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April 25, 2007

Via Hand Delivery

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
Walker Building
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429



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

Dear Ms. Howland:

Enclosed for filing with the Commission are an original and six copies of Verizon New England Inc., et al.'s Objection to Motion to Compel Answers to Data Requests of the Office of Consumer Advocate. An electronic copy of the filing will be provided to the PUC librarian.

Thank you for your assistance with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven V. Camerino".

Steven V. Camerino

SVC/SBK:ksm
Enclosures

cc: Service List (by electronic mail)
Librarian (by electronic mail)
Meredith Hatfield, Esq., Consumer Advocate (by electronic mail and hand delivery)

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, Verizon Select Services Inc. and FairPoint Communications, Inc.

Docket No. DT 07-011

**VERIZON NEW ENGLAND INC. ET AL.'S OBJECTION TO OFFICE OF CONSUMER
ADVOCATE'S MOTION TO COMPEL**

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services Inc. ("Verizon") submit this objection to the Office of Consumer Advocate's ("OCA") Motion to Compel Responses to Data Requests. In support hereof, Verizon states as follows:

1. In its April 20, 2007 Motion, OCA seeks to compel Verizon's response to 19 data requests based on specific arguments in response to Verizon's objections. In addition, OCA reserved the right to argue that Verizon waived all rights to object to any of the requests based on the time that the Verizon objections were filed.¹ In addition, OCA seeks to preserve the right to move to compel on 43 other data requests, all of which Verizon has indicated it will answer.² For purposes of efficiency, Verizon has consolidated the data requests that are the subject of OCA's Motion to Compel into categories, and responded in turn.

¹To the extent the objections were filed after 4:30 p.m., the alleged lack of timeliness was immaterial and resulted from an administrative error. Verizon will address this issue in more detail if and when the OCA asserts it.

² For purposes of this objection, Verizon is not responding to the OCA's motion as it relates to 43 individual data requests identified by the OCA to which Verizon will be responding. Verizon will be responding to such requests in good faith by the April 25 deadline and is hopeful that such responses will obviate any further motions to compel by the OCA.

Pre-Merger Agreement Documents

2. OCA has moved to compel responses to a series of data requests, all of which seek information that was generated prior to the execution of the January 15, 2007 Merger Agreement between Verizon and FairPoint.³ Nothing is more telling about the overreaching nature of OCA's requests than OCA request 1-113, a copy of which is attached as Exhibit A. This request seeks extensive information about Verizon's proposed transfer of its ILEC and other operations, such as the date Verizon began investigating the potential transfer of its New England properties, the documents used to notify potentially interested parties of the potential transfer, and among other things, the identity of every bidder, and the date, amount and structure of the bid.

3. Verizon objected to OCA 1-113 along with the nine other requests seeking pre-Merger Agreement documents and information on the basis that they seek information not relevant (or likely to lead to the admissibility of relevant evidence) in this proceeding. OCA's arguments as to the relevance of these documents could not be less compelling. For example, OCA claims that "[t]hese 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." OCA Motion at 16. This is hardly a sufficient legal justification to bolster OCA's claim that its request for extensive pre-Merger Agreement

³ These requests include: DR 1-9 (documents relating to a September 30, 2005 meeting between management of FairPoint and Verizon to discuss interest in a transaction); DR 1-10 (documents provided by Verizon to Lehman Brothers as financial advisor to the transaction); DR 1-11 (information provided by Verizon to FairPoint prior to FairPoint's submission of a revised acquisition proposal); DR 1-12 (documents provided to Morgan Stanley as an advisor to the transaction); DR 1-13 (copy of management presentation made by Verizon to FairPoint on June 26, 2006); DR 1-14 (documents relating to meetings on December 11 and 13, 2006 between FairPoint and Verizon); DR 1-15 (documents provided by Verizon to Deutsche Bank as an advisor to the transaction); DR 1-26 (documents relating to work performed by Verizon's investment advisors regarding disposal of ILEC operations since Verizon began considering potential sale); DR 1-113 (information relating to Verizon's decision to investigate prospects to sell its ILEC operations), and; DR 1-114 (information on all "credible expressions" of interest in purchase of Verizon's access line properties in the past five years).

documents is reasonably calculated to lead to the discovery of information that is relevant to whether the deal ultimately reached between FairPoint and Verizon should be approved.

