STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company and Verizon Select Services Inc.'s Transfer of Assets to FairPoint Communications, Inc.	**DT 07-011**

PREFILED TESTIMONY OF SEAN DANDLEY FOR DSCI CORPORATION AND MICHAEL CLANCY FOR COVAD COMMUNICATIONS COMPANY

Introduction to Witnesses

Q. Mr. Dandley, please state your name, title and business address, educational background and related experience for the record.

A. My name is Sean Dandley. I am President and Chief Executive Officer of DSCI Corporation ("DSCI"). My business address is 1050 Waltham Street, Lexington, Massachusetts 02421. DSCI is a competitive local exchange carrier ("CLEC") operating in most states in the Northeast, with offices in Lexington, Massachusetts; and in both Tilton and Manchester, New Hampshire. I have a Bachelor of Administration degree from the University of Massachusetts and a Master of Business Administration from Bentley College. My current responsibilities include overall management and leadership of DSCI's telecommunications business and related sales, marketing, business development, product development and regulatory activities. Prior to joining DSCI, I was Senior Vice President for Digital

Broadband Communications, Vice President of Sales for Eastern Telecom, and Operations Manager for Protocol Communications. I also have 11 years of service with the Massachusetts National Guard, attaining the rank of Captain.

Q. Have you testified previously before this Commission or other utility commissions?

A. Yes, I have provided pre-filed or live testimony in the following dockets of the New Hampshire Public Utilities Commission ("Commission" or "PUC"):

Re: Federal Communications Commission Triennial Review Docket (Enterprise Switching), Docket No. DT 03-174.

Verizon New Hampshire — Request to Alter Order and for Partial Relief Pursuant to RSA 365:28. Docket No. DT 04-203.

I have also testified in the following dockets in other states:

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Large Business Customers Served by High-Capacity Loops. Massachusetts Department of Telecommunications and Energy ("MA DTE") Docket No. 03-59.

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers. MA DTE Docket No. 03-60.

Complaint of DSCI Corporation For Declaratory Orders to Ensure Verizon-Massachusetts Compliance With Resale Obligations with Respect To Customer Specific Pricing Contracts. MA DTE Docket No. 05-28.

Re: – Implementation of Federal Communications Commission's Triennial Review Order. Rhode Island Public Utilities Commission, Docket No. 3550.

Q. Can you generally describe DSCI's approach to serving New Hampshire telecommunications customers?

A. DSCI offers a suite of local, long distance, Internet and data solutions to business, non-profit and governmental entities in all density zones across New Hampshire. DSCI delivers these services primarily via its regional carrier-class IP network with supplemental services procured via wholesale agreements through a variety of providers, such as Sprint, PaeTec, and Verizon. Analog voice services are purchased from Verizon exclusively via resale. DSCI serves a wide range of customers in New Hampshire such as hospitals, non-profits, law firms and local municipalities.

Q. **Mr. Clancy, please state your name, title and business address, educational background and related experience for the record.**

A. I am Michael Clancy. I hold the title Business Partner for Covad Communications Company ("Covad") and its related affiliates (including DIECA Communications d/b/a Covad that is certified in New Hampshire). My business address is 149 Margaret Boulevard, Merrick, NY 11566-3612. I was hired by Covad in August 1998 after an almost 28 year career at New York Telephone, NYNEX, and Bell Atlantic where my responsibilities ranged from Switching Equipment Technician to Engineering Director on a path of increasing responsibility. I was initially responsible for building Covad's New York Metro region network that included Northern New Jersey and

South Eastern Connecticut. In executing those responsibilities I managed several operational challenges in particular at the interface between Covad and then Bell Atlantic. As a result my responsibilities changed and I became responsible for managing those operational issues for all Covad operating territories where Verizon was Covad's supplier of colocation space and unbundled loops.

Q. Have you testified previously before this Commission or other utility commissions?

A. Yes. I have participated in a few technical sessions in New Hampshire with particular focus on the Performance Assurance Plan. I am active in the New York Carrier Working Group an industry collaborative that continuously monitors the Performance Guidelines and makes changes to them to keep them current and accurate. I chair the Pennsylvania Carrier Working Group that provides the industry in Pennsylvania a similar forum to discuss issues specific to Pennsylvania. I have provided testimony and participated in technical sessions in several states related to Verizon and its predecessor companies' 271 applications. I also have provided testimony in both the Performance Measures and PAP cases in New York, Pennsylvania, Virginia and Maryland.

