

BEFORE THE NEW HAMPSHIRE 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 Fair Point Communications, Inc.

**OFFICE OF CONSUMER ADVOCATE'S
MOTION TO COMPEL VERIZON'S RESPONSES TO DATA REQUESTS**

The Office of Consumer Advocate (OCA) respectfully requests that the N.H. Public Utilities Commission (Commission) compel Verizon New England (Verizon NE), Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Co., and Verizon Select Services, Inc. (collectively, Verizon) to respond to certain data requests. In support, the OCA states the following facts and law.

I. Introduction

1. On January 31, 2007, Verizon and FairPoint Communications, Inc. (FairPoint) (together, Joint Petitioners) filed with the Commission a joint petition seeking approval of a series of transactions that, if consummated, would result in FairPoint (through subsidiaries) acquiring the current Verizon NE franchise to provide wireline telecommunications services in New Hampshire and owning the network Verizon NE currently uses to provide those services.
2. The Joint Petitioners request, *inter alia*,¹ a determination by the Commission that the proposed transactions are for the public good pursuant to RSA 374:30

¹ The Joint Petitioners also request that the appropriate subsidiary of FairPoint be designated an “eligible telecommunications carrier” pursuant to 47 U.S.C. §§ 254(e) and 214(e)(2) (concerning universal service assistance fund) for purposes of the affected service territory and that Verizon’s current designation be rescinded. The Joint Petitioners further request that the Commission authorize Verizon NE to discontinue

(governing transfers of utility franchises and assets), RSA 374:26 (governing authority to operate as a public utility), and, to the extent necessary, RSA 374:33 (governing transfers of 10 or more percent of ownership of a public utility).²

3. In determining whether the proposed transaction is in the public good, there is no “formulaic principle.”³ In doing so, the Commission “must exercise a measure of discretion.”⁴ The Commission’s resolution of opposing interests rests upon reasoned consideration of pertinent factors⁵ and must be made within the context of the current regulatory environment.⁶ The public interest

service as a public utility in New Hampshire pursuant to RSA 374:28 (governing authority to discontinue providing service as a public utility).

² See, e.g., Appeal of Verizon New England, Inc., 153 N.H. 50, 62 (2005) (finding that Verizon failed to request, pursuant to RSA 374:30, Commission approval to transfer Yellow Pages business) citing Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 483 (1984) (recognizing the “fact” that under RSA 374:30, all sales or transfers of regulated public utility property must be approved by the Commission after a finding that sales are for the public good); and Appeal of Legislative Utility Consumers’ Council, 120 N.H. 173, 174 (1980). See also, Appeal of Public Serv. Co. of N.H., 168 PUR 4th 596, 676 A2d 101 (1996) (concerning RSA 374:26); Re Merrimack County Telephone, 87 N.H. PUC 278, 281-282 (2002) (recognizing that RSA 374:33 requires the Commission to consider whether an acquisition “[is] in the public interest”, “provides net benefits to customers” and “is in the public good”); and Re Aquarion Water Company of New Hampshire 2006 WL 3326670 (N.H.P.U.C. Oct 31, 2006) (NO. 24,691, ID 149733) (reviewing transaction under public interest and public good standards of RSA 374:33 and RSA 374:30, respectively).

³ Re PSNH Proposed Restructuring Settlement, 85 N.H. PUC 125, 241 (2000) set aside on unrelated grounds, 89 N.H. PUC 294 (2004). See also, New England Tel. & Tel. Co. v. State, 95 N.H. 353, 364 (1949) (neither statutes nor the decisions of court require that the Commission use a particular formula or a combination of formulas in performing its statutory duty of determining whether rates are just and reasonable among themselves as well as in total); and New England Tel. & Tel. Co. v. State, 104 N.H. 229, 234 (1962) (Commission not compelled to use specific formula in setting rates).

⁴ Re Concord Electric Company, 87 N.H.P.U.C. 595, 606-607 (2002) (in the context of divestiture of generation plant or supply portfolios).

⁵ See Appeal of Conservation Law Foundation of New England, Inc. et al., 127 N.H. 606, 616 (1986), citing Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968) (reviewing court “obliged to study the record carefully in order ‘to assure [itself] that the [c]ommission has given reasoned consideration to each of the pertinent factors’ upon which the responsible derivation of policy and resolution of opposing interests must rest”).

