

**State of New Hampshire
BEFORE THE
PUBLIC UTILITIES COMMISSION
DOCKET NO. DT 10 - 025**

**PRE-FILED TESTIMONY OF
WENDY WILUSZ
DIRECTOR OF OPERATIONS
OF
FREEDOM RING COMMUNICATIONS, LLC D/B/A
BAYRING COMMUNICATIONS**

April 19, 2010

1 **Q. Please state your full name, business address, title and professional background.**

2 A. My name is Wendy Wilusz; I am employed by Freedom Ring Communications LLC.,
3 d/b/a BayRing Communications (“BayRing”), with a business address of 359 Corporate
4 Drive, Portsmouth, New Hampshire. My title is Director of Operations and I have been
5 in this position since June of 2007. Previously, I held the position of Operations Manager
6 from October 2003. I have been in the telecommunications industry serving the CLEC
7 community in different capacities for over 21 years.

8 **Q. Please describe your responsibilities as the Director of Operations as they relate to**
9 **these proceedings.**

10 A. I am responsible for all of BayRing’s network operations, including provisioning,
11 installation, maintenance, and repair departments. I am also responsible for the network
12 operations of these departments for all wholesale customer orders that we obtain from the
13 incumbent LEC, FairPoint. In my network operations capacity I regularly interface and
14 rely upon FairPoint’s Operation Support Systems (OSS) and FairPoint’s wholesale
15 support staff in order to deliver basic telecommunications services to BayRing’s retail
16 customers. I am also responsible for the review and approval of invoices related to these
17 departments.

18 **Q. Please describe BayRing’s operations in New Hampshire.**

19 A. Following the passage of the Telecommunications Act, BayRing became the first
20 competitive local exchange carrier (“CLEC”) authorized by the New Hampshire Public
21 Utility Commission and is today one of the largest CLECs operating out of offices in
22 New Hampshire. BayRing provides a vast array of voice and broadband services to
23 customers throughout New Hampshire, using its own facilities in combination with

1 leased unbundled network elements through interconnection arrangements with
2 FairPoint. Of particular concern in this proceeding, BayRing is dependent on FairPoint's
3 newly constructed Operational Support Systems ("OSSs") and its wholesale service
4 department in connection with the ordering, preordering, provisioning, maintenance and
5 repair, and billing of the wholesale services that BayRing uses to serve its New
6 Hampshire customers.

7 **Q. Who are BayRing's customers in New Hampshire?**

8 A. BayRing's customers include small and medium size businesses and enterprise
9 customers, including a number of service organizations such as hospitals, medical
10 facilities, doctors' offices, police departments, fire departments, ambulances, schools and
11 municipalities. These service organizations provide critical services to the public and thus
12 depend on BayRing for high quality service as they simply cannot afford any delay or
13 disruption of their telecommunications services.

14 **Q. What is the purpose of your testimony?**

15 A. The purpose of my testimony is to provide BayRing's position on the Regulatory
16 Settlement that is before the Commission in this proceeding. In particular, I will describe
17 the Regulatory Settlement's complete absence of language responding to the on-going
18 concerns of BayRing and other CLECs. I will provide support to BayRing's belief that
19 FairPoint has no intention to abide by its commitments to provide wholesale services on
20 terms that represent an improvement from the services that Verizon provided BayRing
21 before the Commission's Approval Order in DT-07-011. I will describe in detail the
22 regular deficiencies in FairPoint's wholesale systems. My testimony will describe a
23 breakdown in the FairPoint/wholesale service relationship that contradicts FairPoint's

1 representations to the contrary. Given these systemic failures, I will recommend that the
2 Commission not approve the Regulatory Settlement, due to FairPoint's inability to live
3 up to its commitments to provide wholesale services of equal or better than its
4 predecessor (Verizon).

5 **Q. Have you reviewed the Regulatory Settlement and if so do you have any preliminary**
6 **remarks?**

7 A. Yes. I reviewed the document and I can state at the outset that I am troubled that
8 FairPoint believes the document is "just and reasonable and serves the public interest . . ."
9 when the document has no provisions to account for the corrections that are required for
10 wholesale customers such as CLECs. Request for Approval, at pg. 11. I can appreciate
11 that the Regulatory Settlement seeks to address some of the retail service quality
12 problems, along with other matters. However, it is clear that FairPoint had no intention
13 to address several on-going wholesale service quality problems that FairPoint is fully
14 aware of. As long as the Regulatory Settlement leaves aside the current problems with
15 FairPoint's delivery of wholesale services to CLECs this Regulatory Settlement is not in
16 the public interest, especially given the number of New Hampshire entities that depend
17 upon CLECs for critical, quality telecommunication services.