Q. Can you generally describe Covad's approach to serving telecommunications customers in New Hampshire and elsewhere?

A. Covad is a facilities-based CLEC that leases unbundled network elements ("UNEs"), primarily loops and transport, from Verizon to provide service. Covad sells services directly to consumers and also wholesales services to Information Service Providers.

Summary of Testimony and Recommendations

Q. What is the purpose of your testimony and recommendations?

A. The purpose of our panel testimony is to assist the Commission in reviewing and making findings regarding FairPoint's proposed acquisition of Verizon's local wireline operations in New Hampshire ("Proposed Transaction"). Specifically, we offer factual information and policy arguments concerning the "no net harm" test that the Commission will apply to the Proposed Transaction in deciding whether to approve it, reject it or approve it only subject to enumerated conditions that will protect the market participants and the public from significant harms that are likely to result if the transaction is approved as proposed.

Q. Please summarize your testimony and key recommendations.

A. As discussed below, the Proposed Transaction offers virtually unprecedented risks for New Hampshire CLECs and the general public. Among other major concerns shared by both DSCI and Covad, (1) FairPoint has virtually no experience in wholesale operations (i.e., less than 1,000 wholesale lines nationally; no experience with UNEs; no experience with CLEC colocation)[1] and cannot be counted on to manage the hundreds of thousands of facilities-based, UNE and resale wholesale lines in a manner at parity with Verizon's well-experienced wholesale group;[2] (2) FairPoint and its consultant, CapGemini, have no experience whatsoever in developing entirely new operational support systems ("OSS") to replace the capabilities inherent in several hundred separate Verizon legacy OSS; and (3) FairPoint has failed to provide virtually any specific information regarding its operational and management plans following closing of a transaction that will increase the size of FairPoint by more than 800%, from 300,000 to 1.5 million access lines. DSCI and Covad are deeply concerned about the potential for devastating harms to their respective operations and those of their New Hampshire customers. Specifically, DSCI and Covad requests imposition of at least the following minimum conditions on any approval of the Proposed Transaction:

- Express codification in a Commission order that FairPoint may never seek a rural carrier exemption from its obligations as an incumbent local exchange carrier ("ILEC") in New Hampshire;
- Extension of current Verizon interconnection agreements, wholesale tariffs and wholesale pricing arrangements for not

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1 See FairPoint Response to One Communications 1-5 (number of wholesale lines); CLEC Group 3-15 (lack of experience with UNEs and colocation).

2 While FairPoint has stated it has an "internal" goal to meet or exceed Verizon's wholesale performance, it has refused to agree to a commitment to that effect. See FairPoint Response to NECTA Follow Up 3-15. FairPoint also has declined to make a commitment to maintain wholesale staffing levels at parity with Verizon's current levels. See FairPoint Response to NECTA Follow Up 3-40.

less than a 36 month period following transaction closing, and preferably, not less than a 36 month period after the cutover from the Verizon OSS to the new FairPoint OSS;

- Application of the current Verizon Performance Assurance Plan ("PAP") and associated performance penalties to FairPoint until such time as the Commission orders a modified or replacement PAP;
- Avoidance of a "dark period" in which wholesale systems will be off-line or diminished in capacity or functionality with the cutover to new systems. In the alternative, if FairPoint establishes through credible evidence that such a "dark period" is unavoidable, the Commission should condition approval of the transaction on express requirements that FairPoint will (i) be responsible for PAP reporting and penalties throughout such dark period; (ii) ensure that it has the necessary personnel to process such wholesale orders, inquiries and transactions manually during any such dark period; and (iii) give priority to wholesale orders, inquiries and transactions at least as high as it gives to its own retail orders, inquiries and transactions during such period.
- Express codification in a Commission order that FairPoint's relevant New Hampshire subsidiaries are treated as successors or assigns of Verizon for purposes of obligations imposed by

47 U.S.C. § 271, including the obligation to comply with line sharing obligations; and

- Codification in the order that FairPoint cannot seek forbearance relief from the FCC for at least a three-year period following closing of the transaction.

