

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DT 07-011

**Joint Petition by Verizon New England, Inc., et al.
and FairPoint Communications, Inc.
Transfer of New Hampshire Assets of
Verizon New England, Inc. et al.**

**Rebuttal Testimony of Michael T. Skrivan
On Behalf of
FairPoint Communications, Inc.**

September 10, 2007

Summary: Mr. Skrivan’s testimony responds to the Office of Consumer Advocate (“OCA”), the New Hampshire Public Utilities Commission (“the Commission”), Staff (“Staff”), and other Intervenors’ testimony in Docket DT 07-011 (“this Docket”) concerning the federal and New Hampshire state regulatory approval processes, and the appropriate regulation of FairPoint following its acquisition of Verizon’s incumbent local exchange carrier (“ILEC”) and intrastate long-distance operations in New Hampshire. Mr. Skrivan discusses some of the commitments FairPoint has made in connection with the proposed transaction, and provides FairPoint’s responses to the conditions and proposals related to wholesale and retail matters recommended by various Intervenors.

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Introduction

Q. Please state your name and business address.

A. My name is Michael T. Skrivan, Senior Director, Regulatory Affairs for FairPoint Communications, Inc. (“FairPoint”). My business address is 521 E Morehead Street, Suite 250, Charlotte, NC 28202.

Q. Please describe your experience in the telecommunications industry and your educational background.

A. I have thirty years’ of regulatory experience in the telecommunications industry. In 1977, I joined Ernst & Young’s (then Ernst & Ernst) Telecommunications practice. My primary duties were performing cost separations studies for independent telephone companies and providing related regulatory consulting. In 1983, I joined Illinois Consolidated Telephone Company, a midsize carrier, to assist it in the implementation of access charges and carrier access billing and otherwise navigate the requirements associated with the AT&T/Bell System Divestiture. From 1992 through 1999, I provided regulatory consulting to rural and midsize local exchange carriers and started a telecommunications consulting practice in Tulsa, OK. From 1999 through April of 2007, I was VP Revenues for Madison River Communications, a midsize local exchange carrier with operations in North Carolina, Illinois, Alabama and Georgia. My duties there included management of carrier relations, including ordering and billing functions, and negotiation and management of interconnection agreements with facilities-based competitive local exchange carriers (“CLECs”) and wireless (“CMRS”) providers; state

1 and federal regulatory affairs; state and federal tariff management including annual
2 interstate tariff filings; and jurisdictional cost studies.

3 I have actively participated in national telecommunication associations and workgroups,
4 including participation in USTelecom's Telecom Policy Committee and as Chair of the
5 USTelecom Midsize Caucus. I have testified in regulatory proceedings in a number of
6 states including Wyoming, Illinois, North Carolina, and South Carolina. Most recently, I
7 testified in North Carolina on behalf of Madison River in an interconnection arbitration
8 involving Cingular and Alltel. I have also testified on behalf of FairPoint before the
9 Vermont and Maine public service commissions, in connection with their review of this
10 transaction.

11 I have a Bachelor of Arts in Business Administration and a Bachelor of Accounting from
12 Washington State University, both received in 1977. I am a Certified Public Accountant
13 (with a non-practicing license in Washington State) and a Certified Management
14 Accountant. I was an instructor at USTelecom's two-week cost separations courses.

15 Q. What are your current responsibilities with FairPoint?

16 A. I was hired by FairPoint to assist with regulatory requirements associated with its planned
17 acquisition of the Verizon local telecommunications operations in Vermont, New
18 Hampshire, and Maine. My responsibilities include planning for regulatory activities
19 associated with the acquisition, including federal price cap regulation, interstate and
20 intrastate tariff management, and general regulatory compliance.

21 Q. What is the purpose of your testimony?

22 A. The purpose of my testimony is to respond to parties' testimony concerning the federal
23 and New Hampshire state regulatory approval processes, and the appropriate regulation

1 of FairPoint following its acquisition of Verizon’s incumbent local exchange carrier
2 (“ILEC”) and intrastate long-distance operations in New Hampshire.

3 **Overview Of Regulatory Matters**

4 **Q.** Please summarize the regulatory obligations that FairPoint intends to assume following
5 the transaction.

6 **A.** FairPoint has stated that it will undertake various actions to ensure that there will be no
7 local price increases or diminution in the services provided to retail consumers, CLECs or
8 other wholesale customers in New Hampshire following the transaction. FairPoint has
9 not attempted to use this approval process to gain any competitive advantage or modify
10 the obligations of the ILEC to consumers, businesses, wholesale customers, or the
11 Commission. Similarly, FairPoint does not believe that as a result of approval of the
12 transaction it should relinquish any legal rights available to Verizon’s New Hampshire
13 ILEC today or to take on additional regulatory obligations that have not previously been
14 imposed on Verizon’s New Hampshire ILEC operations. As discussed generally in the
15 direct prefiled testimony of Peter Nixon, following the transaction, FairPoint will:

- 16 • Adopt or concur in the terms, conditions, and prices of Verizon’s tariffs as of
17 the closing;
- 18 • At the appropriate time, file new tariffs that replicate as closely as possible
19 Verizon’s current tariffs;
- 20 • Assume or replicate Verizon’s interconnection and traffic exchange
21 agreements;

1 Comply with FairPoint’s obligations as an incumbent local exchange carrier
2 (“ILEC”) pursuant to section 251 of the Communications Act of 1934, as
3 amended (“the Act”), 47 U.S.C. § 251—and FairPoint will not assert rural
4 exemptions of its section 251 obligations pursuant to section 251(f)(1) of the
5 Act;

- 6 • Abide by the Performance Assurance Plan (“PAP”), even where the terms of
7 the PAP have not been incorporated into interconnection agreements; and
- 8 • Provide all of the services required to qualify as an Eligible
9 Telecommunications Carrier (“ETC”) in the state.

10 In addition to these previously stated commitments, FairPoint would agree to the
11 following as conditions of approval of the merger:

- 12 • FairPoint will honor existing commercial agreements between Verizon and
13 CLECs;
- 14 • FairPoint will agree to extend in writing all inter-carrier agreements (including
15 interconnection agreements) in effect as of the closing date for one (1) year
16 following their stated expiration date. In addition, for interconnection and
17 other inter-carrier agreements that have expired or are renewed only on a
18 month-to-month basis as of the closing, FairPoint will extend the then-current
19 rates and other terms in writing for one (1) year following the transaction
20 closing. This includes services or network elements not required to be
21 provided under section 251 of the Act (such as line sharing arrangements
22 provided under Verizon’s VISTA agreements, and UNE-P replacement
23 services offered under the Wholesale Advantage agreements); and

- 1 • FairPoint would work cooperatively with other parties to consider revisions to
2 the PAP following closing, with the objective to develop a simplified, single,
3 uniform PAP appropriate for use across the three states, depending on the
4 interest of the Commission and CLECs in doing so.

5 Other FairPoint witnesses, including in particular Brian Lippold, will provide greater
6 detail regarding how FairPoint will fulfill these various obligations.

7 Q. Several witnesses propose that the Commission formally condition its approval of this
8 transaction on FairPoint's adherence to these plans and on its compliance with various
9 additional requirements. Please respond generally to such proposals.

10 A. FairPoint has already committed to adopting Verizon's rights and obligations under state
11 regulation in New Hampshire. The Commission's authority to enforce tariffs, contracts,
12 and interconnection agreements, as well as regulatory requirements will not be altered by
13 this transaction. Therefore, it is not necessary for the Commission to adopt conditions on
14 its approval. However, if the Commission decides to do so, I suggest the following
15 conditions for FairPoint reasonably capture the commitments FairPoint has made:

- 16 • FairPoint will not file any proposed increase in basic local exchange rates
17 within one (1) year of closing, provided that it is agreed that during the same
18 period no general rate proceedings shall be initiated.
- 19 • Within a reasonable period of time following the closing, FairPoint will file
20 new tariffs matching the current ILEC tariffs for Verizon New Hampshire
21 with the same rates, terms, and conditions at closing;
- 22 • FairPoint will adopt all inter-carrier contracts and interconnection agreements
23 applicable to the ILEC in New Hampshire, and where that is not possible

1 FairPoint will execute contracts with substantially the same rates, terms, and
2 conditions;

- 3 • FairPoint will extend in writing all inter-carrier agreements (including
4 interconnection agreements) in effect as of the closing date for one year
5 following their stated expiration date. In addition, for interconnection and
6 other inter-carrier agreements that have expired or are renewed only on a
7 month-to-month basis as of the closing, FairPoint agrees to extend the then-
8 current rates and other terms in writing for one (1) year following the
9 transaction's closing.

10 FairPoint will abide by the Performance Assurance Plan ("PAP"), even where
11 the terms of the PAP have not been incorporated expressly into
12 interconnection agreements;

- 13 • FairPoint will not assert any section 251(f)(1) rural exemption for the newly
14 certificated acquired operations;
- 15 • FairPoint's systems will conform to industry standards as described in Mr.
16 Lippold's rebuttal testimony;
- 17 • FairPoint will not recover transaction expenses from end users or wholesale
18 service provider customers;
- 19 • FairPoint will install and test systems before cutover. The pre-filed panel
20 rebuttal testimony of Mssrs. Michael Haga and Al Kurtze discusses
21 FairPoint's specific proposal to work with an expert selected by the three state
22 commissions to review and validate FairPoint's testing process. This would
23 include a review of the test strategy and joint concurrence in a testing plan and

1 testing criteria;

- 2 • FairPoint will continue to offer all CLEC (and other wholesale customer)
3 services offered by Verizon under agreement immediately prior to closing,
4 including access to E911 services, back-office support systems, directory
5 listings, automated directory assistance, published network specification
6 sheets, CLEC User forum information, and a CLEC handbook;
- 7 • As to tariffs and rates, FairPoint will not seek to increase its rates for interstate
8 or intrastate tariffed special access circuits effective within eighteen (18)
9 months after the transaction closing, unless required by law. Also, FairPoint
10 will not withdraw any interstate or intrastate tariffed special access service
11 offering for eighteen (18) months after the transaction closing, unless required
12 by law or permitted by order of the FCC; and
- 13 • FairPoint will prorate all volume pricing provided for inter-carrier agreements
14 so such volume pricing terms will be deemed to exclude volume requirements
15 from states outside of the three-state area following the closing.

16 Additional conditions related to the regulation of wholesale services proposed by other
17 parties are simply inappropriate and their imposition risks harming consumers in New
18 Hampshire by harming competition and by hindering FairPoint's ability to invest in and
19 focus on improving service and deploying new services. I discuss the substance of these
20 conditions throughout my testimony below.

1 **State Regulatory Matters**

2 **Q.** Several witnesses propose various additional conditions that would govern FairPoint's
3 conduct following the merger. How do you respond to these proposals?

4 **A.** Some of the conditions recommended by parties to this proceeding and described in their
5 testimony are inappropriate because, as I explain below, they are not necessary or
6 appropriate for FairPoint, either to protect consumers or to promote competition in this
7 market, and in most cases they would subject FairPoint to *increased* regulation as
8 compared to Verizon. FairPoint believes it is premature and potentially harmful to add to
9 the regulatory conditions applicable to Verizon's New Hampshire operations at closing,
10 in the interest of a seamless transition to FairPoint ownership and operation. A number
11 of Intervenors to this proceeding recommend conditions be placed on the approval of
12 FairPoint's Petition that would advance their interests. In some cases, the recommended
13 conditions would provide benefits to parties that they have not been able to obtain
14 through negotiation with Verizon or through the state and federal regulatory processes.
15 In many cases, parties are asking FairPoint to agree to conditions that have not been
16 found to be in the public interest by the FCC or by the New Hampshire PUC. The
17 Commission should refrain from allowing parties to use this proceeding as leverage to
18 gain advantages not otherwise available under established state and federal regulatory
19 policies; this proceeding should be decided based on the public interest. In the long run,
20 New Hampshire consumers will benefit from a disciplined approach to the requested
21 conditions.

22 **Q.** Several witnesses suggest that the Commission should adopt limitations on rate increases
23 by FairPoint. Please respond.

1 A. First, as I noted above, FairPoint will not file any proposed increase in basic local
2 exchange rates within one (1) year of closing, provided that it is agreed that during the
3 same period no general rate proceedings shall be initiated. FairPoint has further agreed it
4 will not seek to increase its rates for interstate or intrastate tariffed special access circuits
5 effective within eighteen (18) months after the transaction closing, unless required by
6 law. FairPoint will agree to extend in writing all inter-carrier agreements (including
7 interconnection agreements) in effect as of the closing date for one (1) year following
8 their stated expiration date, meaning that the rates provided for in those agreements will
9 not change during that time. In addition, for interconnection and other inter-carrier
10 agreements that have expired or are renewed only on a month-to-month basis as of the
11 closing, FairPoint will extend the then-current rates and other terms in writing for one
12 year following the transaction closing.

13 In addition, FairPoint will prorate all volume pricing provided for in agreements of either
14 type of agreement described above, so such volume pricing terms will be deemed to
15 exclude volume requirements from states outside of the three-state area following the
16 closing.

17 Beyond these stated intentions, it would not be appropriate or prudent to prohibit the
18 company from reviewing its pricing and other terms of service in the ordinary course of
19 business to ensure quality, and to respond to changes in law and market conditions.

20 FairPoint should be entitled to the same degree of flexibility to change its pricing and
21 terms and conditions as Verizon.

22 Q. Would FairPoint be willing to discuss a simplified PAP, as several CLECs have
23 requested?

1 A. Yes. FairPoint generally agrees with CLECs regarding the benefits of meaningful and
2 understandable measures and reports, regardless of how much experience the particular
3 wholesale provider has. While I do not believe that the schedule for this proceeding
4 allows sufficient time to develop a simplified PAP prior to closing, FairPoint will
5 welcome a process to revise the PAP and develop a single set of criteria applicable
6 uniformly across all three states, within a reasonable timeframe following closing.

7 Q. Should FairPoint be required to file quarterly reports of (1) its total number of switched
8 access lines and (2) its progress in deploying broadband?

9 A. To the extent this is appropriate or necessary—an issue discussed at length by other
10 FairPoint witnesses, including in particular Walter Leach and Michael Balhoff—
11 FairPoint would be willing to provide such information on a confidential basis for a
12 limited period of time (one year) following the closing. FairPoint would be willing to
13 provide annual updates regarding its progress in deploying broadband, those updates
14 should not include disclosures of the competitively sensitive details proposed by OCA.
15 This recommended condition is similar to others in that the Commission is being asked to
16 impose heavy administrative burdens on FairPoint regardless of whether the benefits of
17 such a proposal outweigh the costs. If the costs of implementing new administrative
18 requirements on FairPoint are not clearly justified by the public benefit, then the request
19 should be rejected. The PAP reporting provides a good case example of where regulatory
20 reporting at a granular level has become a burden for all participants. CLECs, who
21 arguably would benefit most from a detailed PAP, have asked FairPoint for a simplified
22 PAP.

1 Q. Should the Commission impose conditions related to the provisioning of wholesale
2 services?

3 A. No. Access to certain ILEC network elements is required under section 251 of the Act
4 only when a competitor is found to be “impaired” without access to such elements.
5 Moreover, in passing the Telecommunications Act of 1996 and adding sections 251 and
6 252 to the Act, Congress clearly expressed a preference for direct negotiations between
7 carriers and, ultimately, interconnection on commercial terms, not under tariff. I believe
8 that CLECs benefit from having individualized agreements that meet their specific needs
9 rather than a uniform set of terms that applies to everyone. Indeed, as the testimony
10 illustrates, CLECs often have different business models and thus different requirements
11 and priorities. In addition, a CLEC always has the choice under section 252(i) of the
12 Communications Act to opt into an existing interconnection agreement that has been
13 negotiated or arbitrated by another carrier and approved by the Commission pursuant to
14 section 251(e) of the Act. For CLECs that do not need individualized agreements, New
15 Hampshire has adopted wholesale tariffs, and FairPoint has agreed to assume Verizon’s
16 obligations under those tariffs as of the closing. As explained in more detail by Mr.
17 Lippold, FairPoint will be actively working to build relationships with its wholesale
18 customers.

19 Q. Do you believe that FairPoint should be required to offer section 271 services in a
20 wholesale tariff notwithstanding the outcome of the appeal in the United States Court of
21 Appeals for the First Circuit (“the First Circuit”)?

22 A. No. On September 7, 2007, the First Circuit affirmed a federal district court’s reversal of
23 the Commission’s decision to require Verizon to offer various services pursuant to

1 section 271. Although I am not a lawyer, I believe the First Circuit's decision makes
2 clear that section 271 services are under the FCC's jurisdiction, and that the states may
3 not impose rules that conflict with the FCC's decisions. I defer to counsel and
4 FairPoint's post-hearing briefing to explain the full ramifications of the court's ruling.
5 Further, FairPoint should not be required to adhere to any greater unbundling obligation,
6 as determined by the courts, than Verizon would have with respect to 271 unbundling
7 obligations. Otherwise, FairPoint risks becoming subject to more stringent requirements
8 than would apply to Verizon New Hampshire in the absence of the transaction.

9 **Q.** Mr. Brevitz states that ratepayers should "not be[] required to bear, either directly or
10 indirectly, any costs, liability, or obligations incurred in connection with the transaction."
11 How do you respond?

12 **A.** To the extent Mr. Brevitz is concerned that FairPoint might seek to recover transaction-
13 related expenses (including expenses arising from FairPoint's need to develop and
14 transition to new systems currently supported by Verizon) in a future proceeding,
15 FairPoint has already disavowed any such intention. As Mr. Walter Leach explained in
16 his direct testimony, "FairPoint will not include, nor will it request to include, any
17 acquisition premium or amortization thereof in a future rate base/rate of return
18 proceeding, should such an event be necessary. Other types of expenses relating to this
19 transaction, such as due diligence, negotiation, and expenses to obtain financing, will not
20 be passed on to customers through regulated rates." However, to the extent FairPoint
21 makes investments in systems which will replace the costs of systems currently provided
22 by Verizon, and are eligible for inclusion in the regulated rate base, FairPoint has the
23 right to include these costs in future rate proceedings, should such an event be necessary.

1 And of course other interested parties have the right in any such proceeding to oppose the
2 inclusion of such costs at that time.

3 I want to clarify that while certain expenses associated with FairPoint's contract with
4 Capgemini—described at length by Michael Haga in his direct testimony—are
5 considered transaction expenses and would not be included in future rate proceedings,
6 other costs of Capgemini represent bona fide costs of acquiring, developing and
7 implementing systems which will serve in the place of existing Verizon systems and for
8 which costs are currently allocated to Verizon's New Hampshire operations. These other
9 costs, which will be part of the capitalized costs of the systems would be considered used
10 and useful in future rate proceedings and FairPoint has the right to include these types of
11 costs in any future rate proceeding, should such an event be necessary.

12 Q. Please respond to Mr. Brevitz's request that the Commission condition its approval of the
13 transaction on "any other conditions which are imposed by other state commissions, or
14 otherwise agreed to by FairPoint."

15 A. Mr. Brevitz's catch-all request would impose on FairPoint's New Hampshire operations
16 conditions that likely will be specific to the other states and that are neither appropriate
17 for New Hampshire nor supported by the record being developed in this proceeding. To
18 the extent Mr. Brevitz's objective is to recommend uniformity across all three states, this
19 can be readily achieved through the use of regional commercial agreements. Any
20 conditions that are imposed on FairPoint should be done so only to further the public
21 interest. Mr. Brevitz has not explained why adopting conditions developed by and for
22 other states, without even knowing why they are adopted, would serve the public interest
23 in New Hampshire.

Federal Regulatory Treatment

1
2 **Q.** Is there any need for the Commission to impose conditions requiring FairPoint to comply
3 with section 251 of the Act?

4 **A.** No. FairPoint has stated that, following the transaction, it will be an incumbent local
5 exchange carrier (“ILEC”) that is subject to Section 251 as well as Section 252.
6 FairPoint agrees that it must comply with Section 251, and FairPoint will make Section
7 251 UNEs available at the same pricing that applies to Verizon today. There does not
8 appear to be any basis for serious argument on this point. Therefore, FairPoint’s acquired
9 operations *already* will be required to perform such Section 251(c) duties as providing
10 access to unbundled network elements (“UNEs”) and negotiating interconnection
11 agreements in good faith, without any further action by the Commission.

12 **Q.** Does FairPoint intend to avoid these obligations through the mechanisms described in
13 Section 251(f)?

14 **A.** No. FairPoint has stated that it does not intend to seek rural status or section 251(f)(1)
15 relief under the rural exemption, and it has no present intention to seek relief under
16 section 251(f)(2) from any section 251(b) or (c) obligations, although FairPoint will be a
17 “two percent” carrier. As Mr. Nixon stated in his prefiled direct testimony, “FairPoint
18 will not take the position that this company is a rural telephone company entitled to
19 exemption from Section 251(c) obligations under Section 251(f)(1) of the federal
20 Communications Act, or to suspension or modification of Section 251(b) or to (c)
21 obligations under Section 251(f)(2) of the Communications Act.”

22 Therefore, FairPoint will not claim 251(f)(1) rural exemptions at closing or in the future.

23 In addition, FairPoint will not assert rights to 251(f)(2) 2% suspensions and exemptions

1 at close, but reserves the right to approach the Commission in the future seeking 2%
2 suspensions and modifications should FairPoint find a situation in which such an action
3 would be in the public interest. If FairPoint were inclined to seek suspension or
4 modification of a 251 obligation pursuant to Section 251(f)(2) at some point in the future,
5 it is up to the Commission to determine whether FairPoint in fact is entitled to suspension
6 or modification of its Section 251(b) and (c) obligations. The Commission may prefer to
7 have the flexibility to use that mechanism to refine the regulatory landscape in New
8 Hampshire as circumstances warrant. The application of 251(f)(2) could provide the only
9 path to relief that the Commission finds to be in the public interest. I want to point out
10 that in order for FairPoint to receive relief under this statute, it must meet a very tough
11 burden – one which would not be lightly undertaken. FairPoint would need to
12 demonstrate to the Commission, in a public proceeding where all could participate, that
13 the finding is in the public interest. According to Section 251(f)(2), *“The State*
14 *commission shall grant such petition to the extent that, and for such duration as, the State*
15 *commission determines that such suspension or modification – (A) is necessary – (i) to*
16 *avoid a significant adverse economic impact on users of telecommunications services*
17 *generally; (ii) to avoid imposing a requirement that is unduly economically burdensome;*
18 *or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is*
19 *consistent with the public interest, convenience and necessity.”*

20 There may be provisions in the future that all parties agree should be changed for ILECs
21 in New Hampshire, but are required of ILECs generally by FCC rules. Section 251(f)(2)
22 provides appropriate relief for 2% carriers from potential obligations that could harm end
23 users economically, have an undue economic impact on FairPoint or are simply

1 technically infeasible. Further, FairPoint would have to demonstrate that any such relief
2 would be in the public interest before it could be granted. Therefore, it is reasonable for
3 FairPoint to have access to this mechanism for obtaining relief, as do other 2% carriers.

4 **Q.** Please describe FairPoint's obligation to provide access to high capacity UNE loops and
5 transport under section 251.

6 **A.** A CLEC is only entitled to obtain access to high capacity UNE loops or transport under
7 section 251 if the CLEC would be "impaired" without access to such network element on
8 an unbundled basis, or if the ILEC has agreed to provide such network element on a
9 contractual basis. This impairment test is based on the FCC's decisions in the Triennial
10 Review Order and the Triennial Review Remand Order. The FCC concluded, after
11 reviewing the positions of all parties, that the public interest in developing competition
12 was best promoted by requiring the ILEC to provide UNEs only where the CLECs would
13 be impaired without such unbundled access. If I can summarize a complex issue, the
14 FCC concluded that competition is better served in the long run by encouraging all
15 carriers to invest in their own networks. In addition, the FCC found, and the courts
16 affirmed, that the ILECs do not have a market advantage for some types of facilities—
17 such as fiber in "greenfield" or new-build settings, or packet switching—and therefore no
18 CLEC can be said to be "impaired" without regulated access to such facilities. The FCC
19 made certain national findings regarding impairment (*e.g.*, switching). For other loop and
20 transport UNEs, the impairment analysis is conducted by individual wire center and
21 transport route.

22 I understand that the Commission has determined that the Manchester wire center
23 currently satisfies the Commission's interpretation of the FCC's non-impairment standard

1 for DS1 transport. However, an ILEC would only be relieved from providing this
2 transport element under section 251 between Manchester and another Tier 1 wire center,
3 of which there are currently are none identified in the state. I further understand that the
4 Commission has determined that the Concord, Manchester, Nashua, and Portsmouth wire
5 centers currently satisfy the non-impairment standard for DS3 and dark fiber transport.
6 Although the Commission also determined that Verizon New Hampshire must continue
7 to provide unbundled access to DS1 and above transport as a requirement of Verizon's
8 section 271 unbundling obligation, that decision was reversed by a federal district court,
9 which in turn has been affirmed by the First Circuit, as noted above.

10 **Q.** For purposes of determining impairment, does FairPoint intend to count MCI as a fiber-
11 based collocator?

12 **A.** FairPoint may choose to count MCI collocations for this purpose. Although Verizon was
13 prohibited from doing so pursuant to the conditions on its merger with MCI, FairPoint
14 will not be affiliated with MCI and thus there would be no reason for this condition.
15 Having said that, based on discussions with Verizon, we believe that only one of the New
16 Hampshire wire centers in the state would be reclassified as non-impaired if we count
17 MCI's current fiber-based collocations (the Nashua, New Hampshire wire center with
18 respect to DS1 transport between Manchester and Nashua), and FairPoint is willing to
19 refrain from reclassifying that service as non-impaired for one year following the merger
20 closing.

1 Q. Several witnesses claim that FairPoint will not comply with Verizon's obligations under
2 Section 271 of the federal Communications Act. Is FairPoint refusing to perform any
3 significant 271-type wholesale obligations?

4 A. No. As a practical matter, FairPoint will agree to provide anything that Verizon currently
5 provides under the 14-point competitive "checklist" set forth in Section 271(c)(2)(B) of
6 the Act, pursuant to the applicable pricing standard adopted by the FCC (as noted in Mr.
7 Nixon's and Mr. Lippold's testimony). The competitive checklist is the "heart" of
8 Section 271 in that it sets forth the market-opening steps the Bell Operating Companies
9 were required to undertake before they were permitted into the interLATA market.
10 FairPoint is not seeking to pick and choose which Verizon obligations it assumes.
11 Accordingly, there is no need to impose conditions on FairPoint independently requiring
12 that it comply with section 271.

13 Q. Several CLEC Intervenors have suggested that FairPoint should be considered a Bell
14 Operating Company ("BOC") following the transaction. Please respond to this assertion.

15 A. I do not believe that FairPoint should be considered a BOC. To begin with, this is a
16 novel question of interpretation of a federal statute, and one that has been fully briefed
17 before the FCC. It is not clear whether the state has jurisdiction to decide the issue, but
18 the FCC clearly can do so, if it thinks the question important to the overall public interest
19 analysis of the merger. As a practical matter, as far as these parties are concerned, the
20 only reason to classify FairPoint as a BOC would be to trigger the section 271
21 requirements. However, FairPoint already has agreed to provide the substantive checklist
22 obligations that are required under section 271. Thus, whether FairPoint will be
23 classified as a BOC need not be an issue in this Docket.

1 As noted above, FairPoint will honor Verizon's commercial contracts. In addition,
2 notwithstanding FairPoint's belief that it should not be considered a BOC, and as a
3 benefit to the state and its customers (including CLECs), FairPoint confirms that it agrees
4 to provide anything required under the Section 271(c)(2)(B) checklist, as discussed in the
5 rebuttal testimony of Mr. Lippold and Mr. Nixon. Thus, to the extent those requirements
6 evolve over time, FairPoint's obligations to CLECs will evolve with them. FairPoint
7 understands that the Commission may rely on its statements and agreements.

8 **Q.** Has a non-BOC ever been classified as a Bell Operating Company ("BOC") simply
9 because it purchased BOC exchanges?

