

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DT 10-025

**Request for Approvals in Connection with the
Reorganization Plan of FairPoint Communications, Inc.**

COMCAST PHONE OF NEW HAMPSHIRE, LLC'S
POST-HEARING SUBMISSION

In accordance with Executive Director Howland's letters of April 12, 2010 and May 20, 2010 to the parties in the above-captioned docket, Comcast Phone of New Hampshire, LLC ("Comcast") by and through its undersigned attorneys, hereby files this written submission with the New Hampshire Public Utilities Commission ("the Commission") in lieu of a closing statement. Comcast simply requests, in the event that the Commission grants the approvals requested by FairPoint Communications, Inc., Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE, and Northland Telephone Company of Maine, Inc. (collectively "FairPoint") in the petition dated February 24, 2010, that the Commission order FairPoint to abide by all of its current obligations to its New Hampshire wholesale customers. In support of its position, Comcast states as follows:

1. In its order approving FairPoint's requests to acquire the franchise and assets of Verizon New England, Inc. and to operate as a public utility in New Hampshire, the Commission imposed upon FairPoint certain wholesale service obligations. *Re Verizon New England, Inc.*, 93 NH PUC 24, DT 07-011, Order No. 24,823 (Feb. 25, 2008). These obligations are reflected in Section 9 of a "Settlement Agreement" entered

into by FairPoint and Commission Staff in DT 07-011. *See* Exhibit FP-2. The Commission approved the Settlement Agreement in Order No. 24,823. *Re Verizon New England, Inc.*, 93 NH PUC at 72.

2. Paragraph 9.3 of the above-referenced Settlement Agreement adopted “Stipulated Settlement Terms” (“the CLEC Settlement”)¹ agreed to by and among FairPoint and certain competitive local exchange carriers (“CLECs”). Order No. 24,823 reflects the Commission’s understanding that paragraph 9.3 of the Settlement Agreement adopts the terms of the CLEC Settlement for all CLECs, not just those who are signatories to the CLEC Settlement. *Re Verizon NewEngland, Inc.*, 93 NH PUC at 65.

3. Comcast is a New Hampshire CLEC² and participated as an intervenor in DT 07-011 jointly with New England Cable and Telecommunications Association (“NECTA”). *Id.* at 33.

4. The above-referenced CLEC Settlement contains several specific wholesale obligations, including the requirement that interconnection agreements that have expired or which are renewed on a month-to-month basis be extended in writing for three years following the Merger closing date. *See* Exhibit FP-2, Exhibit 2, (*CLEC Settlement*), para. 4.b.

5. In Order No. 24,823, the Commission expressly found that “FairPoint’s agreement to extend the interconnection agreements for three years, to cap all wholesale

¹ The CLEC Settlement is Exhibit 2 to Exhibit FP-2.

² *MediaOne Telecommunication of New Hampshire, Inc. Petition for Authority to Provide Local Telecommunications Services*, Order No. 23,088, DE 98-208, 88 N.H. PUC 680 (December 15, 1998), authorized MediaOne Telecommunications of New Hampshire, Inc. to provide service in the territory of FairPoint’s predecessor, Bell Atlantic. By letter dated April 17, 2001, MediaOne Telecommunications of New Hampshire, Inc. notified the Commission of a name change to AT&T Broadband Phone of New Hampshire, LLC; in February 2003 that name changed to Comcast Phone of New Hampshire, LLC d/b/a Comcast Digital Phone. *See Comcast Phone of New Hampshire d/b/a Comcast Digital Phone*, DT 08-162, Order No. 25,005 at 3 n.1 (Aug. 13, 2009).

rates for three years, and to not seek changes in existing wholesale obligations for three years provides significant regulatory certainty for competitors.” *Re Verizon NewEngland, Inc.*, 93 NH PUC at 64. The Commission further determined that this regulatory certainty, rate stability and “FairPoint’s apparent desire to work with CLECs” provided assurance that CLECs would not be harmed by FairPoint’s acquisition of Verizon’s New Hampshire assets “and that the competitive market will continue to provide benefit to customers in New Hampshire.” *Id.*

6. Staff Advocate Kathryn Bailey’s prefiled testimony indicates that the Regulatory Settlement filed in the instant docket “leaves unchanged FairPoint’s commitments to wholesale providers.” Exhibit Staff Advocate-1, p.12. She testified at hearing that her position is that the Regulatory Settlement in this docket does not change the CLEC Settlement. Tr. Day 2, P.M. Session, p. 118. She further testified that the reason that the CLECs were not involved in the process that led to the Regulatory Settlement in this docket is that the Regulatory Settlement did nothing to change FairPoint’s wholesale obligations contained in the CLEC Settlement. *Id.* at 118-119.

