

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.

**FairPoint Communications, Inc.'s**  
**Objection to Petition for Late Filed Intervenor Status**

NOW COMES FairPoint Communications, Inc. ("FairPoint"), by and through its attorneys, Devine, Millimet & Branch, Professional Association, and respectfully objects to Rural Economic Development Network, Inc. ("REDNET")'s Petition for Late Filed Intervenor Status.

**Factual Background**

1. In this case, FairPoint seeks Commission approval of a transaction through which it would acquire control of the land line assets and operations of Verizon New England Inc. ("Verizon") in New Hampshire. This case has been pending since January 2007.
2. This transaction is among the largest to have come before this Commission and has been the subject of significant publicity. This transaction has also been before this Commission for nearly ten (10) months.
3. On February 7, 2007, this Commission issued Orders of Notice setting forth the deadline to intervene in this case as follows: "pursuant to N.H. Admin. Rules PUC 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a

Petition to Intervene with copies sent to the Joint Petitioners and the Office of the Consumer Advocate on or before February 23, 2007, such petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule PUC 203.17 and RSA 541-A:32, I (b)...”

4. The formal hearing of this case is scheduled to begin on October 22, 2007. The schedule is and has been publicly available and readily accessible on the Commission’s website.

5. On October 15, 2007, ten months after the deadline established by this Commission and days before commencement of the hearings, REDNET filed a Petition to Intervene.

6. REDNET’s Petition acknowledges its tardiness, but neither explains that tardiness nor explains why it should be allowed to intervene at this late date. REDNET simply states that it “intends to participate in this proceeding as necessary to protect its interests.” REDNET does not explain those interests. In addition, REDNET failed to identify how it intends to participate in the proceedings and further failed to reserve any time for the cross examination of witnesses.

#### **Standard Governing Petitions to Intervene**

7. PUC 203.17 provides that “The commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32.

8. According to RSA 541-A:32:

I. The presiding officer shall grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the

proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time.

9. PUC 203.18 provides that “Persons who do not have intervenor status in a proceeding but having interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their position.”

### **Argument**

10. REDNET’s Petition lacks merit for at least two central reasons. First, REDNET’s Petition does not comply with the procedural order governing this proceeding. Second, REDNET cannot demonstrate entitlement to intervention pursuant to PUC 203.17. Accordingly, REDNET’s Petition should be denied.

11. The procedural order entered in these proceedings required parties seeking to intervene to file Petitions to intervene on or before February 23, 2007. The procedural order also required parties seeking intervention to state the facts demonstrating how their rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding. This latter requirement derives from PUC 203.17. The Commission’s deadline was not without teeth: this proceeding is complex, voluminous and has necessarily occurred on a compressed schedule.

Determining who are to be the parties at an early stage was an important factor to successful completion of these proceedings as scheduled. Unlike many other Commission proceedings, moreover, the size of and level of publicity of the immediate transaction is such that it would be hard to imagine any potentially interested party being unaware of this proceeding, so setting an intervention deadline would not prejudice any interested party.

12. Against that backdrop, REDNET's Petition is meritless on its face. REDNET claims to be a CLEC - ie., a company within the telecommunication industry -- yet REDNET failed even remotely to timely intervene. It is inconceivable that REDNET was unaware of this proceeding, and REDNET does not make that claim in its Petition. The Petition lacks a shred of explanation for REDNET's failure to abide by the procedural order. This leads to an inescapable conclusion - REDNET itself could not identify a reason of sufficient magnitude to request a timely intervention.

13. REDNET's Petition also fails to show entitlement to intervention pursuant to PUC 203.17, which requires would-be intervenors to state facts demonstrating that REDNET's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that REDNET qualifies as an intervenor under any provision of law. REDNET announces an intent to participate "as necessary" to protect its interests, but does not bother to explain what those interests are. Instead, REDNET admits that its interests are aligned with other New Hampshire CLECs who are intervenors in this matter and have actively participated in preparation of the case for hearing. REDNET admits, in other words, that its interests will be sufficiently protected by the participation of the CLEC intervenors, and there is no need for REDNET to be allowed to intervene at this late date.

14. Rather than promote the interests of justice and the orderly and prompt conduct of the proceedings, REDNET's intervention will seriously impair those goals. See PUC 203.17(c). REDNET claims that it will not file testimony or serve data requests. REDNET seeks, therefore, to participate by cross examining at the hearings. Hearings, however, begin in less than one week. The final pre-hearing conference has already taken place, and the petitioners and all intervenors participated. During the pre-hearing conference, the parties spent a great deal of time discussing the witnesses who will testify and the necessary time for the testimony and cross-examination of each witness. If REDNET is allowed to intervene at this late date and participate in the final hearing, the carefully planned (and already tight) schedule will be altered. Allowing intervention at this late stage of the proceedings, without explanation of the timing or the interests at stake, would jeopardize the interests of all of the parties who have undertaken the enormous task of preparing for these hearings on such a compressed basis, and of the Joint Petitioners in obtaining timely resolution.

15. What is more, REDNET offers no explanation of how its participation could possibly advance the interests of justice. This is a complicated docket, and a great deal of information has been exchanged between and among the petitioners and the intervenors. REDNET is ill prepared to participate as an intervenor at this late stage in the proceedings, and in fact, its participation without the proper preparation would prejudice the joint petitioners, intervenors and this Commission. For this additional reason, pursuant to RSA 541-A:32, I (c), REDNET's Petition must fail as a matter of law.

16. In accordance with PUC 203.18, REDNET is free to state its position at the hearing as an entity without intervenor status. REDNET's inability to intervene in this matter is a result of nothing more than its own delay, and the intervenor status of several other CLECs

means that REDNET's interests -- whatever they are -- will be adequately aired at the hearings. REDNET made no effort in its Petition to give justification for, or even to try to explain, its delay in filing its Petition. In short, REDNET can show no unfair prejudice by the denial of its Petition.

### **Conclusion**

17. For these reasons, FairPoint respectfully requests that REDNET's Petition be denied in all respects and that the Commission afford REDNET the opportunity to state its position, in accordance with PUC 203.18, at the end of the hearing (scheduled for October 31, 2007).

18. If this Commission is inclined to grant REDNET's Petition in any way, FairPoint respectfully requests, in accordance with RSA 541-A:32, III, that this Commission:

(i) PRECLUDE REDNET from cross examining any witness so as to promote the orderly and prompt conduct of the hearing; and

(ii) REQUIRE REDNET to brief the Commission and the parties to this proceeding with the details of its intervention in order to afford the parties an opportunity to respond in a meaningful manner to said participation.

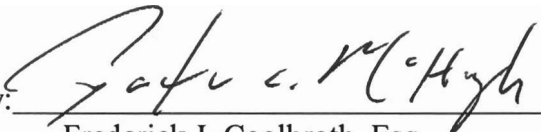
Respectfully submitted,

FAIRPOINT COMMUNICATIONS, INC.

By its Attorneys,

DEVINE, MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION

Dated: October 18, 2007

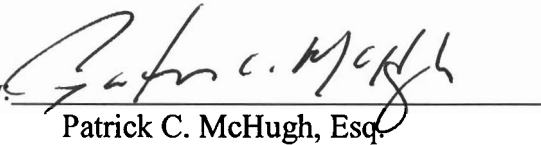
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objection was served this day to Rural Economic Development Network, Inc.

Dated: October 18, 2007

By:   
Patrick C. McHugh, Esq.