

## BROADBAND EXPANSION AGREEMENT

Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE (“NNETO”), the New Hampshire Public Utilities Commission (“Commission”) represented by the Office of the New Hampshire Attorney General (the “Attorney General”) and **[the New Hampshire Department of Resources and Economic Development]**<sup>1</sup> (“DRED” and, collectively, NNETO, the Commission and DRED are the “Parties”) enter into this Agreement as of the last date signed below.

WHEREAS, NNETO is a Delaware Limited Liability Company registered with the New Hampshire Secretary of State to conduct business in the State of New Hampshire, and which business is, among other things, the provision of telecommunications and data services, including (but not limited to) local exchange telephone service.

WHEREAS, the Commission is an administrative agency of the State of New Hampshire with the responsibility for regulating the operations of public utilities in the state, including telecommunications carriers.

WHEREAS, DRED is an administrative agency of the State of New Hampshire with the responsibility for, among other things, economic development for and within the State of New Hampshire.

WHEREAS, the Parties desire to expand Internet access services to communities in the State of New Hampshire that, as of the Effective Date (hereinafter defined), have little or no access to such services (the “Broadband Expansion”).

WHEREAS, NNETO filed with the Commission, on or about January 31, 2012, a preliminary plan related to the Broadband Expansion wherein NNETO proposed to design, construct and pay for the Broadband Expansion utilizing \$500,000 of NNETO’s funds (the “FairPoint Investment”) and \$2,823,751 of retail service quality penalty funds (the “SQI Funds”) that, pursuant to Commission Order No. 25,129, otherwise would be returned to NNETO’s existing retail customers.

WHEREAS, the Commission issued Order No. 25,360, dated May 8, 2012 (the “Order”) in response to NNETO’s preliminary plan for Broadband Expansion, and the Parties now desire to present this Agreement and a related Escrow Agreement to the Commission for its review and approval.

NOW, THEREFORE, for good and valuable consideration, the legal sufficiency of which is hereby acknowledged and accepted, the Parties covenant and agree as follows:

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<sup>1</sup> All references to DRED in this draft Agreement are for discussion purposes only. Final approval of DRED’s involvement in the broadband expansion project and this Agreement must be issued by Commissioner George Bald.

A. Broadband Expansion

1. Escrow Arrangement: Within three (3) business days of the Effective Date, FairPoint shall establish with TD Bank, N.A. (the "Escrow Agent") an escrow account subject to, in all material respects, the terms and conditions set forth in the form escrow agreement attached hereto as Exhibit A (the "Escrow"). FairPoint shall fund the Escrow in the total amount of \$3,323,751. The Escrow shall remain in place pending FairPoint's completion of the Broadband Expansion pursuant to this Agreement or the funds within the Escrow are disbursed pursuant to this Agreement. FairPoint agrees to provide to the Commission's Staff and DRED a copy of the monthly escrow statement provided by the Escrow Agent within three (3) business days of receipt of the statement.

2. Broadband Expansion: Pursuant to the Order, NNETO hereby agrees to formulate and present to the Commission on or before November 1, 2012, a detailed proposal to utilize the Escrow for Broadband Expansion in NNETO's New Hampshire service territory within communities unserved by another terrestrial broadband provider, to the extent NNETO can determine such lack of coverage with then publically available data. NNETO, the Commission Staff and DRED shall (i) work in good faith and cooperatively in the development of the detailed Broadband Expansion plan and (ii) share information reasonably necessary for the development of said plan, pursuant to Section B.16 of this Agreement. Prior to the Commission's review and approval of the detailed Broadband Expansion plan, the Escrow shall remain with the Escrow Agent and no funds shall be removed from said Escrow other than the Escrow Agent's ordinary fee related to its duties as an escrow agent.

