EXHIBIT
NECTA/CPNH 83P
10/22/07

STATE OF VERMONT

PUBLIC SERVICE BOARD

Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, Certain Affiliates Thereof, and FairPoint Communications, Inc. for approval of an asset transfer, acquisition of control by merger and associated transactions	))))))	Docket No. 7270

PROPOSAL FOR DECISION AND BRIEF OF FAIRPOINT COMMUNICATIONS, INC.

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2. Commitments of FairPoint Related to Terms and Conditions of Service

341. Because FairPoint has committed to adopt Verizon's rights and obligations under state regulation in Vermont, it is not necessary for the Board to specifically condition its approval of the transaction on these commitments. Skrivan reb. pf. at 6.

342. However, if the Board were to impose specific conditions, FairPoint would agree to the following conditions which reasonably capture the commitments the company has made:

- FairPoint will file tariffs matching current tariffs for Verizon Vermont with the same rates, terms and conditions at closing. Skrivan reb. pf. at 6.
- FairPoint will assume all contracts and interconnection agreements governing service in the state of Vermont, and where that is not possible FairPoint will adopt contracts with substantially the same rates, terms and conditions. Skrivan reb. pf. at 6.
- FairPoint will agree to extend in writing all inter-carrier agreements (including interconnection agreements) in effect as of the closing date for three years following their stated expiration date. Skrivan reb. pf. at 6; FairPoint PFD.
- In addition, for interconnection and other inter-carrier agreements with expired terms that are continued only on a month-to-month basis as of the closing, FairPoint will agree to extend the then-current rates and other terms in writing for three years following the transaction closing. Skrivan reb. pf. at 6; FairPoint PFD.
- FairPoint will assume Verizon's rights and obligations under the terms of the Amended Incentive Regulation Plan (including the applicability of the PAP for wholesale customers, and the Amended Retail Service Quality Plan, as

required by the Plan, and including the agreement under the Plan not to raise rates in tariffs for existing regulated intrastate telecommunications services during the term of the Plan (through December 31, 2010). Skrivan reb. pf. at 7.

- FairPoint will agree that the newly certificated acquired operations will not assert rural exemptions under Section 251(f)(1) of the federal Communications Act. In addition, FairPoint has proposed that it will not seek any suspension or modification of any 251(b) or (c) obligation pursuant to Section 251(f)(2) of the Communications Act. Skrivan reb. pf. at 7, 26-27; FairPoint PFD.
- FairPoint will provide any item on the 14-point "competitive checklist" set forth in section 271(c)(2)(B) of the federal Communications Act that Verizon would be required to provide under the law, pursuant to the applicable pricing standard adopted by the FCC, even though FairPoint is not a Bell Operating Company (BOC) and will not be a BOC after closing. Nixon reb. pf. at 7; Lippold reb. pf. at 14-15.
- FairPoint will implement systems that conform to industry standards. Skrivan reb. pf. at 7.
- FairPoint will agree not to recover transaction expenses from end users or wholesale service provider customers. Skrivan reb. pf. at 7. FairPoint expects to capitalize certain costs such as certain conversion and systems development costs that it reserves the right to seek recovery of in future rate cases. Exh. FairPoint Cross 3; tr. 9/7/07 at 186-192, 207-213 (Skrivan).
- FairPoint will install and test systems and provide CLECs an opportunity

for training on such systems before cutover. Skrivan reb. pf. at 7; *see* Section VIII.B., *infra*.

- FairPoint will continue to offer all CLECs (and wholesale customer) services required to be offered by Verizon immediately prior to closing (including under wholesale tariffs, agreements, and the Statements of Generally Available Terms and Conditions ("SGAT")), including access to E911 systems, back-office support systems, directory listings, automated directory assistance, published network specification sheets, CLEC User forum information, and a CLEC handbook. Skrivan reb. pf. at 7.

- FairPoint will cap existing rates under wholesale tariffs in effect as of the closing at then-current levels for a period of three years following the transaction closing, and FairPoint will also freeze the wholesale discount offered under total service resale ("TSR") tariffs in effect as of the transaction closing date at then-current levels for three years after the transaction closing, unless FairPoint is required by law to modify such rates (for example, due to a mandated revenue-neutral rate rebalancing). FairPoint PFD.

