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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

FairPoint Communications, Inc., C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Company	:	
	:	**04-0299**
Joint Application for approval of the Recapitalization of FairPoint Communications, Inc. pursuant to Sections 7-203 and 7-204 and for other relief.	:	

ORDER

By the Commission:

On March 25, 2004, FairPoint Communications, Inc. ("FairPoint" or "Company"), C-R Telephone Company ("C-R"), The El Paso Telephone Company ("El Paso"), Odin Telephone Exchange, Inc. ("Odin") and Yates City Telephone Company ("Yates City") (collectively, "Joint Applicants" or "Illinois operating companies") filed a verified Joint Application for approval of the recapitalization of FairPoint by means of several concurrent transactions, including, but not limited to, an Initial Public Offering ("IPO"), entering into a new credit facility and a stand-alone issuance of Senior Subordinated Notes. The Joint Application sought approval of the recapitalization transactions, including the IPO, as a transfer of control in accordance with Section 7-203 of The Illinois Public Utilities Act ("Act") and reorganization in accordance with Section 7-204 of the Act and for all other appropriate relief.

Pursuant to proper notice, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on April 8, April 21 and May 14, 2004. Appearances were entered by counsel on behalf of the Joint Applicants and Staff. Walter E. Leach, Jr., Senior Vice President and Chief Financial Officer of FairPoint, testified and presented evidence in support of the Joint Application. Mark A. Hanson, Janis Freetly, Theresa Ebrey and Samuel S. McClerren of the Staff testified and presented evidence that included certain conditions that Staff recommends be imposed in connection with any Commission Order granting the approvals sought by the Joint Application. Mr. Leach, in Rebuttal Testimony submitted on behalf of the Joint Applicants, agreed to and accepted the imposition of each of the conditions recommended by Staff. On May 14, 2004 Staff witness McClerren submitted supplemental direct testimony. At the conclusion of the hearing on May 14, 2004, the record was marked "Heard and Taken."

I. APPLICANTS' POSITION

Mr. Leach testified that FairPoint is a telecommunications holding company, who ultimately controls the operating subsidiaries providing communications services in rural communities, including local voice, long distance, data, Internet and broadband offerings, to approximately 264,300 access line equivalents in 17 states as of December 31, 2003. The Company was originally incorporated in New York in 1991 and reincorporated in Delaware in 1993 as MJD Communications, Inc. In April, 2000, the Company changed its corporate name to FairPoint.

Mr. Leach testified that FairPoint is the ultimate parent of C-R, El Paso, Odin and Yates City, each of which is an incumbent local exchange carrier providing service in Illinois subject to this Commission's jurisdiction and regulation. C-R, El Paso, Odin and Yates City provide service to approximately 960; 2,040; 3,791; and 560 access lines, respectively. Collectively, the four Illinois incumbent local exchange carriers provide service to approximately 7,351 access lines or approximately 2.8% of FairPoint's total access lines.

Mr. Leach testified that while FairPoint is presently a privately owned company, it is going to recapitalize by taking the Company public through an IPO. Concurrent with the IPO, FairPoint will be entering into a new credit facility and making a stand-alone issuance of Senior Subordinated Notes. Following the completion of the IPO, the majority of the ownership interests of FairPoint will be held by public investors with no new investor owning more than 10% at the time of the offering. Since the change of ownership resulting from the IPO could be interpreted to constitute a change in the right to own, operate, manage or control the four Illinois operating companies requiring approval of the Commission pursuant to Section 7-203 of the Act and may constitute a reorganization requiring approval pursuant to Section 7-204 of the Act, the Joint Application was filed with the Commission.

Mr. Leach testified that the timing of bringing the IPO to market is critical to its success and that FairPoint has targeted a July 2, 2004 offering date.

Mr. Leach testified that the present ownership of FairPoint's Common Stock is as follows: 21,461,720 shares (or approximately 43.0%) are owned by Thomas H. Lee Equity Fund IV, L.P. and affiliates; 18,199,496 shares (or approximately 36.4%) are owned by Kelso Investment Associates V, L.P. and Kelso Equity Partners V, L.P.; 5,618,560 shares (or approximately 11.2%) are owned by the founders of FairPoint; 119,200 shares (or approximately 0.1%) are owned by members of senior management; and 4,568,030 shares (or approximately 9.2%) are owned collectively by other shareholders. Thomas H. Lee Partners, L.P. and Kelso & Company are private investment firms.