7. Although FairPoint has asserted it “is proposing no change in this docket” to the numerous wholesale obligations set forth in the Settlement Agreement and CLEC Settlement in DT 07-011, *see* Exhibit Comcast 2, pp. 1-35, FairPoint witnesses Hood and Skrivan have made clear that the possibility exists that FairPoint could reject its interconnection agreement with Comcast up to and including the effective date of FairPoint’s emergence from bankruptcy (i.e. after this Commission has issued its order in this docket and after the bankruptcy court has approved FairPoint’s reorganization plan.)

Tr. Day 1, pp. 72-73; Tr. Day 2, p. 46-47. This possibility creates great uncertainty for Comcast.

8. Although FairPoint has “assumed” the Comcast interconnection agreement, Comcast has filed a proof of claim in the bankruptcy court regarding amounts owed to it by FairPoint pursuant to the interconnection agreement, but has not yet arrived at an agreement with FairPoint on the “cure amount” for the interconnection agreement that FairPoint assumed in the bankruptcy process. *See* Exhibit Comcast-2, p. 37. Thus, Comcast finds itself in the situation where the certainty created by the provisions of Order 24,823, the Settlement Agreement and the CLEC settlement (especially paragraph 4.b. of the CLEC Settlement which requires FairPoint to maintain its interconnection agreement with Comcast), is undermined by FairPoint’s continued reservation of its right to reject Comcast’s interconnection agreement in the bankruptcy process.

9. FairPoint should not be allowed to utilize the bankruptcy process to avoid any of the wholesale obligations that this Commission imposed in DT 07-011 to provide certainty to the competitive telecommunications market at the time FairPoint undertook Verizon’s New Hampshire operations. FairPoint’s reservation of authority to reject interconnection agreements under the bankruptcy process up to and including the effective date of reorganization eliminates the certainty for CLECs and the competitive market that the Commission intended in Order No. 24,823. To address this uncertainty, the Commission’s order in the instant docket should make clear that FairPoint must keep in place its interconnection agreements for the periods specified in the CLEC Settlement and must also continue to abide by all of the wholesale obligations in the CLEC

Settlement, the Settlement Agreement and Order No. 24,823 until such time as this Commission expressly relieves FairPoint of any such obligation.

10. In addition to preserving the certainty to CLECs that the Commission provided in Order No. 24,823, the order requested herein is necessary to avoid further disruptions of the expectations and operations of FairPoint's wholesale customers who have experienced serious, substantial and unresolved problems when FairPoint assumed Verizon's wholesale responsibilities and transitioned from Verizon's operations support system ("OSS") to FairPoint's own OSS. These wholesale service problems are documented and described in detail in the prefiled testimonies of: Ms. Wilusz (on behalf of CLEC BayRing Communications) Exhibit BR-1; Ms. Mullholand (on behalf of CLEC segTEL, Inc.) Exhibit segTEL 1; and Mr. Winchester and Mr. Tisdale (on behalf of CLEC CRC Communications of Maine, Inc.) Exhibits CRC 1 and CRC2.

11. Ordering FairPoint to keep in place its interconnection agreements and all of its current wholesale obligations is in the public interest as it will provide the CLECs and their customers, whose operations and services have been disrupted to varying degrees by FairPoint's troubled wholesale performance, some measure of stability as FairPoint emerges from bankruptcy.

WHEREFORE, Comcast respectfully requests that:

A. If the Commission issues the approvals requested by FairPoint in the above-captioned docket, the Commission should also expressly order that during the bankruptcy process and following its reorganization in bankruptcy, FairPoint is required to adhere to all of its obligations to wholesale customers, including, but not limited to, the obligation

to keep in place all New Hampshire interconnection agreements for three years following the Merger closing date;

B. In the alternative, if the Commission permits FairPoint to reserve the right to reject its interconnection agreement with Comcast Phone of New Hampshire, LLC, and if such interconnection agreement is rejected, the Commission should order FairPoint to provide service to Comcast under all of the same terms and conditions, including payment obligations, in the rejected interconnection agreement until such time as a new interconnection agreement goes into effect;

C. If the Commission provides relief requested by other CLECs that has the effect of creating additional wholesale obligations for FairPoint beyond those established in DT 07-011, the Commission should extend those additional obligations to Comcast and all other CLECs as well as the requesting CLECs; and

D. Grant such further relief as it deems appropriate.

Respectfully submitted,

Comcast Phone of New Hampshire, LLC
By Its Attorneys

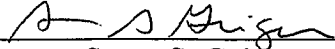


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Dated: June 4, 2010

Certificate of Service

I hereby certify that a copy of the foregoing Post-Hearing Submission has on this
4th day of June, 2010 been sent by email to the service list in the above-captioned docket.

By: 
Susan S. Geiger

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