4. OCA later asserts that the documents may shed light on why the merger talks between FairPoint and Verizon purportedly failed at one point, *id.*, and that the documents might allow the Commission to undertake a comparison of the representations made by Verizon and FairPoint to the financial community and their boards versus those made in the Petition before the Commission. *Id.* at 21. OCA further invites the Commission to “investigate and assure itself that these differences are not to the detriment of the public good.” *Id.*

5. In prior cases, the Commission has made clear that it will not allow discovery of information generated during the pre-contract negotiation process. In *City of Nashua*, Order No. 24,654 (August 7, 2006), *aff'd* by Order No. 24,671 (September 22, 2006), the Commission prohibited Pennichuck Water Works from discovering information regarding projections by the City of Nashua of costs it might incur should it enter into contracts with private water system operators. In that case, the Commission held that:

We do not perceive circumstances in which information about the negotiations that led to the contracts themselves would become part of the record in this proceeding. In arguing to the contrary, PWW notes that information about the negotiations could shed light on how the negotiating parties viewed the likely costs of the matters covered by the contract [sic]. This is true but does not change the outcome. Essentially the same situation arose in connection with Order No. 24,310, where the party seeking the discovery was concerned about the extent to which the utility had been forthcoming about project costs for which it would seek recovery in rates. *There, as here, the facts that drive the Commission's ultimate decision relate to the costs themselves, as fixed by the contracts themselves, regardless of how the contracting parties may have regarded them during contract negotiations and regardless of whether the assumptions that drove such negotiations are at variance with public statements.*

Order 24,654 at 3-4 (emphasis added); *see also Re: PSNH*, 89 NH PUC 226, 229(2004)(denying motion to compel production of documents associated with negotiation of wood yard contracts

because the Commission could not conceive of any circumstances in which such information would be admissible).

6. This is exactly what OCA seeks in this case – documents leading up to the execution of the Merger Agreement in order to compare it against the Petition so that the Commission can “assure itself that these differences are not to the detriment of the public good.” OCA Motion at 21. The Commission should reject this request based on the reasoning it adopted in *Re: PSNH*, Order No. 24,310 and the *City of Nashua*. For the same reasons, the Commission should deny OCA’s request for information regarding potential buyers and potential deals, none of which ever came to fruition, documents presented to or considered by the Verizon and FairPoint boards prior to the signing of the Merger Agreement, and information relating to the fits and starts of the negotiation process. What is relevant to this proceeding is not the universe of potential transaction partners, the state of mind (or information presented to) the two companies in deciding whether to enter into the transaction with FairPoint, or the timing or nature of the negotiations, but rather, the terms of the transaction to which the parties agreed and are now before the Commission. For these reasons, the Commission should deny OCA’s Motion.

Identity of Non-Testifying Experts and Related Documents

7. In request 1-16, OCA seeks the identity of all advisors and consultants engaged by Verizon regarding the proposed transaction and the scope of their work, and in 1-18, any and all materials reviewed by them. Verizon asserted relevance objections to both. OCA argues unconvincingly that this information is relevant because it “may assist the Commission in assessing those aspects of the transaction that merit particular consideration and review” and because it may allow the Commission to determine whether Verizon has appropriately

segregated the costs of the advisors' services from recovery from ratepayers. OCA Motion at 23. OCA's explanation does not meet its legal burden of demonstrating the relevance of such information to this proceeding.