Mr. Leach introduced into evidence as Attachment 2 to Joint Applicants Exhibit 1 the Form S-1 Registration Statement that FairPoint filed with the U. S. Securities and Exchange Commission on March 25, 2004. As described in further detail in Attachment 2, the instrument or security that will be issued by FairPoint pursuant to the Registration Statement is a stapled instrument that contains both an equity and debt component and is referred to as an Income Deposit Security ("IDS"). Each IDS will represent one share of Common Stock of FairPoint and a Senior Subordinated Note of FairPoint with a principal amount to be determined. The IDS will have an equity component of approximately 65% and a debt component of approximately 35%. The IDS' will be listed on one or more Exchanges and may separate into shares of Common Stock and Senior Subordinated Notes. The stock and notes may trade separately. Holders of the IDS' will receive quarterly interest payments, subject to certain limitations, and are expected to receive quarterly dividend payments pursuant to FairPoint's dividend policy.

Mr. Leach testified that while the approximate ownership interests after the IPO, as between new public investors and the approximate ownership interests that will be held by certain existing shareholders, can only be estimated at this time (because the success of the IPO at the time of the offering and the potential exercise of an over allotment provision will impact the proportionate ownership interests), FairPoint anticipates that approximately 68% will be owned by public investors (both retail and institutional) with no new investor earning more than 10% and the approximate remaining 32% ownership interests being held by certain existing shareholders. The allocation of the approximate remaining 32% ownership interests are estimated to be as follows: approximately 12.5% in the name of Thomas H. Lee Equity Fund IV, L.P. and affiliates; approximately 10.6% in the name of Kelso Investment Associates V, L.P. and Kelso Equity Partners V, L.P.; approximately 3.9% in the name of certain founding shareholders of FairPoint, approximately 1.7% in the name of members of senior management of FairPoint; and approximately 3.2% in the name of other existing shareholders. Mr. Leach indicated that after the completion of the IPO, none of the public investors, nor any of the existing investors, will own a majority of the voting capital stock of FairPoint and none will control FairPoint.

Mr. Leach testified that while the success of the IPO at the time of offering, and the possible exercise of an over allotment, means that FairPoint can only provide an estimate of the gross proceeds of the IPO at this time, it is FairPoint's expectation that the IPO should provide gross proceeds of approximately $750,000,000. FairPoint will be entering into a new credit facility and a stand-alone issuance of Senior Subordinated Notes concurrently with the public offering. As a result of the recapitalization transaction, FairPoint intends to use the IPO proceeds, the Senior Subordinated Notes proceeds, and the new credit facility to eliminate substantially all existing debt and Preferred Stock.

Mr. Leach testified that since approximately 65% of the IDS units will represent Common Shares, a substantial amount of debt will be replaced with equity as a part of the proposed recapitalization transaction. This will allow FairPoint to deleverage the Company and substantially reduce its interest rate on the Senior Subordinated Notes portion of the new debt. It is anticipated that the deleveraging of FairPoint and the significant reduction in its cost of capital will increase the operating and financial flexibility of FairPoint and its entire family of companies. Mr. Leach testified that the additional financial strength of the Illinois incumbent local exchange carriers' ultimate parent would be of benefit to those companies, as well.

Mr. Leach testified that none of the recapitalization activities will affect the day-to-day management of FairPoint and will not affect the day to day operations or management of C-R, El Paso, Odin or Yates City. With regard to the requirements of

Section 7-204(b), Mr. Leach testified the transactions for which approval is sought will clearly not adversely affect C-R's, El Paso's, Odin's and/or Yates City's respective abilities to perform their duties under the Act.

Pursuant to subsection (b), the Commission must make seven findings before granting approval under Section 7-204. Under subsection (b)(1), the Commission must find that the proposed reorganization will not diminish the Utilities' ability to provide adequate, reliable, efficient, safe and least cost public utility service. In support of such a finding, Mr. Leach testified that the increased financial strength of FairPoint, and the ability to deleverage, will benefit the entire FairPoint family of companies, including the four Illinois companies who are Joint Applicants. Moreover, it will enhance those Companies' abilities with regard to this statutory criteria.

