

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
Response to Motion for a Determination of Confidentiality
and Confidential Treatment
by The Office of the Consumer Advocate

NOW COMES FairPoint Communications, Inc. ("FairPoint"), by and through its attorneys, Devine, Millimet & Branch, Professional Association, and respectfully responds to the Office of the Consumer Advocate ("OCA")'s Request for a Ruling on its Motion for a Determination of Confidentiality and Confidential Treatment.

Factual Background

1. In this case FairPoint seeks Commission approval of a merger transaction whereby FairPoint seeks to acquire control of the land line assets and operations of Verizon New England Inc. ("Verizon") in New Hampshire, Maine and Vermont. In the course of this proceeding, FairPoint has provided over 2,000 responses to data requests and has produced extensive documentation. In so doing, FairPoint was called upon to produce some of its most highly competitively sensitive information. In order to protect itself from irreparable harm in disclosing this information, while also being as forthcoming as possible, FairPoint endeavored to create a confidentiality system for classifying responses and their corollary attachments. Such a

system was necessary in light of the differing status of the many interveners in this docket and to further FairPoint's resolution of discovery disputes in an informal manner.

2. On July 24, 2007, in response to a request by OCA, FairPoint provided OCA and Commission Staff with two memoranda in which it explained the confidentiality classification system and listed the documents it had produced by classification level. Both memoranda explicitly state they were prepared for the convenience of OCA and Staff and may not be used as an exhibit. FairPoint asked that neither OCA nor Staff disclose the contents of the memoranda to any other party.

3. OCA has never proposed to FairPoint that the memoranda be disclosed to any other party or that the memoranda not remain confidential. For reasons which are unclear to FairPoint, OCA now seeks a determination by this Commission regarding the confidentiality of the memoranda absent any prior discussion of the issue with FairPoint or its counsel. It is important to remember that FairPoint did not have to provide the memoranda in the first instance. FairPoint voluntarily responded to a request for assistance from OCA. In short, FairPoint acted in good faith and in a spirit of cooperation.

4. Puc 201.04 provides that all documents submitted to the Commission or Staff in an adjudicative proceeding become public record, subject to RSA 91-A, but for certain exceptions, including an exception for documents entitled to confidential treatment according to RSA 378:43.

5. RSA 378:43 provides in pertinent part:

I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff shall be maintained confidentially and shall not be considered public records

for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.

II. In order to obtain confidential treatment under paragraph I, the telephone utility shall represent to the public utilities commission that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

(a) Pertain to the provision of competitive services; or

(b) Set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

The memoranda at issue were provided to OCA and Staff under the Protective Agreement in place for this proceeding. The documents are entitled to confidential protection, pursuant to RSA 378:43.

6. OCA cites Puc 203.08(b) in support of its request for a determination of confidentiality. The rule is not applicable. FairPoint did not file a Motion with this Commission seeking to have the memoranda classified as confidential; therefore, it is not required to make any showing based on Puc 203.08. Rather, at OCA's request, FairPoint prepared memoranda, for OCA and Staff, in order to aid OCA and Staff in their preparation and filing of direct testimony. There is neither a Commission decision nor a Commission rule which required FairPoint to prepare the memoranda. FairPoint devoted significant time and resources to

preparation of the memoranda solely to assist OCA. In exchange, FairPoint simply requested that OCA and Staff maintain the confidentiality of the memoranda.

7. The memoranda contain no information relevant to this proceeding. The documents simply set forth the four levels of confidential treatment and single level of public treatment assigned by FairPoint. Furthermore, OCA has not demonstrated – or even alleged – that FairPoint failed to meet its obligations under RSA 378:43. The memoranda do not constitute evidence. That said, FairPoint does not see the need for the Commission to rule on OCA's motion.

Respectfully submitted,

FAIRPOINT COMMUNICATIONS, INC.

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: August 31, 2007

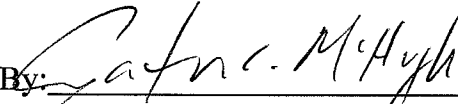
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing response was hand delivered this day to the Office of Consumer Advocate.

Dated: August 31, 2007

By: 

Patrick C. McHugh, Esq.