

VIA ECFS

*EX PARTE*

December 17, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Applications for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and Its Subsidiaries to FairPoint Communications, Inc., WC Dkt. No. 07-22**

Dear Ms. Dortch:

One Communications Corp. (“One Communications”), through its undersigned counsel, hereby submits this *ex parte* letter in the above-reference docket concerning the proposed transaction between FairPoint Communications, Inc. (“FairPoint”) and Verizon Communications Inc. (“Verizon”) (collectively, “the Applicants”), under which Verizon will transfer its local exchange operations in Maine, New Hampshire, and Vermont to FairPoint. The purpose of this letter is two-fold. *First*, One Communications supplements the record in this docket with evidence from parallel state commission merger review proceedings in the affected states, Maine,<sup>1</sup> New Hampshire,<sup>2</sup> and Vermont.<sup>3</sup> This

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<sup>1</sup> Joint Application of Approvals Related to Verizon’s Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc., State of Maine Public Utilities Commission, Docket No. 2007-67 (“ME PUC Docket No. 2007-67”).

<sup>2</sup> Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Co., Verizon Select Services Inc., and FairPoint Communications, Inc. Transfer of Assets to FairPoint Communications, Inc., State of New Hampshire Public Utilities Commission, DT 07-011 (“NH PUC Docket No. 07-011”).

<sup>3</sup> Joint Petition of Verizon New England, Inc. d/b/a Verizon Vermont, Certain Affiliates Thereof, and FairPoint Communications, Inc. for Approval of an Asset Transfer, Acquisition of Control by Merger

evidence reinforces the public interest concerns raised by One Communications throughout this proceeding<sup>4</sup> and underscores the need for the Commission to impose conditions on any merger approval to remedy the specific harms posed by the transaction. Accordingly, One Communications has attached hereto as Appendix A a list of conditions, discussed more fully below, that address the harms posed by the merger.<sup>5</sup> *Second*, One Communications responds to arguments made by the Applicants that have not otherwise been fully addressed in prior One Communications filings.

**I. The Evidence Presented In The State Commission Review Proceedings Confirms That FairPoint Lacks The Financial Qualifications To Operate The Merged Firm In The Public Interest**

FairPoint is a highly leveraged public company that needs the proposed merger to satisfy the demands of its stockholders. According to New Hampshire Office of the Consumer Advocate (“NH OCA”) witness David Brevitz, “[w]ithout the proposed transaction, FairPoint’s prospects are dire.”<sup>6</sup> FairPoint will become even more highly leveraged post-merger. Indeed, the structure of the transaction, a Reverse Morris Trust (“RMT”) (*i.e.*, a tax-free transaction to Verizon’s current shareholders), *requires* FairPoint to take on immense debt.<sup>7</sup> Moreover, as explained in One

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and Associated Transactions, State of Vermont Public Service Board, Docket No. 7270 (“VT PSB Docket No. 7270”).

<sup>4</sup> See Petition to Deny of One Communications Corp., Applications for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc., WC Docket No. 07-22 (filed Apr. 27, 2007) (“Petition to Deny”); Reply of One Communications Corp. and Great Works Internet To The Applicants’ Opposition to Petitions to Deny, WC Docket No. 07-22 (filed May 14, 2007) (“Reply”); Letter from T. Jones, Counsel for One Communications Corp., Willkie Farr & Gallagher LLP to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22 (dated July 27, 2007) (“July 27th Ex Parte”).

<sup>5</sup> Appendix A is based on the list of merger conditions proposed by FairPoint itself in the NH PUC proceeding. See NH PUC Docket No. 07-011, Post-Hearing Brief of FairPoint Communications, Inc., at A-1 & A-2 (filed Nov. 21, 2007).

<sup>6</sup> Direct Testimony of David Brevitz on Behalf of the Office of the Consumer Advocate, NH PUC Docket No. 07-011, at 25 (ln. 25) (Aug. 1, 2007) (“NH Brevitz d.t.”).

<sup>7</sup> See Direct Testimony of Randall E. Vickroy on Behalf of the Staff of the Public Utilities Commission, NH PUC Docket No. 07-011, at 7 (lns. 16-22) (Aug. 1, 2007) (“NH Vickroy d.t.”) (“The RMT requirement that FairPoint own less than 50 percent of the equity capital of the merged entity causes a large portion of the Spinco sale value to be financed by debt. While FairPoint may have financed the Spinco transaction with a high degree of debt leverage under any circumstances, the RMT structure made higher debt leverage a requirement.”).

Communications' previous filings in this docket,<sup>8</sup> FairPoint's highly leveraged capital structure combined with its many promises to stakeholders will leave few or no resources to develop the systems and expertise necessary to comply with its wholesale obligations under the Telecommunications Act, even at the level reached by Verizon. The Maine Public Utilities Commission ("ME PUC") Hearing Examiner came to the same conclusion based on the evidence in that state's proceeding:

The parties have raised significant and plausible concerns about FairPoint's ability to meet its regulatory obligations and live up to the various commitments it has made during the proceeding after the Transaction. While FairPoint appears very sincere in, and committed to, its promises, there are major concerns about FairPoint's ability to maintain its financial viability, while keeping the promises it has made to regulators, customers, employees, other telecommunications providers (both competitors and non-competitors), community organizations, and other governmental agencies.<sup>9</sup>

Among the many promises that FairPoint has made is to continue to pay its shareholders dividends at the current rate post-merger. As CWA/IBEW has stated, FairPoint is cannibalizing itself by consistently paying out more dividends than it earns.<sup>10</sup> This practice is inconsistent with the public interest and earlier this year, the Montana Public Service Commission rejected a utility merger application for exactly this reason. The Montana PSC held that "[i]n normal utility operations, retained earnings provide a vital source of financial strength for capital investment and as reserves that are available during unexpected financial strains."<sup>11</sup> The PSC held further that "[r]egularly paying out

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<sup>8</sup> Petition to Deny at 18-19; Reply at 17-23.

<sup>9</sup> See Letter from Kenneth R. Peres, PhD., Research Economist, Communications Workers of America ("CWA") to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22 (filed Dec. 5, 2007) (attaching Examiner's Report, ME PUC Docket No. 2007-67, at 35 (rel. Nov. 26, 2007) ("ME Hearing Examiner's Report")). It should be noted that although FairPoint has entered into a settlement stipulation with the Maine Office of the Public Advocate, the ME PUC Advocacy Staff, and certain Intervenor in the ME PUC proceeding, the stipulation has not yet been adopted by the ME PUC. See Stipulation, ME PUC Docket No. 2007-67 (filed Dec. 12, 2007) ("ME Stipulation"). It also has no binding effect on the NH PUC or VT PSB proceedings. Moreover, even if the ME PUC were to decide that, with the Stipulation in place, the Merged Firm would be financially viable, this in no way obviates the need for conditions on the FCC's approval of the proposed transaction. This is because FairPoint would still (1) lack the expertise to manage a wholesale business, and (2) have powerful incentives (as a result of its position as an ILEC and its TSA with Verizon) to deprive wholesale customers of wholesale service even at the level provided by Verizon today in the three states at issue.

<sup>10</sup> *Id.* at 32 (citing Brief of CWA/IBEW ("Labor Intervenor") at 10).