18 **Q. Does the proposed Regulatory Settlement say anything about how FairPoint**
19 **commits to improve services for wholesale customers?**

20 A. No. There is no direct statement that describes any commitments that FairPoint is willing
21 to make concerning wholesale customers that I could find in the document entitled
22 "NHPUC Regulatory Settlement" that is labeled as "Exhibit E" to the March 10, 2010
23 "Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the

1 Bankruptcy Code.” This is astonishing, given the well documented problems that have
2 been described to the Commission by several Liberty Consulting Group reports, the well-
3 publicized service quality and operational break-downs that occurred after the cut-over,
4 and in recent complaints filed by CLECs, including the complaint filed by BayRing in
5 Docket No. 09-039. FairPoint certainly recognized the need to make further
6 commitments on several important matters, including retail service quality to avoid
7 Service Quality “SQI” penalties, pricing for stand-alone DSL service, broadband build
8 out and other financial commitments. I see no similar attempt to acknowledge or address
9 the current degraded levels of wholesale service that I will describe in more detail below.

10 **Q. On page 12 of the March 5, 2010 Direct Testimony of Kathryn M. Bailey she states:**
11 **“The Regulatory Settlement . . . leaves unchanged [FairPoint’s] commitments to**
12 **wholesale providers.” Do you agree?**

13 A. I do not doubt the sincerity of Ms. Bailey and her belief that the Regulatory Settlement
14 leaves unchanged the terms of the CLEC Settlement. However I believe the Regulatory
15 Settlement should have been explicit regarding this commitment. I am more concerned
16 about the sincerity of FairPoint’s similar statements, given their unwillingness to abide by
17 the commitments made in the CLEC Settlement that I will discuss below.

18 **Q. Did BayRing ask FairPoint in data requests for confirmation that the terms of the**
19 **Regulatory Settlement do not in any way impact the previous commitments made by**
20 **FairPoint in the CLEC Settlement?**

21 A. Yes. BayRing, as well as other CLECs requested confirmation via data requests from
22 FairPoint because the Regulatory Settlement does not have any provisions that address
23 the problems that wholesale customers have faced with FairPoint since the cutover.

1 FairPoint is attempting to convince the Commission that it will still abide by the
2 conditions imposed by the Commission in its Approval Order No. 24, 823 and the terms
3 of the CLEC Settlement that BayRing (and other CLECs) signed with FairPoint in
4 Docket DT-07-011 (as reflected in FP Response to Joint CLECs DR Nos. 1; FP Response
5 to Otel DR No. 1, 3, 5; FP Response to Comcast DR Nos. 1-1, 1-2, 1-4 through 1-27).
6 However, it is difficult to believe that FairPoint is willing to abide by the terms imposed
7 by the Commission in its Approval Order No. 24, 823 or in the terms of the CLEC
8 Settlement that BayRing (and other CLECs) signed with FairPoint in Docket DT-07-011
9 given what I experience on a regular basis with FairPoint and their actions that undermine
10 these same commitments through degraded wholesale services. Similarly, it is difficult to
11 believe FairPoint when they have, and they confirmed they will continue to pursue efforts
12 to undermine the commitments made in the CLEC Settlement concerning the current
13 provisions of the wholesale Performance Assurance Plan (PAP).

14 **Q. Can you explain what types of commitments and promises FairPoint made to**
15 **wholesale customers that you are concerned about?**

16 A. In DT 07-011 FairPoint promised CLECs that it would deliver wholesale services and
17 operations on terms equal to or better than what BayRing experienced with Verizon,
18 while keeping basic wholesale arrangements, tariffs, pricing and service quality metrics
19 and penalty plans in place as they existed with Verizon prior to the merger. To say that
20 they have failed in this promise is an understatement.

21

1 **Q. Can you provide a few specific examples of FairPoint system problems that affect**
2 **BayRing's ability to provision services to its clients?**

3 A. BayRing has provided FairPoint with a list of approximately 60 system issues that
4 currently are affecting our ability to serve our clients. Following are several examples,
5 all of which are business critical to BayRing. I also note that none of these problems that
6 I describe below existed in the prior Verizon systems.

