

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

FairPoint Communications Inc.
Reorganization

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DT 10-025

STAFF ADVOCATES' CLOSING MEMORANDUM

The Staff Advocates file this Memorandum at the close of hearings on FairPoint Communications Inc.'s (FairPoint's) request that the Commission approve the change in control of FairPoint and the terms of the New Hampshire Regulatory Settlement entered into as a part of FairPoint's reorganization in bankruptcy.¹ For the reasons described in Staff Advocate's testimony and summarized below the Staff Advocates recommend that the Commission approve the change in control and the Regulatory Settlement without conditions.

I. Imposing Additional Conditions Not Contained in the Regulatory Settlement Is Not Necessary and Creates Risk That FairPoint Will Not Emerge from Bankruptcy Under the Current Schedule.

A. The Bankruptcy

The matters before the Commission in this case were necessitated by the voluntary chapter 11 bankruptcy petition filed by FairPoint on October 26, 2009.² The change of control that will occur as a result of the confirmation of the Plan will replace existing equity security holders with new ones. The exchange occurs in conjunction with the write down of over a billion dollars in debt, which is converted to equity. The Staff Advocates have played an active

¹ References herein to the hearing transcripts are as follows: "Tr-2 (PM)" refers to the hearing on May 25, 2010, afternoon session; "TR-3" refers to the hearing held on the morning of May 26, 2010.

² *In re FairPoint Communications, Inc., et al.*, U.S. Bankruptcy Court, Southern District of New York, docket number 09-16335 (BRL), filed October 26, 2009.

role in the bankruptcy by retaining and utilizing experienced bankruptcy counsel who have attended many hearings and meetings in New York.

- In response to one of FairPoint's first day motions in the bankruptcy proceeding, the Staff Advocates along with the other States objected. As a result, FairPoint agreed to include terms in the order preserving the regulatory jurisdiction of the various States' Commissions. See Attachment A.
- Just prior to the date by which parties would have to object to the confirmation of the FairPoint Plan, the debtors and the States entered into a stipulated order reserving the rights of the States to object to the Plan up to the date of the actual hearing on confirmation, extending the date by which a proof of claim might be filed, and certain other relief. See Attachment B.
- After the Regulatory Settlement was filed with the Commission and the Bankruptcy Court, FairPoint moved for and obtained an order from the Bankruptcy Court setting up a process by which the State can get its various costs and fees allowed and paid in accordance with Section 4.3 of the Regulatory Settlement. See Attachment C.
- FairPoint has filed several iterations of its Plan with the most recent being the Modified Second Amended Joint Plan of Reorganization. FP-19. All of these versions of the Plan include the Regulatory Settlement.

Finally, the States and the debtors have worked towards resolving problematic language in the debtors' Plan, including the retention of jurisdiction provision in Article XV.³

³ A concern has been voiced that Article XV of the Plan provides too much jurisdiction to the Bankruptcy Court on a retained basis. That provision however, is subject to the reservations of rights contained in Art. XIV of the Plan and existing law governing the separation of powers and the rights of States in the federal system. Nevertheless, Staff Advocates continue to negotiate with FairPoint with respect to Art. XV and expect to achieve a successful resolution with FairPoint prior to confirmation of the Plan which will resolve any latent ambiguities and further clarify the preservation of the jurisdiction of the Commission to continue regulating FairPoint.

In addition to the States' activity in the bankruptcy, both the CLECs and NHLA saw their agreements all assumed by FairPoint in the bankruptcy case pursuant to Bankruptcy Code § 365.

B. The Regulatory Settlement

From the date FairPoint filed its Chapter 11 petition, the Staff Advocates have been working closely with the debtors to reach the Regulatory Settlement. The Regulatory Settlement contemplated procedures and protections of the State's interest in the steps that are required to get FairPoint out of bankruptcy.

- Section 1.1 provides that the only obligations between Commission Staff Advocates and FairPoint with respect to the change of control or the Plan are provided here
- Section 1.2 provides that approval shall be made prior to or contemporaneously with confirmation of the Plan and the approval should not include substantive new conditions
- Sections 1.3, 1.4 and 1.5 provide the timing of the approval process, provide an opt out clause that is only effective if exercised prior to Commission approval and provides a broad reservation of rights to protect the State's regulatory interests in the event of an opt out and resort to bankruptcy court process by FairPoint
- Section 4.2 requires FairPoint to set up a regulatory subcommittee in its board of directors to work with state regulators
- Section 4.5 provides "most favored nation" terms meaning that FairPoint must offer to New Hampshire any better terms agreed to with, or imposed by other states if the overall balance of the deal is off as a result
- Section 4.7 requires the parties to support the Regulatory Settlement and not take action that would breach or violate its terms in any forum, and

- Section 4.9 requires that the terms of FairPoint's new credit agreements be consistent with the terms agreed to in the October 2009 plan support agreement.

C. The Additional Conditions Offered By Accion

In its Supplemental Report, filed on May 18, 2010, less than a week before the hearings on this matter and after all modes of discovery had closed, Accion Group (the Non-Staff Advocates' witnesses) recommended five new conditions that had not previously been disclosed in their first report dated April 20, 2010. Those conditions included,

- The Plan be confirmed without any significant changes
- Yet to be filed financial reports be consistent with projections
- The Plan not reject either the 2008 Agreement or the 2008 order as modified by the Regulatory Settlement, and not reject the 2008 CLEC settlement agreement
- Any conditions imposed in Maine or Vermont be included in New Hampshire
- FairPoint be required to retain a monitor selected by the Commission.

At the hearing, Accion withdrew the second proposed condition because, based on FairPoint's representations, the first quarter 2010 financial reports would not be available before the Commission's decision.

D. Argument

The primary issue in this case is whether the Regulatory Settlement and the change of control ought to be approved. While the Accion Group recommended additional conditions, the Regulatory Settlement reached between the Staff Advocates and FairPoint does not envision any additional conditions, nor are any necessary. The Regulatory Settlement, instead, could be interpreted as giving FairPoint an out if new conditions are imposed. See Regulatory Settlement at §§ 1.1 and 1.2. Staff Advocates believe that FairPoint and its lenders negotiated in good faith

to reach the Regulatory Settlement and might reasonably have believed that as far as the Commission staff was concerned the conditions in the agreement were acceptable and sufficient.

Accion's first and third conditions are similar. Both are founded on the idea that the Commission approval should be granted on the basis that the bankruptcy situation presented at the hearing remain static until the Plan is approved by the Bankruptcy Court at its next hearing in July. The basis for the concern is not well supported by the testimony or the reports and is in fact belied by the terms of the Regulatory Settlement and the posture of the bankruptcy case. As of now, the Plan confirmation process is nearly complete except for the approval of the Regulatory Settlements and the objection of Verizon with respect to the litigation trust. See Attachment D at pp. 2-3 and ¶¶ 3-5 (5/14/10 order of Judge Lifland). "[A]ll Objections to confirmation of the Plan that have not been withdrawn or resolved ... are overruled in all respects ... and all withdrawn objections, if any, are deemed withdrawn with prejudice." *Id.* at ¶3. The Plan depends upon the approval of the Regulatory Settlement in the form it exists now, which in turn is dependent upon there being no other substantive conditions. The States have reserved the right to object to the Plan and would do so if anything materially adverse happened on the FairPoint end. See Attachment B at pp. 3-5 (3/11/10 Stipulation and Agreed Order of Judge Lifland). It is clear that FairPoint has only one way out of the Regulatory Settlement and that is by opting out prior to Commission approval under Section 1.4. See Tr-3 at 53, 3-23 (Mr. Kessler indicating that the only way out is before approval). The March 11th Stipulated order, moreover requires FairPoint to submit the Plan as it is now presently formed and not seek to pre-empt the Commission's regulatory authority so long as the Regulatory Settlements are "pending approval." *Id.* at ¶ 5. Thus, there is very little risk that the Plan process will go off the rails and result in confirmation of a plan different than what is currently proposed, see Tr-3 at 71, and

even if it does, the Staff Advocates are positioned and have full reservation of rights to object. The Accion witness' suggestion that "old" equity holders did not vote in favor of the Plan and may still object, Tr-3 pp. 69-70, is of no moment. While FairPoint's "old" equity holders (Class 11) are deemed to have rejected the Plan and are not entitled to vote on it, 11 U.S.C. § 1126(g), they nonetheless have no pending objections to Plan confirmation. See Attachment D at 2, ¶ 3. Nevertheless, to provide additional security, the Staff Advocates recommend that instead of adopting Accion's first and third conditions for purpose of insuring consistency, the Commission should enter an order approving the change in control and the Regulatory Settlement specifying that the order is entered and effective contemporaneously with the order confirming the Plan. See Regulatory Settlement ¶ 1.2.