NNETO covenants and agrees to develop a detailed Broadband Expansion plan that provides broadband connectivity to a minimum of 1,000 to 3,000 access lines over and above those access lines that must be broadband enabled pursuant to Commission Order No. 24,823, as the same has been amended by Commission Order No. 25,129 (the "Broadband Merger Requirement"). The Broadband Expansion shall meet the following requirements: (i) not less than 1.5 megabits per second (Mbps) of bandwidth for distances up to 22,000 feet from a DSL-equipped central office or wire center, designed and installed to be scalable for future improvement in speed (ii) not less than 768 kilobits per second (kbps) of bandwidth beyond 22,000 feet, designed and installed to be scalable for future improvement in speed and (iii) fully constructed and provisioned on or before December 31, 2013 (subject to force majeure events such as acts of God, war, terrorist acts, flood, severe weather, riot, embargo, labor disputes or strikes). The detailed Broadband Expansion Plan shall be specific and include for each project: (1) identification of the area(s) to be served by the project; (2) the number of access lines to be served when the project is complete; and (3) the total budgeted cost of the project. Upon approval of the detailed Broadband Expansion plan and completion of ninety-two percent (92%) broadband availability pursuant to the Broadband Merger Requirement by December 31, 2012, the Commission shall extend the deadlines set forth in Order Nos. 24,823 and 25,129 from March 31, 2013 to December 31, 2013, for NNETO to achieve the last three percent (3.0%) of the Broadband Merger Requirement. All other aspects of the Broadband Merger Requirement, including the penalty provisions thereof, shall remain as set forth in Order Nos. 24,823 and 25,129 and shall remain fully enforceable.

In the event the Commission rejects the detailed Broadband Expansion plan, then NNETO (subject to its right to seek reconsideration) within thirty (30) calendar days shall (i) rebate to NNETO's then existing New Hampshire retail customers in the form of bill credits issued in a single month the amount of \$2,823,751 and (ii) instruct the Escrow Agent to return the FairPoint Investment to NNETO. The Parties recognize that NNETO may issue the bill credits in a single month during the course of NNETO's standard billing cycles. Within five (5) days of accounting for the issuance of the above referenced bill credits after each billing cycle, NNETO shall be permitted to obtain a corresponding amount of the SQI Funds from the Escrow Agent. Once all bill credits are issued, NNETO shall terminate the Escrow Agreement.

3. Modification of Broadband Expansion: In the event that NNETO believes in good faith that a modification of the detailed Broadband Expansion plan is necessary after the date of the Commission's approval thereof, then NNETO shall present information to DRED and the Commission's Staff reasonably necessary to identify the need for the modification and the actual modification to be proposed. In the event the Commission's Staff and DRED agree in writing with NNETO's modification, then the Parties agree that the detailed Broadband Expansion plan shall be modified accordingly absent further requirements. In the event the Commission's Staff or DRED disagrees with NNETO's modification, then the Parties shall present the relevant information to the Commission for prompt review and consideration, and the Parties agree to request the Commission to make an expedited decision thereon.

4. Termination of Broadband Expansion: In the event the Broadband Expansion is terminated for any reason whatsoever, then the balance of the Escrow shall be distributed as follows. NNETO shall within thirty (30) calendar days of the termination of the Broadband Expansion: (i) rebate to NNETO's then existing New Hampshire retail customers in the form of bill credits issued in a single month the balance remaining in the Escrow consisting of the SQI Funds and (ii) instruct the Escrow Agent to return the balance remaining in the Escrow consisting of the FairPoint Investment to NNETO. The Parties recognize that NNETO may issue the bill credits in a single month during the course of NNETO's standard billing cycles. Within five (5) days of accounting for the issuance of the above referenced bill credits after each billing cycle, NNETO shall be permitted to obtain a corresponding amount of the SQI Funds from the Escrow Agent. Once all bill credits are issued, NNETO shall terminate the Escrow Agreement.

5. Distribution of Escrow for Broadband Expansion: The SQI Funds and the FairPoint Investment shall be utilized from the Escrow to pay for the Broadband Expansion on a proportionate basis. For the avoidance of doubt, the Parties agree that the balance of the Escrow is divided as follows: (i) eighty-five percent (85%) of the Escrow consist of SQI Funds and (ii) fifteen percent (15%) of the Escrow consist of the FairPoint Investment.

NNETO shall track the Broadband Expansion on a project-by-project basis. NNETO shall report to the Commission's Staff and DRED on a monthly basis the amounts expended for each project. Such reporting is due by the twentieth day of the following month (i.e., if the Broadband Expansion begins in June 2013, then NNETO shall file the first report with the Commission's Staff and DRED no later than July 20, 2013). Prior to advertised availability of broadband service in a project area, funds shall be transferred out of Escrow to NNETO for reimbursement

