

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 11-061

**FairPoint Communications, Inc. Petition for
Approval of Simplified Metrics Plan and Wholesale Performance Plan**

**BRIEF ON OUTSTANDING ISSUES RELATED TO
WHOLESALE PERFORMANCE PLAN**

In accordance with the Secretarial Letter of the New Hampshire Public Utilities Commission, dated October 18, 2013, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”), hereby provides this brief on the outstanding issues related to the proposed Wholesale Performance Plan (“WPP”).

I. Description and Purpose of the WPP

In Docket No. DT 01- 006, in conjunction with its efforts to obtain relief from the FCC under Section 271 of the Communications Act of 1934 (as amended), Verizon New England Inc. (“Verizon”) proposed to the Commission, and eventually obtained approval of, a wholesale service performance assurance plan (“PAP”) modeled on the performance enforcement mechanisms previously approved by the New York and Massachusetts public utilities commissions.¹ Such a plan had been held by the FCC to be convincing evidence that the regional Bell Operating Companies (“BOCs”) would continue provisioning non-discriminatory service to competitive local exchange carriers (“CLECs”) after obtaining Section 271 authority, an important element of the public interest standard.

¹ A very similar PAP was also approved by the Maine and Vermont commissions as well.

PAPs were developed at the instigation of the FCC to ensure that the BOCs would continue to meet their Section 271 obligations after obtaining Section 271 relief. “We find that these PAPs, together with our section 271(b)(6) authority and the continuing oversight of the respective state commissions, provide reasonable assurance that the local market will remain open after 271 authority is granted.”² As the FCC explained, a PAP “provides a mechanism by which to gauge a BOC’s present compliance with its obligation to provide access and interconnection to new entrants in a nondiscriminatory manner”³ and is “likely to provide incentives that are sufficient to foster post-entry checklist compliance.”⁴ The New Hampshire commission reiterated that “[t]he goal of a PAP is to assure parity performance”⁵ For its part, the Maine commission described PAPs as being designed to prevent “backsliding”: “The revised PAP provides a comprehensive, self-executing enforcement mechanism intended to deter backsliding and the provision of substandard performance.”⁶

The PAP, as approved by the Commission in 2002 and subsequently revised, is a self-executing enforcement plan based on “metrics,” a term of art used to refer to the measurements of the quality or timeliness of Verizon’s (now FairPoint’s) performance of individual tasks

² *Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, CC Docket No. 02-157, Memorandum Opinion and Order, 17 FCC Rcd 18660 ¶ 171.

³ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543 ¶ 393 (1997).

⁴ *Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Memorandum Opinion and Order, 17 FCC Rcd 11659 ¶ 61.

⁵ See DT 01-006, *Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines and Performance Assessment Plan*, Order Regarding Metrics and Plan, Order No. 23,940 at 77 (Mar. 29, 2002) (“NH PAP Order”).

⁶ *Application by Verizon New England Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Report of the Public Utilities Commission at 88 (Apr. 10, 2002) (“Maine 271 Report”).

undertaken to enable interconnection between itself and other carriers, and the numerical standards for performance of such tasks to which those measurements are compared. Metrics are thus measures of FairPoint's performance in specific interactions with CLECs.

As part of its settlement of various issues related to the purchase of certain telecommunications based assets in Northern New England, FairPoint agreed to adopt the terms of the existing PAP and its underlying Carrier to Carrier ("C2C") wholesale service quality assurance plans.⁷ Furthermore, FairPoint agreed that it would work cooperatively with the Commission Staff and interested CLECs to develop and implement a simplified, uniform PAP applicable in Maine, New Hampshire and Vermont.

Starting in September 2011, FairPoint and interested CLECs participated in a series of workshops and settlement negotiations with the goal to reach agreement on the structure of a new simplified PAP plan and on the specific metrics that would be included in the new plan. As a result of these negotiations, FairPoint and the CLECs reached agreement on a majority of issues and on October 11, 2013, filed a Joint Motion with this Commission, the Maine Public Utilities Commission and the Vermont Public Service Board for approval of a Settlement Stipulation and proposed WPP.⁸

In those filings, FairPoint and the CLECs acknowledged that no final agreement has been reached on three issues and requested that the respective state regulators establish a schedule for entertaining briefs on which the state regulators could decide these issues. Accordingly, the

⁷ Maine Docket 2007-67, Order (February 8, 2008), New Hampshire Docket DT 07-011, Order No. 24,823 (Feb. 25, 2008), Vermont Docket 7270, Order of December 21, 2007 and Order of February 15, 2008.

