

THE STATE OF NEW HAMPSHIRE

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June 8, 2007

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

NHPUC JUN08'07 PM 4:10

Re: DT 07-011 Verizon New England/FairPoint Communications

Dear Ms. Howland:

Enclosed for filing with the Commission please find an original and seven copies of the Office of Consumer Advocate's (OCA's) SECOND Motion to Compel Verizon Response to Group I Discovery.

Copies of the within Motion have been served on all parties in this docket electronically.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Hatfield".

Meredith A. Hatfield
Consumer Advocate

cc: service list



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 SECOND MOTION TO COMPEL VERIZON'S RESPONSES TO DATA REQUESTS

The Office of Consumer Advocate (OCA) respectfully requests that the New Hampshire 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service assistance fund) for purposes of the affected service territory and that Verizon's current designation be rescinded.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 service as a public utility in New Hampshire pursuant to RSA 374:28 (governing authority to discontinue providing service as a public utility).

(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

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 objections certain of these data requests.
7. On April 16, 2007, the OCA received Verizon's "Preliminary Statement and General Objections" to "each and every data" request.
8. In addition to ten "General Objections,"¹⁰ 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, 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-

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 The OCA hereby adopts and incorporates by reference its responses to Verizon's general objections, as stated in the OCA's Motion to Compel Verizon's Responses to Data Requests, dated April 20, 2007, pp. 6-11.

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 18th and 19th the OCA and its consultants spoke with Verizon by telephone, in a good faith attempt to reach informal resolution of Verizon'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 sought to compel Verizon's responses to the following data requests on April 20, 2007: 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. In lieu of a hearing on the OCA's April 20th motion to compel, the OCA and Verizon reached an agreement on the remaining disputed data requests (i.e., OCA 1-4, 1-5, 1-6, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-18, 1-22, 1-26, 1-28, 1-54, 1-101, 1-107, 1-109, 1-110, 1-113, and 1-114).

13. On May 15th the OCA received materials in response to OCA 1-5, 1-6, 1-16, 1-22, 1-54, 1-60, 1-69, 1-70, 1-71, 1-72, 1-101, 1-107, 1-109 and 1-110, as well as materials related to Verizon's Hart-Scott-Rodino ("HSR") filing, made with the Securities and Exchange Commission, which was in part intended to be responsive to some of these requests.
14. The procedural schedule in this docket provided for the filing today of second motions to compel responses to disputed Group I data requests.¹¹
15. Between May 31st and June 8th the OCA, in good faith, provided Verizon written summaries of its concerns about these data requests and engaged in discussions with Verizon in an attempt to avoid the filing of a motion to compel. *See* Puc 203.09(i)(4).
16. Despite these discussions, disputes remain.
17. As a result, the OCA seeks to compel OCA 1-5, and we reserve our rights to compel responses to OCA 1-11, 1-113, and 1-114, pending the outcome of our ongoing discussions.

II. Standard of review – Discovery

18. 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).

¹¹ This motion was originally due on June 5, 2007. By letter on that date, the OCA requested, on behalf of the OCA and Verizon, an extension of that deadline until June 8, 2007.

19. 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.
20. 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 Co. v. Cutter, 108 N.H. 112, 113 (1967).
21. 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.
22. “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.
23. 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 Response to Verizon's Objections to Specific Data Requests

1. Requests for information and documents related to Verizon's plans for business as usual.

24. Verizon objects on one or more grounds to the following Group I data request of the OCA, which are related to Verizon's regular business operations or "business as usual:" OCA 1-5.¹²

OCA 1-5

25. OCA 1-5 requests Verizon's business plan for years 2004 through 2008.
26. Based upon discussions with Verizon, the company agreed to provide a response regarding business plans that relate to New Hampshire.
27. The OCA made clear in its first motion on this issue that it seeks business plans that govern Verizon NH's operations relevant to this proceeding, and therefore seeks (a) Verizon NH business plans and (b) Verizon corporate business plans including formal network plans that guide the investment, strategic, marketing and business decisions of Verizon NH with respect to the assets at issue in the proposed transaction. As an alternative to part (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.

¹² See Attachment A.