10 **A.** No. Although non-BOCs have purchased BOC exchanges in the past, I am aware of
11 none that was deemed a BOC subject to Section 271 as a result. For example, since
12 Section 271 was enacted in 1996, Kendall Telephone Co. purchased exchanges from
13 Ameritech, Madison River Telephone Co. purchased exchanges from BellSouth, Union
14 Telephone Company purchased an exchange from U S West, and various other telephone
15 companies, including Citizens Telecommunications, Utility Telephone Co., and others,
16 purchased exchanges from Qwest. None of these companies was found to be a BOC as
17 the result of the sale.

18 **Q.** Does FairPoint's position that it should not be deemed a BOC open the door to the future
19 withdrawal of UNE offerings that would otherwise be available to CLECs if Verizon
20 were to remain as the wholesale service provider?

21 **A.** No. FairPoint will continue to offer unbundled access to all network elements required
22 under the "impairment" standard of section 251—as explained above, FairPoint will
23 operate the New Hampshire exchanges as a non-rural ILEC subject to all of the

1 obligations of section 251 of the Act—and FairPoint will not withdraw any section 271
2 services or elements that Verizon otherwise would have been required to offer.

3 **Q.** Should the Commission adopt the determinations by the *Maine* public service
4 commission regarding section 271 network element availability, pole attachments, and
5 dark fiber?

6 **A.** No, and the Commission should reject this request. The Maine commission, like the New
7 Hampshire Commission, required Verizon to provide services pursuant to section 271
8 there are not required pursuant to section 251—including line sharing, dark fiber loops,
9 and dark fiber entrance facilities. The First Circuit has held that the states may not
10 require Verizon to provide these services. Furthermore, as noted above, the Commission
11 should not adopt state-specific conditions imposed by other state commissions.

12 **Q.** Will FairPoint continue to comply with FCC regulations that currently apply to the
13 acquired exchanges?

14 **A.** Generally, yes. As a mid-size ILEC, FairPoint will be entitled to some streamlined
15 treatment under the federal rules, such as the ability to file fewer ARMIS reports. As a
16 result, FairPoint should not be required to file ARMIS reports 43-02, 43-03, and 43-04.
17 However, FairPoint will be required to file the summary report (43-01) and the service
18 quality reports (43-05 and 43-08).

19 **Q.** Do you agree that conditions imposed in connection with the mergers of AT&T and
20 BellSouth, and Verizon and MCI, should apply to FairPoint's acquisition of exchanges in
21 New Hampshire?

1 A. No. There is no basis for applying these conditions to FairPoint. Verizon and AT&T
2 “voluntarily” agreed to a number of conditions, as Mr. Ball notes, in order to obtain
3 approval for their respective transactions. Those mergers, however, were quite different
4 from FairPoint’s proposed transaction. The AT&T – BellSouth transaction merged
5 AT&T, the largest BOC and largest long-distance carrier in the nation, with BellSouth,
6 another large BOC; both had significant wireless holdings; and the companies had
7 significant market overlap. The FCC found the merger would significantly increase
8 market concentration and pose a danger of anticompetitive effects in several markets. In
9 contrast, FairPoint’s acquisition of Verizon’s lines does not pose any anticompetitive
10 threats. If anything, FairPoint’s acquisition of these local exchanges decreases market
11 concentration and vertical integration in the affected markets—for example, MCI will no
12 longer be affiliated with the ILEC. Nor is FairPoint a nation-wide provider of long-
13 distance, broadband or wireless services. The Verizon/FairPoint transaction bears no
14 resemblance to the AT&T – BellSouth transaction; consequently, it is not productive to
15 engage in a discussion about whether those conditions should apply in the instant
16 transaction. The same logic applies with respect to the Verizon/MCI conditions.

17 Q. Will FairPoint continue to offer Lifeline and Link-up discounts, as Verizon currently
18 does?

19 A. Yes. Such discounts are encompassed by FairPoint’s general statement that it will
20 provide the same services as Verizon and adopt or mirror Verizon’s existing tariffs.

1 Q. Will FairPoint seek forbearance relief in New Hampshire similar to that sought by
2 Verizon with respect to two New Hampshire counties?

3 A. No. FairPoint will not seek forbearance relief of this sort for one (1) year following
4 closing.

5 Q. Does this conclude your rebuttal testimony?

6 A. Yes. Thank you.