7 **Q. Please describe the Customer Service Record (CSR) situation.**

8 A. BayRing relies on the information contained in CSRs when entering orders in FairPoint
9 systems. The CSR is the most fundamental request we can make and is often the basis
10 for our orders. If the CSR information is incorrect, then the service order we place will
11 be incorrect. However, the CSR information that we obtain from FairPoint continues to
12 be inaccurate, missing information and/or does not reflect the most recent customer
13 status.

14 **Q. What is the problem created with incorrect information on the CSR?**

15 A. The problem with faulty data on the CSR is that BayRing's wholesale service orders seek
16 incorrect services or, in the event that we somehow recognize that the CSR information is
17 incorrect, we must enter the information manually, which then adds additional time to the
18 service order request process. More than a year after cut-over BayRing continually finds
19 that this information is still not fully available. Each time we enter an incorrect order
20 based on an erroneous CSR, we must wait for the correct information to be provided,
21 which delays service to our customers. Another significant issue with FairPoint's OSS is
22 that our orders receive premature provisioning completion notices (PCN) and billing

1 completion notices (BCN). This means that an order that has not yet been provisioned or
2 completed by FairPoint actually appears completed in the FairPoint system.

3 **Q. What must you do when you receive a false PCN/BCN?**

4 A. When BayRing receives a false PCN/BCN we must contact our FairPoint Single Point of
5 Contact (“SPOC”) in order to determine the actual status of the order. If the SPOC finds
6 that the PCN/BCN is premature we are then informed that they can no longer assist us
7 with the order and that BayRing must open a ticket with FairPoint’s repair department in
8 an attempt to have the order completed. Essentially, because of FairPoint’s
9 malfunctioning systems, we are forced to engage in the ridiculous process of seeking to
10 have circuit installation completed through FairPoint’s repair department which doesn’t
11 even recognize that the circuit has been installed – because it hasn’t been. As a result
12 these orders are delayed further while we escalate within FairPoint to gain assistance.
13 Logically the repair department is unable to address our request because there is nothing
14 to “repair” as no circuit was ever installed. This issue was first reported by BayRing to
15 FairPoint on 2/19/09, was identified as a problem in several Liberty Consulting Group
16 reports and remains unresolved today.

17 **Q. Are you having problems with circuit identification also?**

18 A. Yes, on the orders that FairPoint manually processes we frequently do not receive the
19 circuit identifier and or the demarcation information. Prior to the merger, Verizon’s
20 automated system, EWPTS, provided detailed information that allowed BayRing
21 technicians to locate the exact network interface device as well as circuit(s) for each
22 order. With FairPoint’s supposedly improved systems none of this information is
23 provided. Without basic circuit identification information from FairPoint’s systems,

1 BayRing must request what is known as a “tag and locate” via FairPoint’s repair
2 department. Once a tag and locate request is made, FairPoint should dispatch a
3 technician to identify the circuit. Requesting a tag and locate generally adds *at least two*
4 *days* to the original installation interval provided to the customer. Worse, even though
5 the service is not identifiable/available to BayRing for an additional two days, FairPoint
6 has generated a PCN/BCN for this order indicating the order is complete. Since
7 PCN/BCN is the triggering identifier for order completion, the order is also being
8 reported by FairPoint as delivered on time when in fact it was delayed. Despite
9 FairPoint’s pre merger assertions that it would provide the same or superior service to the
10 wholesale community, FairPoint chose not to recreate the EWPTS system even though
11 CLECs identified this as one of the most critical systems we use. On February 27, 2009
12 John Berard stated (on the FairPoint Communications Operations Cutover
13 communications call, followed by FairPoint notes to the CLECs) that FairPoint was in the
14 process of developing an EWPTS like system. No such system is available today and
15 when BayRing inquired about it at our last meeting with Rich Murtha and John Berard,
16 we were informed that no such system is slated for development.

17 **Q. Are you experiencing problems with conversions of customers to FairPoint’s resale**
18 **service?**

19 **A.** Yes. On nearly every occasion where we convert a customer from another carrier to
20 FairPoint resale service, regardless of the extent of the coordination efforts we have made
21 with FairPoint, the customer often loses service. Once these issues occur, it takes several
22 days of escalation within FairPoint to restore the client’s services. These outages did not
23 occur with such frequency prior to the introduction of FairPoint’s OSS, and now these

1 problems have affected a wide array of our clients, including police and fire departments
2 and schools which have recently have experienced service disruption as FairPoint
3 struggled to manually correct its network operations to function properly.