Accion's third proposed condition also seeks to condition Commission approvals to non-rejection of the CLECs' 2008 settlement. It is evident from the record that FairPoint does not intend to modify the 2008 CLEC settlement. Tr-2 (PM) at 118-19 (testimony of Ms. Bailey); FP Ex 30. It is also clear from the evidence that nothing in the request for change of control or the Regulatory Settlement purports to affect the 2008 CLEC agreement, and despite many hours of cross examination and testimony by the CLECs, no one has pointed to any effort in the FairPoint Plan to affect or dispose of the 2008 agreement. It is not within the scope of this process to adjust the economic issues between the CLECs and FairPoint. Nor does this docket purport to resolve any operational issues between them. As stated during Ms. Bailey's testimony, the Commission staff will open such matters after approval to address operational problems as may be necessary. Tr-2 (PM) at 132-33, 141-42. At the same time, the Bankruptcy Court is the more appropriate forum to address the amount of the CLECs' monetary claims against FairPoint and how they will be treated in the Plan. There is thus no well articulated

reason in the Accion report and testimony for the Commission to condition its orders in this docket on any particular resolution of the monetary claims disputes between FairPoint and the CLECs.

Accion also suggested that the approvals be conditioned upon an agreement from FairPoint that any new conditions added by the Maine or Vermont commissions be included in the New Hampshire approvals order. Aside from the logistical difficulties, this condition is unnecessary because Section 4.5 of the Regulatory Settlement requires FairPoint to offer to New Hampshire anything material that it agrees to give in the other states in accordance with an overall benefit of the bargain concept. In addition, the Commission may be able to review the other States' orders and take such action as it may believe necessary to effectuate an even playing field among the states that would be consistent with the terms of the Regulatory Settlement as it is now presented. Staff Advocates urge a great deal of caution in this endeavor, however, because the Regulatory Settlement may be violated by such a move creating a risk that FairPoint would seek relief in the Bankruptcy Court in response to the snowball effect of such an order. See Tr-3 at 73-74.

Finally, Accion urges the Commission to direct FairPoint to retain a person for the Staff's use to monitor FairPoint's implementation of steps to achieve its revenue projections and operational improvements. As noted below, the Staff is already well equipped and experienced in this type of activity and has many regulatory tools at its disposal. At the same time, Accion's testimony on this point and the purpose of such a requirement is far from clear and compelling. See Tr-3 at 78-85. Where it appears that there is already adequate capability in the Commission Staff and Staff have appropriate tools at their disposal, a monitor is not justified or necessary as an additional condition in possible derogation of the terms of the Regulatory Settlement.

II. The Regulatory Settlement Maintains Key Pre-Bankruptcy Commitments of FairPoint and the Commission Has Sufficient Regulatory Tools to Enforce Those Commitments Post-Bankruptcy.

As outlined in the testimony by Staff Advocate witnesses, Kathryn Bailey and John Lisciandro, Exhibits SA-1 and SA-2, the New Hampshire Regulatory Settlement, Exhibit FP-4, and the FairPoint plan of reorganization, Exhibits FP-17, FP-18 and FP-19, will allow FairPoint to emerge from its reorganization and to continue performing the numerous regulatory commitments it made to the Commission and to the people of New Hampshire in the underlying merger docket. *See* Order No. 24,823 (February 25, 2008) Exhibit FP-1.

As Ms. Bailey explained at hearing, the underlying commitments for capital improvements and broadband infrastructure investments are preserved in the Regulatory Settlement, although some commitments are deferred until December 31, 2010. Exhibit SA-3. Although FairPoint service quality penalties for 2009 are deferred and waived if FairPoint meets certain service quality standards in 2010, the overall service quality commitment remains. Given the extraordinary operational and financial challenges faced by FairPoint as well as the risk that 2009 service quality penalties would not be paid out of the bankruptcy estate, Staff Advocates find the 2009 service quality penalty accommodations appropriate. FairPoint commitments for broadband availability are likewise deferred, but are preserved at the 95% level as originally promised. Furthermore, as Mr. Lisciandro testified and the Accion witnesses confirmed, the reorganized FairPoint has a reasonable business plan for performing its financial commitments post-bankruptcy and the new credit facility does not prevent FairPoint from meeting its projected capital improvements and broadband infrastructure build-out post-bankruptcy. Finally, in the Regulatory Settlement, FairPoint made additional commitments that should help improve service quality compliance including adding a Chief Information Officer, making service quality

performance a basis for earning incentive compensation, and establishing a regulatory sub-committee on the FairPoint board of directors.

As described above, Accion, filed a supplemental report on May 17, 2010, which contained five recommended conditions. Exhibit NAS-3. Condition number 2 was withdrawn at hearing leaving four remaining. Conditions 1, 3 and 4 are discussed above in section I. Condition 5 asks the Commission to require that FairPoint retain an independent monitor selected by the Commission to monitor FairPoint's compliance with all aspects of the Regulatory Settlement, including financial and operational commitments. Such a condition is unnecessary for a number of reasons.

First and foremost, the Commission is always free to require independent experts to assist it in its investigations and regulatory oversight of any public utility, including FairPoint. See RSA 365:37 and RSA 374:5-a. Second, rather than setting a condition as part of its approval of the change in control and Regulatory Settlement, the Commission should determine its needs for outside assistance as the post-bankruptcy process develops. It may be that outside experts will be needed to monitor various aspects of FairPoint's post-bankruptcy conduct. In that case, Commission staff is competent to evaluate such needs and to make recommendations to the Commission as events unfold. Finally, post-bankruptcy, the Commission has its full set of regulatory tools with which to direct and encourage FairPoint to meet its regulatory goals. For instance, the Commission may investigate, RSA 365:5 and 374:4, inspect facilities, RSA 365:6 and 7, order that FairPoint take certain actions, require FairPoint to report on its performance, RSA 374:17 and 18, and impose fines on FairPoint for failure to comply with Commission orders. RSA 365:41.

If the Commission issues an order approving the Regulatory Settlement as Staff Advocates recommend, that order will have the force and effect of law and will be fully enforceable by the Commission against FairPoint. Should FairPoint fail to comply with any term of the Regulatory Settlement, the Commission has all enforcement options discussed above available to it as well as numerous others. Such regulatory authority should be more than sufficient to enforce the terms of the Regulatory Settlement.

III. Conclusion

As discussed above, the conditions proposed by Accion are either covered within the terms of the Regulatory Settlement, have been withdrawn by Accion, or involve routine regulatory oversight. The risk of imposing these conditions far outweighs any benefit that may be gained by requiring these conditions. Staff Advocates urge the Commission to approve FairPoint's request for a change in control and approve the terms of the Regulatory Settlement, without modification, so that FairPoint may emerge promptly from Bankruptcy and return to a more normal regulatory status in New Hampshire.

Respectfully Submitted,

STAFF ADVOCATES

Dated: June 4, 2010

By: 
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : **Chapter 11**
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FAIRPOINT COMMUNICATIONS, INC., et al.: **Case No. 09-16335 (BRL)**
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Debtors. : **(Jointly Administered)**
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ORDER PURSUANT TO BANKRUPTCY CODE SECTION 105(a) ENFORCING PROTECTIONS OF BANKRUPTCY CODE SECTIONS 362, 365(e)(1), AND 525

Upon the Motion, dated October 26, 2009 (the "Motion")¹, of FairPoint Communications, Inc. ("FairPoint Communications") and its affiliated debtors, as debtors in possession (collectively, "FairPoint"), for entry of an order enforcing the automatic stay imposed by section 362 of the Bankruptcy Code, prohibiting the modification or termination of any executory contract or unexpired lease, or any right or obligation under such contract or lease, pursuant to section 365(e)(1) of the Bankruptcy Code, and affirming the protections against discriminatory treatment contained in section 525 of the Bankruptcy Code, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York of Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.)*; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances, and it appearing that no

¹ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of FairPoint, its estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as provided herein.
2. Pursuant to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all governmental units (and all those acting for or on their behalf) are stayed, restrained, and enjoined from:
 - a) commencing or continuing any judicial, administrative, or other action or proceeding against FairPoint, including the issuance or employment of process, that was or could have been initiated before the commencement of FairPoint’s chapter 11 cases;
 - b) enforcing, against FairPoint or its estates, a judgment obtained before the commencement of FairPoint’s chapter 11 cases;
 - c) collecting, assessing, or recovering a claim against FairPoint that arose before the commencement of FairPoint’s chapter 11 cases;
 - d) taking any action to obtain possession of property of the estates or of property from the estate or to exercise control over property of FairPoint’s estates;

- e) taking any action to create, perfect, or enforce any lien against property of FairPoint's estates;
- f) taking any action to create, perfect or enforce any lien against property of FairPoint, to the extent that such lien secures a claim that arose before the commencement of FairPoint's chapter 11 cases; and
- g) offsetting any debt owing to FairPoint that arose before the commencement of these chapter 11 cases against any claim against FairPoint.