<u>**Overview of the Proposed Transaction and Concerns**</u>

Q. Please describe the Proposed Transaction in terms of its potential impact on DSCI, Covad and their New Hampshire customers.

A. The Proposed Transaction is an unprecedented undertaking in New England and, arguably, the entire United States. A mid-sized ILEC focused virtually exclusively on rural markets (and, hence, exempt from market-opening obligations ordinarily placed on ILECs pursuant to 47 U.S.C. §§ 251-52) is proposing to acquire wireline local exchange operations in New Hampshire, Maine and Vermont that have been owned and operated for decades continuously by Verizon and its predecessors. Among other things, this transaction will quintuple FairPoint's size, constitute FairPoint's first opportunity to serve territory with substantial urban and suburban zones,[3] constitute FairPoint's first acquisition of lines from a Regional Bell Operating Company ("RBOC"), and provide FairPoint with its first opportunity to become a large-scale supplier of interconnection and other wholesale local exchange and access services to CLECs. These are very significant changes

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[3] <u>Compare</u> FairPoint Response to Staff 2-68 (highlighting FairPoint's limited experience with suburban areas in Washington state and Missouri) with Verizon Response to Staff 2-39 (customer density for New Hampshire as of 1997 TELRIC study was 24% urban and 45% suburban).

that pose tremendous risks for CLECs, such as DSCI and Covad, that currently rely on Verizon for wholesale inputs and support to provide competitive telecommunications services to their New Hampshire end users.

Q. Can you provide additional information on some of the risks faced by CLECs such as DSCI and Covad if the transaction is allowed to proceed without Commission-imposed conditions?

A. Yes. FairPoint will not rely on Verizon's existing legacy OSS that were vetted as reasonable and nondiscriminatory during the § 271 approval process and have been used by New England CLECs for many years. Instead, FairPoint will use CapGemini – a consultant which it has not worked with previously – to develop an entirely new OSS to replace the Verizon OSS.[4] CapGemini acknowledged during the early June technical sessions that the Proposed Transaction represents its first ever engagement to develop replacement OSS following an acquisition of ILEC lines and networks. In the only comparable transaction – the Carlyle Group's 2005 acquisition of Verizon-Hawaii, which included a cutover to entirely new Buyer-developed replacement OSS – there were significant post-cutover problems for CLECs which triggered a detailed investigation/compliance proceeding by the Hawaii Public Utilities Commission that remains ongoing two years after the

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[4] See FairPoint Response to Staff 3-97 (detailing lack of prior experience with CapGemini).

transaction close.[5] Thus, the Proposed Transaction has the potential for devastating adverse impacts on DSCI, Covad and their respective customers. Problems with the FairPoint OSS could affect DSCI's and Covad's pre-ordering, ordering, maintenance, repair and billing of service relative to their new and existing customers.

Additionally, FairPoint will bring in an untested new wholesale services team who may seek to initiate significant changes to established Verizon practices and policies relative to pricing, terms and conditions of critical wholesale services purchased through tariffs or pursuant to interconnection agreements, such as resale, unbundled network elements, special access, and colocation. While FairPoint has agreed to maintain certain of these commitments in place after closing or up to the cutover point, it has consistently and repeatedly declined to make any time commitments in which it would agree to keep such rates, agreements or practices in place thereafter. Such changes can harm the ability of DSCI and Covad to meet the needs of their existing customers and attract new customers.

Q. Have the commitments of FairPoint and/or Verizon in the Joint Application or through the discovery process alleviated DSCI's and Covad's concerns about potential harms associated with the Proposed Transaction?

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[5] See, e.g., Hawaiian Telcom Communications, Inc. Form 10-K (2006); Public Utilities Commission of the State of Hawaii, Order No. 22928 (October 6, 2006); see also Verizon Response to Staff 2-15 (acknowledging its general understanding of post-cutover service quality problems).

A. No. The incompleteness and ambiguity of discovery responses to date have heightened concerns with FairPoint's ability to serve as DSCI's and Covad's wholesale supplier in a manner that is supportive of competition, nondiscriminatory and comparable to the performance of our longstanding wholesale provider, Verizon.