4 **Q. Are there other concerns you have with FairPoint's efforts to establish quality**
5 **wholesale services for CLECs such as BayRing?**

6 A. Yes. There are two specific reports that are important to BayRing and all CLECs which
7 require that FairPoint provide accurate information. The first is the Line Loss Report.
8 The other is the Listing Verification Report. FairPoint does not provide BayRing with
9 accurate information on either report.

10 **Q. Please explain.**

11 A. First, the Line Loss report identifies resale customers that have migrated to another
12 carrier. This is important information as it indicates the conversion of a client to an
13 alternate carrier which generally requires a cessation of billing by the original carrier.
14 Lacking an accurate Line Loss report decreases our ability to properly invoice customers
15 as we may continue to bill customers that no longer use our services. Thus, resale
16 customers routinely receive bills from two carriers for the same services.
17 The other critical report that remains inaccurate is the Listings Verification Report
18 (LVR). This report allows us to accurately verify our customers' directory listing
19 information before it is published in phone books. Without the ability to verify the data
20 that FairPoint supplies to the publisher of the phone directories, our customers' listings
21 are often incorrect for a year until the new directory is printed.

1 BayRing and other CLECs have informed FairPoint on numerous occasions about the
2 inaccurate data in both the Line Loss Report and the Listing Verification Report. We still
3 have no information as to when these reports will be made accurate.

4 **Q. Do you have any other concerns that are not related to your ability to process**
5 **orders?**

6 A. I have described some of the problems in processing basic service orders for wholesale
7 customers and that FairPoint's solutions to date do not reflect a serious willingness to
8 resolve these issues or provide service equal or better than what was provided by
9 Verizon. Verizon's systems were put through a third party OSS testing regime to make
10 sure that services to CLECs were provided at parity to services provided to Verizon's
11 retail customers. FairPoint's supposedly new and improved OSS were never put through
12 this type of independent third party test before replacing Verizon's systems.
13 Consequently, BayRing questions whether parity exists between wholesale and resale
14 order processing and if the data provided by FairPoint to the Commission and general
15 public accurately reflects its true performance.

16 For example, at a recent hearing in this docket, Rich Murtha of FairPoint reported that
17 there were approximately 200 orders currently past their due date, yet BayRing's internal
18 data shows that we alone had nearly that many late orders. Based on this concern
19 BayRing invited FairPoint management to our corporate office to observe what it is like
20 for a CLEC to attempt to operate using FairPoint's OSS on a daily basis. We wanted
21 FairPoint to witness the myriad issues that we endure while using their system. As the
22 FairPoint staff watched my staff work in the FairPoint OSS it became obvious that the
23 data provided to BayRing via the FairPoint OSS conflicts with the data that FairPoint

1 employees see in their portion of the same OSS. It seems that FairPoint has “fixed” some
2 issues in the system its staff uses for its retail services, such as a more accurate
3 representation of order status. However, this information is not available to wholesale
4 users of the system. Again, the inconsistency and lack of system functionality in this
5 case causes BayRing significant additional effort to ensure that our orders are completed
6 and that our clients receive quality and timely service.

7 Given the variation in available data for CLECs and FairPoint employees, BayRing is
8 concerned that parity does not exist between wholesale and retail services and we are
9 further concerned that FairPoint does not have to muddle through the same machinations
10 that CLECs do to complete a simple order.

11 **Q. Can you elaborate on how FairPoint is aware of this disparity?**

12 A. During FairPoint’s recent shadowing of BayRing’s provisioning staff FairPoint
13 discovered that its system only reported order completions accurately on orders that are
14 never altered or “supplemented.” So, if an order is submitted and FairPoint then requires
15 it to be changed, which happens often given the faulty CSR information that I described
16 above, BayRing must create a supplement or “version 2” order. The version 2 order
17 includes any new or corrected information and is considered the live order. However,
18 FairPoint systems do not provide a completion notice to CLECs when the order is
19 finalized. Instead, a BCN is produced for the original order which contains erroneous or
20 insufficient information and for obvious reasons is not tracked by BayRing..

21 **Q. What other efforts have you tried to address BayRing’s concerns with FairPoint?**

22 A. BayRing has actively participated in the FairPoint sponsored Wholesale User Forums
23 (WUF) both in person and via conference calls. We have actively participated in the four

1 CLEC face to face forums. These forums were held by FairPoint and offered CLECs the
2 opportunity to again identify the numerous problems that exist with FairPoint's OSS. The
3 CLEC community aided FairPoint by identifying a substantial number of problems with
4 FairPoint's home grown OSS that significantly impact wholesale customers such as
5 BayRing. Every one of the identified issues hinders our ability to conduct business as we
6 had done prior to the transition from Verizon to FairPoint.

