

November 17, 2010

By FedEx and Email

Ms. Debra A. Howland, Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



Re: *Verizon New England et al. — Transfer of Assets and Franchise*, DT 07-011

Dear Ms. Howland:

The Signatories to this letter wish to advise the Commission of issues that have arisen with respect to the wholesale performance assurance plan (PAP) of FairPoint Communications, Inc. and/or Northern New England Telephone Operations, LLC, d/b/a FairPoint Communications (“FairPoint”). The Signatories believe that a full and thorough audit of FairPoint’s performance under the PAP that is currently in effect should be conducted now, and should precede further discussions toward any proposed simplified wholesale performance assurance plan.

Each of the Signatories is a competitive local exchange carrier with operations in New Hampshire that acquires network elements and/or wholesale services from FairPoint. FairPoint’s PAP applies to FairPoint’s performance with respect to some or all of the network elements or services that FairPoint provides to each of the Signatories.

In its Order No. 24,823, dated February 25, 2008, the Commission, among other rulings, approved the terms of a settlement agreement between the Commission Staff and FairPoint (“Staff Settlement”). Paragraph 9.4 of the Staff Settlement states:

9.4 FairPoint agrees to pay for the conduct of an independent audit of its wholesale performance assurance plan. If a simplified wholesale performance assurance plan is adopted prior to June 1, 2010, the audit shall take place following the first six months during which that plan is in effect. If no simplified plan is in effect by June 1, 2010, or if efforts to develop such a plan have terminated before that date, then FairPoint agrees to such an independent audit of the existing wholesale performance assurance plan. The Commission will be solely responsible for the choice of the independent auditor, but will afford FairPoint the opportunity to submit the names of firms to be included within the list of firms to receive requests for proposals for the provision of such services.

As the Commission is aware, no simplified wholesale performance assurance plan was adopted by June 1, 2010. FairPoint, therefore, is required to satisfy its commitment to an audit of the existing PAP under § 9.4 of the Staff Settlement. Further, FairPoint’s communications toward a simplified PAP are and have been at a level so preliminary that there can be no realistic expectation that a simplified PAP can be agreed upon in any reasonable time frame.

There is no further condition that must be satisfied before the audit takes place. Such an audit should be conducted immediately, and, because the operation of the PAP depends on the accuracy and integrity of the underlying C2C metrics, the audit should include the C2C metrics as well.

Even though the lack of an approved simplified PAP is reason in and of itself to commence an audit, the Signatories further point out that since cutover, FairPoint has not implemented the existing PAP fully or accurately. In this regard the Commission need look no further than FairPoint's recent announcement that it has significantly under-reported certain credits under the mode of entry (MOE) component of the PAP during various time periods during 2009-2010. See FairPoint's accessible letter dated November 3, 2010 (Attachment 1). FairPoint has neither filed amended PAP reports reflecting the error nor made public its dollar amount. What we do know is that the error was so severe that "[t]he company is in the process of evaluating if the error has a material impact on FairPoint's prior period financial statements." Testimony of Ajay Sabherwal and Lisa R. Hood, VT PSB Docket No. 7599, October 20, 2010, at 42, lines 5-6 (Attachment 2). In addition, the Signatories have perceived numerous other inaccuracies and issues with respect to FairPoint's implementation of the PAP since cutover.

As the result of these documented issues, the Signatories believe that further discussions toward a simplified PAP will not be fruitful, nor will they be in the public interest, unless and until there is a high level of confidence that FairPoint's performance is being accurately measured and reported under the existing PAP. The PAP is a key mechanism established by the Commission to ensure that a competitive telecommunications market continues to operate in New Hampshire. The integrity of the existing PAP and its underlying C2C metrics are crucial to that goal. Ensuring that the existing PAP and C2C metrics are accurate and are operating as the Commission intended is an essential foundation that must be established in order for any meaningful discussions on a simplified PAP to take place. Put another way, only when FairPoint is in full compliance with its existing obligations should the Commission consider whether to significantly modify them. The Signatories would be willing to consider further discussions once FairPoint's compliance with the PAP currently in effect is audited and assured.

Respectfully submitted,

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BayRing Communications

CRC Communications of Maine, Inc., d/b/a
OTT Communications

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