⁸ The MPUC voted to approved the Settlement Stipulation and the WPP in its deliberations on October 29, 2013, with the reservation of the three issues yet to be resolved. (As of the date of this Brief, an Order has not yet been issued.)

Commission issued a Secretarial Letter on October 18, 2013 in which it directed the parties to submit briefs on the following three issues:

- (i) Terms and penalties for late or inaccurate monthly reports;
- (ii) Change of law provisions; and
- (iii) Commercial contract provisions that waive WPP bill credits.

In the following pages, FairPoint discusses each of these issues in turn.

II. Terms and Penalties for Late or Inaccurate Monthly Reports

The proposed WPP contains provisions requiring that FairPoint issue monthly reports on its wholesale performance. It provides that CLEC-specific and CLEC-aggregate monthly reports will be made available to CLECs in electronic format via FairPoint's wholesale web portal within 28 days of the end of each calendar month, and that FairPoint will also file copies of the respective state-aggregate report with the respective state regulator within 28 days of the end of each month. The issue presented in regard to monthly reporting is whether FairPoint should suffer penalties for late or inaccurate monthly reports.

Of the three PAPs currently in effect in the northern New England states, only the Maine PAP contains a provision concerning late or inaccurate monthly reports.⁹ (Furthermore, FairPoint is not aware that such a provision exists in any other PAP that is modeled on the New York PAP.) This provision was inserted into the PAP shortly after it became effective in May 2002.¹⁰ The record in the Maine proceeding is not clear regarding the provenance of this provision nor the reason for its inclusion, other than a footnote in the *Maine 271 Report*

⁹ See Maine PAP, § II.G.2.

¹⁰ Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act 1996, MPUC Case No. 2000-00849; Verizon Compliance Filing (June 25, 2002).

referencing its inadvertent omission from the original PAP.¹¹

Certainly, this provision is not directly related to providing “access and interconnection to new entrants in a nondiscriminatory manner.” Furthermore, to FairPoint’s knowledge, the provision in the Maine PAP for late or inaccurate reports has never been invoked, and no penalties have ever been assessed on FairPoint or its predecessor, Verizon. Consequently, there is no need for any type of incentive regarding the production of these reports. However, to the extent that the Commission determines otherwise, FairPoint proposes simply retaining the provision in the Maine PAP, applying it across all three northern New England states, with certain revisions to account for changed circumstances since 2002. The following table compares the current Maine PAP language with that proposed by FairPoint for the WPP. Segments in which one version differs substantively from the other are noted in **bold underline**.

CURRENT MAINE LANGUAGE	PROPOSED WPP LANGUAGE
<p>Late and Inaccurate Reports</p> <p>Verizon Maine’s PAP will include the following provisions to address late or inaccurate C2C reports. An annual amount of <u>\$120,000 (\$10,000</u> per month) will be placed at risk for “Late or Inaccurate Reports”. Payment amounts as specified by the conditions below will be paid from this “Late or Inaccurate Reports” allocation. Any payments made will be shown on the following month’s report.</p> <ol style="list-style-type: none"> Late performance reports – If <u>performance data and associated C2C reports are not served or mailed</u> on the due day, Verizon Maine shall be liable for a payment of <u>\$500</u> per day to a state fund for each day the C2C 	<p>Late and Inaccurate Reports¹</p> <p>An annual amount of <u>\$60,000 per state (\$5,000</u> per month) will be placed at risk for “Late or Inaccurate Reports.” Payment amounts as specified by the conditions below will be paid from this “Late or Inaccurate Reports” allocation. Any payments <u>will be made to a fund to be designated by each state and</u> will be shown on the following month’s report.</p> <ol style="list-style-type: none"> Late performance reports – If <u>one or more</u> WPP reports are not <u>posted to the FairPoint website</u> on the <u>due</u> day, FairPoint shall be liable for a payment of <u>\$250</u> per day to a state fund for each day the WPP reports <u>for that state</u> are late, <u>provided however that FairPoint</u>

¹¹ *Maine 271 Report* at n. 222 (Apr. 10, 2002).