- FairPoint agrees that it will not withdraw any interstate or intrastate special access service or seek to increase any of its interstate or intrastate tariffed special access rates to be effective within three years after the transaction closing, unless required by law. Skrivan reb. pf. at 7-8; FairPoint PFD.

- FairPoint will also assume SGAT in Vermont and agrees that the Vermont SGAT shall remain in place with rates capped at then-current levels for three years following the transaction closing. Skrivan reb. pf. at 8.; FairPoint PFD.

- FairPoint will prorate all volume pricing provided for in inter-carrier agreements, so such volume pricing terms will be deemed to exclude volume requirements from states outside of the three-state area following the closing. Verizon is contractually bound to do the same with respect to services it will continue providing in states outside the three-state area acquired by FairPoint. Skrivan reb. pf. at 8.

343. Additional conditions related to wholesale and retail matters proposed by other parties are not appropriate for FairPoint, and their imposition risks harming consumers in Vermont by potentially hindering FairPoint's ability to invest in and focus on improving service and deploying new services. Skrivan reb. pf. at 8.

3. <u>FairPoint will assume Verizon's Wholesale Tariffs, SGAT and Interconnection Agreements, and will provide substantial additional benefits to wholesale customers and to independent incumbent local exchange carriers</u>

344. With respect to wholesale services, FairPoint proposes to assume Verizon's wholesale tariffs SGAT, assume or replicate its interconnection agreements and other contracts, and provide interconnection, wholesale services and unbundled network elements to competitive local exchange and other carriers to the same extent that Verizon would be legally required to do so. Nixon pf. at 28; Leach pf. at 8.

345. Customers served by FairPoint's wholesale business unit will have access to a set of tools specifically designed to facilitate their interaction with FairPoint. The tools will have electronic (i.e., web-based or e-Bonding) and manual/telephonic interfaces so that the wholesale customer will have a choice of methods depending upon its needs, network sophistication, and business plans. Haga pf. at 14.

346. FairPoint will comply with industry guidelines, including the Access Service Ordering Guide, the Local Service Ordering Guide and the Customer Account Record Exchange standards, and billing guidelines, including the Multiple Exchange Carrier Access Billing by Telcordia (SR-BDS-000983), and will also meet applicable Performance Assurance Plan and Carrier to Carrier requirements. Haga pf. at 14-15.

347. FairPoint will not take the position that the newly acquired operations qualify for rural telephone company status or would be entitled to exemption from Section 251(c) obligations under Section 251(f)(1) of the federal Communications Act, or to suspension or modification of Section 251(b) or to (c) obligations under Section 251(f)(2) of the Communications Act. Nixon pf. at 28.

348. FairPoint will fulfill all obligations of incumbent local exchange carriers under Section 251(c) of the Communications Act, and commits that it will not try to assert the "rural exemption" in the acquired markets. Nixon reb. pf. at 8.

349. FairPoint agrees to provide anything that Verizon would be required to provide under the 14-point "competitive checklist" set forth in section 271(c)(2)(B) of the federal Communications Act, pursuant to the applicable pricing standard adopted by the FCC, even though FairPoint is not a Bell Operating Company ("BOC") and will not be a BOC after closing. Nixon reb. pf. at 7; Lippold reb. pf. at 14-15.

350. Existing interconnection and other inter-carrier agreements will be assumed by FairPoint, with no diminution in services to CLECs, and CLECs will enjoy the same rate (including volume discounts) after the closing. Nixon reb. pf. at 7; *see* Nixon pf. at 28.

351. In the case of agreements that involve only one or more of the states of Vermont,

New Hampshire, and Maine, FairPoint intends to assume those agreements completely, subject to consent where required. Nixon pf. at 28.

352. Interconnection agreements of Verizon New England, relating in part to service outside of those states, cannot be assumed by FairPoint, but Verizon will modify them, and FairPoint will offer the other party the same terms and conditions in Vermont, New Hampshire and/or Maine, mirroring the Verizon agreements wherever possible. Nixon pf. at 28.

353. FairPoint will agree to extend in writing all inter-carrier agreements (including interconnection agreements) in effect as of the closing date for three years following their stated expiration date. Nixon reb. pf. at 7; FairPoint PFD. Similarly FairPoint proposes to cap rates on wholesale tariffs and the Vermont SGAT for three years following the transaction closing. *See* Findings in Section VII.K., *supra*.