The second finding the Commission must make pursuant to subsection (b)(2) is that the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the Utility or its customer. Pursuant to subsection (b)(3), the third and related finding the Commission must make is that the costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission can identify those costs and facilities that are properly included by the Utility for ratemaking purposes. Mr. Leach testified that the IPO and other recapitalization activities for which approval is being sought at the FairPoint holding company level will have no effect or impact on the four Illinois operating companies with regard to both of these criteria.

According to subsection (b)(4), the Commission must also find that the proposed reorganization will not significantly impair the Utilities' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. Mr. Leach testified that the proposed transactions will not impair the four companies' ability to raise the necessary capital on reasonable terms or to maintain a reasonable capital structure. He indicated that capital for the FairPoint family of companies is raised at the FairPoint holding company level and that the transactions for which approval are sought provide FairPoint with additional access to lower cost capital.

The fifth finding, pursuant to subsection (b)(5), that the Commission must make is that the Utilities will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. Mr. Leach testified on behalf of each of the Joint Applicants that they specifically acknowledged that the companies, and each of them, remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois incumbent local exchange carriers.

The Commission must also find, pursuant to subsection (b)(6), that the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. Mr. Leach testified that the recapitalization transactions will have no effect on competition in the markets over which the Commission has jurisdiction and which are being served by each of the Illinois incumbent local exchange carriers.

The final finding that the Commission must make is that the proposed reorganization is not likely to result in any adverse rate impacts on retail customers pursuant to subsection (b)(7). Mr. Leach testified that the proposed recapitalization transactions will not result in any adverse rate impacts on the retail customers of C-R, El Paso, Odin and/or Yates City.

Section 7-204(c) addresses any savings and costs related to a reorganization. With regard to this Section, Mr. Leach testified that the Joint Applicants are not projecting that any of the four Illinois incumbent local exchange carriers will receive any savings nor will they incur any incremental increase in costs as a result of the recapitalization transactions. Mr. Leach further testified that the Joint Applicants are not seeking the recovery of any costs incurred in accomplishing any and all of the recapitalization transactions.

II. STAFF POSITION

Staff has reviewed the Joint Application and found no reason why the Commission should not approve the recapitalization, provided the Applicants accept and comply with certain conditions. Staff proposes that seven conditions be adopted by the Commission in connection with the approval of the recapitalization and reorganization pursuant to Sections 7-203 and 7-204 of the Act.

Staff proposes that the following conditions be imposed in connection with the transaction:

(1) Staff should be granted access to all books, accounts, records, and personnel of FairPoint Communications Inc., C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Co. and all of their utility and non-utility affiliated parent, sister and subsidiary companies, as well as independent auditors' work papers;

(2) C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Co. should continue to comply with 83 Ill. Adm. Code 712;

(3) FairPoint Communications Inc., C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Co. and all of their utility and non-utility affiliated parent, sister and subsidiary companies should conduct annual internal audits to test compliance with Sections 7-204(b)(2) and 7-204(b)(3). The internal audit report documenting findings, conclusions, and recommendations should be submitted to the Manager of Accounting of the Illinois Commerce Commission by March 31st each year and associated work papers should be available to Commission Staff for review. The first internal audit report shall be submitted to the Manager of Accounting of the Commission on or before March 31, 2005;

(4) that C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Co. be prohibited

from increasing tariffed retail rates for one year after the effective date of the reorganization;

(5) the C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Co. are prohibited from using any increased costs, as a result of this recapitalization, to justify any increases in their levels of support from the Universal Service Fund;

(6) an Operating Company (i.e. C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Co.) will be prohibited from paying dividends to FairPoint Communications Inc. or from otherwise transferring cash to FairPoint Communications Inc. through loans, advances, investments or other means that would divert their moneys, property or other resources that is not essentially or directly connected with the provision of non-competitive telecommunications service if that operating company fails to meet or exceed the standard, set herein, for a majority of the service quality measures;

a) STANDARDS:

