and FairPoint will only produce such information to a party to these proceedings who has entered into the Protective Order in this action and the Commission Staff pursuant to RSA 378:43. FairPoint objects to any data request the response to which requires the disclosure of information or documents from a third party of a confidential or proprietary nature which FairPoint is not authorized to disclose.

8. FairPoint objects to any data request which requests information or documents with respect to matters not addressed within FairPoint's testimony.

Objections to Specific Data Requests

OCA 3-1: The Federal Communications Commission approved the merger of AT&T Inc. and BellSouth Corporation with the following commitments with respect to unbundled network elements ("UNEs"):

“The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.”

“AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (i.e., own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.”

“AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission’s EELs eligibility criteria (as set forth in the Supplemental Order Clarification’s significant local use requirement and related safe harbors, and the Triennial Review Order’s high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.”

- a. Is FairPoint willing to make similar commitments as part of the approval of the instant transaction? Why or why not?
- b. Is FairPoint willing to commit to any of the above conditions? Please identify, and if, and to the extent that they differ from the conditions described above, please explain the differences and the rationale for such differences.

FairPoint objects to Data Request 3-1 on the grounds that it seeks a legal conclusion.

FairPoint further objects to this Data Request on the ground that the orders of the Federal Communications Commission speak for themselves. Subject to and without waiving these objections, FairPoint will provide information responsive to Data Request 3-1.

OCA 3-2: The Federal Communications Commission approved the merger of AT&T Inc. and BellSouth Corporation with the following commitments with respect to interconnection agreements:

“The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.”

“The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.”

“The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its preexisting interconnection agreement as the starting point for negotiating a new agreement.”

“The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier’s request unless terminated pursuant to the agreement’s “default” provisions.”

- a. Is FairPoint willing to make similar commitments as part of the approval of the instant transaction? Why or why not?
- b. Is FairPoint willing to commit to any of the above conditions? Please identify, and if, and to the extent that they differ from the conditions described above, please explain the differences and the rationale for such differences.

FairPoint objects to Data Request 3-2 on the grounds that it seeks a legal conclusion.

FairPoint further objects to this Data Request on the ground that the orders of the Federal Communications Commission speak for themselves. Subject to and without waiving these objections, FairPoint will provide information responsive to Data Request 3-2.

OCA 3-3: The Federal Communications Commission approved the merger of AT&T Inc. and BellSouth Corporation with the following commitments with respect to transit service:

“The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.”

- a. Is FairPoint willing to make similar commitments as part of the approval of the instant transaction? Why or why not?
- b. Is FairPoint willing to commit to any of the above conditions? Please identify, and if, and to the extent that they differ from the conditions described above, please explain the differences and the rationale for such differences.

FairPoint objects to Data Request 3-3 on the grounds that it seeks a legal conclusion.

FairPoint further objects to this Data Request on the ground that the orders of the Federal Communications Commission speak for themselves. Subject to and without waiving these objections, FairPoint will provide information responsive to Data Request 3-3.

OCA 3-4: Does FairPoint have plans to raise rates for the UNEs currently provided by Verizon to its wholesale customers as “Wholesale Advantage” lines? Please provide documentation.

FairPoint objects to Data Request 3-4 on the grounds that it is vague. Subject to and without waiving this objection, FairPoint will provide information responsive to Data Request 3-4.

OCA 3-6: Refer to Nixon testimony at page 28, lines 6-12. Does FairPoint plans to alter the Performance Assurance Plan and carrier-to-carrier standards? Please provide any documents, memos, analyses discussing the issue.

FairPoint objects to Data Request 3-6 on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FairPoint will provide information responsive to Data Request 3-6.

OCA 3-12: Does FairPoint have a formal relationship with Telcordia? If the answer is yes, how long has the relationship existed and please explain the nature of the relationship.

FairPoint objects to Data Request 3-12 on the grounds that it is vague. Subject to and without waiving this objection, FairPoint will provide information responsive to Data Request 3-12.

OCA 3-13: Please provide a schematic identifying each operational system and/or element that will be required under FairPoint's proposal to provision a new order for dial tone, from receipt by a customer service representative until the service order is placed in service.

FairPoint objects to Data Request 3-13 to the extent that it is overbroad in that the request would require FairPoint to create evidence that does not currently exist. Subject to and without waiving these objections, FairPoint will provide information responsive to Data Request 3-13.

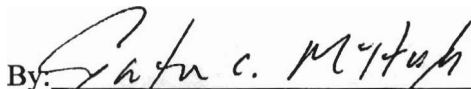
Respectfully submitted,

FAIRPOINT COMMUNICATIONS, INC.

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: April 27, 2007

By: 

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