

THE STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Meredith A. Hatfield



TDD Access: Relay NH
1-800-735-2964
Tel. (603) 271-1172
FAX No. 271-1177
Website:
www.oca.nh.gov

ASSISTANT CONSUMER ADVOCATE
Kenneth E. Traum

OFFICE OF THE CONSUMER ADVOCATE
21 S. FRUIT ST., SUITE 18
CONCORD, NEW HAMPSHIRE 03301-2429

May 30, 2007

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



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) Third Motion to Compel FairPoint Response to Group I Discovery.

Pursuant to the Puc rules copies of the Motions have been served on all parties in this docket electronically.

Sincerely,

Meredith A. Hatfield
Consumer Advocate

cc: service list (via email)

NHPUC MAY30:07 PM 4:08



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 THIRD MOTION TO COMPEL FAIRPOINT'S RESPONSES TO GROUP I, SET 1, DATA REQUESTS

The Office of Consumer Advocate (OCA) respectfully requests that the N.H. Public Utilities Commission (Commission) compel FairPoint Communications, Inc. (FairPoint) to respond to certain Group I, set 1, data requests. In support, the OCA states the following facts and law:

I. Introduction

1. On January 31, 2007, Verizon New England (Verizon NE), Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Co., and Verizon Select Services, Inc. (collectively, Verizon) and 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 As such, the public interest inquiry in this proceeding will require the Commission to examine a

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).

variety of circumstances and factors, including information available to and utilized by the company during its consideration of the acquisition and merger.⁷

4. The OCA, as a statutory party to the docket, is charged with ensuring that the interests of residential ratepayers are represented in the docket,⁸ and to do so, must undertake intensive analyses of how those interests will be impacted by the proposed acquisition and merger. In order for these analyses to occur, a wide range of information must be available and considered. Some of the most important information to be considered is that utilized to inform senior management and board members during the acquisition process. This information has the greatest assurance of being complete and free of “spin” due to fiduciary, legal and business responsibilities of senior management.
5. On March 16, 2007, the Commission issued the procedural schedule.⁹

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 RSA 363:28.

⁹ Order 24,733, March 16, 2007, pp. 6-7, and 20.

6. Pursuant to the procedural schedule, the OCA propounded data requests to FairPoint on April 6, 2007. These data requests concerned Group I, Transactional and Financial Issues.¹⁰
7. On April 13, 2007, FairPoint filed an objection to the OCA's data requests that included those at issue in this motion.
8. On April 20, 2007, the OCA filed a Motion to Compel FairPoint's Responses to Data Requests, including 1-14, 1-17, 1-23, 1-26, to reserve the OCA's rights to compel responses to these questions pending the review of responses that would be received after the date of that motion.
9. These four data requests related to FairPoint's "S-4" Filing with the Securities and Exchange Commission (SEC).
10. The resolution of the dispute over these requests included an agreement that the OCA reserve its rights to compel responses to these data requests pending its review of the company's Hart-Scott-Rodino "HSR" materials to determine if they would be responsive to these data requests.¹¹
11. On May 4, 2007, the OCA received FairPoint's response to OCA 1-8, the HSR documents.
12. Upon review of these responses, the OCA determined that the HSR materials are not responsive to the above-referenced four data requests.
13. During the week of May 21, 2007, the OCA provided FairPoint written summaries of its concerns about these data requests and, in good faith,

¹⁰ Staff Report of Technical Session held on February 27, 2007, dated March 5, 2007.

¹¹ OCA's Motion to Compel FairPoint's Responses to Data Requests, dated April 20, 2007, pp. 4-5.

engaged in discussions with FairPoint in an attempt to avoid the filing of a motion to compel. Puc 203.09(i)(4).

14. During those discussions, the OCA and FairPoint determined that additional time would be useful to help resolve the disputes.
15. On May 25, 2007, the OCA filed a request for an extension of the filing of this motion until May 30, 2007. FairPoint assented to the request.
16. Despite engaging in these ongoing exchanges, differences between the OCA and FairPoint still exist.
17. Consequently, the OCA seeks to compel complete responses of FairPoint to the following data requests: OCA GI 1-14, 1-17, 1-23, and 1-26.¹²

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).
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.