8. In addition, OCA's request is nothing more than an attempt to get at the opinions of non-testifying witnesses. Information and opinions on non-testifying experts are only discoverable upon a showing of exceptional circumstances under which it is impractical for the party seeking the discovery to obtain facts or opinions on the same subject by other means. *See Johnston v. Lynch*, 133 N.H. 79, 95-96 (1990) (citing Superior Court Rule 35(b)(2) that information known and opinions held by a non-testifying expert are not subject to discovery absent a showing of exceptional circumstances). *See also Wheeler v. School Admin. Unit 21*, 130 N.H. 666, 669-70(1988) (plaintiff failed to demonstrate exceptional circumstances allowing for discovery from consulting expert based on allegation that consulting expert was the only New Hampshire expert qualified in law and psychiatry); *Willett v. General Electric Company*, 113 N.H. 358, 359-60(1973) (expert reports, which are subject to protection under work product doctrine, are discoverable in very limited circumstances such as where relevant facts are unobtainable by other means or obtainable under such conditions of hardship as would unfairly prejudice the party seeking discovery).

9. In this case, OCA has not, and cannot, demonstrate any exceptional circumstances that would support its access to the identity of Verizon's advisors and consultants engaged regarding the proposed transaction, and the information reviewed by them. OCA has hired its own experts for this case, and to the extent it requires any expert analysis of the transaction, it can rely upon them, or it can conduct discovery and cross examination of the witnesses testifying in support of the Petition. What it should not be permitted to do is go on a fishing expedition in

the hope that it will be able to obtain information provided to Verizon or FairPoint by experts they retained to assist in the transaction.

Hart-Scott-Rodino Filing

10. Like the Labor Intervenors, OCA also asks that the Commission order Verizon to produce its filing under the Hart-Scott-Rodino filing (see request 1-6). OCA asserts this information is relevant because it “may...show the extent to which Verizon intends to compete with FairPoint on a post-transaction basis...and Verizon’s own estimations of competitive alternatives, impacts on competition, etc.” OCA Motion at 19-20.

11. For the same reasons set forth in Verizon’s objection to the Labor Intervenors’ motion to compel (which Verizon incorporates by reference), the OCA’s request should fail. The purpose of the HSR filing is to allow the Federal Trade Commission and the Department of Justice to make a determination regarding whether the proposed merger will cause competitive harm. In essence, OCA asks this Commission to engage in a similar analysis to determine the potential competitive effects of the transaction. But this was the very reason why the *Lieberman* court refused to grant access to HSR information to state attorneys general – it did not want states interfering with the FTC and DOJ’s determination of the competitive effects, if any, of proposed transactions. *See Lieberman et al. v. Federal Trade Commission*, 771 F.2d 32, 39 (2nd Cir. 1985)(“We doubt if Congress would have intended to have the staffs of fifty state attorneys general sitting as oversight committees reacting to Commission or Justice Department decisions whether to block large-scale mergers of national or international significance.”). The Commission should decline OCA’s invitation to engage in this analysis and uphold Verizon’s objection to producing the HSR filing for the reasons set forth in this objection and the objection to the Labor Intervenors’ Motion to Compel.

Comparison to Vermont and Maine Petitions

12. Unbelievably, OCA requests that the Commission move to compel Verizon to conduct a line by line comparison of the petitions it filed in Maine, Vermont and New Hampshire regarding the FairPoint transaction (*see* OCA 1-4). OCA claims that Verizon is "uniquely situated to know, without much effort, what and where differences exist in these documents." OCA Motion at 12. Essentially, OCA would have Verizon do its bidding, conducting a comparison that OCA is equally capable of performing. Verizon objected on this basis, as well as on the burdensome nature of OCA's request, and the questionable nature of its relevance. Having Verizon conduct such a comparison, particularly given the sheer volume of discovery requests that go to the *substance* of the transaction, is hardly an appropriate use of Verizon's time. Moreover, to the extent there are any differences between the petitions, it is difficult to conceive of how such differences would be relevant to the Commission's consideration of the Petition pending in New Hampshire. The Commission should deny OCA's request to compel this response.