3. All persons and all governmental units, and all those acting on their behalf, are stayed, restrained, and enjoined from in any way seizing, attaching, foreclosing upon, levying against, or in any other way interfering with any and all property of FairPoint or its estates, wherever located.

4. Pursuant to 365 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all governmental units (and all those acting for or on their behalf) are prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of FairPoint's chapter 11 cases solely because of a provision in such contract or lease that is conditioned on:

- a) the insolvency or financial condition of FairPoint at any time before the closing of FairPoint's chapter 11 cases;
- b) the commencement of FairPoint's chapter 11 cases; or
- c) the appointment of, or taking possession by, a trustee in FairPoint's chapter 11 cases.

5. This Order shall not affect the substantive rights of any party or any of the exceptions contained in sections 362(b) and 365(e)(1) of the Bankruptcy Code of the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or with respect to an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

6. Pursuant to section 525 of the Bankruptcy Code, all governmental units are prohibited and enjoined from (i) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to, (ii) placing conditions upon such a grant to, or (iii) discriminating against FairPoint (or another person with whom FairPoint has been associated) solely because FairPoint is a debtor under the Bankruptcy Code, or may have been insolvent before or during these chapter 11 cases, or has not paid a debt that is dischargeable or has been discharged under the Bankruptcy Code.

7. Notwithstanding the foregoing, nothing in this Order shall (1) alter, modify, increase or decrease the legal rights, claims, defenses and obligations of the Debtors and/or parties in interest in these cases (including, without limitation, any claims and defenses to performance of nondebtor contract counterparties) or provide the Debtors and/or any such other parties in interest with any substantive legal rights, remedies or obligations not available thereto under applicable law, including, but not limited to, the Bankruptcy Code; (2) determine any factual issue or issue of substantive law, including, without limitation, the scope of sections 365, 362(b)(4), or 525 of the Bankruptcy Code or whether any particular action of any state regulatory authority, commission or other governmental unit has implicated, or would implicate, any section of the Bankruptcy Code; (3) constitute a finding or conclusion that the Court has or does not have any jurisdiction or authority with respect to any transaction or action of any of the

Debtors over which any state regulatory authority, commission or other governmental unit asserts jurisdiction; (4) limit or restrict the regulatory authority of any state agency, commission or other governmental unit under applicable non-bankruptcy law, or (5) relieve any of the Debtors from any obligations they may have in accordance with 28 U.S.C. sec. 959(b).

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: October 27, 2009
New York, New York

/s/Burton R. Lifland
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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FAIRPOINT COMMUNICATIONS, INC. et al.,	:	Case No. 09-16335 (BRL)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**STIPULATION AND AGREED ORDER AMONG
CERTAIN REGULATORY AUTHORITIES AND FAIRPOINT
CONCERNING FAIRPOINT’S CHAPTER 11 PLAN AND RELATED MATTERS**

WHEREAS, on October 26, 2009 (the “Petition Date”) FairPoint Communications, Inc. and its affiliated debtors, as debtors in possession (collectively, “FairPoint”), filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”);

WHEREAS, on February 11, 2010, FairPoint filed a disclosure statement (as the same may be amended, the “Disclosure Statement”) and a chapter 11 plan of reorganization (as the same may be amended, the “Plan”). A hearing to determine whether the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code has been scheduled for March 11, 2010;

WHEREAS, by order dated February 4, 2010, the Court established (i) March 18, 2010 at 5 p.m. Eastern Time as the general deadline by which proofs of claim against FairPoint must be filed by creditors other than governmental units and (ii) April 26, 2010 at 5 p.m. Eastern Time as the deadline by which proofs of claim against FairPoint must be filed by governmental units;

WHEREAS, in order to facilitate FairPoint's successful reorganization, the Plan incorporates the following settlements (collectively, the "Regulatory Settlements"): (1) that certain Post-Filing Regulatory Settlement-New Hampshire, dated as of February 5, 2010, among FairPoint Communications, Inc. ("FairPoint Communications"), Northern New England Telephone Operations LLC ("NNETO") and the Staff Advocates of the New Hampshire Public Utility Commission (the "Staff Advocates"); (2) that certain Post-Filing Regulatory Settlement-Vermont, dated as of February 5, 2010, among FairPoint Communications, Telephone Operating Company of Vermont LLC ("TOCV", and collectively with FairPoint Communications and NNETO, the "FairPoint Settlement Parties") and the Vermont Department of Public Service (the "VDPS"); and (3) that certain Post-Filing Regulatory Settlement-Maine, dated as of February 9, 2010, among FairPoint Communications, NNETO, a representative (the "Maine Representative") appointed by the Maine Public Utilities Commission (the "MPUC"), and the Maine Office of the Public Advocate (the "Maine Public Advocate," and collectively with the Staff Advocates, the VDPS, and the Maine Representative, the "Regulatory Authorities");

WHEREAS, in accordance with its terms, the Regulatory Settlement between the FairPoint Settlement Parties and the Staff Advocates is subject to approval by the Court and the New Hampshire Public Utilities Commission (the "NHPUC");

WHEREAS, in accordance with its terms, the Regulatory Settlement between the FairPoint Settlement Parties and the VDPS is subject to approval by the Court and the Vermont Public Service Board (the "VPSB");

WHEREAS, in accordance with its terms, the Regulatory Settlement between the FairPoint Settlement Parties, the Maine Representative and the Maine Public Advocate is subject to approval by the Court and the MPUC;

WHEREAS, the parties hereto are entering into this stipulation in furtherance of the Regulatory Settlements;

NOW THEREFORE, the FairPoint Settlement Parties, the VDPS, the Staff Advocates, the Maine Public Advocate and the MPUC (collectively, the "Parties") hereby stipulate and agree as follows:

1. The deadlines established by the Court for the filing of proofs of claim, objections to the Plan, and motions pursuant to Bankruptcy Rule 3018 to temporarily allow claims for the purpose of voting on the Plan, are hereby tolled with respect to the VPSB, the VDPS, NHPUC, the Maine Public Advocate and MPUC to the date, if any, that is fourteen (14) days after the day on which FairPoint files an amended chapter 11 plan that does not incorporate the applicable Regulatory Settlement for Vermont, New Hampshire, or Maine, respectively; *provided, however*, that in no event shall the VPSB, the NHPUC, the Maine Public Advocate or the MPUC request that FairPoint re-solicit creditor votes with respect to such an amended chapter 11 plan.

2. FairPoint agrees that Section 3.4 of the Plan will include the following provisions:
- A. Except as otherwise paid or payable pursuant to the order granting FairPoint's Motion Pursuant to Bankruptcy Code Sections 105(a) and 363(b) For Authorization to Reimburse Certain Regulatory Agency Expenses [Docket No. 685], and subject in all respects to the terms of Section 4.3 of the NHPUC Regulatory Settlement and Section 4.3 of the VDPS Regulatory Settlement, on the Effective Date FairPoint shall reimburse the reasonable out-of-pocket expenses and costs of the State of New Hampshire, the VDPS, and the Vermont Public Service Board in connection with the chapter 11 cases;
 - B. As long as the Regulatory Settlement remains in effect in Maine, and subject in all respects to Section 4.4 of the MPUC Regulatory Settlement, on the Effective Date FairPoint shall reimburse the reasonable out-of-pocket expenses and costs of the MPUC and the Maine Public Advocate in connection with the chapter 11 cases.

3. FairPoint agrees that, as long as the applicable Regulatory Settlement is in effect as to a particular state, the last sentence of Section 8.3 of the Plan will provide as follows as it relates to such state:

Notwithstanding the foregoing, but subject to the provisions of any applicable Regulatory Settlement, on or as of the Effective Date, or as soon as reasonably practicable thereafter, and without the need for any further action, Reorganized FairPoint may: (a) cause any or all of Reorganized FairPoint to be merged into one or more of Reorganized FairPoint, dissolved or otherwise consolidated, (b) cause the transfer of assets between or among Reorganized FairPoint, or (c) engage in any other transaction in furtherance of the Plan.

4. FairPoint agrees that, as long as the applicable Regulatory Settlement is in effect as to a particular state, the last sentence of Section 8.1 of the Plan will provide as follows as it relates to such state:

Subject to obtaining the approval of the settlements reflected in the Plan by the Bankruptcy Court, on the Effective Date, Reorganized FairPoint will take all actions necessary or reasonably required to effectuate such settlements and such settlements shall be binding on Reorganized FairPoint.

5. Notwithstanding Section 12.1(i) of the Plan, FairPoint agrees that, as long as the applicable Regulatory Settlement is pending approval (and not withdrawn by FairPoint under the terms of the Regulatory Settlement) as to a particular state, FairPoint will not seek a ruling from the Bankruptcy Court to the effect that the regulations of such state requiring applicable regulatory approvals are pre-empted by the Bankruptcy Code.