<sup>11</sup> *In re Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure Ltd. et al. for Approval of the Sale and Transfer of NorthWestern Corporation Pursuant to a Merger Agreement*, 259 P.U.R. 4th 293, ¶ 149 (2007); see also *id.* ¶ 156 ("Given BBIL's dividend expectations and practices and the highly leveraged capital structures that BBIL has implemented at its existing [electric utility] operating subsidiaries, . . . it is evidence that BBIL's proposed ownership of

dividends in excess of net earnings by a utility is inappropriate and risky because having insufficient reserves on hand could adversely affect the utility's ability to provide adequate service." In light of such concerns, the Maine Hearing Examiners' Report has recommended that the ME PUC require FairPoint to immediately reduce its dividend payments by \$42 million.<sup>12</sup>

Of importance to the public interest analysis in which the Commission must engage in its review of this transaction is the extreme degree to which FairPoint's massive new debt load will be used for corporate financial, rather than service and operational, purposes. In fact, *none* of the debt that FairPoint will assume through the proposed transaction will be used to finance capital improvements that benefit customers, whether wholesale or retail:

The \$2.3 billion in FairPoint debt that is an outcome of the proposed transaction is not incurred to fund fulfillment of operating needs in the Northern New England states. Rather it is incurred to refinance existing debt, and provide \$1.7 billion for elimination of existing Verizon debt. So, much of the debt is incurred essentially in order to permit Verizon to de-leverage.<sup>13</sup>

It is hard to imagine how the Merged Firm will be able to follow through on all of its promises simultaneously, let alone allocate the resources necessary to comply with its wholesale obligations. Because FairPoint has many incentives to short-change its wholesale operations in the event of a cash-crunch, the Commission must impose appropriate conditions to ensure that FairPoint lives up to its obligations to its wholesale customers. These conditions include, among others, maintenance of the Carrier-to-Carrier ("C2C") Guidelines and Performance Assurance Plans ("PAPs") applicable to Verizon prior to the Merger closing in each of the affected states, classification of FairPoint as a BOC post-Merger, and the requirement that FairPoint's wholesale OSS conform to industry standards as determined by an independent third-party tester of such systems.

## **II. The Evidence Presented In The State Commission Review Proceedings Confirms That FairPoint Lacks The Management, Experience And Technical Expertise To Meet Its Wholesale Obligations Under The Act**

The Merged Firm will be exponentially larger than FairPoint is today. Although FairPoint has argued that it has substantial acquisition experience, as Vermont Department of Public Service ("VT DPS") witness F. Wayne Lafferty has observed, "[FairPoint] has not faced a transaction of this magnitude with the complex systems development and conversion challenges [it poses]."<sup>14</sup> Moreover,

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NorthWestern presents the likelihood that NorthWestern's capital structure will deteriorate and become unacceptably leveraged.").

<sup>12</sup> ME PUC Hearing Examiner's Report at 290.

<sup>13</sup> NH Brevitz d.t. at 35 (Ins. 3-7).

<sup>14</sup> VT Direct Testimony of F. Wayne Lafferty on Behalf of The Department of Public Service, at 4 (Ins. 17-19) (May 24, 2007) ("VT Lafferty d.t.").

while FairPoint has recently hired nearly a dozen executives to fill top management positions for the company's business and wholesale operations, that does not guarantee a smoothly integrated team at the outset. According to New Hampshire Public Utilities Commission Staff ("NH PUC Staff") witness John Antonuk, these senior level executives will be working together—many if not all of them—for the first time to create a wholesale operations business unit from scratch, and their responsibilities will extend beyond the Merged Firm's New England operations to include legacy FairPoint network operations in other parts of the country.<sup>15</sup> More importantly, this entirely new business unit will have few, if any, experienced middle managers and other employees during the critical transition period for establishing wholesale back office systems and processes.<sup>16</sup> According to the testimony of NH PUC Staff consultants Robert V. Falcone and Charles H. King,

FairPoint has only just begun this daunting task by filling a handful of jobs at the senior management levels and has indicated that it will not start by filling the majority of the remaining positions until late in the fourth quarter of 2007. This allows very little time for hiring, staffing and training before FairPoint's projected May 2008 cutover date. *If FairPoint does not fill its open positions and complete the training of its new employees before the cutover, customer service will suffer.*<sup>17</sup>

This risk is exacerbated by the fact that FairPoint will be basing its wholesale and network operations centers in Northern New England, where not all such functions currently exist within Verizon's operations.<sup>18</sup> As Messrs. Falcone and King have explained, there is a shortage of qualified candidates for numerous "specialized network operations jobs such as network engineering and network surveillance that Verizon has historically performed in work centers outside of the northern New England area."<sup>19</sup>

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<sup>15</sup> See Direct Testimony of John Antonuk on Behalf of The Public Utilities Commission of New Hampshire, NH PUC Docket No. 07-011, at 26 (lns. 5-8, 12-15) (Aug. 1, 2007) ("NH Antonuk d.t.").

<sup>16</sup> *Id.* at 25 (lns. 10-13).

<sup>17</sup> Direct Testimony of Robert V. Falcone and Charles H. King, Ph.D, on Behalf of The Public Utilities Commission of New Hampshire Staff, NH PUC Docket No. 07-011, at 87 (lns. 5-11) (Aug. 1, 2007) ("NH Falcone-King d.t.") (emphasis added).

<sup>18</sup> See Rebuttal Testimony of Peter G. Nixon on Behalf of FairPoint Communications, Inc., at 18 (lns. 17-20) (June 27, 2007) ("In order to replace those functions that are currently being performed by Verizon outside of Northern New England, . . . FairPoint will fill over 700 positions in Northern New England.").

<sup>19</sup> NH Falcone-King d.t. at 76 (lns. 19-21).

If this were not enough, as explained in One Communications' previous pleadings,<sup>20</sup> FairPoint itself has virtually no experience in providing wholesale service. In the Vermont Public Service Board ("VT PSB") proceeding, FairPoint confirmed that, for all practical purposes, it has no wholesale access lines in the other states in which it operates as an incumbent LEC.<sup>21</sup> As Comcast and NECTA's witness Michael Pelcovits observed in his VT PSB testimony, "FairPoint has virtually no experience as a provider of wholesale telecommunications services, having only 12 interconnection agreements with competitors in its current markets."<sup>22</sup> In light of this fact, it is clear that FairPoint does not have the technical expertise to provide wholesale services to CLECs in the affected states. In addition, it has neither the experience nor the systems needed to accomplish wholesale operations on the scale that the Northern New England operation will require. According to NH PUC Staff witnesses Messrs. Falcone and King, for the few wholesale services that FairPoint does offer, it "has no experience doing so through automated interfaces."<sup>23</sup> In fact, FairPoint still uses faxes, phone calls, emails, and even U.S. mail to process orders and receive trouble reports.<sup>24</sup>

FairPoint's lack of experience as a wholesale provider creates a significant risk that wholesale service in the affected states will deteriorate post-merger. Expert witnesses in the state commission review proceedings agree with One Communications that the terms of the Transition Services Agreement ("TSA") between the Applicants provide the Merged Firm with a powerful incentive to discontinue its reliance on Verizon's operations support systems ("OSS") as quickly as possible — ready or not. As Dr. Pelcovits testified before the VT PSB,

Although the motivation of this [fees] provision — to force FairPoint to wean itself from Verizon — is understandable, it could be deleterious to wholesale and retail customers if it caused FairPoint to rely on substandard replacement systems rather than Verizon's established systems, or forced FairPoint to move from Verizon's systems prematurely.<sup>25</sup>

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<sup>20</sup> Petition to Deny at 18-19; Reply at 17-23.

