

EXHIBIT

NRCTA/CPNE  
Exh. 84P



NANCY S. MALMQUIST

January 8, 2008

Mrs. Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

Re: Docket 7270: 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

Dear Mrs. Hudson:

With this letter we are filing, on behalf of Verizon New England Inc. ("Verizon") and FairPoint Communications, Inc. ("FairPoint"), a motion to approve the transfer of Verizon's Vermont local exchange and long distance businesses to FairPoint and related transactions ("the Transaction"), modified as described in the motion and the attached Supplemental Testimony of Walter E. Leach, Jr. and associated exhibits. The changes described in the motion and in Mr. Leach's testimony and exhibits address the concerns expressed by the Vermont Public Service Board (the "Board") in its December 21, 2007 Order ("Order") and demonstrate that the transaction will promote the public good. The motion also includes a comprehensive list of conditions that the Board has said it would likely impose if it were to approve the Transaction. This list, which FairPoint and Verizon are prepared to accept with limited proposed revisions, along with additional conditions arising from the Maine Stipulation and the Performance Enhancement Plan filed as exhibits to the Supplemental Testimony, is included as Attachment 1.

Please note that Mr. Leach's testimony includes Exhibit WL-5 (in a sealed envelope marked as confidential) for which FairPoint is seeking confidential treatment in accordance with and subject to the Protective Agreement dated March 16, 2007. Accordingly, this filing also includes a Motion for Confidential Treatment of Prefiled Evidence in connection with confidential Exhibit WL-5. Attachment B to the Motion is an executed Averment with respect to the exhibit being filed under seal.

Mrs. Susan M. Hudson  
January 8, 2008  
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FairPoint is providing to parties the confidential Exhibit WL-5 under seal, in accordance with the Protective Agreement dated March 16, 2007, and the Protective Order that FairPoint is requesting that the Board issue with respect to its prefiled evidence. FairPoint is providing this information to appropriate representatives of parties subject to and in accordance with the terms of the Protective Agreement in advance of issuance by the Board of the Protective Order, provided the party representatives agree to be bound by the terms of the Protective Agreement. In such an event, we ask that the parties agree to return the information to me in the event there is any issue in connection with issuance of a Protective Order by the Board.

FairPoint and Verizon respectfully request that the Board immediately issue a notice setting a deadline for responses by any other party (including any written statement or prefiled testimony) and a date for a hearing, to be held as soon as possible.

Thank you for your assistance in this matter. Please call with any questions.

Very truly yours,  
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STATE OF VERMONT  
PUBLIC SERVICE BOARD

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

**JOINT PETITIONERS' MOTION TO  
APPROVE MODIFIED TRANSACTION**

Pursuant to Public Service Board Rules 2.103, 2.204(G)(1) and 2.221 and Vermont Rules of Civil Procedure 59 and 60, Verizon New England Inc. ("Verizon")<sup>1</sup> and FairPoint Communications, Inc. ("FairPoint" and, together with Verizon, the "Joint Petitioners") hereby move the Public Service Board ("Board") to approve the transfer of Verizon's Vermont local exchange and long distance businesses to FairPoint and related transactions ("the Transaction"), modified as described in this motion and the Supplemental Testimony of Walter E. Leach and exhibits filed herewith.

As grounds for this motion, the Joint Petitioners state that they have substantially revised the terms of the Transaction to reinforce FairPoint's financial strength and soundness by, among other things, significantly reducing FairPoint's debt and its dividend to shareholders and providing it with greater financial wherewithal to satisfy its commitments and the conditions imposed on the Transaction. These and the other changes to the Transaction described below fully address the concerns expressed by the Board in its December 21, 2007 Order ("Order") and demonstrate that the transaction will promote the public good. The Petitioners also accept, with

<sup>1</sup> On behalf of itself and its affiliates NYNEX Long Distance Company, Verizon Select Services Inc., Bell Atlantic Communications Inc., Northern New England Spinco Inc. ("Spinco"), Northern New England Telephone Operations LLC and Enhanced Communications of Northern New England Inc.

limited proposed modifications described below, the conditions the Order states the Board would impose were it to approve the Transaction, and FairPoint and the Department of Public Service (“Department”) have agreed on a Performance Enhancement Plan to ensure FairPoint’s performance of its service quality improvement and broadband expansion obligations.

As a result, the Department supports approval of the Transaction as revised, as set forth in a Stipulation that will be filed with the Board.

The Joint Petitioners respectfully request that the Board (1) promptly schedule a hearing or such other procedural step as it may deem necessary to consider the revised Transaction terms; and (2) expeditiously grant this motion and approve the Transaction as modified herein. Further support for this Motion is contained in the following Memorandum in Support and in the Supplemental Testimony of Walter Leach.

## **MEMORANDUM IN SUPPORT**

### **INTRODUCTION**

In its Order, the Board stated that the Transaction “would offer significant benefits to Vermonters.” Order at 83. For this reason, the Board indicated that “[b]ut for [the identified] financial risks, we would approve the merger.” Order at 228. As a result, the Board stated that it was “willing to consider modifications to the currently Proposed Transaction that would leave FairPoint financially sound” and that it would “leave this docket open for a period of time to allow FairPoint and Verizon to modify their proposal.” Order at 83, 228. With respect to the financial issues, the Board concluded that certain of FairPoint’s projections may be optimistic, and that based on the Board’s analysis, failure to achieve the projected results “could leave FairPoint with a forced choice between reducing dividends and reducing necessary capital and

operational spending.” Order at 82-83. Significantly, however, the Board did not have before it the recently-executed stipulation among certain parties in the Maine proceeding (“Maine Stipulation”), which significantly improves FairPoint’s financial position. Order at 9, note 6. The Maine Stipulation, as amended, is Exhibit WL-4 to the Supplemental Testimony of Walter Leach.

The Board suggested that FairPoint’s financial soundness could be addressed through one or more of a number of possible means, or through some other means entirely, including proposals to (1) “reduce the purchase price paid to Verizon,” (2) “reduce dividends planned for shareholders,” or (3) “make some reserve funds available” to be used in the event of service quality deterioration or reductions in outside maintenance or construction. Order at 83. As described below, the Petitioners have in effect taken action on all three of these fronts in order to ensure FairPoint’s financial soundness. *See* Argument, Part I, below.

Several significant events since the last day of evidentiary hearings on September 21, 2007, significantly reinforce FairPoint’s financial soundness and enhance the public good to Vermont arising from the Transaction. First, the Joint Petitioners entered into a series of commitments reflected in the Maine Stipulation, which substantially improves FairPoint’s financial soundness and provides it with greater financial wherewithal to satisfy its commitments and the conditions imposed on the Transaction. These measures in combination directly address the Board’s concerns in this regard. The Maine Stipulation includes, among other things, the following commitments:

1. Verizon will contribute \$235.5 million to the working capital of Spinco, which will then merge with and into FairPoint, Maine Stipulation, ¶ III.3(A)(5);

2. Fairpoint, in turn, will reduce (or otherwise not incur) its debt obligations at the time of closing by this same amount, id.;
3. FairPoint will reduce its current dividend by 35% (approximately \$49.7 million annually) until it meets specified financial soundness criteria, Maine Stipulation, ¶ III.3(A)(2); and
4. FairPoint will annually devote the greater of \$35 million or 90% of its annual free cash flow to reduce its debt obligations, until it meets the specified financial soundness criteria, ¶ III.3(A)(3).

Second, FairPoint agreed to additional safeguards on its debt level at hearing before the Maine Public Utilities Commission on January 3, 2008. Specifically, FairPoint has agreed to an additional \$150 million reduction in its debt level if certain leverage ratios are not met. Thus, if FairPoint's Total Indebtedness to Adjusted EBITDA ratio is 3.6x or above on December 31, 2011, FairPoint will act to reduce its overall debt level by \$150 million by December 31, 2012 (and FairPoint will also comply with the debt reduction provision of the Maine Stipulation if it is in effect at that time). FairPoint would accomplish this debt reduction by a number of means and could, for example, issue stock, reduce dividends, or sell non core assets. If FairPoint is not able to reduce its debt level by December 31, 2012, FairPoint will suspend its dividend until the bank debt is refinanced.

Third, the Department, and the respective staffs of the New Hampshire Public Utilities Commission and the Maine Public Utilities Commission have agreed to retain an independent monitor to review the cutover process and have agreed to a written Scope of Work of that monitor. *See*, Exhibit WL-6 to the Supplemental Testimony of Walter Leach.



Fourth, FairPoint has agreed to implement the Performance Enhancement Plan, pursuant to which FairPoint will place substantial dollar amounts at risk – in addition to the penalties under the current Amended Retail Service Quality Plan – to be used, if necessary, to fund FairPoint’s commitments relating to service quality or, under certain conditions, to be forfeited to the Vermont Telecommunications Authority. That Plan is set forth in further detail in Argument, Part I, below, and in Exhibit WL-7 to the Supplemental Testimony of Walter Leach.

Fifth, FairPoint has moved the anticipated date for cutover from the end of May to the end of July, 2008.<sup>2</sup> This allows FairPoint and Capgemini, working with the third party monitor, additional time to ensure the readiness of FairPoint’s new back office systems prior to cutover.

Sixth, FairPoint and Verizon have agreed to accept, with limited proposed revisions described in Argument, Part II, all of the conditions the Board “would likely impose” if it were to approve the Transaction, as stated in the Order and Appendix B of the Order. A comprehensive list of those conditions, together with additional conditions arising from the Maine Stipulation and the Performance Enhancement Plan, are attached hereto as Attachment 1.<sup>3</sup>

## ARGUMENT

The modifications to the Transaction set forth below fully address the Board’s concerns with respect to FairPoint’s financial soundness and include all of the Board’s identified conditions (with limited proposed modifications) and the new Performance Enhancement Plan. As a result, the Transaction is now supported by the Department. For these reasons, the Joint

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<sup>2</sup> This represents a single incremental extension as cutover can only be completed every other month. FairPoint now anticipates issuing the notice of cut-Over Readiness during May 2008.

<sup>3</sup> Attachment 1 also includes a marked version identifying the limited changes from the conditions contained in Appendix B to the Board’s Order.

Petitioners respectfully submit that the Revised Transaction meets the requirements of 30 V.S.A. §§ 107, 109, 231, 311 and should be approved as expeditiously as possible.<sup>4</sup>

I. THE PETITIONERS' MODIFICATIONS TO THE TRANSACTION ENSURE THAT FAIRPOINT IS FINANCIALLY SOUND

Pursuant to the Maine Stipulation (the financial terms of which the Petitioners have included as proposed conditions to an order of the Board approving the Transaction, *see* Attachment 1 hereto), Verizon will provide an additional \$235.5 million to Spinco's working capital at closing. *See* Supplemental Testimony of Walter Leach; Exhibit WL-4, ¶ III.3(A)(4). Following the merger, FairPoint, in turn, will use this contribution to reduce (or otherwise not incur) its initial debt obligations. *Id.* (Verizon will also forgive FairPoint's obligation to reimburse Verizon for the cost of certain broadband expenditures in Maine, effectively providing Fairpoint with an additional \$12 million cash infusion. *Id.*) In addition, FairPoint will (1) reduce its projected shareholder dividend by 35% (approximately \$49.7 million annually) until it meets specified financial soundness criteria and (2) agree to dividend restriction covenants that would limit or reduce its ability to pay dividends (at the corporate parent level) to its shareholders (involving minimum capital expenditures in Vermont and specified financial performance criteria); and (3) annually devote the greater of \$35 million or 90% of its annual free cash flow to reduce its debt obligations, until it meets the specified financial soundness criteria. *See* Supplemental Testimony of Walter Leach; Exhibit WL-4, ¶¶ III.3(A)(1-4).

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<sup>4</sup> Petitioners submit the modified Transaction for the Board's approval pursuant to the Board's invitation in its Order. Order at 228. Petitioners also submit this motion as a motion for reconsideration of the Order. Such a motion is consistent with Board practice and is generally treated in a manner consistent with a Motion to Alter or Amend Judgment under V.R.C.P. 59(e) or a Motion for Relief from Judgment under V.R.C.P. 60(b). *E.g. Re Designation of Eligible Telecommunications Carriers*, Docket No. 5918 (Vt. Pub. Serv. Bd. June 26, 2003) at 39; *Re Vermont Yankee Nuclear Power Corp.*, Order re Motions to Alter or Amend, and to Unseal Exhibit, Docket No. 6545 (Vt. Pub. Serv. Bd. July 11, 2002) at note 17.

The Board expressed concern that in its “steady state” analysis, the projected line losses would eliminate FairPoint’s \$70 million “cushion” and require FairPoint to reduce its dividend by 2010. Order at 74. Case III, however, shows that with the revisions to the Transaction, FairPoint’s cash cushion in 2010 under the “steady state” scenario is expected to be *greater than* \$70 million. Indeed, the 6% annual line loss would not eliminate the cash cushion at any time during the projection period, so that FairPoint would not have to choose between cutting its dividend and cutting operating expenses or capital investments even through 2015.

Finally, Case IV in Exhibit WL-5 (Confidential) reflects the assumptions used in Case III, except that this time FairPoint increased the access line loss assumption in 2009 and 2010 to 11% as discussed by the Board in connection with its “VoIP” scenario. In the unlikely event that access line losses are 11% in 2009 and 2010, the revised projections demonstrate that FairPoint is able to maintain its leverage ratio within the limit required by its bank covenants, reduce net debt by more than \$300 million by 2015, maintain a positive free cash flow each year, and maintain a positive shareholders equity account each year. By 2015, shareholder equity is expected to be almost \$500 million greater than it would be under the Discovery Model, even with the enormous 11% line loss rate postulated for the scenario. In this drastic scenario, FairPoint would still be able to maintain a cash “cushion” until 2012, when it would fall slightly short. Given that FairPoint is unlikely to suffer such a large annual line loss and take no action to counter it, the Board should give little weight to this possible outcome.

Thus, the Petitioners have ensured FairPoint’s financial soundness by in effect “reduc[ing] the purchase price paid to Verizon” and by “reduce[ing] dividends planned for shareholders,” as the Board suggested in the Order. Order at 83. FairPoint has also agreed to “make some reserve funds available,” again as the Board suggested, *id.*, not only by restricting or

reducing its ability to pay dividends but also by way of the Performance Enhancement Plan. This Plan requires that if the Board determines that FairPoint has failed to meet certain service quality metrics or has failed to meet the broadband deployment deadlines spelled out in the Plan, FairPoint must set aside amounts that will be used to fund the necessary service or could eventually be forfeited to the Vermont Telecommunications Authority. *See* Supplemental Testimony of Walter Leach and Exhibit WL-7. The Performance Enhancement Plan thus assures that those metrics and deadlines will be met one way or the other.

As a result of these significant modifications, the revised Transaction satisfies the requirements of all applicable approval statutes. 30 V.S.A. §§ 107, 109, 231, 311. These modifications in combination provide abundant assurance that FairPoint will be financially sound, and will have the financial wherewithal to satisfy its commitments. And the Board has already determined that: (1) FairPoint is competent, will act as a fair partner and will create new benefits for the state; (2) the transition will be adequately managed; and (3) the Transaction will not impair or obstruct competition. Order at 25, 228.<sup>6</sup>

II. THE PETITIONERS WOULD CLOSE THE TRANSACTION SUBJECT TO ALL OF THE CONDITIONS STATED IN APPENDIX B TO THE ORDER, WITH LIMITED PROPOSED MODIFICATIONS.

The Board identified in Appendix B to the Order the conditions that it “would likely impose” if it were to approve the Transaction, in order “to ensure that the transaction would

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<sup>6</sup> The Department’s former proposed condition 6 would have required safeguards regarding transfer of cash from the Vermont FairPoint entity to the FairPoint parent company, such as 30-day advance notice and suspension of transfers if the Board determined that FairPoint was not consistently meeting its commitments regarding service quality, management of regulated operations and broadband build-out. Department Brief at 61, 63. In its Order, the Board reserved decision on whether to approve this condition. Order at 84. As indicated in the Stipulation with the Department, the Department has concluded that the Performance Enhancement Plan (and the agreements and merger conditions contained in the Stipulation) address the issues reflected in condition 6 and that no further conditions in this regard are needed.

promote the public good and not impair competition.” Order at 228. A few of those conditions are no longer necessary or appropriate in their original form in light of the revisions to the Transaction described above, and the Petitioners propose the following modifications and/or clarifications to certain conditions.<sup>7</sup>

A. Board Review Of Conditions In Other Regulatory Approval Orders

Condition 11 in Appendix B to the Order provides that in the event regulatory approvals of the Federal Communications Commission (“FCC”), the Maine Public Utilities Commission (“MPUC”) or the New Hampshire Public Utility Commission (“NHPUC”) are conditional, Board approval would be conditioned upon Board review of the other commissions’ conditions. The Petitioners appreciate the Board’s willingness to provide for expedited review of such conditions, but this condition could unduly delay the closing and potentially jeopardize the petitioners’ ability to close the Transaction. Accordingly, the Petitioners propose the following replacement condition:

If regulatory approvals from the FCC, the Maine PUC or the NH PUC are conditional, the Board will determine within three business days of receipt of any such order whether any conditions imposed thereby either conflict with this Order or result in a material adverse change to FairPoint’s financial projections entered into evidence in this proceeding. In the event the Board finds any such conflict or material adverse change, it will establish additional procedures as it deems appropriate.

This revision will avoid unnecessary delays in the closing, and accommodate the need for final approvals in January while still providing for additional Board review of any potentially conflicting approval orders.

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<sup>7</sup> As previously noted, Attachment 1 to this motion states all of the conditions to be included in an order approving the revised Transaction, including: (1) the conditions included in Appendix B to the Board’s Order, modified as described below; (2) financial conditions from the Maine Stipulation, as described above; and (3) conditions arising from the Performance Enhancement Plan.

B. Performance Benchmark Reports

Condition 17 requires FairPoint to demonstrate that it has made adequate arrangements to include all state-specific information contained in the Performance Benchmark Report. The report includes information relating to, among other things, rates, revenues, DSL coverage and take rates in Vermont and twelve other states (including the District of Columbia) in the Verizon Communications Inc. eastern footprint. All of the information contained in the report is available from public sources, except for (1) percent residential lines taking a bundled package with an affiliate product discount, (2) DSL take rate (all service levels), (3) DSL qualified loops to total loops, (4) average revenue per minute (toll), and local revenues per access line. This information is competitively sensitive and therefore should not be available to FairPoint. Given FairPoint's enhanced financial capabilities and the unique nature of the "Consistent Coverage" broadband deployment plan (*see* Condition 19) which FairPoint is now adopting, Verizon's performance in other states – particularly the DSL data – is of little relevance to FairPoint's performance in Vermont. For these reasons, the Petitioners propose to limit this condition to publicly-available information.

C. Dual Poles

Conditions 33-34 would require Verizon to remove within one year of closing, all dual poles existing as of closing in the Vermont service area, and to fund a \$6.7 million escrow account to compensate FairPoint in the event FairPoint instead is required to remove these dual poles. In light of the significant financial changes to the Transaction – in particular, Verizon's \$235.5 million capital contribution (plus its forgiveness of another \$12 million owed by

Fairpoint) – this obligation is now appropriately borne by FairPoint, rather than Verizon.<sup>8</sup> The Board originally declined to place the financial burden of this project on FairPoint, despite FairPoint’s willingness, in part due to concern with FairPoint’s financial soundness, Order at 144-145. The Board also noted that a transaction agreement requiring FairPoint to assume responsibility to perform this remediation would be reasonable and acceptable if FairPoint is compensated. *Id.* at 145. As demonstrated above and in the Supplemental Testimony of Walter Leach, Verizon’s additional \$235.5 million capital contribution to FairPoint (and forgiveness of another \$12 million payment) ensures FairPoint’s financial soundness and more than compensates FairPoint for the remediation effort. Moreover, with its added financial flexibility, FairPoint has agreed to allocate or reserve \$6.7 million from its revolving credit line to be devoted solely to the dual pole remediation effort. Thus, there is no need to impose that obligation on Verizon because, based on the Board’s analysis, the reservation of these funds provides the requisite assurance that the dual poles will be removed.<sup>9</sup> Further, following the closing, FairPoint will be the owner of the network in Vermont and Verizon will merely be a competitor and neighbor. Requiring Verizon to hire contractors to perform the actual work of transferring Fairpoint’s facilities from old poles to new ones across the state and removing the old poles (as opposed to requiring Verizon to provide the funding for FairPoint to do the work, as Verizon has effectively done) would divest FairPoint of significant control over its network and potentially result in coordination and control issues that could needlessly slow down the project.

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<sup>8</sup> Moreover, the statement that the Board “would not allow Verizon’s Certificate of Public Good to be revoked until the [dual pole] work has been performed” is factually and legally unsupported. Order at 145. Verizon does not have a Certificate of Public Good (“CPG”) in Vermont and retention of a CPG would have no effect on an entity over which the Board has no jurisdiction.

<sup>9</sup> Also because of Verizon’s additional \$235.5 million capital contribution and \$12 million debt forgiveness, there is no need to require the cost of the independent monitor to be shared equally by Verizon and FairPoint and, as a result, Petitioners propose conforming changes to Condition 40.

Additionally, Petitioners propose a modification to Condition 33 to allow FairPoint 30 months after closing to complete removal of dual poles, consistent with the record. This would shorten the previously-proposed time period by 12 months in response to the Board's concern that quicker action is required. While FairPoint understands the Board's concern, FairPoint believes that Condition 33's 12-month time limit for the removal of all dual poles is unachievable and unsupported in the record.

As presented in testimony, FairPoint determined that a period of 42 months is necessary to remove dual poles in the Verizon service territory after discussions with Verizon and the electric utilities. FairPoint PFD at 44, finding 169. This time frame is based on the company's reasonable assessment of the time needed to hire and train crews and to perform the necessary work. *See Id.*; tr. 9/20/07 at 176-177 (Nixon).<sup>10</sup> FairPoint further committed to establish a remediation plan addressing dual pole issues within 6 months of closing, to include the quantities of poles subject to remediation, their geographic locations, and a timeline for remediation of 36 months commencing at cutover (with a remediation of a minimum of 1000 poles a year). FairPoint Reply Brief at 17. For its part, the Department has testified that until the scope of the dual-pole problem is more fully understood, there is no basis for it to request a remediation period of less than 42 or 36 months. *See* tr. 9/20/07 at 80-81 (Mertens) ("We just don't understand how big a problem it is right now. Not one party was able to step up and say, here are the numbers, . . . , so it's hard for me to evaluate what is reasonable at this point not knowing how big the nut is.").<sup>11</sup> In addition, as noted in the Supplemental Testimony of Walter Leach,

<sup>10</sup> FairPoint would be prohibited by the collective bargaining agreement from outsourcing this work to outside vendors and is thus required to perform all the work with its own employees.

<sup>11</sup> The Department has advocated an efficient, organized approach to addressing the dual-pole issue. Tr. 9/20/07 at 80 (Mertens). Condition 32 calls for the development of an inventory and remediation plan for dual poles within 6 months of closing, and FairPoint is in agreement with this condition and approach. FairPoint submits



there are only approximately 8 months of each year when pole-removal crews can be highly productive in the field, as a result of frozen ground and snow cover during winter months. There is no evidence, therefore, supporting a time period of less than 30 to 42 months to remedy the dual-pole issue.

Petitioners' revised Condition 33 reiterates FairPoint's commitment to address and remove dual poles in a timely fashion and establishes a shorter time frame than that previously agreed to by FairPoint. A time frame of 12 months as contemplated in the Board's Order is unsupported and simply does not provide sufficient time to appropriately identify dual poles, integrate and coordinate the work with normal work flow, hire supplemental workers as needed, and complete the necessary work. Nevertheless, in order to address the Board's concerns, Petitioners submit that a period of 30 months from closing is a reasonable time for FairPoint to complete removal of dual poles.

Accordingly, the Petitioners have revised Conditions 33 and 34 as provided in Attachment 1 to make clear that the obligation for dual pole removal rests with FairPoint and that FairPoint will allocate and reserve \$6.7 million in funds for this purpose. Revised Condition 34 sets a time frame of 30 months commencing at closing to complete removal of dual poles. Petitioners also propose consistent changes to Condition 7.

D. Credits for Retail Billing Errors

The Board's proposed Condition 44 requires FairPoint to provide each retail customer a \$5.00 credit (in addition to refunding any over-billing) for each month in which the customer's bill contains an "error" during any of the first 18 monthly bills sent to customers under the new FairPoint billing systems. Order at 205, 240. FairPoint seeks clarification of the term "error" as

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that it would be inefficient and unadvisable for FairPoint to be under the obligation contained in Condition 33 to remove large quantities of poles on an accelerated basis during the time period it is developing, and before it has completed, its remedial plan.

referenced in this proposed condition and requests further that the condition be amended to conform to the Board's finding number 559 and to include a reasonable cap.

As FairPoint pointed out in briefing, the Department's proposed billing-accuracy condition does not define what kind of "errors" would require the payment of a credit, nor is there any evidence in the record addressing the point. *See* FairPoint Reply Brief at 38. Condition 44 is silent as to what kind of errors would require issuance of a \$5.00 credit. FairPoint requests that the condition, if imposed, should be limited to those errors that have financial impacts on the customer (i.e., over- or under-billing) and should not include, for example, spelling or other minor errors that do not impact the amount owed by the customer. FairPoint submits that such a clarification would be consistent with the Department's position as well as the provisions of billing-accuracy guarantees of other Vermont utilities.

FairPoint further requests that the Board conform Condition 44 to the Order's findings, and in particular to finding number 559, which states the proposed condition "would not take effect until three months after conversion." Order at 204. This finding was based on the Department's stated position to allow FairPoint "up to 3 months to work out the kinks and the bugs in their systems" before applying the \$5.00 credit requirement. *Id.*; Tr. 9/21/07 at 144-45 (Pariseau).

The evidence of record indicated that a primary concern of the Department on billing matters was to ensure that FairPoint addresses any issues that arise in a timely manner. *See* Pariseau sur. pf. at 15-17. The Department's own witness, Curtis Mills, indicated that errors of some kind are likely to occur in the conversion process, tr. 9/19/07 at 180-81, and FairPoint acknowledged that it could not guarantee 100% accuracy, even with an exhaustively-planned and independently-reviewed conversion plan, *see* FairPoint Proposal for Decision and Brief at 195,

197. In addition to its own work with CapGemini, FairPoint is funding the independent monitor to attempt to avoid any billing errors in the first instance. The goal of Condition 44 should be, therefore, to encourage quick resolution of any billing errors that do happen to arise in spite of the exhaustive planning and review process that is already in place.

In addition, the Board's Order referred to the billing-accuracy guarantees of other Vermont utilities. Order at 205, n. 268. FairPoint notes that the billing-accuracy guarantees of Green Mountain Power Corporation, Central Vermont Public Service Corporation and Vermont Gas Systems all contain a cap (\$10,000, \$10,000 and \$5,000 respectively) for billing errors resulting from a single incident, such as one caused by programming errors. *See* GMP Successor Service Quality & Reliability Plan (9/11/06), Section IV.I.b; CVPS Amended and Restated Successor SQRP (11/30/05), Section IV.I.b; VGS Successor SQRP - Second Amended (5/5/04), Section IV.I.b. FairPoint submits that these caps reflect a realization that the updating of computer programs and software by Vermont utilities should not be discouraged by excessive penalties. FairPoint therefore requests that a reasonable cap of \$100,000 per monthly billing cycle be included in Condition 44.

A three-month grace period after conversion as proposed by the Department and stated in finding number 559 along with a \$100,000 cap per monthly billing cycle would strike the proper balance between allowing the utility to implement new systems without the fear of disproportionate penalties while ensuring that any errors be addressed promptly once they are identified.

Consequently, FairPoint requests the following amendment to the language of Condition 44:

Beginning with the 4<sup>th</sup> monthly bill sent to customers under the new FairPoint billing systems and continuing through the 21<sup>st</sup>

monthly bill (for a total of 18 monthly bills), in each month in which the bill provided contains an error as to amounts owed by the customer FairPoint will provide each retail customer a credit of \$5.00 (in addition to refunding any over-billing actually paid by the customer). FairPoint's obligation to fund credits shall be capped at \$100,000 per monthly billing cycle, with the \$100,000 being divided equally among all affected customers.

### CONCLUSION

The Joint Petitioners request that the Board immediately issue a notice setting a deadline for responses by any other party (including any written statement or prefiled testimony) and a date for a hearing, to be held as soon as possible. An expedited hearing would provide a reasonable opportunity to prepare and respond to the issues raised in the proceeding, in light of (1) the need for expedited review of the Revised Transaction, (2) the other parties' awareness of the Maine Stipulation<sup>12</sup> and other post-hearing developments and (3) the clearly-expressed intention of the Board to consider in an expedited manner a revised proposal that addresses its concerns. Order at 228; 3 V.S.A. § 809(a); *Petition of Twenty-Four Vermont Utilities*, 159 Vt. 363, 369 (1992) (one business day notice of evidentiary hearing was reasonable under the circumstances).

For all the above reasons, following that hearing, the Board should approve the Transaction as modified herein.

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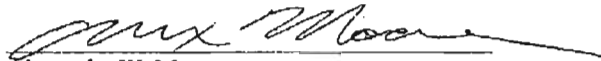
<sup>12</sup> For instance, the CWA/IBEW actively participated in the negotiations leading up to the Maine Stipulation and received relevant information in the same time frame as the other parties to the Maine proceeding.

Dated: January 8, 2008

Respectfully submitted,

VERIZON NEW ENGLAND INC., NYNEX LONG  
DISTANCE COMPANY, VERIZON SELECT SERVICES  
INC., BELL ATLANTIC COMMUNICATIONS, INC.,  
NORTHERN NEW ENGLAND SPINCO INC.,  
NORTHERN NEW ENGLAND TELEPHONE  
OPERATIONS LLC and ENHANCED  
COMMUNICATIONS OF NORTHERN NEW  
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**Attachment 1****Conditions To Be Imposed in Order Approving modified Transaction**

1. Subject to the conditions set out in this Order, the proposed transfer of local exchange and long distance businesses of Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), NYNEX Long Distance Company ("NYNEX Long Distance"), Verizon Select Services Inc. ("VSSI"), and Bell Atlantic Communications, Inc. ("BACI") in Vermont to Northern New England Telephone Operations Inc. ("Telco") and Enhanced Communications of Northern New England Inc. ("Newco") and the transactions contemplated by the Merger Agreement will promote the general good of the State of Vermont and are approved pursuant to 30 V.S.A. §§ 107, 109 and 231, and therefore a Certificate of Consent under 30 V.S.A. § 109 shall be issued.
2. The ownership and operation by Telco and Newco of their respective regulated businesses in Vermont, subject to the conditions in this Order, will promote the general good of Vermont and pursuant to 30 V.S.A. § 231, certificates of public good shall be issued to Telco and Newco.
3. Telco shall be designated as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 254(e) and § 214(e)(2) for the service area previously designated for Verizon and Verizon may relinquish its designation as an ETC pursuant to 47 U.S.C. § 214(e)(4) and 47 C.F.R. § 54.205.
4. FairPoint shall continue to provide the nine services required of ETCs.
5. Subject to the conditions set out herein, the merger, and the acquisition by FairPoint of a controlling interest in Telco and Newco, will promote the public good, and the Board approves in all respects the transactions required or contemplated by the Merger Agreement, including the execution and performance by all parties of the Merger Agreement and all ancillary agreements and transactions required or contemplated by the Merger Agreement.
6. Subject to the conditions in this Order, the Merger will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity in the sale, purchase or manufacture of which Verizon, NYNEX Long Distance, BACI, VSSI or FairPoint are engaged and is approved under 30 V.S.A. § 311.
7. Any abandonment and curtailment of regulated telecommunications services in Vermont by Verizon, NYNEX Long Distance, VSSI or BACI is consistent with the public interest.

**General Conditions**

8. FairPoint shall appoint a senior level person with responsibility for communicating with the Board and Department. The person's primary place of business shall be in Vermont.

9. FairPoint shall provide the Board and Department updates on the FCC approval status for the license transfers under section 310(d) of the Federal Communications Commission's ("FCC") rules and the section 214 authorizations prior to closing. Approval of the acquisition is conditioned on FairPoint obtaining the required approvals from the FCC.

10. If FairPoint and Verizon receive conditional or unconditional regulatory approval from the FCC, the Maine Public Utilities Commission ("Maine PUC") or the New Hampshire Public Utility Commission ("NH PUC"), FairPoint and Verizon shall provide notice to the Board and Department of Public Service ("Department") and a copy of the relevant orders.

11. If regulatory approvals from the FCC, the Maine PUC or the NH PUC are conditional, the Board will determine within three business days of receipt of any such order whether any conditions imposed thereby either conflict with this Order or result in a material adverse change to FairPoint's financial projections entered into evidence in this proceeding. In the event the Board finds any such conflict or material adverse change, it will establish additional procedures as it deems appropriate.

#### Terms and Conditions of Service

12. FairPoint shall file tariffs, to be effective on the date of closing, that match the rates, terms and conditions in Verizon's current tariffs.

13. FairPoint shall be subject to the terms and conditions of the 2005–2010 Amended Incentive Regulation Plan (the "Incentive Regulation Plan") set out in Appendix A of the Board's Order of April 27, 2006, in Dockets 6959/7142 (including the 2005–2010 Amended Service Quality Plan set out in Appendix B), except as modified by this Order.

14. Through December 31, 2010, FairPoint shall not withdraw or increase the price on any regulated intrastate telecommunications service offered by Verizon under tariff as of the closing date of this transaction without the approval of the Board.

15. FairPoint shall prorate all volume pricing provided for in any tariff or other agreement so that the volume thresholds are reduced by the portion of the customer's volume that is generated in states outside of the acquired Verizon operations.

16. Notwithstanding any other provision of the Incentive Regulation Plan, the Board or the Department may seek rate reductions commensurate with any increase in Federal Universal Service Funding which the Vermont operation may be eligible to receive as a direct or indirect result of the transaction.

17. FairPoint shall assume Verizon's duty to provide annually a Performance Benchmark Report. FairPoint shall demonstrate that it has made arrangements to include all state-specific, publicly-available information currently described in that report.

18. FairPoint may not recover in rates any expenses related to the transaction or the transition from Verizon to FairPoint, including any acquisition premium or any increased costs which are due to FairPoint's need to develop and transition to new systems currently supported by Verizon, or which are incurred as a result of continued reliance on Verizon under the Transition Services Agreement.

#### Broadband

19. While meeting the statewide availability commitments for broadband set out in the Incentive Regulation Plan, FairPoint shall also provide broadband service to all access lines in at least 50% of its exchanges by the end of 2010.

- a. As used in this condition, "Broadband" means a data transmission rate of not less than 1.5 Mbps per second in at least one direction.
- b. FairPoint shall determine which exchanges it will serve with 100% broadband availability and publicly announce these exchanges as soon as possible after closing. Each exchange shall be contiguous with at least one other exchange (served by FairPoint or another company) with actual or planned 100% broadband availability.

20. Additional lines or line equivalents qualified for broadband service in the territory served out of the Burlington Central Office after July 1, 2005, shall be excluded from the number of additional lines qualified for broadband service for purposes of the calculations under the Incentive Regulation Plan.

#### Service Quality

21. FairPoint shall track on a monthly basis, Trouble Report Rates and Troubles Not Cleared in 24 Hours by exchange, and ensure that no exchange has a rate on any of these measures that exceeds twice the statewide standard. In addition, if the trouble report rate for any given wire center exceeds twice the statewide standard of 1.4 for three consecutive months, FairPoint shall develop a remediation plan to address the issues causing the higher trouble rate and file it with the Board and Department. Within 12 months of closing, FairPoint also shall develop and file with the Board and Department, an action plan for analysis and remediation of service quality issues for wire centers (other than those already addressed) where the trouble report rates have exceeded twice the statewide standard for at least three consecutive months.

22. If FairPoint fails to meet the performance baseline for the same service quality standard in three consecutive years, it shall file with the Board and Department an evaluation of the reasons for not meeting that standard and the proposed corrective actions.

23. FairPoint shall perform on all of Verizon's obligations under the settlement in Docket 6957.



24. FairPoint shall complete any of the improvement projects that Verizon has identified to address localized service quality issues if Verizon has not completed those projects by the date the parties close the transactions.

25. Prior to conversion, FairPoint shall provide the Department with the codes to be used in the new trouble tracking system to ensure the codes will provide the same information as reported by Verizon, and ensure that the codes map to the Verizon system used as a basis for the report.

26. Within six months of closing, FairPoint shall report on: (1) progress in establishing a tracking system for new customer service requests; (2) whether it has established a goal reflecting good service; (3) the percentage of customer service requests meeting that goal, by month; and (4) a narrative describing improvements that have been made in joint operations with electric utilities when responding to requests for new service.

27. FairPoint shall provide a detailed management plan that addresses quality and service issues before the acquisition is approved. The plan should address the following.

- Organizational Structure and responsibility
- Implementing a regimented approach to the inspection of work
- Quality policies and metrics
- Process flow – engineering, construction, testing, service provisioning
- Reducing error rate
- On time completion rate
- Training employees
- Analysis of data and improvement

Financial

28. FairPoint shall form a separate legal entity within the State of Vermont to separate all Vermont-related assets and liabilities, if any, from the assets and liabilities of other FairPoint regulated and non-regulated operations.

Regulation of FairPoint Vermont

29. The FairPoint Vermont lines shall be excluded from measurements of progress toward the Incentive Regulation Plan's broadband deployment milestones.

30. The election of FairPoint Vermont under 30 V.S.A. Section 227d is terminated; FairPoint Vermont shall be included in the provisions of the Incentive Regulation Plan related to changes in pricing, terms, and conditions of service.

31. FairPoint Vermont shall comply with the Annual Investment requirement of the Incentive Regulation Plan.

Poles

32. All dual poles shall be inventoried and a detailed work plan established within six months of closing.

33. All dual poles existing on the date of closing within Verizon's service area shall be removed by FairPoint within 30 months of closing.

34. Before closing, FairPoint shall allocate and reserve \$6,700,000 from its revolving credit line, which shall be used by FairPoint solely for costs associated with removing the dual poles. The balance shall be released to FairPoint's general funds when FairPoint certifies that the work has been completed.

Emergency Response

35. FairPoint shall adopt written emergency protocols for each electric utility in its serving area. The protocols shall be filed at the Board and Department by closing. If possible, the protocols shall be jointly adopted with the relevant electric utility.

36. No later than six months after closing, FairPoint shall file a demonstration that it has used its best efforts to enter into mutual aid agreements with comparably-sized or larger carriers in case of a natural disaster or other widespread emergency and file copies of any agreements that it has entered.

Cutover and Transition

37. FairPoint shall hire an Independent Monitor acceptable to it and to the Department. The scope of work of the Independent Monitor shall be as defined in Exhibit WL-6, the Three-State Independent Monitor Statement of Scope.

38. The Independent Monitor will generate key deliverables, including draft final reports for review by the Board and interested parties, and will participate in a status conference with the Board, prior to cutover, to present and answer questions from the Board on FairPoint's cutover readiness.

39. Until FairPoint is obliged to give notice to Verizon to activate cutover on a specific date, the Board may order that cutover be delayed, if it has substantial concerns about FairPoint's readiness.

40. The cost of retaining the Independent Monitor shall be funded by FairPoint.

41. FairPoint shall conduct a post-cutover "switch to bill to tariff" comparison to determine the accuracy of the converted billing records. This review shall involve sampling the customer base represented on multiple representative switches to determine the degree to which products that are provisioned on the switch are actually being billed to the customer, and that the products that are being billed to the customer meet the tariff requirements. The review should

examine not only the accuracy of the conversion, but also the accuracy of the current switch profiles, and the quality of the source billing data as it relates to the switches and tariffs. The review shall be completed no later than nine months after cutover and filed with the Board and parties to this docket.

42. FairPoint shall conduct a billing audit within six months of cutover. The audit will be a statistically valid sampling of representative billing output from multiple billing cycles. This review would include full invoice verification. FairPoint may perform the audit in conjunction with the "switch to bill to tariff" comparison and standard revenue operations production reviews.

43. FairPoint shall create a plan within 10–12 months after closing to transition and train Verizon employees, who are accustomed to Verizon's procedures, into FairPoint's operational processes. FairPoint shall establish its own written policies and procedures. FairPoint shall file these policies and procedures along with the transition plan.

44. Beginning with the 4<sup>th</sup> monthly bill sent to customers under the new FairPoint billing systems and continuing through the 21<sup>st</sup> monthly bill (for a total of 18 monthly bills), in each month in which the bill provided contains an error as to amounts owed by the customer, FairPoint will provide each retail customer a credit of \$5.00 (in addition to refunding any over-billing actually paid by the customer). FairPoint's obligation to fund credits shall be capped at \$100,000 per monthly billing cycle, with the \$100,000 being divided equally among all affected customers.

45. The Independent Monitor established to ensure FairPoint's system conversion process is implemented in a manner which eliminates risk to customers should include as one of its criteria an assurance that FairPoint's systems comply with the market opening requirements of the 1996 Act.

#### Competition

46. FairPoint shall be an incumbent local exchange carrier ("ILEC") subject to all of the obligations of Section 251 of the Federal Telecommunications Act of 1996 (the "Act"), including but not limited to the obligation to provide access to unbundled network elements (UNEs) wherever "impairment" exists pursuant to Sections 251(c)(3) and 251(d)(2)(B) of the Act, and the requirement to abide by the negotiation/arbitration process prescribed in section 252 of the Act.

47. FairPoint shall not seek or assert "rural telephone company" classification for FairPoint for purposes of the Section 251(f)(1) rural exemption from Section 251(c) of the Act. This condition does not prevent FairPoint from seeking or accepting designation of FairPoint as "rural" solely for purposes of qualifying for universal service funding or similar support from federal or state programs.

48. FairPoint shall not now or in the future seek any suspension or modification of any of FairPoint's 251(b) or (c) obligations pursuant to Section 251(f)(2) of the Act. This includes FairPoint's local number portability obligations under Section 251(b)(2).

49. For three years following the closing date of the Merger, FairPoint shall not reclassify as non-impaired any of FairPoint's wire centers in Vermont that are not currently classified as nonimpaired. Thereafter, FairPoint shall provide separate notice if and when it decides to withdraw unbundled access to such transport in accordance with applicable tariff, contractual and regulatory notice requirements.

50. FairPoint shall adopt all of Verizon's interconnection agreements and other contracts. Where a contract cannot be adopted, FairPoint shall implement contracts that mirror the rates, terms and conditions in Verizon's contracts.

51. FairPoint shall adopt the Statement of Generally Available Terms ("SGAT") in effect as of the Merger closing date and the Vermont SGAT shall remain in place with rates capped at then-current levels for three years following the Merger closing date. Services available pursuant to said SGAT, as may be amended from time to time in accordance with applicable law (including the conditions in this Order) shall be made available to the competitive local exchange carriers ("CLEC") in accordance with the terms thereof.

52. All services offered to wholesale customers including CLECs under contract, the SGAT or tariffs by Verizon prior to close shall be continued under the same rates, terms and conditions and following the same processes by FairPoint.

53. FairPoint shall extend in writing all inter-carrier agreements in effect as of the Merger closing date for three years following their stated expiration date. Such extension shall not affect the right of a CLEC to terminate an agreement pursuant to the agreement's provisions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of such extended term.

54. For agreements that have expired or are renewed only on a month-to-month basis as of the Merger closing date, FairPoint shall extend the then-current rates and other terms in writing for three years following the Merger closing date. Such extension shall not affect the right of either party to extend such agreements further on a month-to-month basis following the expiration of such three-year term, if the terms of the agreement permit such unilateral month-to-month extensions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of the three-year extension term.

55. FairPoint shall cause all volume pricing provided for in either type of agreement described above, or in tariff-based volume discount programs, to be pro-rated so such volume pricing terms will be deemed to exclude volume requirements from states outside of the three states area served by FairPoint following the Merger closing date. FairPoint shall work with CLECs and Verizon to provide them the same benefits in the aggregate as those provided by the existing Verizon volume discount arrangement; however, in the event that a CLEC chooses to reduce its spending in the FairPoint service territory post-closing, FairPoint is not required to

hold such CLEC “harmless” in the amount of credit it receives under such volume discount arrangement.

56. FairPoint shall offer three-year agreements for tandem transit service, with rates capped at the current tandem transit rates for wholesale customers that agree to a three-year minimum term commitment.

57. FairPoint shall comply with number porting intervals and trunk ordering rules and intervals as may be set forth within existing tariffs, interconnection agreements or other agreements, as the case may be. Otherwise, FairPoint shall comply with industry standard number porting intervals and trunk ordering rules and intervals.

58. FairPoint shall provide as “Settlement Items” all Section 271(c)(2)(B) “competitive checklist” network elements and services to the extent that the FCC rules or has ruled that Bell Operating Companies (“BOCs”) in general are required to provide such elements and services, now or in the future, at rates, terms and conditions that are just and reasonable, and not unreasonably discriminatory, as if governed by Sections 201(b) and 202(a) of the Act as interpreted by the FCC, subject to the rights of negotiation and of review set forth in the subsection below. If the U.S. Supreme Court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007), then FairPoint will provide as “Settlement Items” such Section 271(c)(2)(B) elements and services as BOCs generally may be required to provide under applicable law. In the event the FCC through a final order delegates to the State of Vermont or the State of New Hampshire the authority to determine what elements and services must be provided by BOCs under Section 271(c)(2)(B), then this condition shall be modified accordingly. Nothing herein shall limit the right of FairPoint or any of the parties to the CLEC Settlement to seek reconsideration or review of any such FCC order.

- a. FairPoint may cease providing any Settlement Item in the event that the FCC, a state utility regulatory commission or a court (in each case having competent jurisdiction and authority) (each a “Governmental Authority”) determines that such item is not required to be provided pursuant to applicable law.
- b. In the event a CLEC requests in writing that FairPoint provide in Vermont a Settlement Item required to be provided under this condition, and not the subject of a determination described in subparagraph a, FairPoint and the CLEC will engage in good faith negotiations to reach agreement on the rates, terms and conditions pursuant to which FairPoint will provide such Settlement Item. In the event that FairPoint and the requesting CLEC are unable to reach agreement within nine months from the date FairPoint receives such written request, the CLEC shall have the right to seek resolution of any disputed rates, terms or conditions from the Board. The FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Act and the rates, terms and conditions at which such item must be provided by BOCs shall govern the Board's determinations in any such dispute resolution proceeding. Each Party to such dispute shall have the right to seek

review in a court of competent jurisdiction of any state utility regulatory commission action relative to any Settlement Item, including any state utility regulatory commission order asserting that FairPoint is required to provide an element or service pursuant to this condition above, or setting rates, terms or conditions or asserting a pricing standard for any Settlement Item. None of the Parties will challenge the jurisdiction of the court of competent jurisdiction in which the dispute arises to apply FCC precedent to decide any such review proceeding that may be initiated hereunder. In addition, in any such review proceeding, none of the parties to the CLEC Settlement will challenge the jurisdiction of the state utility regulatory commission to resolve disputes over Settlement Items as provided in this subsection provided that the parties have first engaged in good faith negotiations as required herein, and provided further that in any such dispute resolution process the state applies the FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Act and the rates, terms and conditions at which such item must be provided by BOCs as agreed herein (or such alternative body of law, if any, as may be identified by the U.S. Supreme Court if that court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007)).

59. For a period of three years following closing, FairPoint shall provide wholesale DSL and line sharing where available (provided that the purchaser employs non-interfering technology), subject to the following conditions.

- a. FairPoint will provide wholesale DSL solely for the purpose of a CLEC's provision of end-user DSL service for three years following the Merger closing date, at a rate not to exceed 82% of FairPoint's lowest-priced retail rate advertised for stand-alone residential DSL service in Vermont.
- b. At the CLEC's option, FairPoint shall provide line sharing either (A) at rates set in existing agreements, for the duration of the respective agreements and for an extended term expiring on the date which is three years following their stated expiration date (or three years following the Merger closing date in the case of agreements that remain in effect on a month-to-month basis as of the Merger closing date) at the price specified in the applicable agreement, or (B) for a period of three years following the Merger closing date (pursuant to a tariff provision providing that the offering shall expire by its own terms upon the expiration of such three-year period, unless FairPoint voluntarily extends the term) at a tariffed rate of \$30.00 per line (non-recurring charge), plus a recurring charge of \$6.00 per line per month (non-recurring charges will apply only to lines for which line sharing is not being provided by Verizon as of the Merger closing date).
- c. FairPoint's offering of wholesale DSL or line sharing does not constitute its agreement that these services are required to be offered by BOCs under Section 271(c)(2)(B) of the Act or as a result of FairPoint's commitment to provide

Settlement Items; if it should be determined that either offering is so required, the rates set out in this condition will constitute rates that are just and reasonable, and not unreasonably discriminatory, within the meaning of Section 201(b) and 202(a) of the Act and Condition 58 above, for the three-year term described herein.

- d. FairPoint's obligations under this subsection are independent of any obligation FairPoint has to provide network elements or services under applicable law.
- e. At the end of the three-year period referenced herein, FairPoint may, at its sole discretion, withdraw any offering of line sharing or wholesale DSL pursuant to this section that may then be in effect, including in any state tariff or SGAT. FairPoint will provide at least six months' advance notice of any withdrawal of line sharing or wholesale DSL, and the CLECs agree that such notice will constitute adequate and reasonable notice under applicable law.

60. FairPoint shall not file any new forbearance petition seeking relief from any of FairPoint's Section 251 obligations or obligations to provide access to Settlement Items in any wire center in Vermont for three years after the Merger closing date. FairPoint shall not be prohibited from pursuing rights of review or clarification or from enforcing any forbearance grant arising from a prior Verizon petition. In such event, the three-year period following the Merger closing date shall constitute a reasonable transition period, and no CLEC shall seek any additional transition beyond such three-year period before FairPoint may give effect to any such forbearance authority.

61. FairPoint shall not file any new forbearance petition seeking non-dominant treatment for the acquired territory for three years after the Merger closing date. Nothing herein will restrict FairPoint from enforcing any forbearance from dominant carrier regulation already granted to Verizon (by operation of law or otherwise) in the acquired territory.

62. FairPoint shall comply with the requirements of Section 272(e) of the Act.

#### Performance Assurance Plan

63. FairPoint shall adopt and be subject to the Performance Assurance Plan ("PAP") that now applies to Verizon in Vermont. FairPoint shall adhere to the applicable PAP and Carrier-to-Carrier Guidelines in Vermont and shall be subject to the potential penalties and enforcement mechanisms set forth in those documents. The terms and conditions of the PAP shall remain in effect and applied to FairPoint until the Board orders a successor PAP. FairPoint has agreed not to challenge the Board's jurisdiction to enforce the PAP.

64. Any CLEC may seek enforcement of the PAP, even if such right is not expressly incorporated in the interconnection agreement, tariff or SGAT pursuant to which the CLEC purchases service.

65. After the Merger closing date, FairPoint shall work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to FairPoint in Maine, New Hampshire and Vermont. FairPoint agrees to begin this process by proposing for consideration by the CLECs a revised PAP that could be implemented in all three states.

66. FairPoint shall be responsible for the performance of all of FairPoint's wholesale OSS post-Cutover, in accordance with the terms of the PAP.

#### Miscellaneous Competitive Conditions

67. No later than six months after closing, FairPoint shall, after consultation with its wholesale customers file a proposal to the Board for a "Rapid Response Team" to address issues with wholesale customers arising from the transition from Verizon to FairPoint.

68. FairPoint shall identify the account team or single point of contact assigned to each CLEC.

69. FairPoint shall not pass through to CLECs any acquisition expenses, fees and expenses under the Transition Services Agreement ("TSA") or training expenses incurred by FairPoint in connection with the Merger or the transition to new operating systems. FairPoint reserves the right to seek inclusion in future FairPoint rate cases and cost studies (including but not limited to a future UNE rate proceeding) those capitalized costs arising out of development of new systems which replace systems used as of the Merger closing date by Verizon or its affiliates (including those replacing systems Verizon obtains from third parties), subject to normal review and regulation by the applicable state utility regulatory commission. Nothing herein constitutes an admission by any of the CLECs that FairPoint is entitled to any inclusion of such costs in its future rates or costs.

70. FairPoint shall provide, without charge, training in accordance with the training plan that it develops in accordance with Attachment 1 to the Stipulated Settlement Terms among FairPoint and certain CLECs filed with the Board. FairPoint shall continue to make available to CLECs the types of information that Verizon currently maintains and disseminates to CLECs regarding Verizon's systems and business rules and practices, including the CLEC Manual, industry letters and the change management process. Any CLEC that currently does not receive such materials (for example, because it takes service from the wholesale tariff without an interconnection agreement) may receive such materials upon request. FairPoint shall maintain the CLEC user forum process currently employed by Verizon.

71. FairPoint shall arrange a meeting with wholesale customers approximately six months following cutover to discuss customer concerns and questions. Meeting participants will be expected to inform FairPoint of concerns and questions in advance of the meeting so as to enable FairPoint to respond at or before the meeting.

72. FairPoint shall not request any increase in any of its tariffed rates for interstate or intrastate tariffed special access circuits to be effective within the three years following the



Merger closing date, unless required by law. FairPoint may commence a proceeding or proceedings seeking an increase in such rates prior to the expiration of such three-year period provided that the effective date of the new rates shall not be before the end of such three-year period.

73. FairPoint shall not withdraw any of its currently tariffed interstate or intrastate offering of special access circuits offering for three years after the Merger closing date, unless required by law. This condition does not prevent FairPoint from withdrawing other services offered under the special access tariffs, including high-speed, packetized broadband services previously tariffed by Verizon but authorized by the FCC to be withdrawn from the interstate special access tariff.

Financial (continued)

74. During the three years following the Closing Date, FairPoint shall make, on average, annual capital investments in Vermont in the following minimum amounts:

First Year:	\$ 41,000,000.00
Average of First Two Years:	\$ 40,000,000.00
Average of First Three Years:	\$ 40,000,000.00

To assure investment in the network occurs as projected by FairPoint, total dividend payments by FairPoint to its common shareholders following the two year anniversary of the closing will be reduced the following year by the amount in which the annual average capital expenditures made in Vermont over the two years is less than \$40 million, and dividends paid in the year following the three year anniversary will be reduced by the amount in which the annual average capital expenditures over the three-year period is less than \$40 million.

75. (a) Beginning with the first full quarterly dividend paid after the closing of the Merger, FairPoint shall reduce its aggregate annual dividends payable on common stock (currently \$1.59 per share) by 35% which is effectively an annual reduction of approximately \$49.7 million from current projected levels after the Merger. FairPoint shall not be allowed to subsequently increase its per share dividend until this limitation is terminated pursuant to paragraph 77.
- (b) FairPoint shall not declare or pay any dividend on the common stock of FairPoint following the end of any three consecutive fiscal quarters during which the Leverage Ratio exceeds 5.50 (reduced to 5.0 at and after the fifth full calendar quarter following the Closing Date) or the Interest Coverage Ratio is less than 2.25. FairPoint shall use funds that would otherwise be available to pay dividends but for this restriction to first repay outstanding borrowings under its revolving credit agreement and second to prepay Term Loan borrowings (unless the loan agreements require a different order of payment) until such repayments reduce the debt as of the end of the last respective quarter such that the Leverage

Ratio is reduced to 5.5 or 5.0, respectively. (There will not be any limitation on dividends paid during the first two full fiscal quarters following the closing beyond the reduction agreed to in paragraph (a).)

- (c) FairPoint shall limit the cumulative amount of payments of dividends on its outstanding common stock (excluding the first two full quarterly dividend payments after the closing) to not more than the cumulative adjusted free cash flow (before dividends) generated from and after the Closing Date.
- (d) The conditions in paragraphs (b) and (c) will not be effective until the third full fiscal quarter following the closing, to be consistent with the proposed credit agreement. For all purposes herein, Leverage Ratio shall be defined as the ratio of Total Indebtedness to Adjusted EBITDA. In calculating the Leverage Ratio, for purposes herein, FairPoint shall use the outstanding gross debt amount reduced by any available cash balance, provided that the amount of cash netted against gross debt shall be no more than \$25 million. The definitions of Total Indebtedness and Adjusted EBITDA shall be the same as those contained in FairPoint's current loan documents and as modified by the terms of the new loan documents.

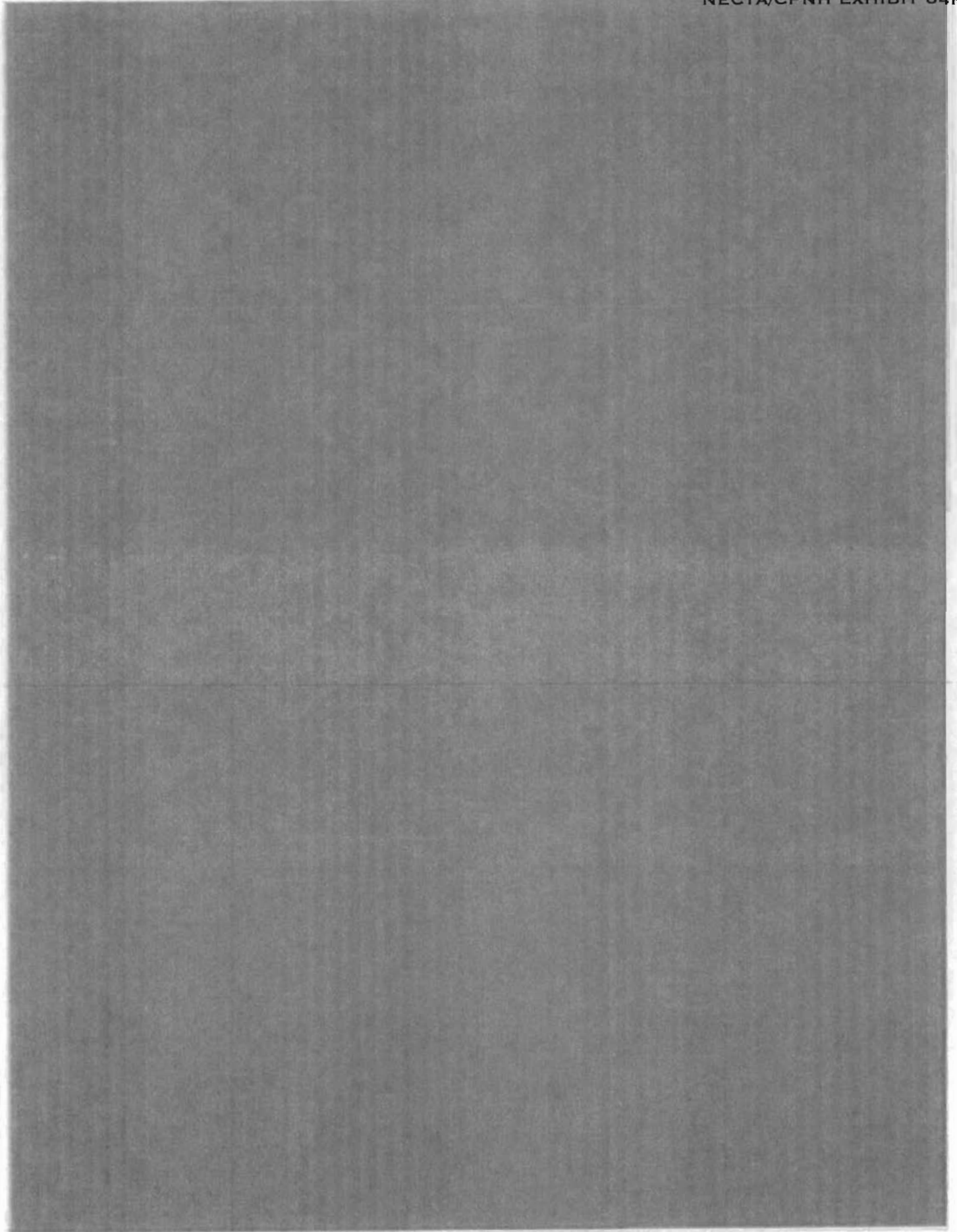
76. Beginning in the first quarter of 2009, FairPoint agrees to pay the higher of \$35,000,000 annually, or 90% of annual Free Cash Flow, to be applied equally in each fiscal quarter, towards the permanent reduction of the principal amount of the Term Loan(s). Free Cash Flow is defined as the cash flow remaining after all operating expenses, interest payments, tax payments, capital expenditures, dividends and other routine cash expenditures have occurred. (For the first year of operations, this calculation would include all adjustments permitted by the current and the new loan documents.)

77. The requirements and conditions in paragraphs 75(a), (b) & (c) and 76, above, shall terminate upon FairPoint achieving a Leverage Ratio of 3.5 for any three consecutive fiscal quarters, provided that if within two years of the end of such three consecutive fiscal quarters achieving the Leverage Ratio of 3.5, the Leverage Ratio exceeds 4.0 for any three consecutive quarters, the limitations and conditions in paragraphs 75(a), (b) & (c) and 76 will become effective and remain effective until the earlier of five years after the end of such three consecutive fiscal quarters achieving a Leverage Ratio of 3.5 or ten years after the closing date. In any event, the limitations and conditions in paragraphs 75(a), (b) & (c), 76 and 77 shall terminate no later than ten years after the closing date. (For the purpose of clarity, if over the ten year period FairPoint does not achieve the Leverage Ratio of 3.5 for three consecutive quarters, the limitations and conditions remain in effect over the entire ten year period.)

78. Verizon will provide at or before closing a contribution to Spinco that will increase Spinco's working capital in the amount of \$235.5 million in addition to the amount specified for working capital in the Distribution Agreement as of the date hereof. FairPoint shall use \$235.5 million to repay permanently (or otherwise not incur), not later than 30 days after the closing of the Merger, the Term Loan or the Spinco Securities issued or incurred at closing.

79. At closing, FairPoint will adopt the Performance Enhancement plan to support its service quality and broadband commitments.

80. If at December 31, 2011, FairPoint's Leverage Ratio of Total Indebtedness to Adjusted EBITDA, as calculated in accordance with the Amended Maine Stipulation dated December 21, 2007, is 3.6 or higher, FairPoint will reduce its debt by \$150 million by December 31, 2012 (and FairPoint will also comply with the debt reduction provision of the Amended Maine Stipulation dated December 21, 2007 if it is in effect at that time). If the debt reduction is not accomplished by December 31, 2012, FairPoint will suspend its dividend until the bank debt is refinanced.



**Attachment 1**

**Marked to identify changes  
from Appendix B to  
Board's Order dated  
December 21, 2007**

**Conditions To Be Imposed in Order Approving modified Transaction**

1. Subject to the conditions set out in this Order, the proposed transfer of local exchange and long distance businesses of Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), NYNEX Long Distance Company ("NYNEX Long Distance"), Verizon Select Services Inc. ("VSSI"), and Bell Atlantic Communications, Inc. ("BACI") in Vermont to Northern New England Telephone Operations Inc. ("Telco") and Enhanced Communications of Northern New England Inc. ("Newco") and the transactions contemplated by the Merger Agreement will promote the general good of the State of Vermont and are approved pursuant to 30 V.S.A. §§ 107, 109 and 231, and therefore a Certificate of Consent under 30 V.S.A. § 109 shall be issued.
2. The ownership and operation by Telco and Newco of their respective regulated businesses in Vermont, subject to the conditions in this Order, will promote the general good of Vermont and pursuant to 30 V.S.A. § 231, certificates of public good shall be issued to Telco and Newco.
3. Telco shall be designated as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 254(e) and § 214(e)(2) for the service area previously designated for Verizon and Verizon may relinquish its designation as an ETC pursuant to 47 U.S.C. § 214(e)(4) and 47 C.F.R. § 54.205.
4. FairPoint shall continue to provide the nine services required of ETCs.
5. Subject to the conditions set out herein, the merger, and the acquisition by FairPoint of a controlling interest in Telco and Newco, will promote the public good, and the Board approves in all respects the transactions required or contemplated by the Merger Agreement, including the execution and performance by all parties of the Merger Agreement and all ancillary agreements and transactions required or contemplated by the Merger Agreement.
6. Subject to the conditions in this Order, the Merger will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity in the sale, purchase or manufacture of which Verizon, NYNEX Long Distance, BACI, VSSI or FairPoint are engaged and is approved under 30 V.S.A. § 311.
7. Any abandonment and curtailment of regulated telecommunications services in Vermont by Verizon, NYNEX Long Distance, VSSI or BACI is consistent with the public interest, ~~subject to Verizon's performance of continued obligations set out in this Order. At such time as the Board determines that Verizon has complied with the requirements of this Order~~

~~relating to removal of dual poles, Verizon's Certificate of Public Good and/or equivalent authorization shall be revoked.~~

#### General Conditions

8. FairPoint shall appoint a senior level person with responsibility for communicating with the Board and Department. The person's primary place of business shall be in Vermont.

9. FairPoint shall provide the Board and Department updates on the FCC approval status for the license transfers under section 310(d) of the Federal Communications Commission's ("FCC") rules and the section 214 authorizations prior to closing. Approval of the acquisition is conditioned on FairPoint obtaining the required approvals from the FCC.

10. If FairPoint and Verizon receive conditional or unconditional regulatory approval from the FCC, the Maine Public Utilities Commission ("Maine PUC") or the New Hampshire Public Utility Commission ("NH PUC"), FairPoint and Verizon shall provide notice to the Board and Department of Public Service ("Department") and a copy of the relevant orders.

11. ~~If regulatory approvals from the FCC, the Maine PUC or the NH PUC are conditional, the Board will determine within three business days of receipt of any such order whether any conditions imposed thereby either conflict with this Order or result in a material adverse change to FairPoint's financial projections entered into evidence in this proceeding. In the event the Board finds any such conflict or material adverse change, it will establish additional procedures as it deems appropriate. approval in Vermont is conditioned upon subsequent review by this Board of the conditions imposed by those other regulatory bodies. The parties may not close the transaction until that subsequent Vermont review has been completed. The Board will provide an expedited procedure to review any such conditions.~~

#### Terms and Conditions of Service

12. FairPoint shall file tariffs, to be effective on the date of closing, that match the rates, terms and conditions in Verizon's current tariffs.

13. FairPoint shall be subject to the terms and conditions of the 2005–2010 Amended Incentive Regulation Plan (the "Incentive Regulation Plan") set out in Appendix A of the Board's Order of April 27, 2006, in Dockets 6959/7142 (including the 2005–2010 Amended Service Quality Plan set out in Appendix B), except as modified by this Order.

14. Through December 31, 2010, FairPoint shall not withdraw or increase the price on any regulated intrastate telecommunications service offered by Verizon under tariff as of the closing date of this transaction without the approval of the Board.

15. FairPoint shall prorate all volume pricing provided for in any tariff or other agreement so that the volume thresholds are reduced by the portion of the customer's volume that is generated in states outside of the acquired Verizon operations.

16. Notwithstanding any other provision of the Incentive Regulation Plan, the Board or the Department may seek rate reductions commensurate with any increase in Federal Universal Service Funding which the Vermont operation may be eligible to receive as a direct or indirect result of the transaction.

17. FairPoint shall assume Verizon's duty to provide annually a Performance Benchmark Report. FairPoint shall demonstrate that it has made arrangements to include all state-specific, publicly-available information currently described in that report.

18. FairPoint may not recover in rates any expenses related to the transaction or the transition from Verizon to FairPoint, including any acquisition premium or any increased costs which are due to FairPoint's need to develop and transition to new systems currently supported by Verizon, or which are incurred as a result of continued reliance on Verizon under the Transition Services Agreement.

#### Broadband

19. While meeting the statewide availability commitments for broadband set out in the Incentive Regulation Plan, FairPoint shall also provide broadband service to all access lines in at least 50% of its exchanges by the end of 2010.

- a. As used in this condition, "Broadband" means a data transmission rate of not less than 1.5 Mbps per second in at least one direction.
- b. FairPoint shall determine which exchanges it will serve with 100% broadband availability and publicly announce these exchanges as soon as possible after closing. Each exchange shall be contiguous with at least one other exchange (served by FairPoint or another company) with actual or planned 100% broadband availability.

20. Additional lines or line equivalents qualified for broadband service in the territory served out of the Burlington Central Office after July 1, 2005, shall be excluded from the number of additional lines qualified for broadband service for purposes of the calculations under the Incentive Regulation Plan.

#### Service Quality

21. FairPoint shall track on a monthly basis, Trouble Report Rates and Troubles Not Cleared in 24 Hours by exchange, and ensure that no exchange has a rate on any of these measures that exceeds twice the statewide standard. In addition, if the trouble report rate for any given wire center exceeds twice the statewide standard of 1.4 for three consecutive months, FairPoint shall develop a remediation plan to address the issues causing the higher trouble rate and file it with the Board and Department. Within 12 months of closing, FairPoint also shall develop and file with the Board and Department, an action plan for analysis and remediation of

service quality issues for wire centers (other than those already addressed) where the trouble report rates have exceeded twice the statewide standard for at least three consecutive months.

22. If FairPoint fails to meet the performance baseline for the same service quality standard in three consecutive years, it shall file with the Board and Department an evaluation of the reasons for not meeting that standard and the proposed corrective actions.

23. FairPoint shall perform on all of Verizon's obligations under the settlement in Docket 6957.

24. FairPoint shall complete any of the improvement projects that Verizon has identified to address localized service quality issues if Verizon has not completed those projects by the date the parties close the transactions.

25. Prior to conversion, FairPoint shall provide the Department with the codes to be used in the new trouble tracking system to ensure the codes will provide the same information as reported by Verizon, and ensure that the codes map to the Verizon system used as a basis for the report.

26. Within six months of closing, FairPoint shall report on: (1) progress in establishing a tracking system for new customer service requests; (2) whether it has established a goal reflecting good service; (3) the percentage of customer service requests meeting that goal, by month; and (4) a narrative describing improvements that have been made in joint operations with electric utilities when responding to requests for new service.

27. FairPoint shall provide a detailed management plan that addresses quality and service issues before the acquisition is approved. The plan should address the following.

- Organizational Structure and responsibility
- Implementing a regimented approach to the inspection of work
- Quality policies and metrics
- Process flow – engineering, construction, testing, service provisioning
- Reducing error rate
- On time completion rate
- Training employees
- Analysis of data and improvement

#### Financial

28. FairPoint shall form a separate legal entity within the State of Vermont to separate all Vermont-related assets and liabilities, if any, from the assets and liabilities of other FairPoint regulated and non-regulated operations.

#### Regulation of FairPoint Vermont



29. The FairPoint Vermont lines shall be excluded from measurements of progress toward the Incentive Regulation Plan's broadband deployment milestones.

30. The election of FairPoint Vermont under 30 V.S.A. Section 227d is terminated; FairPoint Vermont shall be included in the provisions of the Incentive Regulation Plan related to changes in pricing, terms, and conditions of service.

31. FairPoint Vermont shall comply with the Annual Investment requirement of the Incentive Regulation Plan.

#### Poles

32. All dual poles shall be inventoried and a detailed work plan established within six months of closing.

33. All dual poles existing on the date of closing within Verizon's service area shall be removed by FairPoint ~~Verizon~~ within ~~12~~ 30 months of closing.

34. Before closing, FairPoint shall allocate and reserve ~~Verizon shall establish an Overdue Pole Work Escrow Fund of \$6,700,000 from its revolving credit line, which shall be used by FairPoint solely for costs associated with removing the dual poles, with a neutral administrator. The fund shall be available to FairPoint to compensate it for costs associated with removing the dual poles, using procedures designed to give Verizon reasonable opportunity to perform pole removal work using its own resources. The balance shall be released to FairPoint's general funds, with interest, shall be refunded~~ when FairPoint certifies that the work has been completed.

#### Emergency Response

35. FairPoint shall adopt written emergency protocols for each electric utility in its serving area. The protocols shall be filed at the Board and Department by closing. If possible, the protocols shall be jointly adopted with the relevant electric utility.

36. No later than six months after closing, FairPoint shall file a demonstration that it has used its best efforts to enter into mutual aid agreements with comparably-sized or larger carriers in case of a natural disaster or other widespread emergency and file copies of any agreements that it has entered.

#### Cutover and Transition

37. FairPoint shall hire an Independent Monitor acceptable to it and to the Department. The scope of work of the Independent Monitor shall be as defined in Exhibit WL-6, the Three-State Independent Monitor Statement of Scope, ~~which shall be developed jointly by the Department and FairPoint, would include:~~

- Review and assessment of FairPoint planned testing and cutover readiness process, including a review of staffing requirements and plans, training plans and schedules, business readiness and the concerns and requirements expressed by wholesale systems users;
- ~~Monitoring of testing and cutover readiness process;~~
- ~~Pre-cutover readiness review and final report;~~
- ~~Post-cutover review and report; and~~
- ~~State regulator reporting and oversight.~~

38. The Independent Monitor will generate key deliverables, including draft final reports for review by the Board and interested parties, and will participate in a status conference with the Board, prior to cutover, to present and answer questions from the Board on FairPoint's cutover readiness.

39. Until FairPoint is obliged to give notice to Verizon to activate cutover on a specific date, the Board may order that cutover be delayed, if it has substantial concerns about FairPoint's readiness.

40. The cost of retaining the Independent Monitor shall be funded by ~~divided equally between FairPoint and Verizon.~~

41. FairPoint shall conduct a post-cutover "switch to bill to tariff" comparison to determine the accuracy of the converted billing records. This review shall involve sampling the customer base represented on multiple representative switches to determine the degree to which products that are provisioned on the switch are actually being billed to the customer, and that the products that are being billed to the customer meet the tariff requirements. The review should examine not only the accuracy of the conversion, but also the accuracy of the current switch profiles, and the quality of the source billing data as it relates to the switches and tariffs. The review shall be completed no later than nine months after cutover and filed with the Board and parties to this docket.

42. FairPoint shall conduct a billing audit within six months of cutover. The audit will be a statistically valid sampling of representative billing output from multiple billing cycles. This review would include full invoice verification. FairPoint may perform the audit in conjunction with the "switch to bill to tariff" comparison and standard revenue operations production reviews.

43. FairPoint shall create a plan within 10–12 months after closing to transition and train Verizon employees, who are accustomed to Verizon's procedures, into FairPoint's operational processes. FairPoint shall establish its own written policies and procedures. FairPoint shall file these policies and procedures along with the transition plan.

44. Beginning with the 4<sup>th</sup> monthly bill ~~During any of the first 18 monthly bills sent to customers under the new FairPoint billing systems and continuing through the 21<sup>st</sup> monthly bill (for a total of 18 monthly bills), in each month in which the bill provided contains an error as to amounts owed by the customer,~~ FairPoint will ~~shall~~ provide each retail customer a credit of

\$5.00 (in addition to refunding any over-billing actually paid by the customer). FairPoint's obligation to fund credits shall be capped at \$100,000 per monthly billing cycle, with the \$100,000 being divided equally among all affected customers.

45. The Independent Monitor established to ensure FairPoint's system conversion process is implemented in a manner which eliminates risk to customers should include as one of its criteria an assurance that FairPoint's systems comply with the market opening requirements of the 1996 Act.

#### Competition

46. FairPoint shall be an incumbent local exchange carrier ("ILEC") subject to all of the obligations of Section 251 of the Federal Telecommunications Act of 1996 (the "Act"), including but not limited to the obligation to provide access to unbundled network elements (UNEs) wherever "impairment" exists pursuant to Sections 251(c)(3) and 251(d)(2)(B) of the Act, and the requirement to abide by the negotiation/arbitration process prescribed in section 252 of the Act.

47. FairPoint shall not seek or assert "rural telephone company" classification for FairPoint for purposes of the Section 251(f)(1) rural exemption from Section 251(c) of the Act. This condition does not prevent FairPoint from seeking or accepting designation of FairPoint as "rural" solely for purposes of qualifying for universal service funding or similar support from federal or state programs.

48. FairPoint shall not now or in the future seek any suspension or modification of any of FairPoint's 251(b) or (c) obligations pursuant to Section 251(f)(2) of the Act. This includes FairPoint's local number portability obligations under Section 251(b)(2).

49. For three years following the closing date of the Merger, FairPoint shall not reclassify as non-impaired any of FairPoint's wire centers in Vermont that are not currently classified as nonimpaired. Thereafter, FairPoint shall provide separate notice if and when it decides to withdraw unbundled access to such transport in accordance with applicable tariff, contractual and regulatory notice requirements.

50. FairPoint shall adopt all of Verizon's interconnection agreements and other contracts. Where a contract cannot be adopted, FairPoint shall implement contracts that mirror the rates, terms and conditions in Verizon's contracts.

51. FairPoint shall adopt the Statement of Generally Available Terms ("SGAT") in effect as of the Merger closing date and the Vermont SGAT shall remain in place with rates capped at then-current levels for three years following the Merger closing date. Services available pursuant to said SGAT, as may be amended from time to time in accordance with applicable law (including the conditions in this Order) shall be made available to the competitive local exchange carriers ("CLEC") in accordance with the terms thereof.

52. All services offered to wholesale customers including CLECs under contract, the SGAT or tariffs by Verizon prior to close shall be continued under the same rates, terms and conditions and following the same processes by FairPoint.

53. FairPoint shall extend in writing all inter-carrier agreements in effect as of the Merger closing date for three years following their stated expiration date. Such extension shall not affect the right of a CLEC to terminate an agreement pursuant to the agreement's provisions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of such extended term.

54. For agreements that have expired or are renewed only on a month-to-month basis as of the Merger closing date, FairPoint shall extend the then-current rates and other terms in writing for three years following the Merger closing date. Such extension shall not affect the right of either party to extend such agreements further on a month-to-month basis following the expiration of such three-year term, if the terms of the agreement permit such unilateral month-to-month extensions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of the three-year extension term.

55. FairPoint shall cause all volume pricing provided for in either type of agreement described above, or in tariff-based volume discount programs, to be pro-rated so such volume pricing terms will be deemed to exclude volume requirements from states outside of the three states area served by FairPoint following the Merger closing date. FairPoint shall work with CLECs and Verizon to provide them the same benefits in the aggregate as those provided by the existing Verizon volume discount arrangement; however, in the event that a CLEC chooses to reduce its spending in the FairPoint service territory post-closing, FairPoint is not required to hold such CLEC "harmless" in the amount of credit it receives under such volume discount arrangement.

56. FairPoint shall offer three-year agreements for tandem transit service, with rates capped at the current tandem transit rates for wholesale customers that agree to a three-year minimum term commitment.

57. FairPoint shall comply with number porting intervals and trunk ordering rules and intervals as may be set forth within existing tariffs, interconnection agreements or other agreements, as the case may be. Otherwise, FairPoint shall comply with industry standard number porting intervals and trunk ordering rules and intervals.

58. FairPoint shall provide as "Settlement Items" all Section 271(c)(2)(B) "competitive checklist" network elements and services to the extent that the FCC rules or has ruled that Bell Operating Companies ("BOCs") in general are required to provide such elements and services, now or in the future, at rates, terms and conditions that are just and reasonable, and not unreasonably discriminatory, as if governed by Sections 201(b) and 202(a) of the Act as interpreted by the FCC, subject to the rights of negotiation and of review set forth in the subsection below. If the U.S. Supreme Court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007), then FairPoint will provide as "Settlement

Items” such Section 271(c)(2)(B) elements and services as BOCs generally may be required to provide under applicable law. In the event the FCC through a final order delegates to the State of Vermont or the State of New Hampshire the authority to determine what elements and services must be provided by BOCs under Section 271(c)(2)(B), then this condition shall be modified accordingly. Nothing herein shall limit the right of FairPoint or any of the parties to the CLEC Settlement to seek reconsideration or review of any such FCC order.

- a. FairPoint may cease providing any Settlement Item in the event that the FCC, a state utility regulatory commission or a court (in each case having competent jurisdiction and authority) (each a “Governmental Authority”) determines that such item is not required to be provided pursuant to applicable law.
- b. In the event a CLEC requests in writing that FairPoint provide in Vermont a Settlement Item required to be provided under this condition, and not the subject of a determination described in subparagraph a, FairPoint and the CLEC will engage in good faith negotiations to reach agreement on the rates, terms and conditions pursuant to which FairPoint will provide such Settlement Item. In the event that FairPoint and the requesting CLEC are unable to reach agreement within nine months from the date FairPoint receives such written request, the CLEC shall have the right to seek resolution of any disputed rates, terms or conditions from the Board. The FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Act and the rates, terms and conditions at which such item must be provided by BOCs shall govern the Board's determinations in any such dispute resolution proceeding. Each Party to such dispute shall have the right to seek review in a court of competent jurisdiction of any state utility regulatory commission action relative to any Settlement Item, including any state utility regulatory commission order asserting that FairPoint is required to provide an element or service pursuant to this condition above, or setting rates, terms or conditions or asserting a pricing standard for any Settlement Item. None of the Parties will challenge the jurisdiction of the court of competent jurisdiction in which the dispute arises to apply FCC precedent to decide any such review proceeding that may be initiated hereunder. In addition, in any such review proceeding, none of the parties to the CLEC Settlement will challenge the jurisdiction of the state utility regulatory commission to resolve disputes over Settlement Items as provided in this subsection provided that the parties have first engaged in good faith negotiations as required herein, and provided further that in any such dispute resolution process the state applies the FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Act and the rates, terms and conditions at which such item must be provided by BOCs as agreed herein (or such alternative body of law, if any, as may be identified by the U.S. Supreme Court if that court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007)).

59. For a period of three years following closing, FairPoint shall provide wholesale DSL and line sharing where available (provided that the purchaser employs non-interfering technology), subject to the following conditions.

- a. FairPoint will provide wholesale DSL solely for the purpose of a CLEC's provision of end-user DSL service for three years following the Merger closing date, at a rate not to exceed 82% of FairPoint's lowest-priced retail rate advertised for stand-alone residential DSL service in Vermont.
- b. At the CLEC's option, FairPoint shall provide line sharing either (A) at rates set in existing agreements, for the duration of the respective agreements and for an extended term expiring on the date which is three years following their stated expiration date (or three years following the Merger closing date in the case of agreements that remain in effect on a month-to-month basis as of the Merger closing date) at the price specified in the applicable agreement, or (B) for a period of three years following the Merger closing date (pursuant to a tariff provision providing that the offering shall expire by its own terms upon the expiration of such three-year period, unless FairPoint voluntarily extends the term) at a tariffed rate of \$30.00 per line (non-recurring charge), plus a recurring charge of \$6.00 per line per month (non-recurring charges will apply only to lines for which line sharing is not being provided by Verizon as of the Merger closing date).
- c. FairPoint's offering of wholesale DSL or line sharing does not constitute its agreement that these services are required to be offered by BOCs under Section 271(c)(2)(B) of the Act or as a result of FairPoint's commitment to provide Settlement Items; if it should be determined that either offering is so required, the rates set out in this condition will constitute rates that are just and reasonable, and not unreasonably discriminatory, within the meaning of Section 201(b) and 202(a) of the Act and Condition 58 above, for the three-year term described herein.
- d. FairPoint's obligations under this subsection are independent of any obligation FairPoint has to provide network elements or services under applicable law.
- e. At the end of the three-year period referenced herein, FairPoint may, at its sole discretion, withdraw any offering of line sharing or wholesale DSL pursuant to this section that may then be in effect, including in any state tariff or SGAT. FairPoint will provide at least six months' advance notice of any withdrawal of line sharing or wholesale DSL, and the CLECs agree that such notice will constitute adequate and reasonable notice under applicable law.

60. FairPoint shall not file any new forbearance petition seeking relief from any of FairPoint's Section 251 obligations or obligations to provide access to Settlement Items in any wire center in Vermont for three years after the Merger closing date. FairPoint shall not be prohibited from pursuing rights of review or clarification or from enforcing any forbearance grant arising from a prior Verizon petition. In such event, the three-year period following the

Merger closing date shall constitute a reasonable transition period, and no CLEC shall seek any additional transition beyond such three-year period before FairPoint may give effect to any such forbearance authority.

61. FairPoint shall not file any new forbearance petition seeking non-dominant treatment for the acquired territory for three years after the Merger closing date. Nothing herein will restrict FairPoint from enforcing any forbearance from dominant carrier regulation already granted to Verizon (by operation of law or otherwise) in the acquired territory.

62. FairPoint shall comply with the requirements of Section 272(e) of the Act.

#### Performance Assurance Plan

63. FairPoint shall adopt and be subject to the Performance Assurance Plan (“PAP”) that now applies to Verizon in Vermont. FairPoint shall adhere to the applicable PAP and Carrier-to-Carrier Guidelines in Vermont and shall be subject to the potential penalties and enforcement mechanisms set forth in those documents. The terms and conditions of the PAP shall remain in effect and applied to FairPoint until the Board orders a successor PAP. FairPoint has agreed not to challenge the Board's jurisdiction to enforce the PAP.

64. Any CLEC may seek enforcement of the PAP, even if such right is not expressly incorporated in the interconnection agreement, tariff or SGAT pursuant to which the CLEC purchases service.

65. After the Merger closing date, FairPoint shall work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to FairPoint in Maine, New Hampshire and Vermont. FairPoint agrees to begin this process by proposing for consideration by the CLECs a revised PAP that could be implemented in all three states.

66. FairPoint shall be responsible for the performance of all of FairPoint's wholesale OSS post-Cutover, in accordance with the terms of the PAP.

#### Miscellaneous Competitive Conditions

67. No later than six months after closing, FairPoint shall, after consultation with its wholesale customers file a proposal to the Board for a “Rapid Response Team” to address issues with wholesale customers arising from the transition from Verizon to FairPoint.

68. FairPoint shall identify the account team or single point of contact assigned to each CLEC.

69. FairPoint shall not pass through to CLECs any acquisition expenses, fees and expenses under the Transition Services Agreement (“TSA”) or training expenses incurred by FairPoint in connection with the Merger or the transition to new operating systems. FairPoint reserves the right to seek inclusion in future FairPoint rate cases and cost studies (including but

not limited to a future UNE rate proceeding) those capitalized costs arising out of development of new systems which replace systems used as of the Merger closing date by Verizon or its affiliates (including those replacing systems Verizon obtains from third parties), subject to normal review and regulation by the applicable state utility regulatory commission. Nothing herein constitutes an admission by any of the CLECs that FairPoint is entitled to any inclusion of such costs in its future rates or costs.

70. FairPoint shall provide, without charge, training in accordance with the training plan that it develops in accordance with Attachment 1 to the Stipulated Settlement Terms among FairPoint and certain CLECs filed with the Board. FairPoint shall continue to make available to CLECs the types of information that Verizon currently maintains and disseminates to CLECs regarding Verizon's systems and business rules and practices, including the CLEC Manual, industry letters and the change management process. Any CLEC that currently does not receive such materials (for example, because it takes service from the wholesale tariff without an interconnection agreement) may receive such materials upon request. FairPoint shall maintain the CLEC user forum process currently employed by Verizon.

71. FairPoint shall arrange a meeting with wholesale customers approximately six months following cutover to discuss customer concerns and questions. Meeting participants will be expected to inform FairPoint of concerns and questions in advance of the meeting so as to enable FairPoint to respond at or before the meeting.

72. FairPoint shall not request any increase in any of its tariffed rates for interstate or intrastate tariffed special access circuits to be effective within the three years following the Merger closing date, unless required by law. FairPoint may commence a proceeding or proceedings seeking an increase in such rates prior to the expiration of such three-year period provided that the effective date of the new rates shall not be before the end of such three-year period.

73. FairPoint shall not withdraw any of its currently tariffed interstate or intrastate offering of special access circuits offering for three years after the Merger closing date, unless required by law. This condition does not prevent FairPoint from withdrawing other services offered under the special access tariffs, including high-speed, packetized broadband services previously tariffed by Verizon but authorized by the FCC to be withdrawn from the interstate special access tariff.

Financial (continued)

74. During the three years following the Closing Date, FairPoint shall make, on average, annual capital investments in Vermont in the following minimum amounts:

<u>First Year:</u>	<u>\$ 41,000,000.00</u>
<u>Average of First Two Years:</u>	<u>\$ 40,000,000.00</u>
<u>Average of First Three Years:</u>	<u>\$ 40,000,000.00</u>



To assure investment in the network occurs as projected by FairPoint, total dividend payments by FairPoint to its common shareholders following the two year anniversary of the closing will be reduced the following year by the amount in which the annual average capital expenditures made in Vermont over the two years is less than \$40 million, and dividends paid in the year following the three year anniversary will be reduced by the amount in which the annual average capital expenditures over the three-year period is less than \$40 million.

75. (a) Beginning with the first full quarterly dividend paid after the closing of the Merger, FairPoint shall reduce its aggregate annual dividends payable on common stock (currently \$1.59 per share) by 35% which is effectively an annual reduction of approximately \$49.7 million from current projected levels after the Merger. FairPoint shall not be allowed to subsequently increase its per share dividend until this limitation is terminated pursuant to paragraph 77.
- (b) FairPoint shall not declare or pay any dividend on the common stock of FairPoint following the end of any three consecutive fiscal quarters during which the Leverage Ratio exceeds 5.50 (reduced to 5.0 at and after the fifth full calendar quarter following the Closing Date) or the Interest Coverage Ratio is less than 2.25. FairPoint shall use funds that would otherwise be available to pay dividends but for this restriction to first repay outstanding borrowings under its revolving credit agreement and second to prepay Term Loan borrowings (unless the loan agreements require a different order of payment) until such repayments reduce the debt as of the end of the last respective quarter such that the Leverage Ratio is reduced to 5.5 or 5.0, respectively. (There will not be any limitation on dividends paid during the first two full fiscal quarters following the closing beyond the reduction agreed to in paragraph (a).)
- (c) FairPoint shall limit the cumulative amount of payments of dividends on its outstanding common stock (excluding the first two full quarterly dividend payments after the closing) to not more than the cumulative adjusted free cash flow (before dividends) generated from and after the Closing Date.
- (d) The conditions in paragraphs (b) and (c) will not be effective until the third full fiscal quarter following the closing, to be consistent with the proposed credit agreement. For all purposes herein, Leverage Ratio shall be defined as the ratio of Total Indebtedness to Adjusted EBITDA. In calculating the Leverage Ratio, for purposes herein, FairPoint shall use the outstanding gross debt amount reduced by any available cash balance, provided that the amount of cash netted against gross debt shall be no more than \$25 million. The definitions of Total Indebtedness and Adjusted EBITDA shall be the same as those contained in FairPoint's current loan documents and as modified by the terms of the new loan documents.

76. Beginning in the first quarter of 2009, FairPoint agrees to pay the higher of \$35,000,000 annually, or 90% of annual Free Cash Flow, to be applied equally in each fiscal quarter, towards the permanent reduction of the principal amount of the Term Loan(s). Free

Cash Flow is defined as the cash flow remaining after all operating expenses, interest payments, tax payments, capital expenditures, dividends and other routine cash expenditures have occurred. (For the first year of operations, this calculation would include all adjustments permitted by the current and the new loan documents.)

77. The requirements and conditions in paragraphs 75(a), (b) & (c) and 76, above, shall terminate upon FairPoint achieving a Leverage Ratio of 3.5 for any three consecutive fiscal quarters, provided that if within two years of the end of such three consecutive fiscal quarters achieving the Leverage Ratio of 3.5, the Leverage Ratio exceeds 4.0 for any three consecutive quarters, the limitations and conditions in paragraphs 75(a), (b) & (c) and 76 will become effective and remain effective until the earlier of five years after the end of such three consecutive fiscal quarters achieving a Leverage Ratio of 3.5 or ten years after the closing date. In any event, the limitations and conditions in paragraphs 75(a), (b) & (c), 76 and 77 shall terminate no later than ten years after the closing date. (For the purpose of clarity, if over the ten year period FairPoint does not achieve the Leverage Ratio of 3.5 for three consecutive quarters, the limitations and conditions remain in effect over the entire ten year period.)

78. Verizon will provide at or before closing a contribution to Spinco that will increase Spinco's working capital in the amount of \$235.5 million in addition to the amount specified for working capital in the Distribution Agreement as of the date hereof. FairPoint shall use \$235.5 million to repay permanently (or otherwise not incur), not later than 30 days after the closing of the Merger, the Term Loan or the Spinco Securities issued or incurred at closing.

79. At closing, FairPoint will adopt the Performance Enhancement plan to support its service quality and broadband commitments.

80. If at December 31, 2011, FairPoint's Leverage Ratio of Total Indebtedness to Adjusted EBITDA, as calculated in accordance with the Amended Maine Stipulation dated December 21, 2007, is 3.6 or higher, FairPoint will reduce its debt by \$150 million by December 31, 2012 (and FairPoint will also comply with the debt reduction provision of the Amended Maine Stipulation dated December 21, 2007 if it is in effect at that time). If the debt reduction is not accomplished by December 31, 2012, FairPoint will suspend its dividend until the bank debt is refinanced.