¹² Attachment A.

20. The underlying purpose of discovery in legal proceedings is to reach the truth. See Scotsas v. Citizens Insurance Co., 109 N.H. 386, 388 (1969), citing Hartford Accident &c. 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.” Scotsas 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. FairPoint’s incomplete, incorrect and non-responsive responses

A. OCA 1-14

24. OCA 1-14 requested information discussed in FairPoint’s S-4 filing with the SEC.
25. Specifically, the S-4 states: “During the summer of 2005, FairPoint asked Lehman Brothers, Inc., referred to herein as Lehman Brothers, to convey to Verizon FairPoint’s interest in acquiring rural access lines. That led to an initial meeting on September 30, 2005 between management of FairPoint and Verizon. Based on Verizon’s initial reaction, FairPoint’s management, at

FairPoint's December 14, 2005 board of directors meeting, requested approval to pursue further discussions with Verizon, which approval was granted. In December 2005, FairPoint signed a non-disclosure agreement with Verizon."

26. The OCA requested that the company provide any and all documents prepared for and/or used during the meeting of September 30, 2005.
27. FairPoint objected to this request, but agreed to provide some response,¹³ and as discussed above, the OCA agreed to reserve its rights to compel a response pending its review of the HSR materials.
28. Upon review of the HSR materials, the OCA discovered that those documents do not provide any information related to documents provided by FairPoint or Verizon to Lehman Brothers in connection with its role as an advisor, or any documents utilized in the referenced meeting.
29. As a result, the OCA seeks to compel these documents.
30. These documents are likely to lead to the discovery of admissible evidence. However, without having seen the documents it is not possible to state specifically what that evidence will be.
31. Lehman Brothers would have provided substantial financial analysis of the proposed transaction.
32. Based upon information and belief, these documents will likely address a number of matters pertinent to the public interest considerations associated with this proposed acquisition and merger, including the extent to which FairPoint's proposed debt associated with the acquisition increased or

¹³ The OCA hereby adopts and incorporates by reference its responses to FairPoint's general objections, as stated in the OCA's Motion to Compel FairPoint's Responses to Data Requests, dated April 20, 2007, pp. 6-9.

decreased during the course of its negotiations with Verizon. This information is important in the Commission's public interest determination because of FairPoint's characteristic as a "high debt/high dividend" RLEC. The higher the debt leverage and dividend, the greater the likelihood of a "financially distressed" utility in the future.

33. In addition, these documents will allow the parties and the Commission to trace or compare model results to the actual accounting and financial data to illustrate gaps if any between financial model results presented by the Leach testimony and actual accounting data. Such information is pertinent to the Commission's public interest determination because it is necessary to test and assess the accuracy of the financial projections upon which the asserted financial viability rests, and to illuminate any assumptions and going forward changes in revenues or expenditures assumed by the company.
34. FairPoint has spent substantial sums for investment advisory services from Lehman Brothers, Morgan Stanley, and Deutsche Bank. These firms were retained to perform due diligence, produce financial projections and analyses, and address financial strategies. Clearly these investment advisors would have produced substantive documents, presentations and reports to FairPoint from time to time in the acquisition evaluation process addressing or evaluating the crucial topic of projected cash flow.
35. This data request seeks some of the most important information that must be analyzed in this case in making a determination of whether the proposed transaction is in the public interest. The information that was utilized to inform senior management and board members during the acquisition process

can provide the clearest view of the main issues in the transaction, and the potential impact on the company and its ratepayers. This information also has the greatest assurance of being complete and free of “spin” due to fiduciary, legal and business responsibilities of senior management.