354. For interconnection and other inter-carrier agreements with expired terms that are continued or are only on a month-to-month basis as of the closing, FairPoint will extend the then-current rates and other terms in writing for three years following the transaction closing. Nixon reb. pf. at 7; FairPoint PFD.

355. FairPoint will offer to CLECs all of those services Verizon is required to provide (whether offered under SGAT, tariff or agreement), including the Wholesale Advantage (UNE-P replacement) agreements in effect as of the closing. Nixon reb. pf. at 7.

356. Some of the specific services that parties have asked about (such as line sharing and certain dark fiber facilities) are not required to be offered in Vermont at state-regulated rates, terms, or conditions. Nevertheless, to the extent Verizon is providing such services as of the closing, FairPoint intends to continue providing them pursuant to agreements in place at the time

of closing. Nixon reb. pf. at 8.

357. FairPoint intends to maintain existing arrangements with independent incumbent local exchange carriers. FairPoint intends to continue the existing arrangements with independent incumbent local exchange carriers with no change in rates, terms or conditions of the services that Verizon currently provides to the eight independent incumbent local exchange carriers. Tr. 9/19/07 at 214-216 (Nixon). Exh. ITC-1; Exh. ITC-2.

4. New Services and Bundles, Non-Regulated Services

358. The company expects to offer customers an increased selection of competitively priced communications services bundles, providing greater choice in the marketplace for communications services. Leach pf. at 7.

359. FairPoint also intends to introduce a branded wireless communications product, thereby creating an additional wireless competitor and incremental wireless competition in Vermont, Maine and New Hampshire. Leach pf. at 13-14.

360. For services that are "new services" under the Amended Vermont Incentive Regulation Plan, FairPoint will not raise prices for one year following closing. Tr. 9/7/07 at 216 (Skrivan).

361. In addition to FairPoint's agreement to assume Verizon's current obligations not to raise rates in accordance with the Amended Incentive Regulation Plan, FairPoint agrees to provide the additional benefit to consumers of not raising prices on non-regulated services (including DSL) for one year. Tr. 9/5/07 at 72-76 (Leach).

would apply indefinitely, or at least, "until FairPoint files the appropriate tariffs and obtains specific approval to change the bundles or packages in any way." Skrivan reb. pf. at 22; *see* Lafferty pf. at 35.

382. Such a condition would freeze in place service offerings as they stand now and would restrict FairPoint from responding to consumer needs as they evolve and artificially drive FairPoint's business plans. Skrivan reb. pf. at 22.

383. For example, FairPoint has indicated it may introduce a branded wireless communications product, thereby creating an additional wireless competitor and incremental wireless competition in the three states. Skrivan reb. pf. at 22.

384. Although FairPoint has not yet finalized its plans in this regard the requirement that Mr. Lafferty proposes could preclude FairPoint from introducing a wireless service until it obtains approval. Skrivan reb. pf. at 22.

385. Furthermore, Mr. Lafferty's related proposal that FairPoint "identify all bundles and packages provided jointly by the Vermont wireline operations being transferred to FairPoint and any other Verizon entity" is impractical; FairPoint would not possess the information that Verizon would concerning Verizon affiliate offerings. Skrivan reb. pf. at 22-23; *see* Lafferty pf. at 35.

Discussion

Fundamentally, the terms and conditions of service provided by FairPoint after closing will be just and reasonable, because these terms and conditions will be those under which Verizon provides service today. Most importantly, FairPoint will assume Verizon's rights and obligations under the terms of the Amended Vermont Incentive Regulation Plan, including

Verizon's obligations under the Amended Retail Service Quality Plan and the Performance Assurance Plan. FairPoint will not raise rates in tariffs for existing regulated intrastate telecommunications services through December 31, 2010, the term of the Plan. In sum, FairPoint will provide the same services at the same rates, terms, and conditions as Verizon does today, while also providing significant new benefits to its retail and wholesale customers.