	C-R	El Paso	Odin	Yates
Toll & Assistance Answer Time (Part 730.510(a)(1)(A))	10 sec.	10 sec.	10 sec.	10 sec.
Information Answer Time (Part 730.510(a)(1)(B))	10 sec.	10 sec.	10 sec.	10 sec.
Business Office Answer Time (Part 730.510(b)(1))	60 sec.	60 sec.	60 sec.	60 sec.
Repair Office Answer Time (Part 730.510(b)(1))	60 sec.	60 sec.	60 sec.	60 sec.
Interruptions of Service (Part 730.535(a))	1.0%	2.2%	3.2%	1.0%
Installation Requests (Part 730.540(a))	1.0%	1.0%	1.3%	1.0%
Trouble Reports per 100 lines (Part 730.545(a))	1.2	2.4	2.8	2.4

If any of the Operating Company's are granted a permanent waiver from having to comply with a key service quality measure in Dockets 04-0278 through 04-0281, then that service quality measure shall not be included in the list. Until the Commission issues an order in Dockets 04-0278 through 04-0281, key service quality measures Toll & Assistance Answer Time, Information Answer Time, Business Office Answer Time and Repair Office Answer Time shall be included in the condition, but not used to determine compliance with this condition. If a permanent waiver is denied, then those service quality measures shall be used to determine compliance. A standard shall be the average of the two-year actual performance of that operating company for that service quality measure, for the past twenty-four months;

b) MEASUREMENTS: Measurements shall commence on the date the securities are issued, and will be taken on an annual basis.

c) ANNUAL REPORTS: FairPoint Communications Inc. shall file an annual report with the Chief Clerk's Office and posted in this docket. The annual report shall be filed December 1 of each year. Within the annual report, FairPoint Communications Inc. shall identify each carrier, and the title of the service quality measure, and by operating company FairPoint Communications Inc. shall list the standard set by the Commission for each service quality measure, and the actual performance for each annual period. The annual report shall present the actual performance data for every month after the date the securities are issued, with the initial month of data presented in the report being July 2004;

d) FINAL NOTICE: When FairPoint Communications Inc.'s issuer credit rating from both Standard & Poor's and Moody's Investors Service improves to investment grade, FairPoint Communications Inc. shall send a certified notice to the Commission, with a third-party independent verification that its issuer credit rating has been upgraded to investment grade. A corporate officer shall certify that the notice is true and accurate;

e) DURATION OF CONDITON: The duration of time this condition should remain in effect is until FairPoint Communications Inc.'s issuer credit rating increases to investment grade.

(7) that FairPoint keep available exclusively for the Illinois operating telephone companies, under its senior secured credit facility, an amount equal to the higher of $1 million or the currently approved capital expenditures budget for all four Illinois operating telephone companies. FairPoint should certify annually to the Commission that the required amount is available to the Illinois operating companies for the ensuing year. Therefore, on December 1 of each year, FairPoint shall send a notice to the Commission certifying that such amount was then currently available, and for the ensuing year what the dollar commitment would be for the Illinois companies based on the capital expenditure budget for the following year.

Ms. Ebrey, of the Accounting Department of the Financial Analysis Division, presented testimony concerning the proposed recapitalization transactions compliance with Section 7-204(b)(2) and Section 7-204(b)(3) of the Act. Ms. Ebrey recommended that the Commission find that the Joint Applicants are in compliance with said Sections if Conditions (1), (2) and (3) (as set forth above) are agreed to by the Joint Applicants and imposed by the Commission. Ms. Ebrey noted that Conditions (1) and (2) are identical to those found in the Order in Docket No. 00-0161, a prior reorganization and recapitalization transaction of the Joint Applicants under FairPoint's then corporate name of MJD Communications, Inc. With regard to Condition (3), Ms. Ebrey testified that the condition places the burden of ensuring compliance on the Company and not the Commission, that the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers, and that the costs and facilities will be fairly and reasonably allocated between utility and non-utility activities. She noted that the practice of engaging in internal audits requires self-monitoring on the part of the Companies and that the burden of the internal audit is best placed on the Companies, since the burden of compliance rests with the Companies.