<sup>21</sup> See Response of FairPoint Communications, Inc. to One Communications' First Set of Discovery Requests, VT PSB Docket No. 7270, at ONE:FP.1-4 (Apr. 19, 2007) (responding that none of FairPoint's 64,000 access lines in the affected states is provided on a wholesale basis).

<sup>22</sup> Prefiled Testimony of Michael D. Pelcovits on Behalf of New England Cable & Telecommunications Association, Inc. and Comcast Phone of Vermont, LLC, at 7 (ln. 18) and 9 (ln. 1) (May 24, 2007) ("VT Pelcovits p.f.").

<sup>23</sup> NH Falcone-King d.t. at 106 (lns. 1-4).

<sup>24</sup> *Id.* (lns. 5-7).

<sup>25</sup> VT Pelcovits p.f. at 50 (lns. 5-9).

Moreover, the incentives created by the TSA exacerbate the Merged Firm's pre-existing incentives to target its limited resources toward addressing retail service problems since an efficient wholesale OSS only serves to increase the chances that the Merged Firm will lose market share to competitors.

But the threat posed by the TSA is even worse than this. The ME PUC Hearing Examiner — acting as a neutral evaluator of the evidence — concluded that the process by which Verizon will “rent to FairPoint, via the TSA,” the requisite OSS “until FairPoint can build new systems to replace those Verizon will take with it when it leaves” is “disturbing” in light of Verizon’s public interest obligations.<sup>26</sup> The fact that the Applicants have been unable to substantiate the TSA fees as “cost-based” raises the concern that “the TSA may unreasonably transfer value from FairPoint to Verizon as it leaves the state [of Maine] behind, with ratepayers bearing the burden of the costs necessary not only to rent the old systems, but to build the new ones.”<sup>27</sup> The proposed transaction similarly threatens to leave the states of New Hampshire and Vermont behind, with ratepayers, including wholesale customers, footing the bill for the transition. One obvious means by which Merged Firm could seek to recover these costs is by increasing the price of wholesale services. Thus, not only does the TSA pose a threat to the *quality* of the wholesale services provided by the Merged Firm’s OSS, but it also increases the chances that the Merged Firm will seek to raise rivals’ costs by increasing the *prices* wholesale customers pay and the *costs* wholesale customers incur in using Merged Firm’s new wholesale OSS.

The Commission must establish appropriate merger conditions in order to diminish the likelihood that the proposed transaction will yield these harms to competition and consumer welfare. Among other things, such conditions must prohibit the Merged Firm from (1) cutting over from the Verizon OSS to the Merged Firm’s new OSS before the FCC (with the assistance of a third-party expert and public comment) determines that such new OSS operate as efficiently and effectively as Verizon’s OSS functioned prior to the merger,<sup>28</sup> and (2) recovering from wholesale customers the costs it incurs as a result of the TSA and the construction of new OSS. These, and other, conditions are more fully described below.

### **III. In Order To Remedy The Harms Posed By The Proposed Transaction, The FCC Must Adopt Conditions Relating To The Provision Of Wholesale Services.**

The record makes clear that the proposed transaction poses a major threat to the provision of wholesale services to CLECs, and, absent sufficient conditions, it must be rejected. Any argument by FairPoint to the contrary should be dismissed. In particular, in its *October 11th Ex Parte*, FairPoint points to its settlements with DSCI Corporation and other CLECs as evidence that these companies

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<sup>26</sup> ME PUC Hearing Examiner’s Report at 183.

<sup>27</sup> *Id.* at 184.

<sup>28</sup> Of course, if one or more state regulatory commissions assumes responsibility for ensuring that the Merged Firm’s OSS function at the level of Verizon’s before the Merged Firm may cutover wholesale operations to its own OSS, the FCC should coordinate its own review process with the state commissions to avoid duplicating work.

“have expressed their support for this transaction *without conditions*.”<sup>29</sup> This claim is entirely disingenuous. DSCI and other CLECs settled *precisely because* they were able to obtain at least some of their proposed merger conditions as terms of these settlement contracts.<sup>30</sup> As discussed below, as a direct result of the proposed transaction, there is the risk that the Merged Firm, for example, will not comply with the nondiscrimination requirements of Section 272 of the Act, will cutover from Verizon’s systems to its newly developed OSS prematurely, and will pass on the costs of systems development to wholesale customers. In order to remedy these and other transaction-specific harms, the FCC must attach the conditions proposed by One Communications listed in Appendix A to any order approving the proposed transaction.<sup>31</sup> Several of the more important aspects of those conditions are discussed more fully below.

**A. The FCC Must Clarify That The Merged Firm Will Be A BOC Pursuant To Section 3(4)(A) Of The Act And Condition Merger Approval On Compliance With Sections 251, 271, and 272**

In this and the state commission review proceedings, FairPoint has adamantly denied that it will become a BOC post-merger.<sup>32</sup> As explained in detail in One Communications’ previous filings,<sup>33</sup> the plain language of Section 3(4)(A) of the Act, the legislative intent behind the market-opening provisions of the Act specifically applicable to BOCs (namely Sections 251, 271, and 272), and the Supreme Court’s “substantial continuity” test dictate otherwise. Under the substantial continuity test,

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<sup>29</sup> Letter from Shirley J. Linn, Counsel, FairPoint to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22, at 5 (filed Oct. 11, 2007) (“*October 11 Ex Parte*”) (emphasis added).

<sup>30</sup> See, e.g., Motion of DSCI To Withdraw Its Petition To Intervene at 1 (“FairPoint and DSCI have entered into an agreement that resolves all outstanding issues”); Letter from Benjamin M. Sanborn, Counsel for Tel. Ass’n. of ME, to Karen Geraghty, Admin. Dir., ME PUC (Oct. 10, 2007) (“[Telephone Association of Maine]’s member companies are satisfied that the terms of the Agreement are sufficient to ensure that FairPoint will continue to provide the [Independent Telephone Companies] the same services as the ITCs currently receive from Verizon in a manner that will allow TAM’s members to continue to provide the same high quality of service to their customers that the ITC customers in the State currently enjoy.”).

<sup>31</sup> The conditions set forth in Appendix A take as their starting point the conditions regarding wholesale services with which FairPoint and Verizon have already agreed to comply in the NH PUC proceeding. See NH PUC Docket No. 07-011, Post-Hearing Brief of FairPoint Communications, Inc., at A1-A3 (filed Nov. 21, 2007). One Communications then supplemented the list proffered by FairPoint and Verizon with the further requirements that are the minimum necessary to ensure that the proposed transaction is in the public interest.

<sup>32</sup> See, e.g., Opposition to Petitions to Deny at 36-38; Proposal For Decision And Brief Of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 89 (filed Oct. 17, 2007).

<sup>33</sup> Reply at 10-15; and *July 27th Ex Parte* at 2-7.

the Merged Firm qualifies as a successor or assign of Verizon (and therefore as a BOC) if the Merged Firm “acquire[s] substantial assets of its predecessor and continue[s], without interruption or substantial change, the predecessor’s business.”<sup>34</sup> As the FCC has held, substantial continuity exists where “one entity steps into the shoes of, or replaces, another entity.”<sup>35</sup> The evidence developed in state proceedings demonstrates that there will in fact be substantial continuity between Verizon and the Merged Firm in the three states at issue. For example, the ME PUC Hearing Examiner reached the following conclusion:

[W]e find substantial continuity between Verizon and FairPoint if the Transaction is approved - FairPoint is acquiring most of the assets necessary to continue Verizon’s traditional operations, including physical assets and employees. Operations will continue uninterrupted - the transition from Verizon to FairPoint should be invisible to customers. Further, the business of both Verizon and FairPoint will be essentially the same -- former Verizon employees will perform the same jobs under essentially the same working conditions as when Verizon owned the company and FairPoint will offer the same types of products to the same body of customers. Finally, such a decision [i.e., classifying FairPoint as a BOC] supports the pro-competitive purposes of the [Telecommunications Act] and is consistent with the FCC’s interpretation of “successor and assign.”<sup>36</sup>

Even FairPoint’s witness, Michael T. Skrivan, Senior Director, Regulatory Affairs, testified before the NH PUC that “what FairPoint is trying to do [is], . . . ‘[w]e want to step into the shoes of Verizon.’”<sup>37</sup> FairPoint’s voluntary commitments to extend Verizon’s interconnection agreements and special access volume-term discounts for three years<sup>38</sup> only bolster this claim.

FairPoint, however, argued in the VT PSB proceeding that a state commission’s “classifying FairPoint as a BOC would open up a veritable Pandora’s Box of complete legal questions, including questions concerning jurisdiction to interpret Section 3 of the Communications Act.”<sup>39</sup> This is

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<sup>34</sup> See *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion & Order, 14 FCC Rcd. 14712, ¶ 454 (1999) (“*SBC-Ameritech Order*”) (quoting *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43 (1987)).

<sup>35</sup> *SBC-Ameritech Order*, ¶ 454.

<sup>36</sup> ME PUC Hearing Examiner’s Report at 131-32 (internal citations and footnote omitted).

<sup>37</sup> Hearing Transcript 10/25/07, NH PUC Docket No. 07-011, at 101 (Ins. 7-10) (emphasis added).

<sup>38</sup> Proposal for Decision and Brief of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 88.

<sup>39</sup> Reply Brief of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 58 (filed Nov. 2, 2007).

precisely why, as One Communications has previously stated,<sup>40</sup> the FCC should decide whether the Merged Firm will be a BOC in this proceeding. The issue of whether it should be classified as a BOC post-transaction is most efficiently resolved at the federal level, since such an approach obviates the need for three separate state proceedings and prevents the confusion and harm that inconsistent state decisions would cause.

Although FairPoint has stated that it would comply with Verizon's obligation to provide wholesale inputs to local competitors, including the requirements of the Section 271(c) competitive checklist,<sup>41</sup> such revocable statements of intent are insufficient. This promise must be a binding condition of any merger approval order. As One Communications has explained, Congress established the legal requirement applicable to BOCs because mere voluntary commitments would have been insufficient to compel them to open local markets to competition.

Moreover, FairPoint's purported commitment to comply with BOC requirements are subject to qualifications that limit their effectiveness. For example, in the NH PUC proceeding, FairPoint stated that if its promise to comply with the Section 271(c) competitive checklist became a binding condition of any merger approval, only those CLECs that are party to the Settlement Stipulation<sup>42</sup> would be permitted to enforce disputes over pricing of such elements before the NH PUC.<sup>43</sup> All other CLECs would need to file their complaints regarding pricing of these elements with the FCC.<sup>44</sup> This bizarre jurisdictional allocation of enforcement is legally suspect.<sup>45</sup> In any event, FairPoint's commitment would be meaningless for those competitors, like One Communications, that have not entered the settlement agreement. If such competitors must enforce FairPoint's Section 271 obligations at the FCC, they would be left without a remedy if the Merged Firm is not classified as a BOC, because the FCC has the authority to apply the requirements of Section 271 only to BOCs.

In other respects, FairPoint has disavowed any intention of complying with BOC regulation. For example, FairPoint has claimed in the NH PUC<sup>46</sup> and VT PSB<sup>47</sup> proceedings that it need not be

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<sup>40</sup> Reply at 10-15; *July 27th Ex Parte* at 10.

<sup>41</sup> *October 11, 2007 Ex Parte* at 4.

<sup>42</sup> See Settlement Stipulation Among FairPoint Communications, Inc., Freedom Ring Communications, LLC d/b/a Bayring Communications, LLC, SegTEL, Inc. and Otel Telekom, Inc., NH PUC Docket No. 07-011 (dated Oct. 17, 2007) ("NH CLEC Settlement Stipulation").

<sup>43</sup> See Hearing Tr. 10/25/07, NH PUC Docket No. 07-011, at 107-09.

<sup>44</sup> See *id.*

<sup>45</sup> Post-Hearing Brief of One Communications Corp., NH PUC Docket No. 07-011, at 23-25 (filed Nov. 20, 2007).

<sup>46</sup> See Hearing Tr. 10/25/07, NH PUC Docket No. 07-011, at 111 (Ins. 18-24) (stating that the Merged Firm will not agree to be subject to the nondiscrimination requirements of Section 272(e) because

subject to the nondiscrimination requirements of Section 272(e) post-transaction. In both of those state commission proceedings, FairPoint has asserted that “comparable” nondiscrimination requirements in Parts 32 and 64 of the FCC’s rules applicable to all ILECs obviate the need for the Merged Firm’s compliance with Section 272. This is incorrect.

*First*, in the NH PUC proceeding, FairPoint asserts that Section 32.27 of the FCC’s rules “are generally the same as those imposed for pricing transactions under Section 272(e).”<sup>48</sup> This argument is without merit. Section 32.27 of the FCC’s rules establishes accounting regulations for transactions with affiliates.<sup>49</sup> Section 272(e) governs the rates, terms and conditions of local exchange and exchange access services provided by BOCs and their affiliates to unaffiliated carriers. For example, Section 272(e)(1) provides that a BOC must fulfill requests for exchange services and exchange access within the same amount of time as it does for itself or its own affiliates.<sup>50</sup> Similarly, Section 272(e)(3) requires a BOC to charge its affiliates no less than the same amount for exchange service and exchange access that it charges to unaffiliated interexchange carriers.<sup>51</sup> None of these nondiscrimination requirements has anything to do with the rules governing the recording of transactions with affiliates in the carrier’s regulated accounts. In fact, Section 272 contains a separate provision, Section 272(b)(2), that governs accounting of BOCs’ transactions with affiliates.<sup>52</sup> Moreover, Section 272(b)(2) has sunset while the nondiscrimination requirements of Section 272(e) have not.<sup>53</sup> It is clear, therefore, that the accounting rules in Section 32.27 of the FCC’s regulations are entirely irrelevant to the issue of whether FairPoint should be subject to Section 272(e) of the Act.

*Second*, in the VT PSB proceeding, FairPoint claims that compliance with Part 64 of the FCC’s rules would render compliance with Section 272 “redundant”<sup>54</sup> and in the very next footnote, argues that “classifying FairPoint as a BOC would require the untangling of various follow-on questions . . . such as whether and to what extent FairPoint would be required to comply . . . with the FCC’s

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“there are provisions that apply to independent telephone companies and apply to all LECs which essentially cover the same ground”).

<sup>47</sup> Reply Brief of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 57 & n.25.

<sup>48</sup> FairPoint Exhibit No. 50, at 1 (Oral Data Request - provision of Act which would impose obligations similar to those imposed on BOCs by Section 272(e)).

<sup>49</sup> See 47 C.F.R. § 32.27.

<sup>50</sup> 47 U.S.C. § 272(e)(1).

<sup>51</sup> *Id.* § 272(e)(3); see also *id.* §§ 272(e)(2) and (4).

<sup>52</sup> *Id.* § 272(b)(2).

<sup>53</sup> See 47 U.S.C. § 272(f) (excluding the provisions of Section 272(e) from the sunset).

<sup>54</sup> Reply Brief of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 57-58 & n.25.

reporting rules, *see, e.g.*, 47 C.F.R. § 64.903(a).<sup>55</sup> FairPoint is thus arguing that it does not need to comply with Section 272(e) of the Act because it will already be required to comply with “Parts 32 and 64” (presumably including the cost allocation manuals provision of Section 64.903(a) of the FCC’s rules). At the same time, it claims that one of the reasons that it should not be classified as a BOC post-merger is that doing so would raise a number of issues, including whether it would be subject to Section 64.903(a) of the FCC’s rules. FairPoint cannot have it both ways.

**B. The Commission Must Impose Stringent Conditions Relating To Third-Party Testing Of The Merged Firm’s OSS And It Must Prohibit The Merged Firm From Passing Through Systems Development Costs To Wholesale Customers**

In its *October 11th Ex Parte*, FairPoint describes some of its voluntary commitments with respect to independent third-party testing of OSS.<sup>56</sup> In particular, FairPoint has proposed to the state commissions in Maine, New Hampshire, and Vermont that one consulting company, Liberty Consulting Group (“Liberty”), conduct this testing and monitor the cutover from Verizon’s back-office systems to those developed by Capgemini for FairPoint.<sup>57</sup> Among other things, Liberty’s Statement of Scope provides that the plan for wholesale OSS testing must be subject to review and comment by interested parties and the state commissions.<sup>58</sup> Prior regulatory review, with the assistance of a third-party expert and public comment, should be a condition of merger approval. However, in light of FairPoint’s complete lack of experience in the provision of wholesale services and the powerful incentive to discontinue the TSA in light of its fee structure,<sup>59</sup> Liberty’s proposed plan does not go far enough. As discussed in One Communications’ previous filings, the result may be similar to, or worse than, that experienced by the customers of Hawaiian Telcom after its post-merger wholesale OSS breakdown. Therefore, the Commission must impose conditions that put teeth into FairPoint’s proposal.

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<sup>55</sup> *Id.* at 58 & n.26.

<sup>56</sup> *October 11th Ex Parte* at 6-7.

<sup>57</sup> *See* Tri-State Agreement on FairPoint Cutover Monitoring, Statement of Scope, NH PUC Docket No. 07-011 (“Statement of Scope”) (attached hereto as Appendix B).

<sup>58</sup> *Id.* at 2.

<sup>59</sup> In its *October 11th Ex Parte* (at 6), FairPoint claims that it will not initiate cutover prematurely because it “has the strongest economic incentive to wait until its systems are ready for cutover—the potential customer dissatisfaction and loss of marketing opportunities caused by premature cutover could cause FairPoint great economic harm.” This is patently false. Any lost marketing opportunities and customer dissatisfaction pales in comparison to the \$14.2 million per month that FairPoint will be required to pay for relying on Verizon’s wholesale support services for the first eight months after closing. *See* Agreement And Plan of Merger dated as of Jan. 15, 2007 by and among Verizon Communications Inc., Northern New England Spinco Inc. and FairPoint Communications, Inc., Exhibit 5: Transition Services Agreement by and among Verizon Information Technologies LLC et al., and FairPoint Communications, Inc., Art. II, § 2.1(a)-(b) (Jan. 15, 2007).

*First*, any plan for independent third-party testing that is approved as a condition of the merger must include a provision that the FCC will prohibit the Merged Firm from converting wholesale operations from Verizon's OSS to the Merged Firm's OSS until the independent third party has determined that: (1) the Merged Firm's wholesale OSS operate at a level of service quality *at least equal to Verizon's prior to the transaction*; and (2) the Merged Firm has established not only the processes and procedures for, but *dedicated sufficient resources* to, its wholesale OSS operations to ensure that its OSS will continue to operate at a level of service quality at least equal to Verizon's prior to the transaction.

*Second*, the independent third-party tester's conclusions should be subject to notice and comment *and approval* by the FCC prior to any cutover to the Merged Firm's wholesale OSS. More importantly, to the extent that the Commission accepts Liberty's plan for testing OSS and monitoring the cutover process as a condition of the merger, the Commission must also authorize FCC Staff to prevent FairPoint from going forward with any cutover if Liberty determines that FairPoint is not ready to do so. Without any authority to act on the monitoring reports provided by Liberty, the Commission's receipt of such information would be meaningless.

*Third*, the Commission must prohibit any "black out" period in which wholesale OSS do not function during the cutover from Verizon's systems to the Merged Firm's systems.<sup>60</sup> This is especially important given that FairPoint has stated that it "anticipates a brief . . . five-day period during which orders will have to be taken manually."<sup>61</sup> Taking orders manually rather than through electronic means will substantially increase the costs of One Communications and other wholesale customers to submit provisioning, repair, and other orders during this period, as well as greatly increase the chances for error. In addition, Section 271 performance assurance plans ("PAPs") applicable to Verizon prior to the proposed transaction must continue to apply to the Merged Firm and, in particular, must apply during this transition period.<sup>62</sup> FairPoint claims that "[a]llowing FairPoint to suspend the PAP for a couple of months will allow it to focus its efforts on completing the transition."<sup>63</sup> However, the Commission has viewed performance assurance plans as essential to ensuring compliance with the

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<sup>60</sup> FairPoint has stated that it will institute a black-out period during which it will be prevented from doing any provisioning activity and system updates for approximately five days. *See* NH PUC Falcone-King d.t. at 43 (Ins. 15-21).

<sup>61</sup> *October 11th Ex Parte* at 7.

<sup>62</sup> FairPoint essentially admits there will be problems with its OSS during and after the cutover by requesting a two-month suspension of the PAP for some CLECs and a one-month suspension for those that are parties to the Settlement Stipulation. *See* Hearing Tr. 10/25/07, NH PUC Docket No. 07-011, at 113. If the Commission does not agree that the PAP should remain in force throughout the entire cutover process, then at the very least it should reject FairPoint's discriminatory proposal and allow for a one-month suspension vis-à-vis all CLECs.

<sup>63</sup> *October 11th Ex Parte* at 7.

market-opening requirements of the Act.<sup>64</sup> Given the substantial risks to wholesale customers posed by this transaction, it is even more important that FairPoint be held accountable for service quality during the transition. If FairPoint views adoption of Verizon's PAP as a nuisance, then it should not have entered into the transaction with Verizon, a BOC subject to the requirements of Section 271, in the first instance.

*Fourth*, the Statement of Scope provides that “[i]f the cutover process proceeds without significant problems, Liberty’s review will end at cutover.”<sup>65</sup> However, the definition of “significant problems” is unclear and Liberty or the FCC should include a mechanism by which to define this term. It is also unclear which party will decide whether such problems with the new systems exist. Liberty or the FCC must clarify this aspect of post-cutover review. Furthermore, some problems may not arise immediately following cutover and an independent third-party monitor should be retained for at least three months after cutover occurs to address such problems.

The Commission must also prohibit the Merged Firm from passing through costs of its new OSS to wholesale customers. In its *October 11th Ex Parte*, FairPoint states, matter-of-factly, that “FairPoint will replace the Verizon systems with better systems, and CLECs will benefit from better service for little cost.”<sup>66</sup> Just because FairPoint says that wholesale customers’ “costs should be minimal” does not make it so,<sup>67</sup> and whether the systems will be “better” remains to be seen in light of the Hawaii debacle. It is even more difficult to believe such a claim given that, as clearly demonstrated in the record, FairPoint has no wholesale experience. FairPoint contends that “there is no basis for One Communications’s [sic] concern that FairPoint will force CLECs in the region to incur substantial additional costs as a result of the transfer to FairPoint’s systems.”<sup>68</sup> Nevertheless, FairPoint states in the very next footnote that “[t]o the extent FairPoint invests in systems that will replace the costs of systems currently provided by Verizon, however, FairPoint believes it should be able to include such costs in future rate proceedings just as Verizon would.”<sup>69</sup> FairPoint has obviously and unwittingly proved that One Communications’ concern is fully justified.

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<sup>64</sup> See, e.g., *In re Application by Verizon New England Inc. et al. for Authorization to Provide In-Region InterLATA Services in New Hampshire and Delaware*, 17 FCC Rcd. 18660, 18755 (2002) (“[W]e find that the Performance Assurance Plans (PAPs) currently in place in New Hampshire and Delaware will provide assurance that the local market will remain open after Verizon receives section 271 authorization.”).

<sup>65</sup> Statement of Scope, at 4.

<sup>66</sup> *October 11th Ex Parte* at 8.

<sup>67</sup> *Id.* at 7.

<sup>68</sup> *Id.* at 7.

<sup>69</sup> *Id.* n.30; see also Reply Brief of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 7-8 (“FairPoint expects that where it has incurred certain costs to develop and replace the existing Verizon legacy systems which costs will be part of the capitalized costs of the system, it should be able to seek

**C. The Commission Must Make FairPoint's Voluntary Commitments With Respect To Section 251(f) Of The Act, Interconnection Agreements, And Special Access Volume-Term Discounts Enforceable Conditions Of Merger Approval**

Like FairPoint's voluntary commitment to provide wholesale customers with Section 271(c) competitive checklist items, the following promises made by FairPoint in some or all of the state commission review proceedings should become binding, enforceable conditions of any FCC order approving the proposed transaction:

- Refrain from seeking the protections of Section 251(f)(1) or (2) of the Act in perpetuity<sup>70</sup>
- Extend existing interconnection agreements for three years<sup>71</sup>
- Cap existing rates under wholesale tariffs in effect at closing and prorate special access volume-term discounts for three years or the remaining term of any existing arrangements, whichever is longer<sup>72</sup>

The Commission must impose these conditions particularly because some of FairPoint's commitments vary depending on the state affected and on whether CLECs have entered into settlement agreements with FairPoint.<sup>73</sup> For example, while FairPoint has promised to extend interconnection agreements and special access discounts for three years in Vermont, it has promised to do so in New Hampshire for only those CLECs that have entered into the Settlement Stipulation.<sup>74</sup> The remaining CLECs in New Hampshire will have their contracts extended for only one year. There is no reason for FairPoint to treat similarly situated parties differently in this manner. If FairPoint is not harmed by extending interconnection agreements and discounts for three years to all CLECs in Vermont, then it should have

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to include these costs in a future ratemaking proceeding"). FairPoint's desire to include these expenditures in future ratemaking proceedings "just as Verizon would" is further evidence that FairPoint is stepping into the shoes of, and will be in "substantial continuity" with, Verizon.

<sup>70</sup> FairPoint Proposal for Decision & Brief of FairPoint Communications, Inc., VT PSB Docket No. 7270, at 89.

<sup>71</sup> *Id.* at 88.

<sup>72</sup> *Id.* at 90.

<sup>73</sup> *See, e.g., supra* note 45 & accompanying text (discussing FairPoint's commitment to permit only those CLECs that are party to the NH Settlement Stipulation to bring disputes over pricing of Section 271(c) checklist elements before the FCC).

<sup>74</sup> *See id.* at 35-36.

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no objection to making a similar commitment, in the form of a binding, enforceable merger condition, to all CLECs throughout the affected states.<sup>75</sup>

For all of the reasons discussed herein and in One Communications' previous filings in this proceeding, One Communications urges the Commission to deny the instant application, or in the alternative, to impose the conditions listed in Appendix A on its approval.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones  
Nirali Patel

*Attorneys for One Communications Corp.*

cc: William Dever (FCC)  
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<sup>75</sup> Such a result would be consistent with recent Commission precedent extending interconnection agreements for three years. *See, e.g., In re AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, 22 FCC Rcd. 5662, App. G (2006).

**APPENDIX A**  
**PROPOSED CONDITIONS OF APPROVAL**

- FairPoint will assume all of Verizon's inter-carrier contracts, including all interconnection agreements, in effect in the Northern New England region. Where it is not possible for these agreements to be assigned to FairPoint, FairPoint will execute contracts with substantially the same rates, terms, and conditions. FairPoint will agree to extend in writing all such agreements for one year beyond their stated expiration dates or three years from the transaction closing, whichever is later.
- For interconnection and other inter-carrier agreements that have expired and are renewed only on a month-to-month basis as of the closing, FairPoint will extend the terms in writing for three years following the transaction closing. This includes agreements for services or network elements not required to be provided under Section 251 of the Communications Act of 1934, as amended (the Communications Act), such as UNE-P replacement services offered under Verizon's Wholesale Advantage agreements, and line sharing arrangements provided under Verizon's VISTA agreements.
- Within a reasonable period of time following the closing, FairPoint will file new FCC and state tariffs matching the current ILEC retail and wholesale tariffs for Verizon in Maine, New Hampshire, and Vermont with the same rates, terms, and conditions at closing.
- FairPoint shall file with the applicable state commission copies of any agreements which create ongoing obligations relating to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation, for a period of at least three years, or until the applicable state commission relieves FairPoint of this obligation, whichever is later.
- FairPoint will cap existing rates under wholesale tariffs (including intrastate and interstate special access tariffs) and Statements of Generally Available Terms (SGATs) in effect as of the Merger closing date at then-current levels for a period of three years following the Merger closing date, and FairPoint will also freeze the wholesale discount offered under total service resale ("TSR") tariffs in effect as of the Merger closing date at then-current levels for three years following the Merger closing date. FairPoint shall not seek any increase in rates for unbundled network elements, interconnection, collocation, tandem transit services, or any other wholesale service for three years following the transaction closing.
- FairPoint will not withdraw any tariffed interstate or intrastate special access circuit or seek to increase any of its tariffed rates for interstate or intrastate tariffed special access circuits effective for three years after the transaction closing, unless required by law.

- FairPoint and Verizon will prorate all volume discount pricing provided for inter-carrier agreements and under federal and state tariffs so that such volume pricing terms will be deemed to exclude volume requirements from states outside of the three-state area following the closing. Verizon will make a comparable pro-ration with respect to services it will continue providing in states outside the three-state area acquired by FairPoint. This condition will be in effect for three years from the Merger closing or for the term of any existing arrangements, whichever is longer.
- FairPoint will be an ILEC and its operations of the acquired properties will be subject to Sections 251 and 252 of the Communications Act. FairPoint will not classify its operations in the acquired territory as “rural” for purposes of Section 251(f)(1) of the Communications Act, nor attempt to seek suspension or modification of any of its obligations under Section 251(b) or (c) of the Communications Act pursuant to Section 251(f)(2).
- FairPoint will be a Bell Operating Company (“BOC”) with respect to all assets and operations acquired from Verizon in Maine, New Hampshire, and Vermont. FairPoint shall be subject to all of the legal obligations applicable prior to the Merger closing to such transferred assets and operations by virtue of their status as belonging to a BOC. For example, FairPoint will provide any item on the 14-point “competitive checklist” set forth in Section 271(c)(2)(B) of the Communications Act that Verizon would be required to provide, pursuant to the applicable pricing standard adopted by the FCC, and FairPoint will be subject to the nondiscrimination requirements of Section 272(e) of the Communications Act.
- FairPoint will abide by the Carrier-to-Carrier (“C2C”) Guidelines and Performance Assurance Plans (“PAP”) applicable to Verizon prior to the Merger closing in Maine, New Hampshire and Vermont. There will be no blackout period and no waiver of PAP credits during cutover to new FairPoint operational support systems (“OSS”) and other systems.
- FairPoint's wholesale OSS will conform to industry standards as determined by the independent third-party tester of such systems.
- FairPoint shall retain, at its sole expense, an independent third-party consultant acceptable to the Commission (after notice and opportunity to comment by interested parties) to test the readiness of FairPoint’s new OSS and other systems, similar to the process that applied to Verizon when it sought approval under Section 271 of the Communications Act to enter the long-distance business. The independent third-party consultant shall establish system testing criteria and shall conduct testing of FairPoint’s new systems, determine the readiness of the new systems for cutover, evaluate FairPoint’s operational readiness reports, and report to the Commission and parties regarding FairPoint’s readiness for cutover. Any such testing process shall ensure that, as part of the process, wholesale customers

have the opportunity to test FairPoint's new systems. After notice to and an opportunity for comment by the parties, the Commission shall not permit FairPoint to give Verizon the irrevocable Notice of Readiness for Cutover under the Transition Services Agreement between FairPoint and Verizon until the independent third party has notified the Commission of its determination that (1) FairPoint's wholesale OSS operate at the level of service quality at least equal to Verizon's prior to the Merger; and (2) FairPoint has established the processes and procedures for, and dedicated sufficient resources to, its wholesale OSS to ensure that they will continue to operate at a level of service quality at least equal to Verizon's prior to the Merger.

- FairPoint will not recover transaction expenses, including but not limited to expenses under the Transition Services Agreement and expensed costs of the development of new systems, from end-users or wholesale customers. No acquisition premium or other intangible will be recovered from retail or wholesale ratepayers in the three affected states. In addition, FairPoint shall not seek to recover from wholesale customers any portion of the capitalized costs associated with development of new systems. However, if the Commission allows FairPoint to recover any portion of capitalized costs related to its new operations in the region, such as systems development costs, all such costs shall be allocated among and between jurisdictions and operating systems that benefit from the systems and work represented by the capitalized costs (*e.g.*, wholesale and retail, interstate and intrastate, regulated and unregulated service). In no event shall FairPoint recover or seek to recover such capitalized costs solely from wholesale customers.
- FairPoint will reimburse wholesale customers for all costs they incur in connection with hardware and software required to make their systems interoperable with FairPoint's new systems, including but not limited to costs related to electronic bonding. FairPoint will provide training on such systems at no charge to wholesale customers. FairPoint also will reimburse wholesale customers for all travel and other expenses related to training functions sponsored by FairPoint.
- FairPoint will continue to offer all CLECs (and wholesale customers) services required to be offered by Verizon immediately prior to closing, including access to E911 services, back-office support systems, directory listings, automated directory assistance, tandem transit services, published network specification sheets, number porting intervals, trunk ordering rules, CLEC User forum information, and a CLEC handbook. FairPoint shall offer such services at levels of service equal to or better than those provided (or required to be provided under applicable standards or metrics) by Verizon as of the Merger closing.
- FairPoint will not reclassify or seek to reclassify any wire center so as to increase its level of non-impairment (*e.g.*, from Tier II to Tier I) for a period of three years after the Merger closing. FairPoint shall not count any collocation arrangement

maintained by the former MCI as a “fiber-based collocation” for purposes of the impairment criteria in the *TRRO* for a period of three years after the transaction closing.

- For three years after the Merger closing, FairPoint will not make any request for forbearance from loop and transport unbundling under Section 251; from any obligation to provide services or elements under Section 271; from *Computer Inquiry* requirements; or from dominant carrier regulation.

## **FairPoint Cutover Monitoring Statement of Scope**

The Liberty Consulting Group (“Liberty”) understands that the Maine Public Utilities Commission, the New Hampshire Public Utilities Commission, and the Vermont Department of Public Service (“State Regulators”) are interested in engaging a consultant to monitor the cutover from Verizon’s back-office systems to those developed for FairPoint by Capgemini in the event that the MPUC, NHPUC, and VTPSB approve the proposed transaction. The purpose of this engagement is to address concerns raised in proceedings in each of the three states that failures in the transition from Verizon to FairPoint systems can produce adverse customer impacts. The State Regulators recognize that FairPoint is already developing and testing its systems and that Liberty's participation before any regulatory approvals may prove useful even if the transaction is not ultimately approved. The State Regulators' interest and participation in Liberty's engagement shall not be construed by any party as an indication that any of the state regulatory commissions will approve the proposed transaction nor consent to be bound by specific recommendations made by Liberty. Liberty understands that the work would include the following activities but would not include an explicit approval of FairPoint's testing criteria, practices, or strategies.

### **Review and Assessment of FairPoint Planned Testing and Cutover Readiness Process**

This part of the scope of work will begin immediately at commencement of the project and will involve a thorough review of FairPoint’s planned testing process to determine readiness to provide Verizon with notice of readiness for cutover and to proceed with the cutover of systems and functions provided by Verizon to the Northern New England operation. Liberty expects that this review will be accomplished through review of documents, telephone conferences, and on-site meetings with FairPoint and Capgemini personnel working on the conversion project. Liberty will also review the concerns and requirements expressed by the wholesale systems users. Through this process, Liberty will:

- Review the systems testing strategy.
- Review the systems testing plans.
- Review the specific test cases.
- Review the expected outcome of the test cases.
- Review the testing acceptance criteria.
- Analyze the testing strategy and plans for adequacy, feasibility, and comprehensiveness in addressing all necessary functions moving from Verizon to FairPoint.