As a result of FairPoint's commitments in this proceeding, retail customers will benefit from the same consumer protection and service quality standards that apply to Verizon today. In addition, such customers not only will continue to receive their existing services without interruption and on the same terms, but also will be able eventually to choose from among new, competitively-priced services and bundles. Because FairPoint will bring increased broadband addressability more quickly to more of its customers, significantly more Vermonters will have access to FairPoint's next-generation network over which more-advanced broadband services can be offered. FairPoint's commitment not to raise prices for "new" services and non-regulated services for one year following closing goes beyond what Verizon is required to do under the Amended Incentive Regulation Plan, and thus affords consumers a benefit that they would not have in the absence of the transaction.

Wholesale customers will continue to receive the same services provided by Verizon today as required by law, on the same terms and at no additional cost (and FairPoint has agreed to provide significant additional benefits to wholesale customers and competitors that are not available today). Regardless of what conditions might be imposed on the transaction's approval, FairPoint will be obligated to interconnect with other telecommunications carriers, *see* 47 U.S.C. § 251(a); to provide access to poles, ducts, conduits, and rights-of-way, dialing parity, and number portability to the extent technically feasible, *see Id.* § 251(b); to establish reciprocal compensation arrangements with other local carriers, *see Id.*; and to negotiate in good faith agreements for interconnection, resale, UNEs, and collocation, *see Id.* § 251(c). Following the transaction, FairPoint will not be exempt from any Section 251(c) obligations as a rural telephone company, *see Id.* § 251(f)(1). As an additional benefit to wholesale customers and competitors, FairPoint has proposed and agreed that it will not seek any suspension or modification of any 251(b) or (c) obligation pursuant to Section 251(f)(2) of the Communications Act, notwithstanding the company's status as a two percent carrier.

FairPoint's voluntary commitments—which go well beyond its legal obligations—will further protect wholesale customers. FairPoint's adoption of Verizon's tariffs, SGAT, obligations under the Amended Incentive Regulation Plan (including the PAP), and interconnection and other inter-carrier agreements will provide continuity and security for wholesale customers. In fact, FairPoint's proposal (in this brief) to extend in writing all inter-carrier agreements that are in effect as of the closing date or that have expired or are renewed on a month-to-month basis as of closing for three years and to cap rates under existing wholesale tariffs and the Vermont SGAT for three years following the closing (a longer period than proposed in its rebuttal testimony) will put wholesale customers in a better position than they would be in with Verizon. Similarly, FairPoint's development of state-of-the-art wholesale systems will permit FairPoint to provide wholesale customers with higher-quality service than that to which they are accustomed.

While neither FairPoint nor any of its subsidiaries will be a BOC or a successor or assign of a BOC under Section 3 of the Communications Act, 47 U.S.C. § 153(4), FairPoint proposes that following the merger its local operating affiliate will provide access in the acquired territory to all "competitive checklist" items required of BOCs pursuant to Section 271(c)(2)(B) of the

Act to the extent that the FCC has ruled that BOCs in general are required to provide such items. The applicable rates, terms and conditions for such checklist items should be determined in accordance with the standards set by the FCC for BOC provision of 271(c)(2)(B) checklist items. To the extent that the BOCs' obligations to provide such items change over time, FairPoint's obligations correspondingly should change.

All of these commitments will substantially benefit retail and wholesale customers in the acquired exchanges and ensure that the terms and conditions of service remain just and reasonable, as they were under the Amended Vermont Incentive Regulation Plan. Docket No. 6959/7142, Order of 4/27/06 at 15. These just and reasonable terms and conditions of service can be achieved without subjecting FairPoint to increased regulation in the acquired exchanges compared to what Verizon would face, and without affecting the regulation of FairPoint's existing exchanges.

L. The Merger Will Produce Efficiencies in Providing Services

Findings of Fact

386. Replacing Verizon's systems and corporate cost structure will produce significant operating cost savings. This finding is supported by findings in Section VII.L., below.

387. FairPoint expects that the combined company will generate $60 million to $75 million in annual net cost savings over Verizon's present cost structure. More specifically, FairPoint expects to be able to reduce expenses from the levels of Verizon's internal corporate allocations ($270 million in 2006) related but not limited to network monitoring, customer care, and back-office support. In other words, FairPoint's in-region costs to run these operations will be less than Verizon's internal allocations for these services, which historically were provided by