Hurdle Rate Documents and Verizon Business Plans

13. In request 1-22, OCA seeks information for the past seven years on hurdle rates for every Verizon⁴ company in every state in which capital projects were considered but rejected. Verizon objected on the basis that the request was overbroad to the extent it sought information on hurdle rates in other states, and more fundamentally, that information on Verizon's hurdle

⁴ The definitions accompanying OCA's data requests provide that Verizon means "Verizon Communications, Inc. ("Verizon Communications"), Bell Atlantic Entertainment & Information Services Group, GTE Corp., NYNEX Corp., Verizon Internet Services, Inc., Bell Atlantic Communications, Inc., Verizon Select Services, Inc., NYNEX Long Distance Co., Verizon New England, Inc. ("Verizon New England"), Enhanced Communications of Northern New England, Inc. ("Newco"), Northern New England Telephone Operations, Inc. ("Telco"), Northern New England Spinco, Inc. ("Spinco"), and all other subsidiaries, if any, and affiliates, if any, of these named entities."

rates is not relevant to consideration of the proposed merger. OCA claims that the production of this information is necessary so that it can assess FairPoint's capital budgeting process.

14. There is no legitimate reason why Verizon's hurdle rates across the country have any relevance to this proceeding in New Hampshire. Capital investments necessarily vary from state to state based on the infrastructure and markets particular to each state. Even assuming that OCA limited its request to hurdle rates for New Hampshire, this information still is not necessary for OCA to assess the sufficiency of FairPoint's projected level of capital investment. For example, OCA can question FairPoint and Verizon witnesses on the details of FairPoint's capital plans to determine whether they meet the public good. In addition, OCA can utilize the services of its two expert witnesses to scrutinize FairPoint's claims.

15. At the most base level, OCA's request for Verizon's hurdle rates appears to be nothing more than an effort to obtain information so that it can attempt to critique Verizon's operations, should the merger not be consummated and Verizon were to continue to provide service in New Hampshire. The Commission should reject OCA's request based on the lack of relevance of the information and the OCA's ability to achieve its stated goal through other means.

16. In a similar request, OCA 1-5 seeks Verizon's business plans that "guide the investment, strategic, marketing and business decisions of Verizon NH," OCA Motion at 13, regardless of whether generated by Verizon NH or any other Verizon entity. OCA claims that this information is necessary to allow it to compare FairPoint's proposed investment plan. Instead of reviewing FairPoint's plan and determining its adequacy—which is properly the focus of this proceeding—OCA seeks to put Verizon's business plans on trial. The Commission should deny OCA's request for this information given its ability to conduct the appropriate

analysis based on other sources of information and the lack of relevance of the information sought.

FCC Inter-carrier Compensation and Special Access Documents

17. OCA 1-107 requests documents prepared by Verizon regarding the impact of the FCC dockets on inter-carrier compensation and special access on Verizon's business, operations, revenues or profitability. Verizon objected on the grounds of relevance and the over breadth of the request given that it calls for information on Verizon companies that are not parties to this proceeding and on operations outside of New Hampshire. In its Motion, OCA acknowledges that the true focus of its request is to gain information on the implications of these FCC proceedings on the potential future financial health of FairPoint. OCA Motion at 18. Once again, the only reason OCA seeks the Verizon information is to conduct a comparison between the two companies, instead of scrutinizing information about FairPoint. The central focus of this proceeding is whether FairPoint, not Verizon, has the technical, managerial and financial capability to operate the Verizon assets in New Hampshire. This necessarily requires analysis of FairPoint's financial condition and external factors bearing on it. It does not, however, require such an analysis of Verizon. The Commission should deny request 1-107 because it will not lead to the admission of relevant information in this proceeding.