Ms. Freetly, of the Finance Department of the Financial Analysis Division, presented an evaluation of the financial implications of the proposed recapitalization transactions with respect to Section 7-204(b)(4) of the Act. Ms. Freetly in her testimony proposed Staff Conditions (6) and (7) (as set forth above). She indicated that Staff Condition (6) would help ensure that the Illinois operating companies would retain sufficient cash to provide reasonable and adequate service at reasonable costs. She indicated that Staff Conditions (6) and (7) would help ensure that the proposed reorganization would not significantly impair the Illinois operating companies' ability to raise necessary capital on reasonable terms as required by Section 7-204(b)(4).

Due to the high degree of financial leverage that FairPoint will maintain following the reorganization, Ms. Freetly recommended that Condition (6) be imposed by the Commission. Pursuant to Condition (6), C-R, Odin, El Paso and Yates City would be prohibited from paying dividends to FairPoint or from otherwise transferring cash to FairPoint through loans, advances, investments or other means that would divert monies, property or other resources for any purpose that is not indirectly or directly connected with the provision of non-competitive telecommunications service if an Illinois operating company fails to meet a service quality test. The service quality test is set forth in Condition (6) and described by Staff witness McClerren in his testimony. Ms. Freetly noted that Condition (6) is designed to ensure that C-R, Odin, El Paso and Yates City maintain service quality at a reasonable level and retain sufficient funds to support their own operations. The Condition, however, allows FairPoint to continue to have access to any funds that C-R, Odin, El Paso and Yates City generate in excess of their own needs as long as the four companies maintain their ability to meet the service quality standards. The test by which to determine whether C-R, Odin, El Paso and Yates City is maintaining service quality standards is established by Staff witness McClerren. If a carrier fails to meet that test, FairPoint should be prohibited from accessing any funds of that carrier.

With regard to the duration of Condition (6), Ms. Freetly testified that the Condition should continue until FairPoint's corporate issuer credit rating increases to investment grade. FairPoint's current corporate credit ratings are B+ from Standard & Poor's and B3 from Moody's Investors Service. She noted that according to Standard & Poor's, a company with a B rating currently has the capacity to meet its financial commitments, however, adverse business, financial or economic conditions will likely impair the Company's capacity or willingness to meet its financial commitments. She indicated that even after the reorganization and recapitalization, FairPoint's financial condition will not be sufficiently strong to eliminate concerns, therefore the Condition should remain in effect until notification is provided to the Commission that FairPoint's issuer credit rating is raised to investment grade status. She indicated that investment grade status will be achieved when the issuer credit rating from Standard & Poor's is upgraded to BBB- or above and the rating from Moody's Investors Service is upgraded to Baa3 or above. When that occurs, Ms. Freetly recommends that FairPoint send a "Final Report to the Commission" indicating that its issuer credit rating is raised to investment grade status and that said Final Report include a third-party independent verification that its issuer credit rating has been upgraded to investment grade. She indicated that a corporate officer should certify that the notice is true and accurate.

Ms. Freetly in her testimony also proposed Staff Condition (7) (as set forth above). With regard to Condition (7), she testified that C-R, Odin, El Paso and Yates City have no debt and will not be able to issue debt that would balance the operating companies' capital structures under the loan agreements that are part of the proposed recapitalization and reorganization transactions. Ms. Freetly indicated that the Commission, when setting rates, typically uses the parent company's capital structure for subsidiaries that rely on that parent to supply their needs for external capital. As a result, consideration of the effect of the proposed reorganization on the parent company's ability to maintain a balanced capital structure can be addressed when setting rates. She indicated that although the proportion of debt in FairPoint's capital structure will remain very high after the proposed reorganization, the proportion of debt will decline from existing levels. She indicated that from this standpoint, the proposed reorganization can be deemed to enhance the ability of FairPoint, and through FairPoint, the ability of C-R, Odin, El Paso and Yates City to achieve a balanced capital structure. She indicated that even though C-R, Odin, El Paso and Yates City currently generate more cash than is needed for capital expenditures, that in the event additional funds to support their capital expenditures would be needed, C-R, Odin, El Paso and Yates City have to rely on FairPoint to access the capital markets since FairPoint has entered into agreements that would prohibit C-R, Odin, El Paso and Yates City from raising debt capital. She pointed out that the exception to this is the $100 million revolving credit facility that is a part of the proposed recapitalization. Since FairPoint may draw upon that credit facility to support the operation of all of its operating companies in the FairPoint organization, she believed a condition should be imposed requiring that a portion of the credit facility be reserved for C-R, Odin, El Paso and Yates City. Condition (7) requires FairPoint to reserve exclusively for C-R, Odin, El Paso and Yates City, under its senior secured credit facility, an amount equal to the higher of $1 million or the currently approved capital expenditures budget for all four companies.