- Review the testing acceptance criteria for adequate classification and disposition of outcome defects (severity 1, severity 2, etc.). Analyze the test cases for completeness and accuracy in addressing the necessary functions.
- Review staffing requirements and plans.
- Review system training plans and schedules, both for FairPoint personnel and wholesale customers.
- Review notice and readiness timetables given to wholesale customers for adequacy and reasonableness.
- Notify FairPoint of issues and concerns exposed in the review and recommendations for FairPoint action.
- Identify the key business processes and associated test criteria that FairPoint must use to demonstrate cutover readiness. Successful performance on these key test criteria by FairPoint should be necessary (although not necessarily sufficient) for proceeding with the final cutover.

*Key Deliverables:*

- A draft report to the State Regulators on the testing strategy, plans, acceptance criteria, and test cases after completing the initial review. This report will include comments and recommendations; a list and description of key business processes and associated test criteria, with explanation as to why they were selected; and identification of any key concerns raised with FairPoint that have not been addressed.
- Release of the draft report for review and comment by the State Regulators and interested parties, including wholesale customers.
- A final report on the testing strategy, plans, acceptance criteria, and test cases after Liberty review of the input from the State Regulators and interested parties.

### **Monitoring of Testing and Cutover Readiness Process**

This part of the scope of work will be ongoing from the beginning of the project through the notification by FairPoint to Verizon of readiness for conversion. During this process Liberty will collect information on the progress being made toward cutover readiness and flag emerging issues or areas of concern for the State Regulators. As part of monitoring, Liberty will:

- Participate in FairPoint project status meetings at least monthly.
- Participate in Capgemini and FairPoint test status and defect review meetings and key decision making meetings, as appropriate.
- Participate monthly in FairPoint conference calls with CLEC technical subject matter experts to verify progress towards cutover readiness from wholesale users' perspective.
- Review any updates or changes to the testing strategy, plans, acceptance criteria, test schedules, test cases, training plans, and training schedules that occur as the systems development and testing proceeds.

- Provide updates, comments, and recommendations on any changes to the State Regulators.
- Review the test results on a weekly basis as the testing proceeds, examining all severity 1 and severity 2 failures and a selected set of other results and comparing number of scheduled versus actually executed tests.
- Review systems training progress.
- Monitor FairPoint's progress in bringing on staff and developing the organization needed to support business processes post-conversion.
- Verify that FairPoint is using appropriate and sufficient methods to assure complete and accurate conversion of data from the Verizon systems to the new FairPoint systems. This would include but not be limited to verifying that the conversion team is using automated comparative conversion metrics reporting of key count statistics between the Verizon systems and the converted data in the new systems, including access line counts by type, customer counts by type, product counts by product code, and other comparably key statistics.
- Review and verify FairPoint's and Verizon's ability to successfully migrate necessary data from Verizon to FairPoint systems in a reasonable timeframe.
- Observe selected system and business process acceptance tests, as appropriate, and review the detailed test results for key acceptance criteria.
- Review and evaluate the readiness of FairPoint's systems, organization, and business processes to support retail operations at cutover.
- Review and evaluate the readiness of FairPoint's systems, organization, and business processes to support wholesale operations at cutover, including the readiness to offer those required services, products, and network elements specified by the State Regulators.
- Verify that FairPoint has performed the steps necessary to confirm accuracy of the data converted from Verizon systems in advance of cutover. This will include but not be limited to verifying that the conversion team has performed a conversion "audit" to confirm conversion data accuracy for important data on the final mock conversion in advance of cutover. This audit should involve statistically valid sampling of important converted data within the new systems to ensure that it is accurate as designed and required for business operation.
- Verify that FairPoint has taken the necessary steps to produce service quality and other required regulatory reports.

*Key Deliverables:*

- A weekly telephone status conference with the State Regulators to answer questions as the system development and testing proceeds.
- A monthly written report to the State Regulators, including a public version, commenting on the test results and systems training progress and making recommendations for use in decision making prior to cutover. Among other items, the monthly report would:
  - Review the overall test status and defect reporting at application and summary levels.
  - Highlight performance on key test criteria.

- Summarize and comment on known workarounds planned by FairPoint.
- Summarize and evaluate FairPoint's contingency planning and escalation procedures.
- Summarize possible service-affecting issues, their magnitude and severity, and possible remedies.
- Summarize any remaining concerns of the consultant, based on the observations it has made and data it has reviewed.

### **Pre-Cutover Readiness Review and Final Report**

Through its monthly reporting process, Liberty will inform the State Regulators of the status of FairPoint's plans to provide its Cutover Readiness Notice to Verizon. Liberty anticipates that in the month before FairPoint is likely to provide this notice, the State Regulators will have an increased need for information about testing status. In addition, at the end of the monitoring process after cutover, Liberty will provide a final report to the State Regulators. In this portion of the review, Liberty will:

- Be available to answer additional questions that the State Regulators may have related to FairPoint's cutover readiness.
- Participate in conference calls and/or status conferences, as appropriate to each state.
- Produce a final report after cutover, summarizing Liberty's review and conclusions.

#### *Key Deliverables:*

- A conference call with State Regulators to answer questions about FairPoint's cutover readiness.
- Participation in a status conference in Vermont with the Vermont Public Service Board to present and answer questions from the Board on FairPoint's cutover readiness.
- One final report to the State Regulators two months after cutover, summarizing the project and final conclusions, including identifying any key business process gaps and ongoing FairPoint system development activities to them.
- A conference call with the State Regulators to answer questions about the final report.

### **Post-Cutover Review and Report**

If the cutover proceeds without significant problems, Liberty's review will end at cutover. However, if after cutover the State Regulators obtain information from customers or other interested parties that customer-affecting problems have arisen, the State Regulators may elect to retain Liberty for further work to ascertain the source of the perceived problems and FairPoint's actions and plans to alleviate them. In this part of the project, Liberty would:

- Identify and review problems associated with the conversion.

- Confer with Consumer Affairs staffs of each of the State Regulators regarding consumer complaints post-cutover.
- Review FairPoint's continuing system development plans for work that will be completed post-cutover to address any gaps in the support of key business processes at cutover.
- Evaluate the effectiveness of workarounds which were implemented and progress toward their elimination.
- Meet with FairPoint personnel to review and evaluate the results of the cut-over and ongoing performance.

*Key Deliverables:*

- A report to the State Regulators that summarizes the problems that have arisen as part of the conversion, identifies ongoing FairPoint system development activities to address key business process gaps, and recommends whether any further monitoring is necessary.
- A conference call with the State Regulators to answer questions about the report.

### **State Regulator Reporting and Oversight**

Liberty understands that the New Hampshire PUC will provide contract management for this contract, and that its agreement is with the New Hampshire PUC. Payment for services will be received through the New Hampshire PUC, and Liberty understands that it will not be receiving payment from any other party. It is the intention of the New Hampshire PUC to collaborate with the Vermont DPS and the Maine PUC in a collaborative inter-jurisdictional process. Liberty understands that the New Hampshire PUC intends that Liberty will report on work performed to an individual designated at each of the three State Regulators. Liberty agrees that it will respond to inquiries and requests from any of the three State Regulators that are within the Scope of Work agreed to in this contract.