7 **Q. What other steps have you made to work with FairPoint to address the wholesale**
8 **problems that you face?**

9 A. We have informed FairPoint of OSS problems during the Wholesale Cutover by way of
10 teleconferences conducted twice a month by FairPoint. We have also presented the
11 numerous system failures and problems to our FairPoint appointed Single Point of
12 Contact (SPOC) as well as to FairPoint's Wholesale Help Desk (WHD) and the
13 Wholesale Service Center (WSC) as per FairPoint's published procedures and escalation.
14 Lastly, in our continued efforts to motivate FairPoint to resolve its OSS issues we have
15 had multiple meetings at BayRing with FairPoint key personnel. Personnel such as Rich
16 Murtha, Patti Ahern, Todd Jervah, John Berard, Matt Bertsch, and Rich Celucci have met
17 at BayRing and were provided detailed examples of the inadequacy and lack of
18 functionality of FairPoint's OSS.

19 **Q. As a result of these efforts do you feel FairPoint has addressed these issues?**

20 A. No, and more importantly, as FairPoint has implemented repairs to its OSS it does not
21 appear that their fixes resolved the root causes of the issues. Instead the changes seem to
22 be band-aid solutions or temporary workarounds. All of our methods for communicating
23 issues to FairPoint seem to result in the same good intentions but FairPoint staff and

1 management appear to lack the ability to successfully identify and resolve root cause
2 issues in a timely fashion. Further, while FairPoint attempts to rectify system problems
3 there is little and or no concise, timely communication to CLECs regarding crucial
4 information, such as why the problem exists, what types of transactions are affected and
5 when the error will be fixed.

6 **Q. How does FairPoint handle these complaints?**

7 A. In response to BayRing's complaints FairPoint many times implements manual
8 procedures that bypass OSS failures. While these manual work-arounds may resolve the
9 instant issue temporarily, unfortunately they often create additional problems for CLECS.
10 We experience longer processing times for our orders, and more effort and time is spent
11 on processing these orders. Because FairPoint is operating in a highly manual
12 environment, my staff must do the same - which introduces the additional risk of human
13 error. The problem for BayRing is that we are unable to rely on the integrity of the
14 FairPoint OSS as we could prior to the FairPoint merger. Instead we must manually track
15 orders by spreadsheet. We must now engage in frequent calls with FairPoint to discuss
16 orders that are not "flowing" in their OSS. We also must identify for FairPoint any
17 orders that are in jeopardy of not meeting their due dates, in hopes that FairPoint can
18 manually "push" these orders through the system. Prior to cut over from Verizon to
19 FairPoint, BayRing's orders were electronically managed and rarely was manual
20 intervention required.

21 **Q. What have you done to accommodate all these manual processing difficulties?**

22 A. In order to accommodate the multiple shortcomings of the post merger FairPoint systems
23 BayRing has significantly increased our provisioning and repair department staff. I fear

1 FairPoint is beginning to consider the manual intervention and information we now are
2 required to provide FairPoint in order to process orders to be the new “business as
3 usual.” I see this as a big step backward from the wholesale service that we experienced
4 with Verizon. I also see this as a failure of FairPoint to live up to the conditions imposed
5 by the Commission in its Approval of the transfer of operations from Verizon, and in
6 FairPoint’s promise that it would provide service improvements. I am also troubled that
7 FairPoint continues to believe that the current systems and wholesale processing of orders
8 can translate into “positive benefits for all of FairPoint’s customers” including CLECs, as
9 FairPoint states in response to Joint CLECs DR No. 35.

10 **Q. Are there other problems with the FairPoint OSS that remain two years after the**
11 **merger and more than a year after FairPoint implemented what it touted as a state**
12 **of the art OSS for use by wholesale customers? If so can you discuss some of them?**

13 A. Yes. Because the current FairPoint OSS systems do not accurately process order
14 information provided by BayRing, FairPoint must continually apply system “fixes”
15 through updates or enhancements. BayRing is rarely if ever given advance notice
16 detailing when FairPoint will apply system patches and we usually find out by way of a
17 new system error that occurs as a result of the patch. Also, as a result of these patches, it
18 is not uncommon for previously resolved issues to reappear. This coupled with the
19 frequent system outages further exacerbate the basic lack of FairPoint OSS functionality.