36. FairPoint’s continued refusal to produce documents such as these in this proceeding raises significant concerns about selective production of documents and information, and impedes the ability of the parties and the Commission to undertake the extensive review necessary in this case.
 37. These types of documents have been provided in other states’ proceedings without the necessity of a motion to compel. *See, e.g.*, Application for Approval of the Transfer of Control of Alltel Kentucky, Inc. and Kentucky Alltel, Inc., case no. 2005-00534, before the Kentucky Public Service Commission.
- B. OCA 1-17**
38. OCA 1-17 request information related to analysis performed by Morgan Stanley.
 39. Specifically, the S-4 states: “On May 19, 2006, FairPoint engaged Morgan Stanley & Co. Incorporated, referred to herein as Morgan Stanley, as a financial advisor in connection with a proposed transaction with Verizon.”
 40. The OCA requested that FairPoint provide any and all documents provided by FairPoint or Verizon to Morgan Stanley in connection with its role as a financial advisor and describe fully the scope of Morgan Stanley Brother’s engagement.

41. FairPoint objected to this request, but agreed to provide some response,¹⁴ and as discussed above, the OCA agreed to reserve its rights to compel a response pending its review of the HSR materials.
42. Upon review of the HSR materials, the OCA discovered that those documents do not provide any information related to documents provided by FairPoint or Verizon to Morgan Stanley in connection with its role as an advisor.
43. As a result, the OCA seeks to compel these documents.
44. These documents are likely to lead to the discovery of admissible evidence. However, without having seen the documents it is not possible to state specifically what that evidence will be.
45. Morgan Stanley would have provided substantial financial analysis of the proposed transaction that is relevant to the analysis required in this case.
46. The OCA hereby incorporates by reference paragraphs 32 through 37, *infra*.

C. OCA 1-23

47. OCA 1-23 requested information related to FairPoint's "S-4" filing with the SEC.
48. Specifically, the request sought information related to a January 2, 2007 meeting, during which FairPoint's board of directors met telephonically with FairPoint's management team, legal counsel and financial advisors to discuss the status of the proposed transaction. According to the S-4, "Representatives of Deutsche Bank Securities Inc., referred to herein as Deutsche Bank, whose engagement as financial advisor to FairPoint was confirmed on January 4,

¹⁴ The OCA hereby adopts and incorporates by reference its responses to FairPoint's general objections, as stated in the OCA's Motion to Compel FairPoint's Responses to Data Requests, dated April 20, 2007, pp. 6-9.

2007, participated in the meeting and addressed the scope of the work completed by them in connection with the evaluation of the proposed transaction and indicated that further due diligence in certain areas was required.”

49. FairPoint objected to this request, but agreed to provide some response.¹⁵
50. The OCA reserved its rights to seek to compel a further response following the receipt of FairPoint’s response, and agreed to review the HSR materials to determine if they would be responsive to this request.
51. Upon review of the HSR materials, the OCA discovered that those documents do not provide any information related to documents provided by FairPoint or Verizon to Deutsche Bank in connection with its role as an advisor.
52. As a result, the OCA seeks to compel these documents.
53. These documents are likely to lead to the discovery of admissible evidence. However, without having seen the documents it is not possible to state specifically what that evidence will be.
54. FairPoint and Verizon would have provided to Deutsche Bank substantial financial and operational information of the company to facilitate performance of Deutsche Bank’s duties in the due diligence, financial projections and analysis, and financial strategies areas.
55. The OCA hereby incorporates by reference paragraphs 32 through 37, *infra*.

¹⁵ The OCA hereby adopts and incorporates by reference its responses to FairPoint’s general objections, as stated in the OCA’s Motion to Compel FairPoint’s Responses to Data Requests, dated April 20, 2007, pp. 6-9.