CURRENT MAINE LANGUAGE	PROPOSED WPP LANGUAGE
<p>reports are late.</p> <p>2. Inaccurate reports – <u>the set of aggregate and CLEC-specific monthly C2C performance reports shall be considered inaccurate or incomplete if Verizon Maine inaccurately reports performance data relating to the C2C Guidelines.</u> Verizon Maine shall be required to revise and re-file, in a timely fashion, any performance reports that are agreed by the parties to be inaccurate, in accordance with the following guidelines:</p> <p>a. <u>If a CLEC or other party notifies</u> Verizon within 30 days of <u>receipt (or electronic availability)</u> of one or more C2C reports with errors, <u>the CLEC or other party</u> must <u>expeditiously</u> provide documentation providing the basis for the claim of incomplete or inaccurate reports. If <u>the parties</u> find the C2C report(s) to contain error(s) and the effect on the associated PAP is <u>found to be</u> material,¹ Verizon would be liable for a payment of <u>\$1000</u> per day to a state fund until the set of monthly reports is corrected. In calculating the per day payment, the first day counted shall be the day after the reporting CLEC has provided Verizon information necessary for Verizon to investigate the validity of the claimed error and continues until the day that the C2C performance report(s) have been revised so that they:</p> <p>i. resolve the <u>agreed upon</u> error;</p>	<p><u>shall not be liable for a late report payment during periods of emergency, catastrophe, natural disaster, severe storms, work stoppage, or other Force Majeure events beyond FairPoint NNE's control. A CLEC must notify FairPoint within 3 business days of the scheduled posting date if its report is unavailable or inaccessible on the designated FairPoint NNE website.</u></p> <p>2. Inaccurate reports –FairPoint shall be required to revise and re-file, in a timely fashion, any performance reports that are agreed by the parties to be inaccurate, in accordance with the following guidelines:</p> <p>a. <u>A CLEC must notify</u> FairPoint within 30 days of electronic availability of one or more WPP reports with <u>claimed</u> errors, <u>and</u> must provide <u>conclusive</u> documentation <u>that uses the WPP report(s) or raw data files provided by FairPoint and the CLEC's own records establishing</u> the basis for the claim of incomplete or inaccurate reports <u>within 45 days.</u> If <u>FairPoint and the CLEC</u> find the WPP report(s) to contain error(s) and the effect is material,² FairPoint would be liable for a payment of <u>\$250</u> per day to the designated state fund until the set of monthly reports is corrected. In calculating the per day payment, the first day counted shall be the day after the reporting CLEC has provided FairPoint <u>conclusive</u> information necessary for FairPoint to investigate the validity of the</p>