20 **Q. What is FairPoint doing to address the problem of orders that are not being**
21 **processed without manual interventions?**

22 A. On our orders that are back logged from March 2009 through March 2010 FairPoint
23 required us to manually request BCNs to be resent and then FairPoint would manually

1 update the current version of the order and resend the BCN to us in order to finalize these
2 orders in the system. This of course is done under the assumption that the order has been
3 physically completed, which is often not the case.

4 **Q. How has this affected BayRing's ability to maintain daily business and service its**
5 **customers?**

6 A. The poorly functioning FairPoint systems and processes have had a significant effect on
7 our business. We have a much higher cost to do business, such as additional employee
8 costs to accommodate the deficiencies in the FairPoint OSS. These wholesale service
9 order problems force us to extend our installation intervals to customers to points never
10 seen when Verizon was providing service; we quote our customers much longer
11 installation periods; and we frequently are unable to verify available services to specific
12 addresses which prevents us from serving existing and potential customers. We have
13 customers that have cancelled their request for service due to delays or otherwise
14 compromised installations. All these deficiencies place BayRing at a competitive
15 disadvantage, prevents the company from providing choice to customers in New
16 Hampshire, and suggest that FairPoint does not provide the same degree of service to
17 wholesale customers that it commits to its retail customers.

18 **Q. What is your level of confidence that despite the troubles that you have identified**
19 **FairPoint can still deliver on its promise to provide equal or superior quality of**
20 **service as compared to Verizon?**

21 None. Even with the limited information and ability for CLECs to test FairPoint's new
22 OSS prior to cut-over, it was obvious that wholesale customers would be losing a
23 significant amount of functionality that was available in Verizon's systems. However,

1 when the cut-over actually occurred, the loss in functionality was much greater than we
2 could have imagined. Since that time, FairPoint's answer to system deficiencies has
3 often been the insertion of manual system manipulation, which essentially moves the
4 provisioning of telecom services in New Hampshire further and further backward from
5 where we were prior to the FairPoint merger.

6 **Q. In Mr. Murtha's testimony (page 5 and Exhibit RM-2) he appears to acknowledge**
7 **the CLEC concerns about order flow through but suggests that FairPoint has**
8 **corrected most of the problems and suggests that orders are flowing through at a**
9 **much higher rate than you seem to indicate. Do you have any comments?**

10 A. Given the difficulties with orders that require manual processing that my team
11 experiences I have very little confidence in the numbers and charts that FairPoint relies
12 on. I also point out that the accuracy of FairPoint's representation of its order flow
13 through rate has been questioned for many months by Liberty Consulting Group in its
14 independent evaluations. For example, in the July 2009 Liberty evaluation of
15 FairPoint's flow through figures they pointed out the "improved accuracy" of FairPoint's
16 information "remains questionable." Liberty Assessment of FairPoint's Stabilization Plan
17 Status Report, July 13, 2009 (submitted by Staff Memo in DT 07-011 on July 14, 2009.
18 The July 13, 2009 Liberty Report further explains why FairPoint's order flow through
19 numbers are inaccurate, and reiterated the problems of manual work arounds and how
20 FairPoint's systems skew the results. The Staff Memo of July 14, 2009 also pointed out
21 how "Liberty's assessment points out inconsistencies between data reported by FairPoint
22 and Staffs' experience in the three states, as well as inconsistencies in data reported by

1 FairPoint, and areas where FairPoint does not address in its report. Liberty concludes
2 FairPoint cannot be considered to have returned to normalized operations.”

3 **Q. What happened after Staff issued this Memo with the Liberty Assessment of July**
4 **13, 2009?**

5 A. The Commission then convened a technical session and a “deposition” like proceeding
6 where Staff, the companies and Liberty Consulting Group participated to question
7 FairPoint about its efforts to correct for its service problems. Following these
8 proceedings Liberty issued a follow up report, dated September 2, 2009, which was
9 submitted by Staff to the Commission on September 3, 2009 in DT 07-011.