⁶ See Re Public Serv. Co. of N.H., 89 N.H.P.U.C. 70, 96 (2004) (RSA 369-B:3-a analysis done within the context of “the evolution of the electric industry in New Hampshire from an environment where investments in generation were subject to traditional rate regulation - i.e., where all prudently incurred and reasonable expenses were recovered - to one in which market forces alone will determine cost recovery for investments in generation).

inquiry in this proceeding will require the Commission to examine a variety of circumstances and factors.⁷

4. On March 16, 2007, the Commission issued the procedural schedule.⁸
5. Pursuant to the procedural schedule, the OCA propounded data requests to Verizon on April 6, 2007. These data requests concerned Group I, Transactional and Financial Issues.⁹
6. On April 13, 2007, at or about 6:17 PM, Verizon filed its initial objections¹⁰ to certain of these data requests.¹¹
7. On April 16, 2007, the OCA received Verizon's "Preliminary Statement and General Objections" to "each and every data" request.¹²
8. In addition to ten "General Objections", Verizon specifically objected in whole or in part to the following Group I data requests: OCA 1-4, 1-5, 1-6, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, 1-22,

⁷ See, e.g., Re PSNH Proposed Restructuring Settlement, 85 N.H.P.U.C. at 241-242 (public interest determination requires Commission to strike a balance between the utility and its customers); Re New Hampshire Public Utilities Commission Statewide Electric Utility Restructuring Plan, 143 N.H. 233, 236 (1998) (public interest test as enunciated by the Restructuring Act: whether the level of stranded cost recovery is "equitable, appropriate, and balanced."); Re Public Service Co. of New Hampshire, 83 N.H.P.U.C. 278 (1998) (Commission's finding that renegotiated rates paid by PSNH to wood-fired generators were not in the public interest required balancing of savings achieved for ratepayers against the costs and risks shifted from PSNH and the wood-fired generators, in addition to consideration of the economic impact upon the state, the community impact, enhanced energy security by utilizing mixed energy sources, including indigenous and renewable electrical energy production, and the potential environmental and health-related impacts); Grafton Electric Company v. State, 77 N.H. 539, 542 (1915) ("public good" finding required by statute requiring Commission approval of utility's issuance of securities equated to "reasonable taking all interests into consideration."); Re Connecticut Light and Power Co., 84 N.H.P.U.C. 634 (1999) (finding that allowing the generating assets in question to be an eligible facility will be beneficial to consumers and is in the public interest because the assets in question are being transferred to an entity that will be engaged in the competitive electricity market in New England, and the development and growth of that market is in the interest of New Hampshire electric customers).

⁸ Order 24,733, March 16, 2007, pp. 6-7, and 20.

⁹ Staff Report of Technical Session held on February 27, 2007, dated March 5, 2007.

¹⁰ Responses to the data requests are not due until April 27 (if "unobjected) and May 4 (if compelled). See Order No. 24,733, at p. 6.

¹¹ Attachment A.

¹² Attachment B.

1-26, 1-27, 1-28, 1-31, 1-33, 1-34, 1-53, 1-54, 1-59, 1-60, 1-61, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-69, 1-70, 1-71, 1-72, 1-73, 1-75, 1-76, 1-77, 1-78, 1-86, 1-87, 1-88, 1-92, 1-93, 1-94, 1-95, 1-96, 1-97, 1-98, 1-99, 1-100, 1-101, 1-103, 1-104, 1-106, 1-107, 1-108, 1-109, 1-110, 1-113, 1-114, 1-123, 1-124, 1-127, 1-128, 1-129, 1-131 and 1-135.

9. Within the objections to the following data requests, however, Verizon indicated an intent to provide some response: 1-17, 1-19 through 1-21, 1-27, 1-31, 1-34, 1-53, 1-59 through 1-67, 1-69 through 1-73, 1-75 through 1-78, 1-86 through 1-88, 1-92 through 1-97, 1-99, 1-103, 1-104, 1-106, 1-108, 1-124, and 1-127 through 1-129. Verizon's responses are due after the deadline for filing motions to compel.
10. On April 18 and 19, the OCA and its consultants spoke with Verizon and FairPoint by telephone, in a good faith attempt to reach informal resolution of Verizon's and FairPoint's objections to the OCA's data requests. Although some differences were resolved, at least temporarily, disagreements remained at the conclusion of these discussions.
11. Consequently, pursuant to Puc 203.09, the OCA seeks to compel Verizon's responses to the following data requests: 1-4, 1-5, 1-6, 1-9 through 1-16, 1-18, 1-22, 1-26, 1-33, 1-54, 1-98, 1-100, 1-101, 1-107, 1-109, 1-110, 1-113, 1-114, and 1-135.
12. Additionally, the OCA reserves its rights to compel further response or propound additional data requests concerning the data requests to which Verizon's indicated, in its written objection or in subsequent discussion, its

intent to provide some response but which response the OCA will not receive until after the present deadline for filing motions to compel.