of fifty percent (50%) of NNETO's monthly expended project costs specified in the detailed Broadband Expansion Plan by the twentieth day of the following month (i.e., if the Broadband Expansion begins in June 2013, then NNETO shall receive reimbursement of its expended project costs from the Escrow for the month ended June 30, 2013, no later than July 20, 2013). Upon advertisement of broadband service availability or issuance of a press release about broadband service availability, the remaining fifty (50%) of NNETO's project costs specified in the detailed Broadband Expansion Plan for a particular project shall be transferred out of Escrow to NNETO for reimbursement. The Parties agree to work in good faith to develop (i) a single page certification for NNETO to provide to the Escrow Agent for release of the funds and (ii) a monthly project reporting form which tracks the Broadband Expansion on a project-by-project basis. A copy of the certification form and the form of NNETO's reporting requirement shall be provided to the Commission together with the detailed Broadband Expansion plans on or before November 1, 2012. Under no circumstances shall NNETO or FairPoint Parent (hereinafter defined) be required to pay for an independent or third party consultant's review of any aspect of the Broadband Expansion or any funds expended in connection therewith.

NNETO shall provide the Commission's Staff and DRED with a copy of said certification within one (1) business day of NNETO's submission to the Escrow Agent. NNETO requires no advanced approval in order to withdraw funds from the Escrow (pursuant to this Agreement); provided, however, NNETO first shall have provided the Commission's Staff and DRED with the above referenced monthly project report. Notwithstanding anything in this Section A.5 to the contrary, at any point in time prior to the Escrow Agreement being terminated, if an Event of Default occurs and is continuing pursuant to that certain Credit Agreement, dated as of January 24, 2011, by and among FairPoint Communications, Inc. ("FairPoint Parent"), FairPoint Logistics, Inc., Bank of America, N.A., as administrative agent, and the other lenders party thereto (as amended, the "FairPoint Credit Agreement"), then no funds may be transferred out of Escrow to NNETO absent the prior written consent of the Commission's Staff and DRED. NNETO shall notify the Commission's Staff and DRED of an Event of Default under the Credit Agreement within three (3) business days of (i) the administrative agent's declaration of said Event of Default or (ii) FairPoint Parent's self reporting of an Event of Default. If an Event of Default occurs and is continuing under the Credit Agreement, then at the written election of DRED and the Commission, this Agreement may be terminated and the balance of the Escrow shall be distributed pursuant to Section A.4 of this Agreement; provided, however, NNETO first shall be reimbursed for all costs incurred in connection with each project of the Broadband Expansion.

## B. General Terms

1. Binding Agreement and Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement does not confer authority or jurisdiction in the Commission to review any change of control or change of ownership with respect to NNETO. This Agreement also does not limit in any way the authority or jurisdiction of the Commission to review any change of control or change of ownership with respect to NNETO, said authority and jurisdiction to be controlled by applicable New Hampshire law.



2. Project Revisions: The Parties acknowledge and accept that the Broadband Expansion has not been fully designed or engineered as of the Effective Date. It is understood by the Parties that, depending on various conditions and the status of construction related to the Broadband Merger Requirement, there may be revisions to the Broadband Expansion, which changes will be made in consultation with DRED, the Commission's Staff or the Commission, as provided in Section A.3 above.

3. Choice of Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of New Hampshire, without regard to any choice or conflict of law provision or rule (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire.

4. Authority: The Parties to this Agreement represent and warrant that they are authorized to enter into this Agreement in their individual or representative capacities. The Parties further represent that the execution and delivery of this Agreement and the performance of the Parties' obligations hereunder have been duly authorized by all necessary action, excluding only the approval of the New Hampshire Governor and Executive Council. In the event the Governor and Executive Council fail to approve of this Agreement in its entirety without material modification or revision, then NNETO shall within thirty (30) calendar days (i) rebate to NNETO's then existing New Hampshire retail customers in the form of bill credits issued in a single month the amount of \$2,823,751 and (ii) instruct the Escrow Agent to return the FairPoint Investment to NNETO. The Parties recognize that NNETO may issue the bill credits in a single month during the course of NNETO's standard billing cycles. Within five (5) days of accounting for the issuance of the above referenced bill credits after each billing cycle, NNETO shall be permitted to obtain a corresponding amount of the SQI Funds from the Escrow Agent. Once all bill credits are issued, NNETO shall terminate the Escrow Agreement.

5. Signatures: This Agreement may be signed in multiple identical counterparts, each of which shall be deemed an original, but all of which together shall constitute the Agreement. Signatures delivered by facsimile or other electronic means shall have the same effect as delivery of an original signature.