10 **Q. What did Liberty conclude after reviewing FairPoint’s responses to the July 2009**
11 **Liberty Assessment?**

12 A. Once again Liberty concluded that FairPoint’s answers did not resolve the inaccuracies
13 that FairPoint reports in its flow through data. Here is what Liberty had to say: “The
14 conclusion Liberty draws from our analysis of FairPoint’s quoted flow-through rates is
15 that these numbers are misleading. FairPoint needs to use more reliable numbers to track
16 flow-through in its reports, as even the FairPoint representatives at the Technical
17 Sessions admitted.” The Liberty Report then goes on to question a host of other
18 deficiencies in FairPoint’s representations of progress, and Liberty confirms the problems
19 that CLECs are experiencing in other areas that I have identified, such as incorrect Line
20 Verification Reports (“LVRs”) and incorrect provisioning and billing notifications
21 (PCNs and BCNs). After these reports Staff issued FairPoint’s Plan for working with
22 CLECs towards solutions to many of these problems. FairPoint filed for bankruptcy
23 protection. At this point I still question FairPoint’s statements and I continue to doubt the

1 accuracy of FairPoint's data. I also continue to believe FairPoint provides below-
2 standard service in its wholesale ordering processes. I recommend that the Commission
3 read Mr. Murtha's representations and the percentage data in his exhibits with a very
4 healthy grain of salt and with a skeptical eye, given the Liberty Consulting Group
5 Assessments that corroborates that the deficient services CLECs experience.

6 **Q. The Liberty Consulting Group Comments of September 2, 2009 (Page 9) identified a**
7 **host of wholesale billing problems revealed during the technical sessions held in**
8 **2009. Has FairPoint addressed these concerns to your satisfaction?**

9 A. No. I do not believe our wholesale invoices are accurate. I have been informed by Judith
10 Brownell, BayRing's Director of Corporate Operations that a substantial number of
11 FairPoint's bills to BayRing are unacceptably inaccurate. Some examples of the
12 inaccuracies include unapplied payments (many over a year old), unaddressed disputes
13 (or disputes denied waiting for order flow through), differences between electronic and
14 paper bills, and lack of details to verify charges for directory listing invoice. I note that
15 Liberty Consulting Group also concluded that "FairPoint has a number of issues with
16 both retail and wholesale billing." Comments on Stabilization Status (9/2/2009) at pg. 9.

17 **Q. What about the wholesale performance assurance plan, or the PAP? Has FairPoint**
18 **committed to providing CLECs continued relief for poor service quality through**
19 **penalty payments in the PAP under currently approved metrics?**

20 A. They have not, and this again makes me question their statements that the Regulatory
21 Settlement will not impact previously made commitments to CLECs. Despite all of the
22 operational and service impacting issues caused by FairPoint, they continue to
23 aggressively seek to wipe out, and even recover back PAP penalties that are indicative of

1 poor wholesale service. So, while FairPoint makes even further commitments on the
2 retail side of its house – as reflected in the Regulatory Settlement, it ignores the plain
3 failures of its delivery of wholesale services and is taking steps to treat CLECs worse
4 than its retail customers, and certainly worse than the way CLECs were treated by
5 Verizon.

6 **Q. Can you elaborate?**

7 A. FairPoint’s responses to data requests on this point are disturbing. On the one hand, in
8 Joint CLECS DR No. 12 we asked FairPoint if it agrees that it continues to be subject to
9 the Performance Assurance Plan and Carrier to Carrier guidelines that were imposed on
10 FairPoint as a condition of the Approval Order in DT 07-011. In its response FairPoint
11 indicated “yes.” Similarly, FairPoint was asked if FairPoint continues to abide by the
12 terms of the current PAP and to the penalty provisions for poor service quality (Comcast
13 DRs No 1-22 through 1-1-26 and Otel 5). In response to these questions FairPoint further
14 states that it continues to be bound by these provisions of the PAP and the PAP penalty
15 provisions referenced in the CLEC Settlement.

16 However, at the same time, FairPoint also states that it will continue efforts to undermine
17 these commitments. For example, FairPoint continues to take the position that it may
18 unilaterally undermine these PAP commitments by seeking to recover retroactive
19 payments made for poor service (FP Response to CLECS DR 14 and 15) and that it will
20 continue to pursue other waivers of the PAP to the detriment of CLECs (FP Response to
21 CLECS DR 17-18). These efforts to undermine FairPoint’s commitments in the CLEC
22 Settlement make me question whether FairPoint seriously intends to make further
23 improvements to wholesale systems given that they suggest to the Commission that most

1 of the problems affecting wholesale service have been resolved. I cannot accept
2 FairPoint's representations when they continue to take direct actions that contradict the
3 promises they made to BayRing and to this Commission.