D. OCA 1-26

56. OCA 1-26 requested copies of cash flow analyses showing post-transaction projected cash flows for FairPoint.
57. Specifically, the S-4 states: “Discounted Cash Flow Analysis of Spinco. Deutsche Bank performed a discounted cash flow analysis for Spinco on a stand-alone basis based on financial estimates for 2007 through 2012 provided by FairPoint. FairPoint management’s financial estimates for 2007 through 2012 assumed that FairPoint will make certain capital investments related to the Spinco business after the execution of the merger agreement. Deutsche Bank calculated the discounted cash flow values for Spinco as the sum of the net present values of (i) the estimated future cash flow that Spinco would generate for the years 2007 through 2012, plus (ii) the value of Spinco at the end of that period.”
58. The OCA requested that FairPoint provide any and all information, assumptions and documents upon which Deutsche Bank relied in order to conduct its discounted cash flow analysis, including the rationale for any and all assumptions. The OCA requested that the data provided be in a machine-readable Excel format.
59. FairPoint objected to this request, but agreed to provide some response.
60. The OCA reserved its rights to seek to compel a further response following the receipt of FairPoint’s response, and agreed to review the HSR materials to determine if they would be responsive to this request.¹⁶

¹⁶ OCA’s Motion to Compel FairPoint’s Responses to Data Requests, dated April 20, 2007, pp. 4-5.


61. Upon review of the HSR materials, the OCA discovered that those documents do not provide any information or documents regarding Deutsche Bank's cash flow analysis in connection with its role as an advisor.
62. As a result, the OCA seeks to compel these documents.
63. These documents are likely to lead to the discovery of admissible evidence. However, without having seen the documents it is not possible to state specifically what that evidence will be.
64. FairPoint and Verizon would have provided to Deutsche Bank substantial financial and operational information of the company to facilitate performance of Deutsche Bank's duties in the due diligence, financial projections and cash flow analysis, and financial strategies areas.
65. The OCA hereby incorporates by reference paragraphs 32 through 37, *infra*.

IV. Relief requested

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

- A. Compel FairPoint's responses to OCA Group I data requests: OCA GI 1-14, 1-17, 1-23, and 1-26; and
- B. Grant such other relief as justice requires.

Respectfully submitted,



Meredith A. Hatfield
Rorie E. P. Hollenberg
Office of Consumer Advocate
21 S. Fruit St., Ste. 18
Concord, N.H. 03301
(603) 271-1172
meredith.hatfield@puc.nh.gov
rorie.hollenberg@puc.nh.gov

CERTIFICATE OF SERVICE

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

May 30, 2007



Meredith A. Hatfield

FairPoint Communications, Inc.
State of New Hampshire
Docket No. DT 07-011

Respondent: Walter E. Leach, Jr.
Title: Executive Vice President,
Corporate Development

REQUEST: Office of Consumer Advocate
Group I, Set 1

DATED: April 5, 2007

ITEM: OCA 1-14 The S-4 states: "During the summer of 2005, FairPoint asked Lehman Brothers, Inc., referred to herein as Lehman Brothers, to convey to Verizon FairPoint's interest in acquiring rural access lines. That led to an initial meeting on September 30, 2005 between management of FairPoint and Verizon. Based on Verizon's initial reaction, FairPoint's management, at FairPoint's December 14, 2005 board of directors meeting, requested approval to pursue further discussions with Verizon, which approval was granted. In December 2005, FairPoint signed a non-disclosure agreement with Verizon." Provide any and all documents prepared for and/or using during the meeting of September 30, 2005.

REPLY: **OBJECTION:** FairPoint objects to Data Request 1-14 to the extent it seeks confidential or proprietary information of a third party which FairPoint is not authorized to disclose. In addition, FairPoint objects to the extent Data Request 1-14 to the extent it seeks information protected from disclosure by the attorney client privilege and the work-product doctrine. [Objection served April 13, 2007.]

Without waiving its objection, FairPoint responds as follows:

There were no documents prepared for such meeting by either party.

Please see attached documents produced under seal and pursuant to RSA 378:43 and the Protective Agreement in this Docket as CFPNH0141 – CFPNH0189.