6. Severability: If any clause or provision of this Agreement or the application thereof shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

7. Interpretation: The Parties all agree that any interpretation of New Hampshire General Court Senate Bill 48, 2012 Session (relative to state regulation of telephone service providers), should it be enacted, shall not be used in any way to prevent the implementation of any elements of this Agreement or otherwise deprive any Party, their respective successors and assigns, of the benefits or obligations of the terms of this Agreement.

8. Notices: All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication

hereunder shall be deemed duly given or delivered (i) when delivered personally to the recipient, (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) one (1) Business Day after being sent to the recipient by facsimile transmission or electronic mail or (iv) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

9. No Third Party Beneficiaries: This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

10. Captions and Construction: The captions in this Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision hereof. The use in this Agreement of the singular shall include the plural, as the context may require. The word “including” shall mean including without limitation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

11. Entire Agreement: This Agreement, together with Exhibit A, contains the entire and integrated agreement among the Parties relating to the subject matter contained herein. Each Party acknowledges that no representations, inducements, promises, or agreements, oral or written, with reference to the subject matter herein have been made other than those expressly set forth herein. This Agreement cannot be modified, rescinded or terminated orally; any modification of this Agreement must be in writing signed by each of the Parties. Nothing in this Agreement shall be construed as limiting the Parties from executing a mutually-agreeable written modification of any of the terms of this Agreement.

12. Amendments and Waiver: The terms of this Agreement may not be amended orally, and only may be amended by an instrument in writing signed by the Parties. No waiver by any Party of any provision of this Agreement or any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way rights arising by virtue of any prior or subsequent such occurrence. No waiver by any party of a breach hereof or a default hereunder shall be deemed a waiver by such party of any other breach or default.

13. No Joint Venture: Nothing in this Agreement is intended to create an association, trust, partnership or joint venture between the State of New Hampshire (including its administrative agencies and political subdivisions thereof) and NNETO, or impose a trust, partnership, fiduciary duty, on or with respect to any Party.

14. Dispute Resolution and Venue: In the event that any dispute arises over compliance with the terms and conditions of the Agreement, including a determination of

material prejudice due to changes, conditions, or modifications in the Broadband Expansion, the parties agree to engage in good faith negotiations for a period of at least 60 days, if necessary, in an effort to resolve the dispute. If the Parties cannot arrive at a resolution to the dispute, any of the Parties may seek relief in a non-jury trial in the Merrimack County (New Hampshire) Superior Court (or its successor). The Parties hereby acknowledge and accept the jurisdiction and venue of the Merrimack County Superior Court and expressly waive any and all objections to venue and jurisdiction in this regard.

15. Sovereign Immunity: Nothing herein shall serve to waive the sovereign immunity of the State of New Hampshire, which immunity is hereby reserved.

16. Confidentiality: Except as required by applicable law, each Party promises that during the term of this Agreement and for two (2) years thereafter, it will use NNETO's Confidential Information (hereinafter defined) only for purposes of this Agreement, not disclose it to third parties except as provided below, and protect it from disclosure to the public. "Confidential Information" means information (in whatever form) designated as confidential by NNETO by conspicuous markings (if tangible Confidential Information) or by announcement at the time of initial disclosure (if oral Confidential Information) or if not so marked or announced should reasonably have been understood as confidential to the receiving party, either because of legends or other markings, the circumstances of disclosure or the nature of the information itself and that (i) relates to this Agreement or changes to this Agreement; (ii) relates to NNETO's customers, products, services, developments, trade secrets, know-how or personnel; and (iii) is received by the receiving party from NNETO during the Broadband Expansion project. Confidential Information does not include information that: (a) is in the possession of the receiving party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; or (c) is received without restriction from NNETO.

17. Effective Date: Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the New Hampshire Governor and Executive Council, this Agreement, and all obligations of the parties hereunder, shall not become effective until the later of (i) the date the Commission approves this Agreement and (ii) the date the Governor and Executive Council approve this Agreement (the "Effective Date").

The parties named below, by the signatures of their representatives, enter into and accept this Broadband Expansion Agreement.

**Office of the New Hampshire Attorney  
General on behalf of the New Hampshire  
Public Utilities Commission**

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Northern New England Telephone  
Operations LLC d/b/a FairPoint  
Communications – NNE**

By:

\_\_\_\_\_  
Name: Patrick C. McHugh  
Title: State President – New Hampshire  
Date: \_\_\_\_\_

**New Hampshire Department of Resources  
and Economic Development**

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_