CURRENT MAINE LANGUAGE	PROPOSED WPP LANGUAGE
<p>ii. have been re-filed with the Commission; and iii. have been <u>provided or</u> made electronically available to all affected CLECs..</p> <p>b. Should Verizon Maine find an error in the C2C reports on its own, the <u>incomplete or</u> inaccurate payment set forth in 2.(a) above would not be due for any re-filed C2C reports.</p> <p>c. Corrected C2C and PAP reports are only required for the <u>current</u> month if the effect of the error(s) on the associated PAP is “material” (as defined above in 2.a.and the related footnote), <u>or if the corrections cause changes to the performance scores in the CLEC’s favor.</u>²</p> <p>3. Whether or not a late or inaccurate report penalty is due, Verizon Maine, when re-filing C2C performance reports in accordance with item 2.c. or on a voluntary basis, would be required to revise the PAP credits and make adjustments (increases or decreases) to any incentive amounts previously credited. <u>Revised PAP reports are due within 15 days of the re-filing of the C2C performance reports.</u></p> <p>4. <u>Once Maine CLECs are able to access their performance data only via an electronic gateway,</u> Verizon shall pay <u>\$500</u> per day to a state fund for each full day any CLEC is not able to access its performance data because of failures under Verizon’s control.</p> <p>¹ A material error is one where the correction of that error would increase an individual CLEC’s right to credits under the PAP for the month by at least \$1,000.</p>	<p>claimed error and continues until the day that the WPP performance report(s) have been revised so that they:</p> <p>i. resolve the error; ii. have been re-filed with the Commission or Board; and iii. have been made electronically available to all affected CLECs..</p> <p>b. Should FairPoint find an error in the WPP reports on its own, the inaccurate payment set forth in 2.(a) above would not be due for any re-filed WPP reports.</p> <p>c. Corrected WPP reports are only required <u>on a prospective basis beginning on the month in which the error is identified</u> if the effect of the error(s) on the associated WPP is “material” (as defined above in 2.a.and the related footnote.)³</p> <p>3. Whether or not a late or inaccurate report penalty is due, FairPoint, when re-filing WPP performance reports in accordance with item 2.c. or on a voluntary basis, will be required to revise the WPP credits and make adjustments (increases or decreases) to <u>only those incentive amounts reflected in the re-filed reports.</u></p> <p>4. FairPoint shall pay <u>\$250</u> per day to a state fund for each full day any CLEC is not able to <u>electronically</u> access its performance data because of failures under FairPoint’s control. <u>A CLEC must notify FairPoint within 3 business days of the scheduled</u></p>

CURRENT MAINE LANGUAGE	PROPOSED WPP LANGUAGE
<p>² <u>When a material error is found, reports and the underlying data for the current month will be corrected and filed within 30 days.</u> Non material errors will be corrected on a prospective basis.</p>	<p><u>posting date if its report is unavailable or inaccessible on the designated FairPoint NNE website.</u></p> <p><u>5. FairPoint and the CLEC(s) will consult with one another and attempt in good faith to resolve any issues regarding the accuracy of the WPP reports. If FairPoint and the CLEC(s) cannot agree on whether a WPP report is inaccurate or an inaccuracy is material, either FairPoint or the CLEC(s) may file a petition asking the Commission or Board to resolve the dispute. If the Commission or Board determines the WPP report(s) was inaccurate, FairPoint shall reissue such report(s), and adjust the respective bill credits accordingly.</u>⁴</p> <p>¹ These provisions shall take effect six months after implementation of the WPP.</p> <p>² A material error is one where the correction of that error would increase an individual CLEC's right to credits under the PAP for the month by at least \$1,000. <u>If FairPoint does not have sufficient data to determine materiality, FairPoint will be liable for a payment of \$500 per day per state until the error(s) is corrected. The first day counted shall be the day after the reporting CLEC(s) has provided FairPoint conclusive documentation necessary for FairPoint to confirm the validity of the claimed error.</u></p> <p>³ Non material errors will be corrected on a prospective basis.</p> <p>⁴ <u>The payment of daily penalties shall be tolled from the date a petition is filed and until the Commission/Board issues an order resolving the dispute.</u></p>

Key provisions of FairPoint's proposed language include:

Penalties: The annual dollars at risk is reduced by half to \$60,000 from the current \$120,000, however, the \$60,000 cap applies in each state, not just Maine. Thus, the total amount at risk is \$180,000, which equates to an overall increase of 50% over the current PAPs. This increase in overall dollars at risk for late or inaccurate reports is significant, particularly in comparison to the proposed WPPs' reduction in the cap on billing credits overall. The proposed WPP establishes a meaningful cap of \$12.0 million across the three states,¹² down from the current three-state cap of \$86.7 million, for a reduction of over 85%.

The daily penalties are reduced for one state from the current value of \$500 for late reports and \$1,000 for inaccurate reports to \$250 per late or inaccurate report for each of three states. This does not necessarily represent an overall reduction in daily penalties, however. Given that the monthly reports will be generated by the same FairPoint department, posted to the same website, and based on the same three-state WPP, it is reasonable to assume that any late or inaccurate reports will occur in all three states, generating daily penalties of \$250 in each of those states. Consequently, FairPoint's proposal represents a balanced approach that increases its exposure for late reports from \$500 per day to \$750 per day and reduces its exposure for inaccurate reports from \$1,000 per day to \$750 per day.¹³

Finally, FairPoint's proposed language retains the provision that the payments be made into a state fund.