4 **Q. Do you have any comments on the ability of FairPoint's current management team**
5 **to live up to its commitments and rectify these problems that you identify?**

6 A. I have real concerns, and the Commission should also be worried about the management
7 team that FairPoint has put in place to handle wholesale services. The same FairPoint
8 management team that represented that the new FairPoint OSS was well tested and
9 prepared to efficiently serve its clients when the irrevocable notice of readiness was
10 requested is substantially is the same team that is in place today and, according to
11 FairPoint, the same staff will remain in place for the foreseeable future (as indicated in
12 Response to Joint CLECS DR No. 37). They are the same individuals charged with
13 stabilizing the systems, developing the operations, and certifying that FairPoint was ready
14 for cutover. The past year of degraded services has shown us that FairPoint was
15 definitely not ready for the cutover from Verizon's systems in 2008/09.

16 An argument can be made that they were unaware of the system deficiencies when they
17 cutover in February of last year. I would contend that FairPoint still does not understand
18 how to rectify the many problems and shortcomings that are inherent in its OSS. Given
19 the many unmet commitments that have defined the post-merger period with FairPoint, I
20 am not confident that this company will ever be able to ever provide the wholesale
21 community the services FairPoint promised and that were ordered by the Commission.

22 After more than two years of daily interaction with this company I believe that its staff
23 may be well intentioned but have displayed a consistent inability to access, analyze, and

1 implement stable change to positively impact the ability for the wholesale community to
2 conduct even a business as usual arrangement without continuous loss of basic service
3 order and provisioning functionality.

4 **Q. What questions do you recommend the Commission explore in these proceedings**
5 **during its consideration of the Regulatory Settlement?**

6 A. I recommend that the Commission focus its review on how FairPoint is responding to the
7 kinds of wholesale order deficiencies I identified in this testimony. For example, the
8 following questions will require satisfactory answers:

- 9 1. When exactly will FairPoint's systems support their wholesale business in a
10 manner that does not require manual flow through, using Verizon's systems as a
11 bench mark, given that FairPoint promised there would be "no loss of
12 functionality"?
- 13 2. What is the cost associated with achieving this basic level of functionality and
14 where will the resources (financial, etc) come from to provide these
15 improvements?
- 16 3. Where in its plan to emerge from bankruptcy does FairPoint show it has
17 acknowledged the need for adequate resources (systems, personnel, financial,
18 etc.) to provide these improvements?
- 19 4. When will there be a third party test of their newly designed OSS to determine
20 definitively that FairPoint is providing not just the same service as Verizon, but
21 superior service, as they promised the Commission and the CLECs in DT-07-011?
- 22 5. How can FairPoint claim that they continue to be bound by the commitments
23 made in the CLEC Settlement Agreement when they are taking steps to actively

1 unravel certain commitments, such as the agreement to abide by the terms of the
2 current PAP and its penalty provisions?

3 6. If FairPoint succeeds in their quest to undermine the PAP, what incentives will
4 the Commission put in place to ensure that FairPoint will provide the level of
5 wholesale services it promised and is obligated to provide?

6 7. Lastly, the most important question is WHEN. When can the Commission expect
7 that FairPoint will be able to conduct business in such a way that BayRing and
8 other CLECs receives the benefits of FairPoint's promise to deliver improved
9 service quality as compared to Verizon?

10 Until the Commission receives adequate responses to these basic questions it should not
11 approve the Regulatory Settlement. In the alternative, the Commission should revise the
12 Regulatory settlement, to explicitly restate FairPoint's commitments in regards to
13 wholesale services under the CLEC Settlement, extend the timeframes for commitments
14 under the CLEC Settlement, and also extinguish FairPoint's hopes to reduce or recover
15 PAP monies for past or future poor service.

16 **Q. Do you have any final thoughts?**

17 A. Yes. Given FairPoint's poor track record for following through on its commitments to
18 the Commission and to CLECs, I cannot take FairPoint's word that they will abide by the
19 terms of the commitments made to the Commission and to the CLECs or that they will
20 magically change their ways. I believe that FairPoint's actions following cut-over should
21 give the Commission great concern regarding the ability of FairPoint to fulfill the
22 commitments FairPoint now makes. FairPoint's service record does not bode well for
23 competition and the quality of service to customers in New Hampshire. Without firm

1 action by this Commission, the business activities of CLECs such as BayRing will
2 continue to be hampered, to the detriment of BayRing's retail customers, BayRing's
3 business operations and the State of New Hampshire.

4 **Q. Does this conclude your testimony?**

5 A. Yes.