Ms. Freetly concluded that with the imposition of Conditions (6) and (7), the proposed reorganization would not significantly impair the ability of C-R, Odin, El Paso and Yates City to raise necessary capital on reasonable terms and that the proposed reorganization with the imposition of Conditions (6) and (7) meets the requirements of Section 7-204(b)(4).

Mr. McClerren, of the Engineering Department of the Telecommunications Division, testified concerning the impact of the recapitalization and reorganization transactions on the issue of service quality and the requirements contained in Section 7-204(b)(1). He testified that even though the new service quality reporting requirements of Code Part 730 are not yet operative, he had no reason to believe that C-R's, Odin's, El Paso's or Yates City's current level of service quality has been, or is, inadequate. He indicated that he would likely be aware of any service quality problems of any of the four companies through the previous Part 730 exception reporting, consumer services or direct complaints.

Mr. McClerren testified that the Commission had demonstrated a strong interest in matters of service quality in previous dockets, including other reorganization dockets. He recommended that the Commission impose Condition (6) (as set forth above) and as described by Staff witness Freetly in her testimony. He indicated that Condition (6) is tied to the quality of service that C-R, Odin, El Paso and Yates City provide. Mr. McClerren proposed seven service quality measures from Code Part 730 and all are set forth in Condition (6). Mr. McClerren recommended that FairPoint annually file with the Commission a report that in detail shows the performance of C-R, Odin, El Paso and Yates City with respect to those key service quality measures. Mr. McClerren addressed the temporary waivers that have presently been granted concerning four of the seven service quality measures as outlined in Condition (6).

Mr. McClerren testified that Staff wants to be sure that the reorganization and recapitalization transactions do not degrade the current service quality levels. To accomplish that he recommends that the level of service used in Condition (6) be the average level of service the operating companies have been providing for the last two years for three service quality measures, and the level of service be that set in Part 730 for four of the service quality measures. The Part 730 standard was proposed for Toll & Assistance Answer Time, Information Answer Time, Business Office Answer Time and Repair Office Answer Time because there was insufficient information to develop an average of the companies' two year performance. FairPoint would be prohibited from accessing funds of a company -- C-R, Odin, El Paso or Yates City – that fails to meet a majority of the key service quality measures. It is Staff's position that these standards and this test would ensure that the current level of service does not degrade for C-R, Odin, El Paso and Yates City.

Staff acknowledged that of C-R, Odin, El Paso and Yates City have petitioned the Commission for a waiver of four of the seven key performance measures (Dockets 04-0278 through 04-0281). The four key performance measures are Toll & Assistance Answer Time, Information Answer Time, Business Office Answer Time and Repair Office Answer Time (respectively service quality performance measurements set forth in 83 Illinois Administrative Code Sections 730.510(a)(1)(A), 730.510(a)(1)(B), 730.510(b)(1), and 730.510(b)(1)). Staff recommends that these four key performance measures be included in the condition, but not used to determine compliance with this condition, unless the permanent waiver is denied. If a permanent waiver is denied, then those service quality measures shall be used to determine compliance. If the permanent waiver is granted, then the test shall be the majority of the remaining three key performance measures.

Mr. McClerren, in his supplemental testimony, proposed the seven key performance measure standards for C-R, Odin, El Paso and Yates City, as set forth in Condition (6) above. Mr. Leach, on behalf of the Applicants, accepted the standards proposed by Mr. McClerren.

