STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company and Verizon Select Services Inc., and FairPoint Communications Inc.

DT 07-011

Transfer of Assets to FairPoint Communications, Inc.

ONE COMMUNICATIONS' OPPOSITION TO FAIRPOINT'S MOTION FOR PARTIAL RECONSIDERATION OF LETTER ORDER

The Commission should deny FairPoint's motion for partial reconsideration of the Commission's October 19 Letter Order requiring FairPoint to file copies of all settlement agreements that it has reached with other parties in this docket. The Commission's order reasonably addresses the interests of all parties, as well as the interest of fair adjudication of the issues in this docket. FairPoint's arguments against the order lack merit.

At issue are settlement agreements that FairPoint admits it has entered with other telecommunications carriers. As BayRing, segTEL, and Otel pointed out in their letter dated October 11, 2007, there is a strong likelihood that the settlement agreements into which FairPoint has entered contain provisions that discriminate against One Communications and other carriers. The Commission's order, which expressly allows FairPoint to take advantage of the protective procedures already in place in this docket, will allow the Commission and parties to scrutinize the agreements while reasonably protecting any truly confidential information in those agreements.

Discussion

The Commission may grant rehearing if "good reason" exists to consider an order either unlawful or unreasonable. RSA 541:3, 541:4; *In re Investigation as to Whether Certain Calls Are Local,* DT 00-223, DT 00-054, Order Denying Verizon New Hampshire's Petition for Rehearing of Order Approving Agreements, Order No. 24,266, at 2 (May 13, 2005); *In re Global NAPs — Petition for an Order Directing Verizon to Comply with Its Interconnection Agreement,* DT 01-127, Order Denying Motion for Reconsideration, Order No. 24,367, at 5 (Sept. 2, 2004). Good reason includes matters that were either "overlooked or mistakenly conceived." *In re Verizon New Hampshire — Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues,* DT 02-165, Order on Motion for Rehearing and/or Reconsideration, Order No. 24,385, at 14 (Oct. 19, 2004).

On the other hand, the Commission need not grant rehearing so that a party may have a second chance to present material it could have presented earlier. *Investigation as to Whether Certain Calls Are Local,* Order No. 24,266, at 3. Also, good reason for rehearing "must be more than merely reasserting prior arguments and requesting a different outcome." *Investigation of Verizon New Hampshire's Treatment of Yellow Pages Revenues* at 14.

FairPoint has not shown that this standard is satisfied. First, these issues were thoroughly discussed before Hearing Examiner Kreis in the prehearing conference of October 9. Counsel for BayRing, segTEL, Otel and counsel for Comcast and NECTA raised the issue of the potentially discriminatory nature of the settlement agreements and requested that the agreements be examined by the Commission. FairPoint resisted this suggestion, claiming that the agreements are confidential, commercially sensitive, and do not necessarily take effect unless and until the merger closes. FairPoint's motion for rehearing does little more than rehash the

same arguments it made in the prehearing conference and could easily have made in response to the October 11 letter of BayRing, segTEL, and Otel — arguments that the Commission necessarily rejected in issuing the Letter Order.

Further, FairPoint has not shown that the Commission's disclosure requirement is unlawful, unreasonable, or "mistakenly conceived." FairPoint's meritless claims that the settlements contain highly confidential material, the disclosure of which will harm the settling parties, form no basis to reconsider the Commission's ruling.

FairPoint fails to explain, in other than the most conclusory terms, how the disclosure of the agreements will harm the settling parties. FairPoint never specifies precisely what is the information in the agreements that "would give RLEC or CLEC competitors a competitive advantage against the settling parties." FairPoint Motion ¶ 3. FairPoint makes no effort to show how the information fits within the tests of RSA 91-A:5, RSA 378:43, or any other statutory provision authorizing nondisclosure.

FairPoint has not alleged any concrete harm that will result from filing the agreements under the Letter Order. It strains credulity for FairPoint to claim that the agreements should be kept hidden because they "function in part on the basis of individual CLEC and RLEC (and FairPoint) business and strategic plans and models." FairPoint Motion ¶ 13. Those in the industry can discern something about a competitor's "business and strategic plans and models" from news reports or many other sources of information. Anyone could tell that One Communications' business plans involve collocation and use of unbundled network elements and perhaps some resale by looking at One Communications' interconnection agreements with Verizon. But that, without more, does not justify keeping One Communications' interconnection agreements secret.