Posting of reports: FairPoint's proposed language reflects that reports are now posted on FairPoint's website and therefore any provisions related to physical delivery are moot. The proposed language also adds a "force majeure" provision that clarifies the limits of FairPoint's

¹² See proposed WPP § I.F.

¹³ However, as explained later, the daily penalty for inaccurate reports is increased to \$500 per state per day when requisite data is not available to establish whether an error is material.

obligation under this section. The proposed language also limits FairPoint's exposure to cumulative daily penalties by placing a duty of diligence on a CLEC to inform FairPoint of late reports within three days of the due date.

Standard of proof: FairPoint's proposed language clarifies that complaints of inaccurate reports must arise from more than mere suspicion, but rather must be based on objective information that is accessible to both parties and conclusively demonstrates that the information is inaccurate.

Materiality: FairPoint's proposed language retains the materiality threshold of \$1,000 for an individual CLEC. In addition, FairPoint has suggested additional language that recognizes that FairPoint controls the systems that generate the data on which materiality indicators are based. In the definition of "materiality," FairPoint proposes that in the absence of sufficient materiality data, a daily penalty of \$500 per day per state will be imposed on FairPoint until the reporting error is corrected.

Dispute resolution: Although such a provision has never proved necessary, the current language concerning late or inaccurate reports has never provided for a dispute resolution process. FairPoint has proposed language for such a process. FairPoint also proposes that daily penalties are tolled until resolution of the dispute.

In summary, FairPoint's proposed language concerning late or inaccurate reports is a reasonable way to address an issue that does not appear to have been a significant concern to the state regulators or the CLEC parties and which does not relate to the actual provisioning of wholesale services. It conforms to the motivational nature of the WPP, while prescribing penalties that are proportional to the historical likelihood of any problems and the level of inconvenience they present.

III. Change of law provisions

The current northern New England PAPs do not contain change of law provisions, although they all contain in Section II.K.2., respectively, identical language that provides that changes to the New York PAP will be filed with the state regulator for review and inclusion in that state's PAP upon the Commission's approval. The Maine PAP also contains a Part III that provides that all changes to the C2C Guidelines are effective immediately upon filing, although parties may file objections to so-called "non-consensus" items. The issue presented is whether the WPP should contain express change of law provisions, and what those provisions should be.

FairPoint believes that the WPP should contain change of law provisions, and that these provisions should complement the change of law provisions that are already in the contractual vehicles by which FairPoint provides the wholesale services that the WPP measures. In New Hampshire, for example, wholesale services that are subject to the proposed WPP are available under the terms of FairPoint's Tariff NH PUC No. 2. Section A.1.4.3.B of that tariff contains change of law provisions that provide that:

Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial, regulatory or other governmental authority with jurisdiction over the subject matter hereof, it is determined that the Telephone Company is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to the TC hereunder, then the Telephone Company may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing thirty (30) days prior written notice to the TC.

In the introduction to the proposed WPP, the parties stipulate that "the WPP is a self-executing remedy plan that ensures FairPoint NNE will provide services, access and interconnection to Competitive Local Exchange Carriers ("CLECs") consistent with the requirements of the Communications Act of 1934, as amended, State law and regulation, and

stipulations between the CLECs and FairPoint NNE.” Consequently, if the WPP is designed to ensure that FairPoint will provide “services, access and interconnection” in accordance with the requirements of the law, and neither the law nor any agreement requires that FairPoint provide a particular service, access or interconnection, then the WPP is immediately moot in regard to that requirement and should be modified accordingly.

There is no plausible reason to introduce any more of a process. Accordingly, FairPoint suggests the following proposed language:

K. CHANGE OF LAW

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in applicable law, substantively affects any material provision of this WPP, FairPoint and the CLECs will promptly renegotiate in good faith and amend the WPP in order to make such mutually acceptable revisions to the WPP as may be required in order to conform to applicable law.

Notwithstanding anything in the preceding paragraph to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in applicable law, FairPoint is not required by applicable law to provide any service/product reported in the WPP, then FairPoint will no longer be subject to any metrics or bill credits associated with that service/product.

In summary, this proposed language concerning change of law conforms strictly to the subject matter of the WPP, contemplates a reasonable opportunity for the parties to discuss any legitimate concerns, and is reasonable and fair.

IV. Commercial contract provisions that waive WPP credits

FairPoint disagrees that this is a legitimate issue for discussion in this proceeding. By its plain language, it does not concern the WPP but instead involves matters outside the scope of this proceeding and beyond the Commission’s jurisdiction.

By definition, and often by their express terms, commercial contracts are not within the Commission’s Section 252 jurisdiction. In addition, FairPoint is not aware that any party or state

regulator has asserted otherwise. Moreover, there is no relationship between the commercial contracts and the PAPs or proposed WPP.¹⁴ The commercial contracts do not invoke, reference, or in any way alter or waive the terms of the PAPs or the proposed WPP, or otherwise govern their operation. The commercial contracts are separate and distinct agreements covering unrelated matters.

It is well settled law that a promise to surrender a valid claim, if bargained for, constitutes consideration for purposes of a valid contract. This is true even if the claim is only a potential one (as is always the case with WPP billing credits.) “Relinquishment or waiver of a legal or contract right or privilege, or forgoing any advantage or benefit, is generally sufficient consideration for a promise. Such relinquishment is a legal detriment, regardless of whether it constitutes an actual detriment or loss to the promisee.”¹⁵ “Not only forbearance to litigate, but also the relinquishment of any other right, or forbearance to do any act which one has a legal right to do, is consideration where such forbearance is requested as consideration.”¹⁶ As the New Hampshire Supreme Court has explained:

When the parties have bargained for an item, promise or forbearance [sic], the adequacy of the exchange should not be examined except in unusual situations. Only in the absence of bargaining will the court weigh the relative values of the benefits and detriments. In fact, the consideration can even consist of “the creditor’s surrender of his old claim, whether the claim was well founded or not, so long as it was not wholly frivolous and unreasonable.”¹⁷

The reversion of WPP billing credits is a bargained-for benefit that in no way alters the

¹⁴ The commercial agreements in question do not include FairPoint’s Wholesale Advantage (WA) agreements, for which PAP credits revert to FairPoint so long as UNE-Platform (UNE-P) services are measured under a metrics plan. The WPP does not include metrics related to UNE-P service; thus, by the express terms of these agreements, WPP credits to CLECs that have entered into WA agreements will no longer revert to FairPoint when the new plan is implemented.

¹⁵ Am. Jur. 2d *Contracts* § 142 (2013).

¹⁶ Williston on *Contracts* § 7:45 (2013).

¹⁷ *Burgess v. Queen*, 124 N.H. 155, 470 A.2d 861 (1983).

PAP, or the carrier's right to PAP payment; it simply provides that the carrier will relinquish this right as consideration for a bargained-for benefit. In addition to other consideration, FairPoint's commercial customers exchange the *potential* for billing credits from the WPP for something else of *immediate and tangible* value, *i.e.* access to a telecommunications service to which they have no legal right but which they consider of benefit to their businesses.¹⁸

In summary, the Commission has no authority to interpret or enforce commercial contracts. Furthermore, it should not use the WPP process to intrude into the negotiation of these contracts, particularly to deny FairPoint the benefit of any bargain it has made. The issue of commercial contract provisions that waive WPP credits is irrelevant to this proceeding. The Commission should decline to hear or decide this issue.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
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FAIRPOINT COMMUNICATIONS-NNE

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¹⁸ This is particularly true as it applies to any commercially available broadband service, because FairPoint's predecessor in interest, Verizon, obtained forbearance from the application of Title II of the Communications Act to its broadband services. *See Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect Their Broadband Services is Granted by Operation of Law*, WC Docket No. 04-440, FCC News Release (rel. Mar. 20, 2006), *petition for review denied Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007).