FairPoint Communications, Inc.
State of New Hampshire
Docket No. DT 07-011

Respondent: Walter E. Leach, Jr.
Title: Executive Vice President,
Corporate Development

REQUEST: Office of Consumer Advocate
Group I, Set 1

DATED: April 5, 2007

ITEM: OCA 1-17 The S-4 states: "On May 19, 2006, FairPoint engaged Morgan Stanley & Co. Incorporated, referred to herein as Morgan Stanley, as a financial advisor in connection with a proposed transaction with Verizon." Provide any and all documents provided by FairPoint or Verizon to Lehman Brothers in connection with its role as a financial advisor and describe fully the scope of Lehman Brother's engagement.

REPLY: **OBJECTION:** FairPoint objects to Data Request 1-17 to the extent it seeks confidential or proprietary information of a third party which FairPoint is not authorized to disclose. In addition, FairPoint objects to Data Request 1-17 on the grounds that it is overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection FairPoint will provide information concerning the scope of Lehman Brother's engagement. [Objection served April 13, 2007.]

Morgan Stanley was engaged to provide financial advisory services related to the proposed transaction, including, but not limited to, assistance with due diligence, financial projections, and financing strategies.

FairPoint Communications, Inc.
State of New Hampshire
Docket No. DT 07-011

Respondent: Walter E. Leach, Jr.
Title: Executive Vice President,
Corporate Development

REQUEST: Office of Consumer Advocate
Group I, Set 1

DATED: April 5, 2007

ITEM: OCA 1-23 The S-4 states: "On January 2, 2007, FairPoint's board of directors met telephonically with FairPoint's management team, legal counsel and financial advisors to discuss the status of the proposed transaction. . . . Representatives of Deutsche Bank Securities Inc., referred to herein as Deutsche Bank, whose engagement as financial advisor to FairPoint was confirmed on January 4, 2007, participated in the meeting and addressed the scope of the work completed by them in connection with the evaluation of the proposed transaction and indicated that further due diligence in certain areas was required." Provide any and all documents provided by FairPoint or Verizon to Deutsche Bank in connection with its role as a financial advisor and describe fully the scope of Deutsche Bank's engagement.

REPLY: **OBJECTION:** FairPoint objects to Data Request 1-23 to the extent it seeks confidential or proprietary information of a third party which FairPoint is not authorized to disclose. In addition, FairPoint objects to Data Request 1-23 on the grounds that it is overly broad, unduly burdensome and seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, FairPoint will provide information concerning the scope of Deutsche Bank's engagement. [Objection served April 13, 2007.]

Deutsche Bank was engaged to provide financial advisory services related to the proposed transaction, including, but not limited to, assistance with due diligence, financial projections, and financing strategies.

FairPoint Communications, Inc.
State of New Hampshire
Docket No. DT 07-011

Respondent:
Title:

REQUEST: Office of Consumer Advocate
Group I, Set 1

DATED: April 5, 2007

ITEM: OCA 1-26 The S-4 states: "Discounted Cash Flow Analysis of Spinco. Deutsche Bank performed a discounted cash flow analysis for Spinco on a stand-alone basis based on financial estimates for 2007 through 2012 provided by FairPoint. FairPoint management's financial estimates for 2007 through 2012 assumed that FairPoint will make certain capital investments related to the Spinco business after the execution of the merger agreement. Deutsche Bank calculated the discounted cash flow values for Spinco as the sum of the net present values of (i) the estimated future cash flow that Spinco would generate for the years 2007 through 2012, plus (ii) the value of Spinco at the end of that period." Provide any and all information, assumptions and documents upon which Deutsche Bank relied in order to conduct its discounted cash flow analysis, including the rationale for any and all assumptions. For data provided, please provide in a machine-readable Excel format.

REPLY: **OBJECTION:** FairPoint objects to Data Request 1-26 to the extent it seeks confidential or proprietary information of a third party which FairPoint is not authorized to disclose. In addition, FairPoint objects to the extent Data Request 1-26 is overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence and would require FairPoint to create evidence that does not currently exist. [Objection served April 13, 2007.]

The materials being requested in OCA 1-26 are subject to a Motion to Compel that is scheduled to be heard by the New Hampshire Public Utilities Commission on April 27, 2007.