Executive Compensation

18. In its request 1-54, OCA seeks information on any executive compensation provided to Verizon related specifically or contingent upon the proposed transaction. OCA argues that this information is relevant because it will "enable the Commission to consider the weight that should be afforded to management's decision to pursue the transaction." OCA Motion at 16. Once again, OCA's focus is misdirected. In the *City of Nashua* case, the

Commission ruled that the reasons motivating parties to enter into a transaction are not in and of themselves relevant to a determination of whether the transaction itself is permissible. Order 24,654 at 3-4. Similarly, in the case now before the Commission, what is relevant is the deal itself, and the impact of the terms of the deal on customers, not compensation paid to any particular individuals. OCA's claim for this information should be rejected because it is irrelevant to the matters to be determined by the Commission.

Revenues and Expenses of Directory Publishing Company

19. OCA data requests 1-109 and 1-110 seek revenues and expenses by subaccount for the Verizon publishing agreement for the years 2005 and 2006. Verizon has objected to producing this information, because it is not relevant to this proceeding. That is the case because the revenues and expenses associated with that publishing agreement are generated by a company that is not subject to the Commission's jurisdiction, is no longer owned or controlled by Verizon, and has no probative value in this investigation. Any attempt to compel the production of such information would exceed the Commission's authority. To the extent that OCA seeks information regarding the remedy imposed as a result of Order 24,345 and its impact on this case, Verizon will be providing a response to Staff 1-34 addressing this issue.

20. For these reasons, the Commission should deny OCA's Motion to Compel in its entirety.

WHEREFORE, Verizon respectfully requests that the Commission:

- A. Deny OCA's Motion to Compel; and
- B. Grant such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

VERIZON NEW ENGLAND INC.
BELL ATLANTIC COMMUNICATIONS, INC.
NYNEX LONG DISTANCE COMPANY
VERIZON SELECT SERVICES INC.

By their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: April 25, 2007

By:

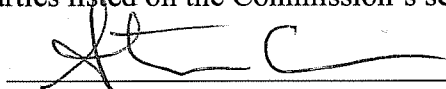


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Certificate of Service

I hereby certify that on April 25, 2007, a copy of this Objection to OCA's Motion to Compel has been forwarded to the parties listed on the Commission's service list in this docket.



Steven V. Camerino

EXHIBIT A

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

State of New Hampshire

Docket No. DT 07-011

**Respondent:
Title:**

REQUEST: Office of the Consumer Advocate, Group I, Set #1
Transactional and Financial Issues
DATED: April 6, 2007

ITEM: OCA GI
1-113
Please state or provide the following information regarding Verizon's proposed transfer of its ILEC and other operations in New Hampshire, Vermont and Maine (hereafter "the New England properties"). Dates can be approximated to month and year if necessary:

- a. State the date at which Verizon decided to investigate prospects for transfer of the New England properties;
- b. Provide the document used by Verizon to notify potentially interested parties of the potential for transfer of the New England properties;
- c. State the names of each party that was so notified;
- d. State the date at which Verizon began providing information to parties potentially interested in acquiring the New England properties;
- e. State the names of each party to which Verizon provided information on the New England properties;
- f. For each party which submitted a serious bid for the New England properties, state:
 - i. The name of the party;
 - ii. The date of the bid and any subsequent bids;
 - iii. The amount and structure of the bid and any subsequent bids; and,
 - iv. Any conditions attached to the bid or subsequent bids.
- g. State the date at which each bidder withdrew or decided not to pursue its bid;
- h. State the date or dates at which FairPoint withdrew from negotiations for acquisition of the New England properties, and the reason(s) for such withdrawal.

REPLY: Objection. The request for information regarding Verizon's proposed transfer of its ILEC and other operations in New Hampshire, Vermont

REPLY:
(Cont'd)

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and Maine seeks information not reasonably calculated to lead to the discovery of admissible evidence regarding whether the transaction with FairPoint in New Hampshire that is currently before the Public Utilities Commission meets the no net harm standard and will be for the public good.

VZ #