Mr. Hanson, of the Telecommunications Division, testified concerning the remaining statutory requirements of Sections 7-203 and 7-204 of the Act. With regard to assuring that the proposed reorganization is not likely to result in any adverse rate impacts on retail customers (Section 7-204(b)(7)), Mr. Hanson recommended the imposition of Condition (4) (as set forth above), which prohibits C-R, Odin, El Paso and Yates City from increasing tariffed retail rates for one year after the effective date of the reorganization. Mr. Hanson also recommended the imposition of Condition (5), which would prohibit C-R, Odin, El Paso and Yates City from using any increased costs, as a result of the recapitalization transactions, to justify any increase in the respective company's levels of support from the Illinois Universal Service Fund. He indicated that these two conditions would ensure that the requirements of Section 7-204(b)(7) are met.

With regard to the requirements of Section 7-204(c), Mr. Hanson testified that since this reorganization is principally a financial transaction, there would be no operational savings as Mr. Leach had indicated in his testimony, and thus, no allocation issues to resolve. With regard to the requirements of Section 7-204(b)(5), Mr. Hanson indicated that Mr. Leach had acknowledged, on behalf of FairPoint, C-R, Odin, El Paso and Yates City, that they would remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois incumbent local exchange carriers, thereby allowing the Commission to make the requisite finding.

With regard to the requirements of Section 7-204(b)(6), Mr. Hanson testified that the proposed reorganization would not have a significant adverse impact on competition in markets over which the Commission has jurisdiction. He indicated that the reorganization is primarily financial in nature and allowing it to proceed should have no impact on competition in the markets in which C-R, Odin, El Paso and Yates City operate.

With regard to the requirements of Section 7-204(b)(1), Mr. Hanson testified that the adoption of all seven conditions proposed by the Staff as part of approving the reorganization would ensure that the reorganization meets the requirements that it will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost utility service.

III. APPLICANTS' REBUTTAL POSITION

Mr. Leach, in his Rebuttal Testimony on behalf of the Joint Applicants, agreed to and accepted each of the seven conditions proposed by Staff as set forth above.

IV. COMMISSION ANALYSIS AND CONCLUSION

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) C-R, El Paso, Odin and Yates City are each telecommunications carriers as defined in Section 13-202 of the Act, and each is providing telecommunications services as defined in Section 13-203 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(3) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;

(4) for the reasons set forth by the Joint Applicants' witness and in light of the conditions described in the prefatory portion of this Order, the proposed reorganization will not adversely affect C-R's, El Paso's, Odin's and/or Yates City's ability to perform their duties under the Act and the proposed reorganization meets the criteria as set forth in Section 7-204 of the Act in that:

a) the proposed reorganization will not diminish C-R's, El Paso's, Odin's, and/or Yates City's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;

b) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by C-R, El Paso, Odin and/or Yates City or their respective customers;

c) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities, which are properly included by the respective utilities for rate making purposes;

d) the proposed reorganization will not significantly impair C-R's, El Paso's, Odin's and/or Yates City's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

e) C-R, El Paso, Odin and Yates City will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;

f) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets served by C-R, El Paso, Odin and/or Yates City over which the Commission has jurisdiction; and

g) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers of C-R, El Paso, Odin and/or Yates City;

(5) the seven conditions proposed by Staff as set forth in the prefatory portion of this Order and accepted and agreed to by the Joint Applicants should be imposed in connection with the reorganization;

(6) no quantifiable changes in the Operating Statements of C-R, El Paso, Odin and/or Yates City or savings are projected as a result of the reorganization, and therefore, no savings should be allocated;

(7) FairPoint, C-R, El Paso, Odin and Yates City do not seek to recover, and therefore, should not be allowed to recover any costs incurred in accomplishing the proposed reorganization;

(8) all of the recapitalization transactions for which approval are sought, including the proposed reorganization and proposed transfer of control of C-R, El Paso, Odin and Yates City, are reasonable and the relief requested under Section 7-203 and Section 7-204 of the Act should be granted as herein set forth; and

(9) the prayer of the Joint Application may reasonably be granted and the public will be convenienced thereby.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that consent and approval are granted to Joint Applicants to carry out all actions necessary to effectuate the recapitalization of FairPoint Communications, Inc. and the reorganization and transfer of control of C-R Telephone Company, The El Paso Telephone Company, Odin Telephone Exchange, Inc. and Yates City Telephone Company.

IT IS FURTHER ORDERED that the Joint Applicants shall comply with the seven conditions referenced in Finding (5) and set forth in the prefatory portion of the Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 26th day of May, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman