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July 18, 2007

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VIA HAND DELIVERY

Ms. Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit St., Ste. 10
Concord, NH 03301

Re: DT 07-011 Verizon New England Inc., Bell Atlantic Communications Inc.,
NYNEX Long Distance Co. Verizon Select Services Inc., and Fairpoint
Communications, Inc.

Dear Ms. Howland:

Enclosed for filing in the above-docketed proceeding are an original and seven (7) copies of FairPoint Communications, Inc.'s to the OCA's Motion to Extend Procedural Schedule and Request For Expedited Decision.

A compact disk containing FairPoint's objection is also enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick C. McHugh".

Patrick C. McHugh

PCM:kaa

Enclosures

cc: Service List

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.

**Objection by FairPoint Communications, Inc. to
Motion to Extend Procedural Schedule and Request For Expedited Decision**

NOW COMES FairPoint Communications, Inc. (“FairPoint”) and pursuant to New Hampshire Public Utilities Commission (the “Commission”) Procedural Order No. 24,733, objects to the Motion to Extend Procedural Schedule and Request for Expedited Decision filed by the Office of the Consumer Advocate for the reasons set forth below.

Introduction

1. In its latest motion, the Office of the Consumer Advocate (“OCA”) asks this Commission to bring these proceedings, and the transaction they concern, to an indefinite halt. OCA bases this extraordinary request on a claim that FairPoint’s supplementations on a handful of discovery issues have made it impossible for OCA to timely complete its testimony and adhere to the procedural schedule. Yet, OCA cannot demonstrate that it is the victim of undue hardship or that the efficient and orderly conduct of these proceedings justifies the stall OCA proposes. FairPoint respectfully requests that OCA’s motion be denied.

Factual Background

2. These proceedings concern the transfer of all of the New Hampshire land line telephone operations of Verizon to FairPoint, as part of a larger transfer of all of Verizon's land line assets in northern New England (Maine, Vermont and New Hampshire) to FairPoint. Various merger documents filed with this Commission outline both the details of the transaction and the schedule of events leading up to and through (1) closing of the transaction, and (2) cutover of operations from Verizon to FairPoint. Implementation of the transaction, including systems integration, personnel and hiring, financial, and other aspects, is occurring parallel to these proceedings with the goal that by year end all plans to effectuate the merger will be in place and this Commission will have had the opportunity to determine whether the transaction will result in no net harm and will be for the public good.

3. In the course of these proceedings, FairPoint has responded to over 1900 data requests, 380 propounded by OCA, concerning all conceivable aspects of the transaction before this Commission. FairPoint has timely produced over 4,000 pages of documents in response to data requests. Throughout the process, as FairPoint has (1) had conversations with OCA that have clarified what some of the data requests sought, (2) become aware of new information, and (3) continued to add detail to some of the implementation aspects of the transaction, FairPoint, pursuant to its obligations under this Commission's rules, has issued supplemental responses and produced additional documents. The bulk of the information produced, however, has been in first-round response to data requests. In short, what has and will occur in these proceedings is no

different than what has occurred in the multitude of proceedings before this Commission, and is entirely consistent with this Commission's rules and procedures.

4. In this motion, OCA claims that a small handful of FairPoint's supplementations have created such a hardship to OCA that it cannot meet its testimony filing obligations and, on that basis, OCA seeks a stay - of unspecified duration - of these proceedings. OCA devotes the bulk of its motion, paragraphs 11, 12, 14 and 15, to a reiteration of an issue this Commission has long resolved against OCA, namely, the production of documents reflecting pre-deal negotiations, considerations and analyses, which FairPoint produced voluntarily (without conceding relevance) after this Commission declined to compel FairPoint to produce them.¹ OCA claims, in part, that these disclosures - of irrelevant information - came too late for OCA to be able to complete its testimony.

5. OCA also claims that developments in the scope of work of the contractor (Capgemini) responsible for systems integration, a refinement to FairPoint's broadband deployment plan and some amendments to some of the merger documents also prevent OCA from timely completing its testimony.

6. Throughout, OCA suggests, with little specificity, that FairPoint has somehow failed to discharge its discovery obligations. OCA makes these suggestions despite the fact that FairPoint has met every one of its disclosure deadlines, that FairPoint has produced information in every category in which OCA made a request

¹ In addition to producing them, FairPoint also facilitated a lengthy conference call with OCA and others (described in paragraph 15 of OCA's motion) to try to de-mystify the issues that arose out of these documents, all the while contesting their relevance. During that call, FairPoint provided an electronic copy of a spreadsheet, the paper version of which FairPoint produced to OCA on June 22 in response to a follow up data request. Again, while FairPoint does not concede the relevance of any of this material, OCA did have the spreadsheet in June.

except one, and that, with respect to the category in which FairPoint refused to produce information, this Commission found the request irrelevant and declined to compel FairPoint to produce the information.

7. What is more, OCA's motion lacks any supporting testimony, by affidavit, which thoroughly or specifically explains why OCA cannot timely file testimony.

Argument

8. While OCA expressly requests a stay, OCA's motion, if granted, will have the effect of (1) extending OCA's testimony deadline, and (2) postponing the hearings. OCA's motion, therefore, must be evaluated in the context of Commission rules governing extensions and postponements, namely, Puc 202.04 and 202.13.