Q. **Can you explain your concerns in more detail?**

A. Yes. First, the discovery responses make clear that, prior to the instant transaction, FairPoint had essentially no wholesale experience of any kind. FairPoint has no management, sales, legal/regulatory or technical staff working with the wholesale market segment. This compares very unfavorably to Verizon, which has been in the wholesale business since the beginning of telecommunications competition throughout its Eastern United States footprint and in many of the former GTE territories elsewhere, and has an experienced infrastructure of human and network in place to respond quickly and within the confines of existing law to meet all the needs of a CLEC wholesale customer and its end users. FairPoint faces the difficult task of inventing this wholesale infrastructure and developing unified and reasonable practices for the three-state Northern New England region from the ground up. This will be a massively complex undertaking for FairPoint that may well not be completed and fully functioning until long after closing.

As only a few examples of the issues that will have to be worked out cooperatively between FairPoint's new wholesale team and DSCI and Covad if the transaction is approved are the following:

<u>Capacity planning</u> – what will FairPoint use as a forecasting method when working closely with the CLECs, particularly in light of the planned efforts to expand broadband access in New Hampshire? To what extent will CLECs have access to FairPoint's build out plans so that they can work together to grow customers in New Hampshire?

<u>Billing Systems – NDM</u> – what will replace the current Verizon Network Data Mover ("NDM"), a direct electronic method of delivering CLEC and Reseller usage data files and Reseller bills? DSCI has used this method with Verizon and currently has a T1 line installed that connects DSCI for billing data exchange purposes directly to the Verizon Data Center in Burlington, Massachusetts. What plans does FairPoint have to provide a similar service and will it reimburse DSCI and other CLECs for the associated costs?[6]

<u>Billing Systems - Other Systems</u> – FairPoint represented at the technical session and in testimony in other New England states that ATIS/OBF Standards were going to be used and that no systems development would be required on the CLEC's part. This statement ignores that there can be

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[6] To date, FairPoint has refused to agree to reimburse CLECs for equipment and other costs they incur as a result of FairPoint's initiated changes to billing systems. <u>See</u>, <u>e.g.</u>, FairPoint Response to One Communications Follow Up 3-7 and 3-19.

significant differences regarding policies and practices within the ATIS/OBF standards. Verizon has documented Business Rules that define what particular data fields it is using and how they would be used. Will the FairPoint developers use the Verizon Business Rules and incorporate these into the "new" systems? Will CLECs be actively involved and have input into pre-system testing using industry stands with system testbeds, fully documented releases with adequate timeframes for any necessary changes, keeping in mind that FairPoint has repeatedly stated that CLECs would not be allowed to collaborate with FairPoint and CapGemini in developing the new system?[7]

Billing Systems – Pending CLEC Orders in the Verizon OSS at Time of Cutover – FairPoint must provide more detail concerning its plans for handling the CLEC orders that are in process in the Verizon OSS but not completed as of the time of the cutover to the FairPoint OSS and related ordering systems.

Change Management Process – DSCI and Covad strongly believe that FairPoint needs to develop and publish a formal Change Management Process so that CLECs understand how to use it or, alternatively, commit to adhere to the existing Verizon Change Management process.

[7] See, e.g., FairPoint Response to NECTA Follow Up 3-8.

Complex Order Handling – DSCI's Resale business and Covad's UNE business include complex service orders that do not flow through Verizon's current OSS. These orders drop out and require manual processing. How are complex orders being handled in the FairPoint OSS design? What plans are being designed into the FairPoint wholesale operations groups for live, experienced staff to process these complex order types in a cost-effective and efficient manner?

Reconciliation of Records to Field Installations – Customer Service Records available on line or in paper files often do not reflect what is actually installed, thereby causing customer delays and problems that can harm competitors to the ILEC. What means will FairPoint develop to handle discrepancies and resolve them quickly? In particular, relative to installations that require installation of CLEC facilities, how will cable/pair discrepancies be handled?

Telephone Number Porting – Currently Verizon uses the SPID 9104 process to port all telephone numbers used in Verizon Resale in New England. How will the designation of a new SPID be handled within NH, VT, ME? How will this be implemented and CLECs notified for the porting out of telephone numbers?