II. Standard of review – Discovery

13. The scope of discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. See Re Public Service of New Hampshire, 86 NH PUC 730, 731 (2001) (citation omitted); and Re Public Service Company of New Hampshire, 89 NH PUC 226, 229 (2004) (citation omitted).
14. The Commission will deny discovery requests only when it “can perceive of no circumstance in which the requested data will be relevant.” Re Public Service of New Hampshire, 86 NH PUC at 731-732; and Re Public Service Company of New Hampshire, 89 NH PUC at 229.
15. The underlying purpose of discovery in legal proceedings is to reach the truth. See Scontsas v. Citizens Insurance Co., 109 N.H. 386, 388 (1969), citing Hartford Accident &c. Co. v. Cutter, 108 N.H. 112, 113 (1967).
16. A party in a legal proceeding in New Hampshire is entitled to “be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponents and whether the evidence is in the possession of his opponent or someone else.” Scontsas v. Citizens Insurance Co., 109 N.H. at 388.
17. “If a party is surprised [at trial] by the introduction of evidence or an issue or the presentation of a witness previously unknown to him, the trier of fact is

likely to be deprived of having that party's side of the issue fully presented, and the system becomes less effective as a means of discovering the truth.” *Id.*

18. Likewise, the Commission has recognized the “liberality of the applicable discovery rule.” Re Public Service of New Hampshire, 86 NH PUC at 732.

III. OCA’s Responses to Verizon’s Objections

A. OCA’s General Responses to Verizon’s Objections

a. Verizon’s objections to the OCA’s data requests were not timely filed, and, as such, Verizon waived its objections.

19. The procedural schedule required Verizon to file objections to Group I data requests on or before April 13, 2007.¹³

20. The objections were due by or before 4:30 PM.¹⁴

21. Verizon filed its objections to the OCA’s Group I data requests at or about 6:17 PM on April 13, 2007,¹⁵ and on April 16, 2007.¹⁶

22. As such, the OCA may ask for a ruling that Verizon’s untimely objections were waived.¹⁷

23. Instead, in good faith and in the spirit of cooperation, the OCA reserves its rights to request such a ruling until the conclusion of the conference with the hearings examiner on April 27, 2007.

b. Verizon’s attempts to narrow the scope of the OCA’s inquiry should not be permitted.

24. It is difficult to imagine a transaction of greater moment and importance to New Hampshire consumers than the proposed transaction. An investment-

¹³ Order 24,733, March 16, 2007, pp. 6 and 20.

¹⁴ Puc 103.01 (j) sets the hours of the commission “from 8:00 a.m. to 4:30 p.m.”

¹⁵ Email from Ellen M. Cummings dated April 13, 2007. See Attachment A.

¹⁶ Email from Ellen M. Cummings dated April 16, 2007. See Attachment B.

¹⁷ RSA 541-A:37.

grad, financially-stable entity with approximately a century of providing service seeks to transfer its franchise, tangible assets, customers and operations to an entity that has no history of managing operations of this size and significance, an entity that may be characterized fairly as “high debt/high dividend” with “junk bond” or non-investment grade bond ratings.

25. In its objections, Verizon seeks through artificial obstacles and arbitrary choices to wall off from the Commission and parties any information pertaining to its analysis and evaluation of its transfer of assets beyond what is public through financial reporting obligations.
26. Contrary to Verizon’s assertions, information from Verizon’s own analyses and those of its paid advisors is crucial to the Commission’s and intervenors’ understanding of the genesis and full nature of the proposed transaction and its impact on the public and ratepayers. No clearer information exists than that which is formulated for senior management review and consideration – given fiduciary and management obligations.
27. Such information will enable the intervenors to make independent public interest assessments and recommendations and the Commission to make its public good determination based on the long-term financial and operational viability of the proposed transaction among other considerations.

B. OCA’s Responses to Verizon’s “General” Objections

28. Without waiving its objection to the untimely nature of Verizon’s “general” objections, the OCA responds to these as follows.

29. Verizon's response to the OCA's Group I data requests included a "Preliminary Statement and General Objections". Therein, Verizon asserts numerous general grounds for objection to and reservations of rights to object regarding "each and every" data request.

b. Verizon's "general" objections and reservations of rights, numbers 1, 2, 3, 4, 6, 7, and 8.

30. In its general objection number 1, in pertinent part, Verizon asserts attorney-client privilege or attorney work-product doctrine.

31. In its general objection number 2, in pertinent part, Verizon reserves its right to object to further discovery into the subject matter of any of its responses.

32. In its general objection number 3, in pertinent part, Verizon objects to the production of information and documents "equally available to the requester or that are not within Verizon's possession, custody or control."

33. In its general objection number 4, in pertinent part, Verizon objects to the production of information and documents "that Verizon has already made available to the requester in this or other dockets."

34. In its general objection number 6, in pertinent part, Verizon reserves the right to object "that any data requests, in the aggregate, are overly burdensome and exceed reasonable limits of discovery."

35. In its general objection number 7, in pertinent part, Verizon reserves "the right to object to definitions and instructions to the extent that there are differences in them among the requesters."

36. In its "general" objection 8, Verizon objects "to the extent that the instructions and/or definitions seek to impose burdens on Verizon that are greater than

those imposed by applicable portions of N.H. Admin. Rules, Puc 200, impose undue burdens on Verizon, and/or have the effect of making the data requests overbroad.”

37. Verizon’s “general” objections are extremely broad and vague, particularly as they actually apply to the OCA’s Group I data requests.
38. In most cases, the OCA may not know the impact of these “general” objections and reservations of rights unless and until Verizon responds to the data requests.
39. To the extent that Verizon asserts any of these general objections or rights in its responses, the Commission should require Verizon to do more than just make the assertion as a preamble to its question-specific objections.
40. Rather, to the extent that Verizon relies upon a “general” objection in a response, the Commission should require Verizon to specifically set forth the basis or bases for asserting the objection and to provide a log of withheld information and documents (i.e., privilege log).
41. Until such time as Verizon provides more specific information as to how each “general” objection applies to “each and every” data request, the OCA reserves its rights to challenge Verizon’s characterizations and refusals to respond on the basis of these “general” objections or reservations of rights.

c. Verizon’s “general” objection 5: Definition of “Verizon”.

42. In its “general” objection 5, in pertinent part, Verizon objects to producing information regarding non-party affiliates Verizon affiliate or operations of party-affiliates outside of New Hampshire.
43. The intent of this definition was to avoid the situation where responsive documents exist but Verizon NH does not possess these documents because of an internal decision of Verizon NH, its parent or subsidiary. For example, Verizon Communications, Inc. (Verizon Communications) or another Verizon entity may intentionally limit the information in Verizon NH’s control or custody as a way to avoid turning over information in these state regulatory proceedings. Given the structure and interrelationships of the Verizon companies as well as the structure of the proposed transaction, going up through and including Verizon Communications, the identify of the particular entity that possess and needs to produce the information responsive to relevant data requests should not control.

d. Verizon’s “general” objection 9: Proprietary information.

44. In its “general” objection 9, in pertinent part, Verizon objections to “all data requests to the extent they seek information that is proprietary, competitively sensitive and subject to confidential treatment in accordance with RSA 378:43.”
45. The OCA and its consultants are signatories to a Protective Agreement with Verizon and FairPoint in this matter. Therefore, there should be no issue limiting production of confidential information to OCA or its consultants.

46. To the extent that Verizon refuses to provide a response on this basis, the Commission should require Verizon to do more than just make the assertion that the request seeks proprietary information.

47. Rather, the Commission should require Verizon to specifically set forth the basis or bases for asserting this objection and to provide a log of withheld information and documents (i.e., privilege log).

e. Verizon's "general" objection 10: Pre-2003 data.

48. In "general" objection 10, in pertinent part, Verizon objects to providing data for periods before 2003.

49. Verizon's determination of 2003 as the cut-off for discovery in this proceeding is arbitrary.

50. The OCA has and will continue in good faith to limit the scope of its requests in time to the extent reasonable given the nature of the specific questions and the data it seeks. It will not, however, agree to the use of a single arbitrary date determined by Verizon as a cut-off for responses to all questions.

51. While the OCA has agreed to limit the scope of some of its Group I data requests to the period after 2003, the OCA does not agree that such a limit is appropriate in all circumstances and does not waive its right to compel the production of information and documents for periods before 2003.

52. In the following section, addressing Verizon's objections to specific data requests, where appropriate, the OCA provides justification for requesting pre-2003 data.

C. OCA’s Response to Verizon’s Objections to Specific Data Requests

53. Without waiving its objection to the untimely nature of Verizon’s question-specific objections, the OCA responds to these as follows.

a. Requests for information and documents related to proceedings in Maine and Vermont

54. Verizon objects on one or more grounds to two Group I data requests of the OCA, which are related to the petitions filed by Verizon and FairPoint with the Vermont Public Service Board and the Maine Public Utilities Commission: OCA 1-4 and OCA 1-53.

OCA 1-4

55. OCA 1-4 concerns the differences in the petitions filed by Verizon and FairPoint in New Hampshire, Maine and Vermont. Verizon, as a Joint Petitioner and author of these petitions is uniquely situated to know, without much effort, what and where differences exist in these documents. The information sought concerns requests and commitments made by the regions largest telecommunications provider in three parallel state proceedings. In making its decision about whether the proposed transaction is in the public good for New Hampshire, the Commission may receive and consider information about the circumstances surrounding parallel transactions in neighboring states, Maine and Vermont. Based upon discussion with Verizon, the OCA understands that the only differences concern the law or legal issues. Without waiving the right to request further information at a later time, the OCA would be satisfied if Verizon would provide a revised written response to that effect.

OCA 1-53

56. OCA 1-53 requests copies of interrogatories propounded upon Verizon¹⁸ by any party to the parallel proceedings in Maine and Vermont.
57. In its objection, Verizon indicates that it intends to provide some sort response.
58. Until such time as Verizon responds, the OCA reserves its rights to compel a further response or to propound further data requests seeking additional information.

b. Requests for information and documents related to Verizon's business.

59. Verizon objects on one or more grounds to the following Group I data requests of the OCA, which are related to Verizon's regular business operations or "business as usual": OCA 1-5, OCA 1-22, OCA 1-26, OCA 1-54, OCA 1-59, OCA 1-106, and OCA 1-107.

OCA 1-5

60. OCA 1-5 requests Verizon's business plan for years 2004 through 2008.
61. Based upon discussion with Verizon, the OCA understands that Verizon objects to providing "Verizon corporate" business plans but will provide Verizon NH business plans.
62. For clarity, the OCA seeks business plans that govern Verizon NH's operations and therefore seeks (a) Verizon NH business plans and (b) Verizon corporate business plans to the extent that they guide the investment, strategic, marketing and business decisions of Verizon NH. As an alternative to part

¹⁸ OCA 1-53 also requests copies of interrogatories submitted to FairPoint. This portion of the request was in error and, as such, is withdrawn.

(b), OCA seeks those portion(s) of Verizon corporate plans that discuss Verizon's local "telco" operations (such as, but not limited to, investment in plant (copper vs. fiber, copper retirement, depreciation policy, etc.); marketing strategies (such as Freedom packages, FiOS ventures), service quality analyses, and competitive analyses.

63. Based upon discussion with Verizon, the OCA understands that Verizon agreed to provide Verizon NH business plans only and on the condition that the OCA withdrew its request for Verizon corporate plans.
64. It is appropriate and necessary for Verizon to produce the information requested by the OCA, because it will show Verizon's level of investment in New Hampshire, past and planned, which, when compared with FairPoint's proposed investment plans and promises, will assist the Commission in making the public good determination.

OCA 1-22

65. OCA 1-22 requests documents related to Verizon's "current/most recently used 'hurdle rate' or 'hurdle rates' for investments in local exchange company projects and programs."
66. During discussion with Verizon, the OCA clarified that it sought information on "hurdle rate(s)" for investments, acquisitions, and capital projects pertaining to the local telecommunications business, *e.g.*, DSL.
67. In response to the same question, FairPoint agreed to provide a response with information dating back to 2003.

68. Information about Verizon's hurdle rate or rates is needed to ascertain what is the current financial threshold for Verizon's discretionary investment in New Hampshire for telecommunications projects that advance service quality or services such as DSL under the "business as usual" track, Improved service offerings and new services are pertinent to the public interest.
69. The "hurdle rate threshold" and projects rejected due to application of that threshold for Verizon should be compared to the same information for FairPoint to determine in the public interest whether investments in the public interest are more or less likely to occur in New Hampshire under FairPoint's stewardship given the financial constraints posed by use of hurdle rates or equivalent measures in its capital budgeting process.
70. The OCA is willing to limit its request to the period 2003 to the present.

OCA 1-26

71. OCA 1-26 requests documents "relating to the work performed by investment advisors for Verizon regarding disposal of ILEC operations."
72. Based upon discussion with Verizon, the OCA understands that Verizon objects to providing any information other than that which relates to the "deal as struck."
73. If full information for the full period of negotiating with FairPoint for sale/acquisition of the Verizon NE properties were included (from the inception of discussions in the summer of 2005, as indicated by the SEC Form S-4), OCA is willing to forego documents pertaining to work associated with other potential bidders.

74. OCA seeks all investment advisor analyses performed by or for Verizon regarding transfer of the Verizon NE properties to FairPoint.
75. These analyses will show the identification and analyses of particular issue areas over time, and will therefore provide basic information regarding issues and topics directly associated with the transaction.
76. Furthermore, it is OCA's understanding and belief that at one point in the process, discussions between Verizon and FairPoint terminated. OCA, other parties, and the Commission have a proper interest in knowing what issues caused termination at that point, and how those issues were resolved.

OCA 1-54

77. OCA 1-54 requests identification and description of "executive compensation for Verizon that is related specifically or contingent upon to (*sic.*) the pending transaction."
78. This information is relevant to the Commission's consideration of whether the proposed transaction is in the public good, because it will enable the Commission to consider the weight that should be afforded to management's decision to pursue the transaction.
79. It is important for the Commission to consider and understand the incentives for Verizon executives in having the proposed transaction approved as compared with those for Verizon's customers, in order to assess whether the venture is in customers' and the public's interest.

OCA 1-59

80. OCA 1-59 requests Verizon's "'business as usual' plans for New Hampshire, assuming the transaction does not occur."
81. In its objection, Verizon indicates that it intends to provide some response.
82. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-103 and 1-104

83. OCA 1-103 requests information about revenues and expenses associated with Verizon's directory assistance, and OCA 1-104 requests information about revenues and expenses associated with Verizon's directory listings' services.
84. Verizon's objections to these data requests indicate that it intends to "produce responsive information on its New Hampshire revenue from 2003 to the present to the extent available."
85. In discussion with Verizon, the OCA agreed to accept post-2003 information, data and documents.
86. In doing so, however, the OCA does not waive its rights to propound further data requests for data pre-2003.
87. Also, until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response concerning post-2003 information.

OCA 1-106

88. OCA 1-106 requests “documents prepared by or on behalf of Verizon regarding services offered in New Hampshire, Northern New England, corporate-wide.”
89. In its objection, Verizon indicates that it intends to provide some response.
90. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-107

91. OCA 1-107 requests documents “prepared by or on behalf of Verizon regarding the impact” of two FCC dockets¹⁹ on its business, operations, revenues, or profitability.
92. Information responsive to this request from both Verizon and FairPoint will enable the Commission, in making its public good determination, to assess public and non-public information concerning the financial exposure and range of risk of each company with regard to these two significant FCC dockets.
93. Information about the potential financial implications of these proceedings bears on the potential future financial health of FairPoint. To the extent that FairPoint’s financial exposure and range of risk differs significantly from Verizon’s, the public good may not result from the approval of the proposed transaction.
94. Without waiving its rights to compel a full response to the question as propounded, the OCA is willing to limit its request the period after 2003.

¹⁹ FCC CC Docket 01-92 (intercarrier compensation) and FCC CC Docket 05-25 (special access).

c. Requests for information and documents related to filings made by Verizon and/or FairPoint with public agencies.

95. Verizon objects on one or more grounds to the following Group I data requests of the OCA that relate to filings made by Verizon and/or FairPoint with public agencies such as the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), the Federal Department of Justice (DOJ), the Federal Communications Commission (FCC), and the Commission, itself: 1-6, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, and 1-31.

OCA 1-6

96. OCA 1-6 requests copies of materials that comprise the Hart/Scott/Rodino (HSR) filing associated with the proposed transaction, to the extent not previously provided.²⁰
97. The HSR filing provides information that is not contained in the Joint Applicant's petition or pre-filed testimony, including financial data, and competitive information (including product and geographic market information). Specifically, the HSR filing is to include "all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) ... for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets..." (Instructions to FTC Form C4, page V).
98. Such information is pertinent to the Commission's determination of public good because it may, among other things, show the extent to which Verizon

²⁰ Attach Verizon's response to Labor GI 1-13(h).

intends to compete with FairPoint on a post-transaction basis in New Hampshire, and Verizon's own estimations of competitive alternatives, impacts on competition, etc.

99. There are no more dispositive, relevant, concentrated or revealing documents than these, and the Commission should not permit Verizon to conceal these relevant documents from it.
100. Also, given the completeness of the document filing requirement under the cited instruction, it likely obviates the need for responses on other questions if Verizon provides this information. Other questions seeking information to which the response would be documents provided under the HSR filing can be answered by reference to that provision of HSR documents.
101. The OCA does not know what documents Verizon possesses that are responsive to most if not all of its requests, nor is it certain to which requests Verizon will actually be responsive. Therefore, the OCA is required to ask for documents "both ways"—through the HSR request, and other general requests for studies, surveys, analyses and reports prepared by or for directors or officers. The necessity of this approach can be seen in reference to the adamancy with which Verizon opposes production of the HSR documents. These documents are clearly a complete collection of documents relevant to the proposed transaction because they are generated due to the proposed transaction and contain information which will be relevant to the parties' analyses and the Commission's deliberations on matters pertaining to competitiveness of markets and the public interest.

102. These documents are not burdensome to produce since Verizon has already collected and produced the documents elsewhere. Any confidentiality considerations associated with production of the documents are addressed by the fact that OCA is signatory to a protective agreement in this matter.

OCA 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, and 1-15

103. OCA 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, and 1-15 relate to the specific documents discussed in the SEC Form S-4 filed by FairPoint on April 3, 2007.

104. The S-4 includes information provided to the Securities and Exchange Commission about the proposed transaction under review by the Commission. The documents referenced therein include, among other things, information provided by Verizon to FairPoint and to FairPoint's financial advisors regarding the proposed transaction, management presentations, and presentations to the Joint Applicant's Boards of Directors.

105. A comparison of representations made by Verizon to the financial community, FairPoint and the Boards of Directors with those made to regulators is an appropriate and useful undertaking by the Commission in making its public good determination. To the extent that representations to the financial community differ from those made to regulators, the Commission should investigate and assure itself that these differences are not to the detriment of the public good.

106. The publicly filed S-4 and the Joint Applicants' testimony are general and lack the detail and data included in the documents that Verizon provided to FairPoint. Absent access to such information, the Commission and the parties

will be unduly constrained in its ability to assess independently the merits and implications of the transaction.

OCA 1-31

107. OCA 1-31 requests copies of Verizon's "unredacted annual reports to the Commission for the years ending 2001 to date."²¹
108. In its objection, Verizon indicates that it intends to provide some response.
109. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

d. Requests for information and documents related to Verizon's internal processing of a transfer of its ILEC and other operations in New Hampshire, including the proposed transaction.

110. Verizon objects on one or more grounds to the OCA's Group I data requests concerning a transfer of its ILEC and other operations in New Hampshire: OCA 1-16, OCA 1-17, OCA 1-18, OCA 1-19, OCA 1-20, OCA 1-27, OCA 1-28, and OCA 1-113.

OCA 1-16

111. OCA 1-16 requests Verizon to identify the advisors and consultants it engaged regarding the proposed transaction and to provide specific details concerning the engagements, including the dates, scope and compensation.
112. The Joint Applicants have represented that they will not seek to recover transaction costs associated with the proposed transaction.

²¹ OCA 1-31 also requests copies of FairPoint's un-redacted annual reports. This portion of the request was in error and, as such, is withdrawn.

113. In making its public good determination, the Commission should consider specific evidence as to whether or not the costs associated with financial advisors and consultants are appropriately segregated and not recovered.
114. Furthermore, the scope of outside entities' review may assist the Commission in assessing those aspects of the transaction that merit particular consideration and review. .
115. Also, it is also important for the OCA to know the advisors and consultants retained by the company to be able to access the materials they have provided to the company that are relevant to the analysis required in this case.

OCA 1-17

116. OCA 1-17 requests Verizon to identify Verizon employees who have or are participating in the proposed transaction and to provide specific details regarding their involvement, including dates and scope.
117. In its objection, Verizon indicates that it intends to provide some response.
118. For the sake of limiting the scope of this question, the OCA agrees to accept the requested information, specifically, about Verizon corporate, Verizon affiliate and Verizon New Hampshire management and officers.
119. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-18

120. OCA 1-18 requests materials reviewed by advisors and consultants engaged by Verizon.

121. Based upon discussion with Verizon, the OCA understands that Verizon objects to providing any information other than that which relates to the “deal as struck.”
122. The documents sought by the OCA will reveal the basis for the recommendations of financial advisors and consultants concerning the proposed transaction.
123. In making its public good determination, the Commission should not only consider the representations of the Joint Applicants, that its advisors favorably recommend the proposed transaction, but should also consider the factual underpinnings of those recommendations, particularly as provided by the Joint Applicants.

OCA 1-19

124. OCA 1-19 requests copies of “documents that will be used for purposes of transition to support the proposed transaction, to the extent not already provided”.
125. In its objection, Verizon indicates that it intends to provide some response.
126. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-20

127. OCA 1-20 requests copies of “documents regarding any and all financial analyses concerning the transaction.”
128. In its objection, Verizon indicates that it intends to provide some response.

129. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-27

130. OCA 1-27 requests copies of presentations to Verizon's Board of Directors or any of its committees, working groups, concerning the sale of Verizon land lines in Maine, New Hampshire and Vermont.
131. In its objection, Verizon indicates that it intends to provide some response.
132. Until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-113 and 1-144

133. OCA 1-113 and 1-114 request various information regarding Verizon's efforts to transfer of its landlines and franchise in New Hampshire. These questions seek such information as other potential buyers and other potential deals.
134. Based upon discussion with Verizon, the OCA understands that Verizon objects to providing any information other than that which relates to the "deal as struck" with FairPoint and filed with the Commission.
135. The OCA is also willing to limit the required scope of response to 1-113 f. iii and iv., to pertain only to FairPoint and no other bidders.
136. If a full response to OCA 1-113 f. iii and iv. is provided, the OCA is willing to no longer pursue response to OCA 1-114.
137. It is necessary for the OCA and the Commission to know facts as sought here about the proposed transfer from its inception.

138. It is OCA's understanding and belief that at one point in the process, discussions between Verizon and FairPoint terminated. OCA, other parties, and the Commission have a proper interest to know in the public interest facts about this termination, the issues that caused termination at that point, how those issues were resolved, and what compromises were made by whom.
139. Finally, OCA and the Commission may find relevant information in the facts and circumstances surrounding whether FairPoint was in essence the only serious suitor for these properties. Such information speaks to whether the proposed transaction is one of true competitive merit or, in the alternative, one of necessity and convenience.

OCA 1-127

140. OCA 1-127 requests Verizon's data book and documents referenced in the data book.
141. In its objection, Verizon indicates that it intends to provide some response.
142. Until such time as Verizon responds to these data requests, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-128 and 1-129

143. OCA 1-128 requests due diligence reports and OCA 1-129 requests solvency analyses or opinions pertaining to the proposed transaction.
144. In its objections, Verizon indicates that it intends to provide some response.

145. Until such time as Verizon responds to these data requests, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

OCA 1-35

146. OCA 1-135 requests information about any data room made available to potential buyers and a copy of the index of information contained in the data room.

147. Based on discussion with Verizon, the OCA understands that Verizon agrees to provide an index of categories of information in the data room.

148. Without waiving its right to compel a full response to this data request or its right to propound further data requests concerning Verizon's data room, the OCA agrees to accept the index offered by Verizon.

e. Requests for information and documents related to the competitive landscape in New Hampshire

149. The OCA propounded a number of data requests for information and documents related to the competitive landscape in New Hampshire: 1-33, 1-60, 1-61, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-69, 1-70, 1-71, 1-72, 1-73, 1-75, 1-76, 1-77, 1-78, 1-86, 1-87, 1-88, 1-92, and 1-93.

OCA 1-33

150. OCA 1-33 requests information about whole sale purchases, disaggregated by CLEC.

151. Based upon discussion with Verizon, the OCA understands that Verizon will produce or permit the OCA to use information that Verizon filed on February

27, 2007, contained within its January 2007 Reports under the Performance Assurance Plan (PAP).

152. Without waiving its right to compel a full response to this data request or its right to propound further data requests concerning wholesale purchases from Verizon, the OCA agrees to accept the information offered by Verizon.

OCA 1-60

153. OCA 1-60, in pertinent part, requests data, disaggregated by wire center, concerning various wholesale and retail products of Verizon.
154. Verizon's objection indicates that it will produce "responsive information on its New Hampshire wire centers from 2003 to the present to the extent available."
155. During discussion with Verizon, the OCA agreed to accept disaggregated information for the period after 2003 but requested statewide totals for the period 1997 through 2003.
156. This statewide information bears on the level of regulation necessary for rates, terms and conditions and quality of basic local exchange service.
157. It also goes to the assessment of the scope and magnitude of wholesale operations in New Hampshire, which speaks to competition and competitive options for consumers as well as to the magnitude and complexity of the operations for which FairPoint will be undertaking. Because competition likely varies significantly in different parts of the state, geographically disaggregated data is necessary

158. In agreeing to accept disaggregated data post-2003, the OCA does not waive its rights to propound further data requests for data pre-2003.

OCA 1-61 through 1-67, 1-69 through 1-73, 1-75 through 1-87 1-86 through 1-88, and 1-92 and 1-93

159. OCA 1-61 through 1-67, 1-69 through 1-73, 1-75 through 1-78, 1-86 through 88, 1-92 and 1-93 request information, data and documents concerning migration of Verizon customers to and from CLECs (OCA 1-61 through 1-64) and from one Verizon service to another Verizon service (OCA 1-65); disconnections of Verizon customers (OCA 1-66, 1-67 and 1-93); Verizon's revenues (OCA 1-69 through 1-73); residential line subscriptions (OCA 1-75 and 1-78); residential line penetration rates (OCA 1-86 through 1-88); customer surveys of customers' demand for telecommunications services in New Hampshire (OCA 1-92).

160. Verizon's objections to these data requests indicate that it intends to "produce responsive information on its New Hampshire revenue from 2003 to the present to the extent available."

161. In discussion with Verizon, the OCA agreed to accept post-2003 information, data and documents.

162. In doing so, however, the OCA does not waive its rights to propound further data requests for data pre-2003.

163. Also, until such time as Verizon responds, the OCA reserves its rights to compel further response or to propound further data requests seeking further response concerning post-2003 information.

f. Verizon Yellow Pages, Directory Assistance and Directory Listings Services

164. The OCA propounded a number of data requests for information and documents related to Verizon's Yellow Pages: OCA 1-94 through 1-101, 1-108 through 1-110.

OCA 1-94 through 1-101 and 1-108 through 1-110

165. OCA 1-94 through 1-101, 1-108 through 1-110 seek information, data and documents related to Verizon's yellow pages.

166. In its objections to 1-94 through 1-97, 1-99 and 1-108, Verizon indicates that it intends to provide some response.

167. Until such time as Verizon responds to these data requests, the OCA reserves its rights to compel further response or to propound further data requests seeking further response.

168. The information requested by OCA 1-98, 1-100, 1-101, 1-109 and 1-110, which Verizon objected to in full, is critical to the tasks of quantifying the remedy required by Appeal of Verizon New England, Inc. d/b/a Verizon New Hampshire, 153 N.H. 50 (2005) (*i.e.*, the imputation of *at least* \$2.3 million earned by Verizon's unregulated affiliate) and ensuring that the relief granted to ratepayers as a result of this case is not forfeited by the approval of the proposed transaction.

IV. Compliance with Puc 203.09(i)(4)

169. Puc 203.09(i)(4) requires a motion to compel responses to data requests to "certify that the movant has made a good faith effort to resolve the dispute informally."

170. OCA counsel and witnesses, in good faith, spoke by telephone with Verizon's counsel and witnesses on April 19, 2007, in order to informally resolve their discovery dispute.

171. The OCA and Verizon were unable to resolve the dispute despite this effort.

Wherefore, the OCA respectfully requests the Commission to provide the following relief:

- A. Compel Verizon's responses to the following OCA Group I data requests: 1-4, 1-5, 1-6, 1-9 through 1-16, 1-18, 1-22, 1-26, 1-33, 1-54, 1-98, 1-100, 1-101, 1-107, 1-109, 1-110, 1-113, 1-114, and 1-135; and
- B. Grant such other relief as justice requires.

Respectfully submitted,



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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.

April 20, 2007



Meredith A. Hatfield