

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.

**Reply and Objection of Northern New England Telephone Operations LLC d/b/a FairPoint
Communications - NNE and FairPoint Communications, Inc. to
Motion for Hearing by the Office of Consumer Advocate**

NOW COME Northern New England Telephone Operations LLC d/b/a FairPoint Communications - NNE and FairPoint Communications, Inc. (collectively "FairPoint") and, pursuant to New Hampshire Public Utilities Commission (the "Commission") Puc. 203.07, hereby reply and object to the Motion for Hearing filed with the Commission on or about March 6, 2009 (the "OCA Motion"), by the Office of Consumer Advocate (the "OCA").¹

A. Reply to Motion for Hearing

1. On February 27, 2009, FairPoint filed a Motion for Limited Modification of Merger Condition ("Motion"). OCA apparently filed the above referenced Motion on March 6, 2009 and also served FairPoint with a set of twenty-five data requests. On March 13, 2009, the Commission issued Order No. 24,947 (the "Scheduling Order") in which it scheduled a hearing for March 26, 2009, preceded by a technical session on March 20th. The purpose of the technical session is to facilitate discovery and to discuss procedural matters. *See* Scheduling Order at 2.

¹ The OCA Motion is neither dated nor signed, but was served on the electronic service list for Docket DT 07-011 (this "Docket") at 4:05 PM on Friday, March 6, 2009.

2. FairPoint appreciates the Commission promulgating the discovery and hearing schedule as set forth in the Scheduling Order. However, in light of the Commission's decision to address discovery in a session reserved for such issues, FairPoint will hold in abeyance any responses to OCA's data requests until the scope of discovery has been fully determined at the technical session.

3. Furthermore, many of OCA's current data requests ask for information that is highly confidential and competitively sensitive to FairPoint. To the extent that any such data requests are retained subsequent to the technical session, FairPoint will request that the OCA enter into a protective agreement.

4. Moreover, to the extent the OCA or the Commission Staff seek information during the technical session of a nature similar to the information requested by the OCA in its data requests, then FairPoint will need to invoke its rights to confidentiality under RSA 378:43. While FairPoint is more than willing to address questions from the Staff or the OCA during the technical session, FairPoint does not want to be in the position of disclosing competitively sensitive information to competitors or other third parties

B. Objection to OCA Request to Expand Scope of Proceeding

5. FairPoint's Motion and the relief requested therein involved the discrete and very limited issue of whether FairPoint can delay the initial payment of a principal pay down of its merger related debt for a single quarter. No party to this Docket filed an objection to FairPoint's Motion. Indeed, the OCA Motion contains no objection to the relief requested in FairPoint's Motion.

6. Nonetheless, the OCA Motion attempts to inflate the scope of this proceeding far beyond FairPoint's simple request. The OCA Motion seeks to compel FairPoint to submit to a

review of “its compliance with *all* conditions of the Order approving the merger” including, presumably, conditions wholly unrelated to financial issues in general and the Motion in particular. *See* OCA Motion at 2 (emphasis supplied). The OCA Motion does not provide any, and there is no, basis for such an expansion of the review of FairPoint’s straightforward request.

7. The oversight that OCA requests is already established pursuant to the Order approving the merger in this docket. *See* Order Approving Settlement Agreement with Conditions, Docket DT 07-011, Order No. 24,823, dated February 25, 2008 (the “Order”). Financial conditions of the Order provide for routine reporting of many aspects of FairPoint’s financial condition, including detailed quarterly and annual financial results, copies of all financial filings made with the FCC and SEC, and quarterly reports detailing capital expenditures. These reports are in addition to reports detailing staffing, broadband deployment, network improvement and service quality. FairPoint therefore submits that no further remedy or special proceeding is warranted at this time.

8. Far from being “efficient use of the parties’ time and resources,” OCA Motion at 2, a proceeding of the scope that OCA demands would be unnecessary, overly broad and burdensome for FairPoint at a critical time in the transition to FairPoint’s new operational support systems. Moreover, the Scheduling Order expressly established only a hearing “based on *FairPoint’s* motion,” Scheduling Order at 2 (emphasis supplied), making no reference to the OCA Motion. This is an appropriate restriction in these circumstances, and any interested parties should focus on the single issue raised in the Motion.

CONCLUSION

However the Commission decides to proceed with respect to FairPoint's Motion, FairPoint respectfully requests that the Commission restrict its proceedings and deliberations to the issues raised in the Motion. Consequently, FairPoint urges the Commission to:

- 1) deny the OCA Motion to the extent that it seeks to expand the scope of the proceeding, and
- 2) rule on FairPoint's Motion as specifically drawn.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC D/B/A FAIRPOINT
COMMUNICATIONS - NNE AND
FAIRPOINT COMMUNICATIONS, INC.

By Their Attorneys:

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

Dated: March 16, 2009

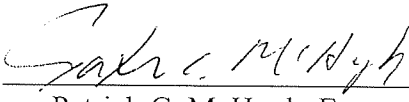
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CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing Response and Objection was forwarded this day to the parties by electronic mail.

Dated: March 16, 2009

By: 
Patrick C. McHugh, Esq.