I. OCA Demonstrates No Entitlement To An Extension Pursuant To Puc 202.04

9. OCA's motion will result in an extension of OCA's testimony filing deadline. Extensions are governed by Puc 202.04, which provides that the Commission shall grant a request for an extension of time if "(1) the party making the request has demonstrated that circumstances would cause undue hardship or inconvenience unless the request were granted, and (2) the extension would not unduly delay the proceeding or adversely affect the rights of any party." OCA claims undue hardship, but offers this Commission no specific bases for that claim, nor any explanation for its claim that FairPoint's supplementations have been anything other than in compliance with the letter and spirit of this Commission's rules. By contrast, OCA's motion, which will bring these proceedings to an indefinite halt, will have a significant and adverse effect on the rights of FairPoint and Verizon.

10. At the outset, OCA's motion is devoid of any specific reasons why any of FairPoint's disclosures has caused OCA undue hardship. OCA makes conclusory allegations about the importance of the information, but nowhere describes how or why OCA cannot timely file its testimony. This Commission does not generally allow extensions on testimony filing deadlines in the absence of a timely motion backed by testimony, under affidavit, "which thoroughly explains the reasons" why the deadline cannot be met. Re Public Service Company Of New Hampshire, 71 N.H. P.U.C. 578, 579 (1986). This Commission, for example, has rejected requests for blanket testimony extensions and when allowing extensions with respect to specific subjects, has required the late testimony to be accompanied by "testimony which specifically explains why said testimony could not be prepared" in a timely fashion. OCA, in other words, should have (1) specified the areas of testimony it believes it cannot prepare, and (2) supported this motion with a sworn affidavit thoroughly explaining the reasons why it cannot prepare the testimony. Instead, OCA points to some of FairPoint's supplementations, and, without specificity, seems to contend that the fact of supplementations alone justifies a stay of these proceedings. Coming just days before the testimony filing deadline, moreover, OCA's motion cannot be said to be timely.

11. The supplementations OCA describes do not merit an extension. With respect to the information disclosed in amendments to FairPoint's S-4, the bulk of OCA's complaints, this Commission has unequivocally held the information to be irrelevant. OCA cannot credibly seek an extension on the basis of a supplemental disclosure of irrelevant information.

12. The remainder of the supplemental disclosures about which OCA complains resides at the margins of the transaction and are among the supplementations contemplated by Commission rules. Puc 203.09(k) provides that a party who has responded to discovery “prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such response” had the information been available. Pared to its essence, Puc 203.09 not only places an obligation upon parties to supplement their discovery responses, but contemplates that supplementation, in some instances, may need to occur up to and after hearings, and up to the issuance of a final order.

13. The Commission’s rules, in other words, contemplate the reality that, as in this case, a party may need to continue to supplement discovery responses right up through hearing and beyond, because the landscape may continue to evolve and new information may come to light. That is precisely what has occurred in this case, and is not unusual in proceedings which are part of the parties’ larger efforts to implement a merger transaction.

14. OCA’s Capgemini concern, for example, is an incident of FairPoint’s need to replace the Verizon operations support systems, for which FairPoint has retained Capgemini. OCA claims FairPoint is paying Capgemini millions of dollars, but does not suggest how that event impedes OCA from timely filing its testimony. FairPoint’s refinement of its broadband deployment plan, which FairPoint has communicated to OCA is not a wholesale re-draft but a minor revision, is the natural product of the merger implementation process. Again, OCA offers no explanation as to why that development

impedes OCA's ability to timely file its testimony. Finally, OCA complains about FairPoint's recent disclosure of amendments to the merger agreement. The amendments, however, cannot remotely be characterized as affecting the central terms of the transaction and OCA does not attempt to argue that the substance of the amendments impedes OCA from timely filing its testimony.

15. To justify the extraordinary relief OCA seeks – a suspension of these proceedings of unspecified duration - OCA must provide this Commission with a thorough explanation, backed by testimony by affidavit. See PSNH, 71 N.H.P.U.C. at 579. OCA's motion presents, at best, a situation in which FairPoint is diligently working to provide information concerning the types of developments that normally occur in merger transactions, as this Commission's rules – Puc 203.09 – contemplate. That situation provides no basis for an adjustment to the procedural schedule, much less an open ended suspension of these proceedings.

II. OCA Demonstrates No Basis For A Postponement Of The Hearing Under Puc 202.13

16. OCA's motion would also result in a postponement of the hearing scheduled in these proceedings. PUC Rule 202.13(c) provides that “[t]he commission shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the hearing.”

17. On its face, OCA's motion fails to demonstrate that the postponement that will result from OCA's motion will promote the orderly and efficient conduct of the hearing. OCA neither proposes a revised schedule nor specifies the duration of the stay it seeks. Instead, OCA seeks an open-ended stay, which will, in effect, postpone these proceedings indefinitely. OCA proposes to wait for a week, until the settlement

conferences, before even attempting to negotiate a new schedule. A new schedule, in turn, will hinge on the schedules and availability of all of the parties and intervenors as well as on the availability of this Commission for seven hearing days, as contemplated in the current schedule. Rather than promote the orderly and efficient conduct of the hearing, OCA's motion, if granted, will inject uncertainty and unpredictability into these proceedings, and will bring the prospect for conduct of any hearing to a grinding halt.

WHEREFORE, FairPoint respectfully requests that the Commission:

- A. Deny OCA's Motion to Extend Procedural Schedule; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

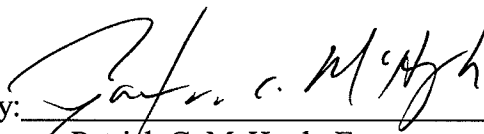
FAIRPOINT COMMUNICATIONS, INC.

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: July 18, 2007

By: _____



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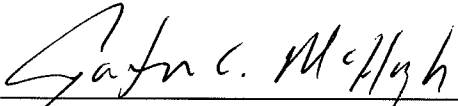
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CERTIFICATE OF SERVICE

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

July 18, 2007

By: 
Patrick C. McHugh, Esq.