Other Codes – What specific plans will be developed and utilized with respect to particular signaling codes, such as Point Codes, LIDB and SS7, as well as

USOC and phrase codes?[8] How will these plans be communicated to CLECs? Will the codes be provided sufficient months prior to implementation to allow CLECs to have the opportunity to build any code changes into ordering and financial systems? Will hot cuts and associated processes be required? What type of FairPoint team will be available to support any issues that arise?

Q. Has FairPoint made any progress on wholesale service issues?

A. Yes. DSCI appreciates that FairPoint has begun to make strides on this effort, including the hiring of a Vice President for Business and Wholesale Services. Nevertheless, given the nascent state of this effort FairPoint has been unable to provide specifics regarding the manner in which its wholesale services operation will work going forward. Even accepting FairPoint's good faith effort with respect to operating a viable wholesale business in northern New England, the record does not provide any assurance that FairPoint can accomplish its stated goals. In summary, wholesale staff is not in place, OSS systems are under development, and FairPoint has not even surveyed the existing Verizon workforce to confirm which of the experienced staffers will remain with FairPoint after closing.[9] The Commission cannot, and should not, rely on mere statements of good intentions in approving the Proposed Transaction without putting at risk the entire competitive market segment in the State of New Hampshire.

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[8] FairPoint's plan for many of these codes is not yet developed. See, e.g., FairPoint Response to Staff Follow Up 2-3.

[9] See FairPoint Response to Labor Follow Up 1-38 (acknowledging the failure to survey Verizon workers).

In addition, FairPoint announced during the June technical sessions that it intended to use a WISOR front end for wholesale transactions, including LSOG, ASOG, and Trouble Administration transactions with CLECs. It is critically important that this platform and ancillary back office systems – which FairPoint advises will be provided by MetaSolv – be made available to CLECs for test transaction purposes at the earliest practicable dates. Furthermore, it is critically important that the Commission involve itself in the testing of and oversight over these systems so as to make sure that they work effectively in a manner that will allow CLECs to continue to do business in New Hampshire. Currently, as the specifics of the FairPoint-CapGemini testing plans are still in development, there is no assurance that they will be reasonable or sufficient to meet the needs of New Hampshire CLECs and customers.[10]

Q. Do you have another concern that you would like to discuss?

A. Yes. The discovery responses also confirmed that FairPoint is subject to greater capital constraints than Verizon, a much larger ILEC, and is relying on aggressive growth and expense reduction projections to try to demonstrate it can meet the requisite legal standards for transaction approval. Furthermore, discovery revealed that FairPoint has few or no studies or other substantiation

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10 As disclosed in discovery responses, FairPoint's work with CapGemini is governed by work orders and, currently only Work Order No. 1 is in the record, with Work Order No. 2 not expected until August 31, 2007. See, e.g., FairPoint Response to NECTA Follow Up 3-3, 3-19.

to confirm that these projections will be achievable in the field following the closing of the transaction.[11] DSCI and Covad have no position on whether the Commission should approve or deny the application based solely on FairPoint's financial projections. DSCI and Covad are concerned, however, that the wholesale business segment will suffer disproportionate harms, through price increases or service quality cutbacks, in the event that FairPoint's revenue and expense reduction estimates are not achieved.[12] FairPoint has stated it will "consider all options available to it"[13] in the event that financial projections are not met. Conditions are needed to ensure that wholesale providers such as DSCI and Covad not bear the brunt of the adverse changes if FairPoint fails to meet its financial goals in taking over Verizon's northern New England operations.

Q. Above, you have highlighted six conditions that should be imposed on any approval of the Proposed Transaction. For each recommendation, please describe in more detail DSCI's and Covad's justifications for implementing such a measure as a condition on approval of the Proposed Transaction.

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11 For example, FairPoint has failed to conduct analyses to project the potential impacts, positive and negative, of changes to factors such as capital expenditures, DSL demand, and length of the Transition Services Agreement. See FairPoint Response to OCA Follow Up 5-8. Additionally, it appears that FairPoint has not realized its obligations to reduce $23 million in annual Yellow Pages revenues as a result of Commission decisions. See FairPoint Response to Staff Follow Up 1-8.

12 See FairPoint Response to Labor Follow Up 2-17 (acknowledging that wholesale operations generate less margins to FairPoint than retail operations).

13 FairPoint Response to DSCI-Covad 2-8.

A. First, we recommend codification in any Commission order that FairPoint may never seek a rural carrier exemption from its ILEC obligations. The need for this is self-evident – New Hampshire's telecommunications competitive market has flourished under the pro-competitive conditions made possible by the incumbent's adherence to market-opening conditions established in 47 U.S.C. §§ 251, 252 and 271. Competitors, their customers and the public all would be substantially harmed if FairPoint could abandon these commitments in favor of a vague and cumbersome bona fide request process.

Second, we recommend an order extending current Verizon interconnection agreements, wholesale tariffs and wholesale pricing arrangements for not less than a 36 month period following transaction closing and, optimally, a 36 month period following the cutover of the Verizon OSS systems to the new FairPoint OSS system and the consequent end of transition arrangements between FairPoint and Verizon. As noted above, FairPoint is building its wholesale services group from scratch. It is unlikely that this group will be complete, fully functioning and capable of meeting all needs of their CLEC customers until a lengthy time after closing and, given the importance of effectuating the transition away from Verizon systems and services to FairPoint's own systems and services, until a lengthy time period after completion of the cutover.[14] Moreover, it will take FairPoint, Covad and other CLECs substantial time to develop working relationships and mutual

[14] For example, while not specific to wholesale operations, FairPoint has acknowledged that to date it has hired only 17 of the approximately 600 new staffers it projects to hire in Northern New England. See FairPoint Response to Labor Follow Up 1-37.

understanding of business practices needed to work through practices and policies fundamental to enabling vibrant competition throughout New Hampshire. A three year standstill period after closing or, if possible, cutover should provide sufficient time for FairPoint to staff up, gain experience, and work with the CLEC community to an extent that the Commission will not be inundated with regulatory dispute and interconnection arbitration filings.

Third, we recommend a condition to apply the current Verizon Performance Assurance Plan and associated performance penalties to FairPoint until such time as the Commission orders a modified or replacement PAP. If FairPoint and/or CapGemini cannot deliver on their promises to wholesale customers, remedies must be available to make CLECs at least somewhat whole. Application of the current PAP as a condition for any approval of the Proposed Transaction is thus necessary to address the very substantial harms to competitors that will occur if (and, likely, when) FairPoint falls short in meeting wholesale performance standards.

Fourth, we recommend FairPoint not be allowed to utilize a "dark period" on use of automated wholesale systems immediately prior and subsequent to the planned cutover from the Verizon OSS to the newly developed FairPoint/CapGemini OSS, with an associated exemption from PAP reporting and penalty guidelines during and/or subsequent to such period.[15] In a setting where FairPoint has reserved the right to implement a cutover over CLEC objections (and has expressly rejected requests to pay for lost revenues to such CLECs)[16] and has strong incentives to cutover prior to adequate testing and verification in order to minimize associated transition payments to Verizon, FairPoint cannot be allowed untrammeled discretion to implement a cutover and be free of performance penalties in the event that the systems fail to function properly, thereby imposing both costs and potential business losses on the CLEC counterparties. This is highlighted by the fact that FairPoint has picked a target cutover date (May 30, 2008) without any consideration of CLEC needs.[17] These concerns are highlighted even more given that FairPoint has not yet confirmed it will increase staffing to handle CLEC orders or codified time periods in which problems will be resolved.[18]

The avoidance of a lengthy period free of PAP penalty is especially critical given that quality assurance of the new FairPoint OSS cannot be assumed on the current record. With due respect to the good intentions of both FairPoint and CapGemini that they will build new OSS that will meet CLEC needs in a

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15 FairPoint has advised it expects a dark period of approximately five days, subject to change as planning proceeds, but has not yet taken a position on whether or not it will be exempted from the PAP during that period. See FairPoint Response to CLEC Group Follow Up 3-10.

16 See FairPoint Responses to CLEC Group Follow Up 3-3 and 3-4.

17 See FairPoint Response to NECTA Follow Up 3-28.

18 See FairPoint Response to Staff Follow Up 2-14 (date period plan to be developed "may" include additional staffing and will handle problems on a "prompt" basis).

manner as good or even better than the longstanding Verizon OSS, neither FairPoint nor CapGemini has an adequate track record on which the Commission and CLECs can rely. Billing systems are hard to get right, as the Carlyle Group learned in Hawaii and as FairPoint itself learned in a smaller scale in its Maine properties.[19] Both FairPoint and Verizon have made clear that the OSS cutover is an irrevocable event, without the safety net of a return to the Verizon systems in the event of significant quality problems.[20] FairPoint has acknowledged that if gaps remain, post-cutover, they will be "resolved as reasonably as possible."[21] This is not a reassuring answer for a CLEC whose business may be harmed or even devastated if the new FairPoint OSS fails or if it fails to incorporate key capabilities available under the former Verizon OSS. Given all of (1) the absence of relevant FairPoint and CapGemini experience, (2) the adverse case study from Hawaii, (3) the magnitude of the tasks faced in northern New England, (4) the incomplete nature of the cutover planning materials furnished to date, (5) the financial pressures on FairPoint to effectuate cutover and end expensive monthly transition services payments, and (6) the irrevocable consequences of cutover, the Commission cannot give FairPoint the discretion to implement a lengthy blackout period where CLECs -- and their customers -- will bear the full costs of any FairPoint/CapGemini errors in OSS development. Both DSCI and

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19 FairPoint has acknowledged that OSS problems in Maine lasted for a five month period, from July to November, 2005. See FairPoint Response to One Communications Follow Up 2-24.

20 See, e.g., FairPoint Responses to Staff 3-65; and to DSCI-Covad 2-17.

21 FairPoint Response to DSCI-Covad 2-17.

Covad heard the concern expressed by FairPoint during the technical sessions regarding third party testing. We believe there are financial pressures on FairPoint and on Verizon to avoid such testing. We also understand that FairPoint will be replacing many Verizon systems with systems that we can only hope are better. Hope is not a very good business strategy. FairPoint needs the incentive of PAP penalties continuously through the cutover period in order to make sure the OSS and the back office systems that deliver on the requests received from customers fully function before it initiates the decision to cutover.

Alternatively, if the Commission determines, based on credible evidence, that a PAP exemption is required, the Commission should issue orders limiting the harms to CLECs and their customers during this period. This should include a limitation on the length of both the PAP exemption and the dark period and express conditions to ensure that FairPoint has sufficient staff to handle orders manually and ensure that CLEC orders are treated at parity with Verizon retail orders.

Fifth, we request that the Commission order the FairPoint entity responsible for compliance with ILEC responsibilities in New Hampshire be classified as a successor or assign of Verizon for purpose of complying with RBOC obligations under 47 U.S.C. § 271. Competition in New Hampshire will be devastated if FairPoint is allowed to evade the obligation to offer CLECs delisted UNEs under 47 U.S.C. § 271 subject to applicable "just and reasonable" rate obligations.

Sixth, and finally, FairPoint cannot be allowed to obtain forbearance from ILEC obligations for at least a three year period after transaction closing. CLECs will have enough trouble developing policies and implementing operational changes needed to work with FairPoint to have to defend against forbearance petitions.

Q. **With respect to your third recommendation above, do you believe that the Commission should help develop a PAP that would be tied to FairPoint's specific practices, policies and systems under development rather than one tied to Verizon's practices, policies and systems throughout its multi-state footprint?**

A. While it makes sense to develop a FairPoint-specific PAP over time, it appears impracticable to complete such a task prior to closing of the Proposed Transaction. CLECs therefore should receive the benefits of the current PAP which, even if imperfect, provides for better protection than the unacceptable situation of having no PAP or associated remedies in place at all. Such PAP can either be modified or entirely replaced over time based on an investigation initiated at a later date, as appropriate.

Q. Have other parties to this proceeding expressed support for these or similar measures with respect to Verizon and FairPoint?

A. Yes. There was broad support for these six measures, or substantially similar ones, in the intervention pleadings, during the technical sessions, and in filings of CLECs, public agencies and other parties in other northern New England states. DSCI and Covad look forward to seeing the specific recommendations advanced by the participants to this docket.

Q. Does this complete your panel testimony?

A. Yes. It does.