6. FairPoint agrees that, as long as the applicable Regulatory Settlement is in effect as to a particular state, Section 14.2 of the Plan will provide as follows as it relates to such state: For the avoidance of doubt, this Section 14.2 shall not limit the implementation of a Regulatory Settlement or, as to the business and activities of FairPoint as conducted on and after the

Effective Date of the Plan, the application and enforcement of applicable state law (consistent with the provisions of the Regulatory Settlements) with respect to the regulation of FairPoint by any governmental unit including the MPUC, VPSB and/or the NHPUC.

7. FairPoint agrees that, as long as the applicable Regulatory Settlement is in effect as to a particular state, Section 14.4 of the Plan will provide as follows as it relates to such state: For the avoidance of doubt, this Section 14.4 shall not limit the implementation of a Regulatory Settlement or, as to the business and activities of FairPoint as conducted on and after the Effective Date of the Plan, the application and enforcement of applicable state law (consistent with the provisions of the Regulatory Settlements) with respect to the regulation of FairPoint by any governmental unit including the MPUC, VPSB and/or the NHPUC.

8. Each person who executes this Stipulation by or on behalf of each respective party warrants and represents that he or she has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such party, *provided, however*, that nothing herein shall be construed as an approval by the MPUC, the NHPUC and/or the VPSB as to any aspect of the Plan and/or any Regulatory Settlement.

9. The Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Stipulation, *provided, however*, that nothing herein shall constitute a waiver of any provision in any Regulatory Settlement or prior order of the Court relating to the Regulatory Parties' reservation of rights as to the Court's jurisdiction over, or with respect to the affairs of, the MPUC, the NHPUC, the VPSB and/or the Regulatory Parties under applicable bankruptcy and non-bankruptcy law.

10. This Stipulation may be executed in one or more counterparts and by facsimile or electronic copy, all of which shall be considered effective as an original signature.

[Signatures Follow]

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IT IS SO ORDERED:

Dated: New York, New York
March 11, 2010

/s/Burton R. Lifland
THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED THAT**:

1. The Motion is GRANTED.

2. FairPoint is authorized to reimburse the Regulatory Agencies for their actual, reasonable, out-of-pocket expenses and costs incurred postpetition, solely in furtherance of the process of negotiating the terms of the Settlement Agreements and any proceedings to obtain the approval thereof, in accordance with the following procedures:

- a) On or before the thirtieth (30th) day of each month following the month for which reimbursement is sought, each Regulatory Agency seeking reimbursement will serve a monthly statement (the "Monthly Statement"), by hand or overnight delivery on (i) FairPoint, c/o FairPoint Communications, Inc., 521 East Morehead Street, Suite 500, Charlotte, NC 28202 (Attn: Shirley J. Linn and Susan L. Sowell, Esq); (ii) Paul, Hastings, Janofsky & Walker LLP, 75 East 55th Street, New York, NY 10022, (Attn: Luc A. Despina, Esq. and James T. Grogan, Esq.); (iii) Andrews Kurth, LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Paul N. Silverstein, Esq. and Jonathan I. Levine, Esq.); (iv) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Andrew D. Velez-Rivera and Elisabetta G. Gasparini); and (v) Kaye Scholer LLP, 425 Park Avenue, New York NY 10022 (Attn: Margot B. Schonholtz, Esq. and Nicholas J. Cremona, Esq.) (the "Notice Parties").
- b) Each Monthly Statement shall specify the expenses and costs for which reimbursement is sought, including the fees and expenses of any professionals.
- c) With respect to the reimbursement of fees of professionals retained by the Regulatory Agencies, the Monthly Statement shall set forth, in reasonable detail, (i) an appropriate narrative description of the services rendered; (ii) the persons who performed the services; (iii) the time expended by each person on each activity, broken out in increments of tenths of an hour; and (iv) the billing rate of each such person.
- d) With respect to the reimbursement of expenses of the Regulatory Agencies and professionals retained by them, the statement shall set forth, in reasonable detail, (i) the nature of each expense for which reimbursement is sought; (ii) the amount sought for reimbursement on account of each expense; and (iii) supporting documentation for each expense.
- e) Objections, if any, to a Monthly Statement submitted by a Regulatory Agency shall be served on the applicable Regulatory Agency and the Notice Parties within twenty-business days after receipt of the statement by the objecting party.