The irony of FairPoint's claim is obvious. FairPoint's claim is backwards — it is the potentially discriminatory nature of the agreements themselves that would give a competitive advantage to the settling parties over One Communications and other non-settling and nonparty CLECs. The Commission should not allow FairPoint to hide behind the shield of alleged competitive harm to itself and the settling parties while it simultaneously wields the sword of anticompetitive, secret discrimination that will harm One Communications and other non-settling entities. Moreover, FairPoint has publicly filed (without any claim of confidentiality) its October 17 Joint Stipulation with BayRing, segTEL, and Otel. FairPoint has acknowledged at the hearing that certain of the terms of that Joint Stipulation apply only to BayRing, segTEL, and Otel and not to any other interested parties. It is inconsistent, to say the least, for FairPoint now to claim that other settlement agreements containing commitments to particular parties should be viewed only by the Commission and Staff.

In evaluating claims of confidentiality, the Commission must balance any individual privacy interest in the withheld information against the public interest. *In re Granite State Telephone — Notification of Granite State Telephone, Inc. Pursuant to RSA 369"8, III(a) and (b),* DT 04-180, Order Approving Motion for Confidential Treatment, Order No. 24,432, at 6-7 (Feb. 11, 2005); *see also NYNEX*, 80 NH PUC 437, 443-446 (1995) (discussion of balancing test of benefits of public disclosure vs. nondisclosure). The public interest is served by disclosing information to "serve the Purpose of informing the public about the conduct and activities of their government." Order No. 24,432 at 6.

In addition, to approve the proposed divestiture of Verizon's operations to FairPoint, the Commission must determine that the transaction is in the public interest. *See, e.g., North Atlantic Energy Corp.*, 85 NH PUC 758 (2000). The settlement agreements at issue are not mere

contracts with suppliers, such as the coal contracts at issue in *PSNH,* 90 NH PUC 323 (2005). They implicate fundamental statutory duties of a telecommunications carrier in New Hampshire, including but not limited to the duty to file its rates, terms, and conditions of service with the Commission; the duty not to discriminate in such rates, terms, and conditions; and the duty to obtain Commission permission before entering any special contracts. RSA 378:1, 378:10, 378:18. The extent to which FairPoint intends to comply with these legal obligations unquestionably is a matter that is relevant to the public interest in the transaction. *See* RSA 374:33 (Commission must determine that acquisition is lawful, proper, and in the public interest). Similarly, whether FairPoint intends to treat its wholesale customers fairly and even-handedly, or discriminate among them by entering *secret deals* available to only a favored few, squarely implicates whether the public interest will be served by allowing FairPoint to become the dominant wholesale provider in the state. The Commission, its Staff, and all interested parties must have access to FairPoint's settlement agreements in order for these issues to be fully vetted in this proceeding. Therefore, FairPoint should also be precluded from seeking a designation of "Highly Confidential" for these agreements which would curtail review by the very parties most affected by the agreements, such as One Communications.

Further, even if the agreement did contain certain information that satisfied New Hampshire standards for protection of confidential information, that does not allow FairPoint to withhold the entire document from public disclosure. In such cases, the standard practice is to redact the truly confidential information. *See NYNEX*, 80 NH PUC at 446-447 ("In the interests of full compliance with the applicable laws and the intent of the legislature . . . we will make those *parts* of special contracts which contain no competitively sensitive information accessible to the public") (emphasis added).

Finally, FairPoint does not even attempt to show why the protective measures currently in place in this case are inadequate to protect it against the alleged harms. The Commission's Letter Order specifically provides, "Consistent with the treatment already adopted in this docket, FairPoint should classify these filings as public, confidential, or highly confidential, as appropriate." Letter Order at 2. Earlier in this case, the Commission similarly ruled that Verizon was required to disclose business plans, subject to an existing protective agreement. Order on Motions to Compel Discovery Submitted by the Consumer Advocate, Order No. 24,767 at 9 (June 22, 2007). In the earlier order, the Commission found that the "confidentiality agreement . . . should be adequate to protect any privacy interest implicated by production of documents" that Verizon claimed were "highly confidential." *Id.* The same is true for the agreements at issue here. The vague claims of harm that FairPoint makes, even if they had merit, are more than adequately addressed by the Commission's specific directive that FairPoint file the agreements in a manner consistent with the existing protective procedures in place in the docket that allow for review by the parties directly affected by the agreements, such as One Communications.

Conclusion

FairPoint's motion is little more than a rehash of arguments it made, or could have made, at the prehearing conference or in response to the October 11 letter of BayRing, segTEL, and Otel. In addition, the Commission's requirement that FairPoint file the settlement agreements under the existing protective treatment in this docket is not unlawful, unreasonable, or mistakenly conceived. Accordingly, the Commission should deny FairPoint's motion.

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Respectfully Submitted,

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