28. Based upon discussions with Verizon, the OCA understood that Verizon agreed to provide business plans related to Verizon NH only, to the extent that they exist, and on the condition that the OCA withdrew its request for Verizon corporate plans.
29. After these ongoing discussions, on May 15, 2007 Verizon provided the following response to this question: “Business plans responsive to the request that pertain to New Hampshire operations do not exist and thus are not available.”
30. This responsive is non-responsive.
31. Based upon information and belief, the OCA understands that Verizon has some type of business plans, perhaps not prepared by state but instead by line of business or some other internal organization, that direct its activities in various areas of the business. One would expect that this would be true for most any company, and especially for the one that is the size and scale of Verizon and which serves as a public utility subject to certain regulatory requirements.
32. The OCA has made a good faith effort to narrow the scope of this request, to no avail. We now seek Verizon’s complete business plans so that the OCA can independently assess such plans as they relate to this proceeding and the impact of it upon New Hampshire residential ratepayers. The business plan of Verizon NH’s corporate parent, should it be the only business plan available, is directly relevant to an assessment of the merits of the proposed transaction for New Hampshire consumers because it likely discusses the overarching business priorities of Verizon NH’s corporate parent, which, in the absence of

a New Hampshire-specific business plan (or plans), directs operations and investment in the state.

33. The OCA seeks this information in order to analyze whether the proposal by FairPoint for future operations of Verizon's network provides a public benefit as compared to Verizon's proposal for future operation of the system. We would expect that such a plan (or plans) would address, among other things, Verizon's corporate-level business priorities, strategies, and plans, which in turn bears upon the priorities of its local operations. This information, when compared with FairPoint's proposed investment plans and commitments, will assist the Commission in making a determination of whether the proposed transaction meets the public benefit standard required in the case.

34. Verizon seems to believe that it is in the position of determining what discovery is relevant in this proceeding. That is a determination for the Commission to make, not Verizon. The information requested is central to the OCA's determination of whether the proposed transaction is in the interest of New Hampshire ratepayers, and such, we believe that Verizon should provide the requested information.

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

35. Verizon objects on one or more grounds to the following Group I data request of the OCA that relate to filings made by Verizon and/or FairPoint with public agencies such as the Securities and Exchange Commission (SEC): 1-11.

OCA 1-11

36. Specifically, OCA 1-11 seeks information discussed in the S-4 filed with the SEC. which states, “on April 20, 2006, FairPoint submitted a revised proposal based on its review of additional information provided by Verizon to FairPoint.” The OCA requested in 1-11 that Verizon provide all information that the company provided to FairPoint originally, and as part of the additional information that this excerpt references.
37. The HSR materials received by the OCA on May 15th were not responsive to 1-11.
38. The OCA understands that Verizon has agreed to provide materials responsive to OCA 1-11 in the Maine proceeding. The OCA would be willing to accept those materials as responsive to this question.
39. The OCA has communicated this offer to Verizon, but due to time constraints had not received a response as of the time of this filing. As a result, the OCA reserves its rights to compel this response pending the outcome of these discussions with Verizon.
 3. **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.**
40. 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 1-113 and 114.

OCA 1-113 and 1-114

41. 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.
42. 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.
43. It is necessary for the OCA and the Commission to know facts as sought here about the proposed transfer from its inception.
44. 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.
45. 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.
46. The OCA understands that Verizon has agreed to provide materials responsive to OCA 1-113 in the Maine proceeding. The OCA would be willing to accept those materials as responsive to both questions.
47. The OCA has communicated this offer to Verizon, but due to time constraints had not received a response as of the time of this filing. As a result, the OCA

reserves its rights to compel this response pending the outcome of these discussions with Verizon.

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

48. 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.”
49. OCA counsel and witnesses, in good faith, communicated via email and by telephone with Verizon’s counsel during the first round on April 19, 2007, and again during the weeks of May 29th and June 4th in order to informally resolve their discovery dispute.
50. 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 request: 1-5; 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.

June 8, 2007



Meredith A. Hatfield

**Verizon New England Inc.
d/b/a Verizon New Hampshire**

State of New Hampshire

Docket No. DT 07-011

Respondent: Stephen E. Smith
Title: Vice President – Business
Development

REQUEST: Office of the Consumer Advocate, Group I, Set #1
Transactional and Financial Issues

DATED: April 6, 2007

ITEM: OCA GI 1-5 Provide a complete copy of Verizon's business plan for the years 2004, 2005, 2006, 2007, and 2008.

**SUPPLEMENTAL
REPLY:** Objection. The request for copies of Verizon's business plans is overbroad and calls for information that would be unduly burdensome to produce because it seeks information on Verizon companies that are not parties to the proceeding and operations other than in New Hampshire. The request also seeks information that is not reasonably calculated to lead to the discovery of admissible evidence regarding whether the transaction with FairPoint in New Hampshire meets the no net harm standard and will be for the public good.

Subject to and without waiving its objection, Verizon responds as follows:

Business plans responsive to the request that pertain to New Hampshire operations do not exist and thus are not available