- f) In the event that no objection is interposed by one or more of the Notice Parties within twenty-business days after receipt thereof, then FairPoint shall be authorized to pay the Monthly Statement as requested.
- g) If an objection is interposed, then FairPoint shall withhold payment with respect to the disputed item pending resolution of the objection. FairPoint, the objecting parties and the applicable Regulatory Agency shall then endeavor to amicably resolve any disputes as soon as practicable. If the dispute is not resolved within ten-business days after an objection is interposed, any party may request that the Court resolve the dispute.

3. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: March 22, 2010
New York, New York

/s/Burton R. Lifland
THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
 In re: : **Chapter 11**
 :
 FAIRPOINT COMMUNICATIONS, INC., *et al.*: **Case No. 09-16335 (BRL)**
 :
 Debtors. : **(Jointly Administered)**
 :
 -----X

**ORDER UNDER BANKRUPTCY CODE SECTIONS 105(a) AND 1129 AND
BANKRUPTCY RULES 3019(a) AND 9014
REGARDING PLAN CONFIRMATION PROCESS**

Upon consideration of (i) the *Debtors' Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated as of March 10, 2010, as modified on May 7, 2010, and (ii) the *Debtors' Plan Supplement*, dated April 23, 2010, and May 7, 2010, all as they may be subsequently amended or modified in accordance with their respective terms and the Bankruptcy Code ((i) and (ii) collectively, the "Plan"), proposed and filed by FairPoint Communications, Inc. ("FairPoint Communications") and its affiliated debtors, as Debtors-in-Possession¹ (collectively, "FairPoint"); and that, on May 11, 2010, the Court commenced the hearing to consider confirmation of the Plan (the "Phase I Confirmation Hearing"); and upon the arguments of counsel and the evidence proffered and adduced at the Phase I Confirmation Hearing; and the Court having found and determined that the modifications to the Plan and the Plan Supplement that were filed with the Court on May 7, 2010 and/or described on the record at the Phase I Confirmation Hearing (collectively, the "Modifications") do not adversely change the treatment of the claim of any creditor entitled to vote to accept or reject the Plan; and the Court having found and determined that the Modifications are in the best

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

interests of FairPoint, its estates, its creditors, and all parties in interest; and due notice of the Phase I Confirmation Hearing having been provided to holders of Claims against and Equity Interests in FairPoint and other parties in interest, as established by the certificate of service and mailing filed with the Bankruptcy Court (Docket Nos. 972, 1250, 1006 and 1007), and such notice being sufficient, and no further notice being required; and based upon and after full consideration of the entire record of the Phase I Confirmation Hearing; and the Court having considered all objections to confirmation of the Plan (the "Objections"); and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Modifications are approved pursuant to Bankruptcy Rule 3019(a) and the Plan with the Modifications thereto is hereby deemed accepted by all creditors who have previously accepted the Plan.

2. The record of the Phase I Confirmation Hearing is hereby closed.

3. Except to the extent set forth below or in that certain Stipulation and Agreed Order (Docket No. 824, the "Regulatory Stipulation") among FairPoint and the Maine Public Utilities Commission, the Staff Advocates of the New Hampshire Public Utilities Commission and the Vermont Department of Public Service and/or Vermont Public Service Board, and the Maine Office of the Public Advocate (collectively the "Regulators"), all Objections to confirmation of the Plan that have not been withdrawn or resolved prior to the entry of this Order are overruled in all respects for the reasons set forth in the record of the Phase I Confirmation Hearing, which record is incorporated herein by reference, and all withdrawn objections, if any, are deemed withdrawn with prejudice.

4. No creditor or equity security holder of FairPoint shall be heard with respect to any matter related to confirmation of the Plan except as follows: (a) the Regulatory

Settlements and any and all objections of the Regulators, to the extent provided in the Regulatory Stipulation and to the extent set forth on the record at the Phase I Confirmation Hearing, are hereby reserved for consideration by the Court at a later date (except as to the Court's ruling on FairPoint's compliance with Bankruptcy Rule 3019(a) set forth in paragraph 1 above); and (b) any objections that Verizon Communications Inc. and its affiliates may have to the Litigation Trust Agreement or Section 11.4 of the Plan and any responses thereto are hereby reserved; *provided however*, that Verizon shall provide to FairPoint's counsel by e-mail a list of any section in the Litigation Trust Agreement other than 1.8 to which it objects and the basis for that objection by no later than 12:00 noon Eastern Time on May 14, 2010.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: May 14, 2010
New York, New York

/s/Burton R. Lifland
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE