

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Petition of Telephone Operating Company of	)	
Vermont LLC, d/b/a FairPoint Communications,	)	
for waiver of certain requirements under the	)	Docket No. 7506
Performance Assurance Plan and Carrier to	)	
Carrier Guidelines	)	

Petition of Telephone Operating Company of	)	
Vermont LLC, d/b/a FairPoint Communications,	)	
for waiver of certain requirements under the	)	Docket No. 7539
Performance Assurance Plan and Carrier to	)	
Carrier Guidelines	)	

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**MOTION TO ADOPT CONSOLIDATED PROCEDURAL SCHEDULE**

CTC Communications Corp., Lightship Telecom LLC and Conversent

Communications of Vermont LLC (all doing business as “One Communications”<sup>1</sup>) and National Mobile Communications Corp., d/b/a Sovernet Communications (“Sovernet”) jointly submit this Motion to Adopt Consolidated Procedural Schedule for Docket Nos. 7506 and 7539.

**I. INTRODUCTION**

During this past week, One Communications and Sovernet, through the CLEC Association of Northern New England (“CANNE”), have engaged in negotiations with FairPoint to develop a procedural schedule that would address both Vermont docket nos. 7539 (“the Dollars at Risk docket”) and 7506 (“the Simplified PAP docket”), as well as the corresponding proceedings in New Hampshire and Maine. One Communications and Sovernet, along with their CANNE colleagues, believe that consideration of all of the Performance Assurance Plan (“PAP”)-related issues should be combined into a single

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<sup>1</sup> One Communications is in the process of changing its name to “EarthLink Business.”

proceeding to maximize judicial and economic efficiency and to allow the parties to review all aspects of the PAP plan as a whole, not allowing FairPoint to simply reduce the dollars of risk under the PAP to a level that significantly reduces, or in the case of FairPoint's current proposal, eliminates the effectiveness of the wholesale performance plan. The combined proceedings in each state would proceed on the same schedule in order to minimize duplicative activities and to ensure the most efficient use of the limited resources of the commissions, their staffs, FairPoint, the CLECs, and other participating parties. We also believe that, based upon a recent very successful workshop in New Hampshire concerning the PAP audit, conducting a series of three-state workshops designed to narrow the issues to be litigated followed by a litigation schedule that covers all aspects of the PAP – metrics, structure, scoring system, and dollars at risk – will allow for meaningful review of all aspects of the PAP by all three state commissions and provide the best opportunity for development of a unified PAP across the three states. Accordingly, the CLECs have developed the attached CLEC Proposed Consolidated Schedule which is being filing in all three states. The CLECs ask that each state adopt the Consolidated Schedule as soon as possible. It is One Communications' and Sovernet's understanding that FairPoint does not agree to the Consolidated Schedule, but rather wishes to litigate the Dollars at Risk issues in each state while collaboration on the remaining issues goes forward.

The Vermont Rules of Civil Procedure allow broad discretion to order a joint hearing or trial for "actions involving a common question of law or fact" without the consent of the parties. V.R.C.P. 42(a); Mobbs v. Cen. Vt. Ry., 155 Vt. 210, 215 n.2 (1990). As discussed further below, FairPoint's proposal and rationale in the Dollars at

Risk docket (Docket No. 7539) is the same as its proposed treatment of the dollars at risk in the Simplified PAP docket (Docket No. 7506). Further, issues such as FairPoint's performance, analysis of the PAP penalties paid and their accuracy, and a vetting of the conditions, if any, that might justify lowering the dollars at risk at a time when FairPoint continues to show little improvement, will be issues common to both proceedings. The difference is FairPoint's request in Docket No. 7539 to retroactively reduce the dollars at risk under the PAP. Approving the Consolidated Schedule as requested herein, will avoid the waste of time and resources caused by separate discovery, testimony, and hearings that will result if these schedules are not combined. In the alternative, should the Hearing Officer not elect to consolidate the scheduling of the Board's review of FairPoint's two, related petitions, the CLECs propose that the Hearing Officer adopt separate but parallel schedules in the two investigations. That is, testimony, discovery requests, discovery responses and briefs in the two investigations would be due on the same dates as proposed in the Consolidated Schedule. Any workshops on overlapping topics would be held concurrently, but separate proposals for decision and orders would be issued. Proceeding in this parallel fashion would address many of the issues articulated in this motion regarding inter-related issues, resource constraints, administrative economy and the value of parallel schedules in all three states.

## **II. COMBINING THE SCHEDULES OF THE PROCEEDINGS IS BOTH NECESSARY AND EFFICIENT**

### **A. Evaluation of the Dollars at Risk Issues Requires Consideration of the PAP as a Whole**

Consideration of the dollars at risk issues, both under the old PAP and any potential new PAP, should not be done in a vacuum as suggested by FairPoint.

Evaluation of the proper level of dollars at risk will require analysis and comparison of past performance by Verizon and FairPoint and a determination of whether the dollars at risk under the current PAP have prevented backsliding and incented FairPoint to meet its market-opening requirements under federal law. Further, any determination regarding a lowering of the dollars at risk should be done in the context of a review of all of the other issues associated with the PAP, such as metrics, standards, scoring system, and overall structure. The PAP, in fact, provides that all aspects of the PAP will be subject to review, not only the elements of the plan that FairPoint proposes to modify:

Each year the Board and [FairPoint] may review and/or audit the Performance Assurance Plan to determine whether any modifications or additions should be made. During this review, the Board and [FairPoint] can determine, among other things, whether: (1) measures and weights should be modified, added or deleted; (2) modifications should be made to the distribution of dollars at risk among the four MOE and Critical Measures categories; (3) geographic deaveraging should be adopted for reporting metric results; (4) the clustering and CLEC behavior exceptions included in Appendix D should be modified; (5) small sample size procedures should be modified; and (6) the methodologies used to calculate the bill credits should be modified. All aspects of the Plan, however, will be subject to review.

See Performance Assurance Plan – Verizon Vermont, Section K.1, at 24

(implemented June 1, 2004) (emphasis added).

Moreover, the Board should not make a decision about the dollars at risk without a full understanding of how that decision will be implemented through the PAP, both the existing and the new PAP. The fact that FairPoint's current filing is devoid of any explanation as to how it proposes to allocate the \$1 million dollars it unilaterally determined would be an appropriate level of dollars at risk in the existing and "simplified" PAP only reinforces the need to combine the schedules of the Dollars at

Risk proceeding with the Simplified PAP proceeding so that such issues can be explored by the parties.

**B. Combining the Schedules Accommodates All Parties' Limited Resources**

Neither FairPoint nor the CLECs has sufficient resources to simultaneously litigate the Dollars at Risk docket and the Simplified PAP docket, while also trying to negotiate/collaborate on a new PAP. Considerable time and effort has been spent over the past two months on issues related to the metrics – identification of metrics that can be deleted from the PAP/Wholesale Performance Plan (“WPP”) or Carrier-to-Carrier (“C2C”) Guidelines/Simplified Metrics Plan (“SMP”), identification and proposal of new metrics needed to address FairPoint’s performance failures under the current PAP, and identification of metrics for the New Hampshire PAP audit. The parties should build on this progress now – while it is still fresh in everyone’s minds – by continuing with three additional workshops over the next three months (a rather short timeframe) which will result in a list of agreed upon metrics for the new PAP (both existing and new, and including standards and measures) and a list of issues and metrics (hopefully short) that may need to be the subject of litigation. Requiring the parties to propound and respond to discovery and prepare testimony in both dockets during this same timeframe will distract the parties, slow the momentum on the simplified PAP, and require both FairPoint and the CLECs to incur significant costs associated with outside consultants and counsel over a very short period of time.

**C. The Proposed Consolidated Schedule Is Reasonable**

A review of the attached Proposed Consolidated Schedule reveals that it is reasonable in that it accommodates the need to coordinate among the three states, the

desire to limit the scope of issues to be litigated, and FairPoint's request to move these proceedings along quickly. First, the workshop phase will be finished by mid-October. Three months is a very short time if, as was shown in New Hampshire, the parties can eliminate significant areas of disagreement and the need for discovery through informal discussions and negotiations. As the Board knows, the PAP has many moving parts to it, not the least of which is a large number of metrics. Nobody – not FairPoint, not the CLECs, and not the Board -- wants to litigate hundreds of metrics; such litigation would be a waste of all parties' resources. The workshop schedule is, in fact, quite aggressive in that it calls for milestones to be met at least once every two weeks, if not more frequently. Moving any faster will not allow for a full vetting of the issues or maximum resolution of those issues.

Second, the proposed consolidated litigation schedule also accommodates all parties' interests in moving this matter forward to a final decision. To the extent available, it allows for consideration of any interim reports from the New Hampshire PAP audit. It provides all parties an opportunity to file testimony and discovery – hopefully on a much more limited set of issues than if the litigation were to proceed today without the benefit of the workshops. The litigation phase would last seven months – which given the breadth of the subject matter and the complexity of some of the issues to be addressed – is very reasonable.

One of the significant benefits of the Consolidated Schedule is the reduction in the number of issues to be litigated. Not only does this reduce the litigation costs for all parties, but it will undoubtedly result in a better solution. Workshops allow for informed consideration of the other parties' positions and for compromise. The workshop

environment also encourages creativity and the ability to investigate – outside of the formal discovery process – the underlying needs and arguments of the parties. With Department participation and guidance, the workshops will be educational, instructive and will almost certainly result in a better final PAP than continuing with duplicative, multi-state litigations without workshops.

### **III. SIMULTANEOUSLY LITIGATING BOTH DOCKETS ON AN ACCELERATED BASIS IS NOT REALISTIC**

If the Board does not grant the Motion for a Consolidated Schedule, then One Communications and Sovernet respectfully request that the Board develop more realistic and appropriate schedules. FairPoint's testimony may give the impression that the Dollars at Risk docket requires only a simple review of ARMIS data and application of percentage – that no real analysis is necessary. Nothing could be farther from the truth. As the CLECs have argued since the inception of this docket in 2009, modifying the existing PAP to drastically reduce the dollars at risk at a time when FairPoint has yet to achieve pre-cutover levels of wholesale service provides exactly the wrong message and incentive to FairPoint. Any decision to change the dollars at risk in the current PAP will require submission of detailed information concerning FairPoint's performance since cutover, compilation and analysis of the PAP penalties paid and their accuracy during this time, and a thorough vetting of the conditions, if any, that might justify lowering the dollars at risk at a time when FairPoint continues to show little improvement in its wholesale performance. Clearly, a schedule should accommodate the CLECs', the Department's, and the Board's need to thoroughly review and carefully consider FairPoint's requested waivers and modifications of the PAP.

In addition, One Communications and Sovernet point out that it was FairPoint, and not the CLECs, that sought an 18-month standstill in both of the Dollars at Risk and Simplified PAP dockets during the pendency of FairPoint's bankruptcy proceedings. Considerable progress could, and should, have been made during that time. Now that it suits FairPoint's needs, multi-state litigation of these dockets have suddenly become urgent matters demanding everyone's full attention. The situation is made worse by the fact that the CLECs in Maine (as well as other parties) also have to conduct a complete regulatory review by the end of the year to accommodate a FairPoint-backed Maine law designed to relieve FairPoint of obligations it voluntarily assumed in the Verizon-FairPoint Merger proceedings. While the CLECs recognize the Board's interest in the continued viability of FairPoint, we ask that the Board not let that interest blind it to the need to carefully consider these important matters related to the PAP.

The PAP is a means to an end – the provision of reasonable and adequate wholesale services in compliance with the law. Vermont businesses and consumers rely upon CLECs and their business partners to a larger degree than ever. Careful consideration of PAP related issues ensures that these business and consumers retain the ability to choose their carrier and gain access to services on terms and conditions that are not otherwise available from FairPoint. The Board should not be rushed through its review, especially by a company that sought and obtained an 18-month delay of these very matters.

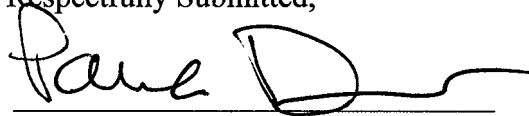
#### **IV. CONCLUSION**

One Communications and Sovernet respectfully request that the Board combine the schedules in the Dollars at Risk and Simplified PAP dockets and adopt the attached

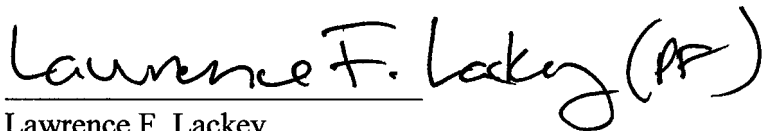


Consolidated Procedural Schedule. Doing so will ensure an orderly, efficient, and thorough review of all of the issues associated with the adoption of a new PAP, including consideration of dollars at risk – both under the old PAP and the new PAP. It will also allow for coordination with Maine and New Hampshire, thereby conserving the resources of all regulatory agencies and the parties involved. In the alternative, if the Board determines that it must move forward with formal litigation of both dockets, One Communications and Sovernet request that procedural schedules that accommodates all parties' needs be established.

Respectfully Submitted,



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July 12, 2011

## CLECS' PROPOSED CONSOLIDATED SCHEDULE

The following is a proposal from CANNE ("CLECs") for the administration of a three state collaborative effort to review FairPoint's filing of its SMP and WPP Plans ("Plans"). The CLECs propose that FairPoint present its Plans through a series of structured and focused workshops during which the CLECs and Commissions would be permitted to ask questions and raise concerns. This process, which has proven to be fruitful to date, would narrow the contested issues and would allow the Commissions time to gather the information needed to consider effectively the need for revisions to the current C2C and PAP plans. The CLEC proposal would combine the workshops (and to the extent practicable, the litigation) for Maine, New Hampshire and Vermont in order to reduce the total workload and to avoid unnecessary differences among the three states' performance plans.

The following series of workshops/milestones and litigation schedule would be structured to combine the proceedings in all three states. The schedule also incorporates workshops for updates based upon preliminary results from the NH audit.

<b>Develop a draft master list of current metrics</b> and each party's position. Establish differences between FP proposed PAP metrics and CLEC proposed metrics (identify specific metrics that are different based on exclusion/inclusion).	July 11, 2011 – Draft from Canny
<b>Comments on draft metric list</b> (ensure parties' positions are accurate, etc.) – schedule conference calls as needed.	Complete by July 18, 2011
<b>Redline of current C2C and PAP plans</b> – FairPoint to provide redline of current C2C guidelines and PAP Plans including rationale for all metric changes.	Complete by July 20, 2011
<b>Metric Workshop #1</b> – Review of all current metrics. Identify basis(es) for differences in inclusion/exclusion. Identify any issues associated with metric definitions. Identify any issues with metric standards/measures.	Wednesday – July 27, 2011
<b>Metric Workshop #2</b> – Complete review of current metrics and follow up on any open items from Metric workshop #1.	Wednesday– August 10, 2011
<b>New Metric Workshop</b> – Review current list of operational issues and new proposed metrics. Review operations issues not covered by current metrics/ new metrics	Wednesday– August 24, 2011
<b>Metric recap workshop</b> – Review open items from metric workshops. Come up with agreed upon lists	Wednesday – September 7, 2011

for new metrics, disagreement lists, definition/standards disagreement list, and questions requiring Commission resolution.	
<b>Comparison pro forma calculations</b> - FairPoint to provide pro forma calculations for 3 separate months for each state.	Complete by September 12, 2011
<b>Structure and Scoring System Workshop #1-</b> Review FairPoint's proposed structure and scoring. Identification of areas of agreement and disagreement.	Wednesday – September 21, 2011
<b>Structure and Scoring System Workshop #2 and dollars at risk</b> – Complete review of FairPoint's proposed structure, scoring, and issues regarding FairPoint's dollars at risk proposal.	Wednesday – October 5, 2011
<b>NH Audit Update and Summary of Progress Workshop</b> – Summary of audit status and identification of areas of agreement and disagreement between FP and CLECs and questions requiring Commission resolution. Review of 3 state litigation schedule.	Wednesday - October 19, 2011

### Litigation Process

FairPoint Testimony	Wednesday - November 2, 2011
Discovery on FairPoint testimony	Wednesday - November 16, 2011
Response to CLECs' discovery on FairPoint testimony	Wednesday - December 14, 2011
NH Audit Update workshop	Monday - December 19, 2011
CLECs' testimony	Wednesday - January 18, 2012
Discovery on CLECs' Testimony	Wednesday February 1, 2012
NH Audit Update workshop	Wednesday - February 22, 2012
Responses to FairPoint's discovery on CLECs' testimony	Wednesday February 29, 2012
Auditors issue final report	Wednesday March 14, 2012
NH Audit Workshop - Parties review findings and discuss remaining schedule.	Wednesday – March 28, 2012
Discovery on NH Audit	Wednesday – April 4, 2012

Response to CLECs' discovery on NH audit	Wednesday – April 18, 2012
Rebuttal Testimony	Wednesday – April 25, 2012
Data Requests on Rebuttal Testimony	Wednesday – May 2, 2012
Data Responses	Wednesday – May 16, 2012
Hearings	Week of June 4, 2012

**STATE OF MAINE  
PUBLIC UTILITIES COMMISSION**

**July 12, 2011**

**MAINE PUBLIC UTILITIES COMMISSION  
Investigation into Simplified Performance  
Assurance Plan (PAP) for Northern New  
England Telephone Operations, LLC d/b/a  
FairPoint Communications – NNE**

**Docket No. 2009-334**

**NORTHERN NEW ENGLAND  
TELEPHONE OPERATIONS INC.,  
d/b/a FAIRPOINT  
COMMUNICATIONS, Request for  
Modification of Total Amount at Risk  
Under Performance Assurance Plan**

**Docket No. 2009-291**

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**JOINT CLECS' MOTION TO CONSOLIDATE  
AND ADOPT PROCEDURAL SCHEDULE**

Mid Maine Telplus d/b/a Mid Maine Communications and CRC Communications of Maine, Inc., collectively doing business as OTT Communications ("OTT"), Biddeford Internet Corp., d/b/a Great Works Internet ("GWI"), and CTC Communications Corp., Lightship Telecom LLC, Choice One Communications of Maine Inc., and Conversent Communications of Maine LLC (all doing business as "One Communications"<sup>1</sup>) (collectively the "Joint CLECs") hereby move the Commission to consolidate the above-captioned proceedings and adopt the attached CLECs' Proposed Consolidated Schedule.

In a Procedural Order dated July 5, 2011, the Hearing Examiner requested comment on the proposed schedule filed by FairPoint Communications-NNE ("FairPoint") in Docket No. 2009-291 ("the Dollars at Risk docket"). During this past week, the Joint CLECs, through the

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<sup>1</sup> One Communications is in the process of changing its name to "EarthLink Business."

CLEC Association of Northern New England (“CANNE”), have been engaged in negotiations with FairPoint to develop a procedural schedule that would address both the Dollars at Risk docket as well as Docket No. 2009-334 (“the Simplified PAP docket”) as well as similar proceedings in New Hampshire and Vermont. The Joint CLECs, along with their CANNE colleagues, believe that consideration of all of the PAP-related issues should be consolidated into a single proceeding to maximize judicial and economic efficiency and to allow the parties to review all aspects of the PAP plan as a whole, rather than allowing FairPoint, as it proposes to do here, to reduce the dollars of risk to a level that eliminates the effectiveness of a performance plan without consideration of other important aspects of such a plan.

The consolidated proceedings in each state would proceed on the same schedule in order to minimize duplicative activities and to ensure the most efficient use of the limited resources of the commissions, their staffs, FairPoint, and the CLECs. We also believe that, based upon a very successful workshop in New Hampshire concerning the PAP audit, that conducting a series of three-state workshops designed to narrow the issues to be litigated followed by a litigation schedule that covers all aspects of the PAP – metrics, structure, scoring system, and dollars at risk – will allow for meaningful review of all aspects of the PAP by all three state commissions and provide the best opportunity for development of a unified PAP across the three states. Accordingly, the CLECs have developed the attached Consolidated Schedule which we are filing in all three states and asking that each state adopt it as soon as possible.

**I. CONSOLIDATION OF PROCEEDINGS IS BOTH NECESSARY AND EFFICIENT**

**A. Evaluation of the Dollars at Risk Issues Requires Consideration of the PAP as a Whole.**

Consideration of the dollars at risk issues, both under the old PAP and any potential new PAP, cannot be done in a vacuum as suggested by FairPoint. Evaluation of the proper level of dollars at risk will require analysis and comparison of past performance by Verizon and FairPoint and a determination of whether the dollars at risk under the current PAP have prevented backsliding and incited FairPoint to meet its market-opening requirements under federal law. Further, any determination regarding a lowering of the dollars at risk should be done in the context of a complete review all of the other issues associated with the PAP, such as metrics, standards, scoring system, and overall structure. The Commission cannot make an informed decision about the dollars at risk without a full and complete understanding of how that decision will be implemented through both the existing and new PAP. The fact that FairPoint's current filing is devoid of any explanation as to how it would allocate the \$1 million dollars it unilaterally determined would be an appropriate level of dollars at risk only reinforces the need to combine the Dollars at Risk proceeding with the Simplified PAP docket so that such issues can be explored by the parties.

**B. Consolidation Accommodates All Parties' Limited Resources**

Neither FairPoint nor the CLECs has sufficient resources to simultaneously litigate the Dollars at Risk dockets in both Maine and Vermont while trying to negotiate/collaborate on the Simplified PAP docket in Maine, New Hampshire and Vermont. Considerable time and effort has been spent over the past two months on issues related to the metrics – identification of metrics that can be deleted from the PAP/Wholesale Performance Plan ("WPP") or Carrier-to-



Carrier (“C2C”) Guidelines/Simplified Metrics Plan (“SMP”), identification and proposal of new metrics needed to address FairPoint’s performance failures under the current PAP, and identification of metrics for the New Hampshire PAP audit. The parties should build on this progress now – while it is still fresh in everyone’s minds – by continuing with three additional workshops over the next three months (a rather short timeframe) which will result in a list of agreed upon metrics for the new PAP (both existing and new metrics, including standards and measures) and a list of issues and metrics (hopefully short) that may need to be the subject of litigation. Requiring the parties to propound and respond to discovery in the Dollars at Risk docket in Maine (as well as in Vermont) during this same timeframe will distract the parties, slow the momentum on the simplified PAP, and require both FairPoint and the CLECs to incur significant costs associated with outside consultants and counsel over a very short period of time.

In addition, during this same time period, the Joint CLECs and other parties will be addressing the myriad of questions propounded by the Commission in Docket No. 2011-224, *Inquiry Into Telecommunications Regulatory Reform Plan* (“Deregulation Docket”) – a docket necessitated by FairPoint’s efforts in the Maine Legislature to get itself deregulated. We simply cannot do justice to all three of these requirements at the same time given the devotion of resources required by CLECs – both jointly and individually.

**C. The CLECs’ Proposed Consolidated Schedule Is Reasonable**

A review of the attached CLECs’ Proposed Consolidated Schedule reveals that it is reasonable in that it accommodates the need to coordinate among the three states, the desire to limit the scope of issues to be litigated, and the request by FairPoint to move these proceedings along quickly. First, the workshop phase will be finished by mid-October. Three months is a very small price to pay if, as was shown in New Hampshire, the parties can eliminate areas of



disagreement and/or the need for discovery through informal discussions and negotiations. As the Commission knows, the PAP has many moving parts to it, not the least of which is a large number of metrics. Nobody – not FairPoint, not the CLECs, and not the Commission -- wants to litigate hundreds of metrics; such litigation would be a waste of all parties' resources. The workshop schedule is, in fact, quite aggressive in that it calls for milestones to be met at least once every two weeks, if not more frequently. Moving any faster will not allow for a full vetting of the issues or maximum resolution of those issues.

Second, the proposed litigation schedule also accommodates all parties' interests in moving this matter forward to a final decision. To the extent available, it allows for consideration of any interim reports from the New Hampshire PAP audit. It provides all parties an opportunity to file testimony and discovery – hopefully on a much more limited set of issues than if the litigation were to proceed today without the benefit of the workshops. The litigation phase would last seven months – which given the breadth of the subject matter and the complexity of some of the issues to be addressed – is very reasonable.

One of the benefits of the consolidated schedule is the reduction in the number of issues to be litigated. Not only does this reduce the litigation costs for all parties, but it will undoubtedly result in a better solution. Workshops allow for informed consideration of the other parties' positions and for compromise. The workshop environment also encourages creativity and the ability to investigate – outside of the formal discovery process – the underlying needs and arguments of the parties. With staff participation and guidance, the workshops will be educational, instructive and will almost certainly result in a better final PAP than moving to duplicative litigation without workshops.

## **II. FAIRPOINT'S PROPOSED SCHEDULE IN THE DOLLARS AT RISK DOCKET IS NOT REALISTIC**

If the Commission does not grant the Joint CLECs' Motion to Consolidate, then we respectfully request that the Commission reject the schedule proposed by FairPoint and convene a conference of counsel to develop a more realistic and appropriate schedule. First, the schedule that FairPoint has proposed for the Dollars at Risk docket is far too aggressive. It requires that discovery be conducted and testimony filed in less than six weeks on an issue that is critical to the survival of the competitive marketplace in Maine. FairPoint's testimony may give the impression that this docket requires only a simple review of ARMIS data and application of percentage – that no real analysis is necessary. Nothing could be farther from the truth. As the CLECs have argued since the inception of this docket in 2009, modifying the existing PAP to drastically reduce the dollars at risk at a time when FairPoint has yet to even come close to attaining pre-cutover levels of wholesale service provides exactly the wrong message and incentive to FairPoint. Any decision to change the dollars at risk in the current PAP will require submission of detailed information concerning FairPoint's performance since cutover, compilation and analysis of the PAP penalties paid and their accuracy during this time, and a thorough vetting of the conditions, if any, that might justify lowering the dollars at risk at a time when FairPoint continues to show no improvement in its wholesale performance. Clearly, the schedule proposed by FairPoint would not accommodate the CLECs' or the Commission's need to thoroughly review and carefully consider FairPoint's requested waiver and modification of the PAP.

In addition, the Joint CLECs respectively point out that it was FairPoint, and not the Joint CLECs, that requested, and was granted, an 18-month stay of both of the Dollars at Risk and Simplified PAP dockets during the pendency of the bankruptcy proceedings. Considerable

progress could, and should, have been made during those 18 months. Now that it suits FairPoint's needs, completion of this docket, as well as the Simplified PAP docket, have suddenly become urgent matters demanding everyone's full attention. The situation is made worse by the fact that the Commission and the CLECs (as well as other parties) also have to conduct a complete regulatory review by the end of the year to accommodate a law that FairPoint pushed through the Legislature to further relieve itself of obligations it voluntarily assumed in the Verizon-FairPoint Merger proceedings. While the CLECs recognize the Commission's desire to ensure the continued viability of FairPoint, we ask that the Commission not let that desire blind it to the need to carefully consider these important matters related to the PAP.

The PAP is a means to an end – the provision of reasonable and adequate wholesale services in compliance with the law. Maine businesses and consumers rely upon CLECs and their business partners more than ever. Careful consideration of PAP related issues ensures that these business and consumers retain the ability to choose their carrier and gain access to services on terms and conditions that are not otherwise available from FairPoint. The Commission should not be rushed through its review, especially by a company that voluntarily asked for an 18-month stay of this very matter.

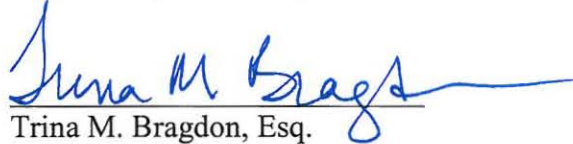
### **III. CONCLUSION**

The Joint CLECs respectfully request that the Commission consolidate the Dollars at Risk and Simplified PAP dockets and adopt the attached CLECs' Proposed Consolidated Schedule. Doing so will ensure an orderly, efficient, and thorough review of all of the issues associated with the adoption of a new PAP, including consideration of dollars at risk – both under the old PAP and the new PAP. It will also allow for coordination with Vermont and New Hampshire, thereby conserving the resources of all regulatory agencies and the parties involved.



In the alternative, if the Commission determines that it must move forward with the Dollars at Risk docket, the Joint CLECs request that a conference of counsel be convened so that a procedural schedule that accommodates all parties' needs can be established.

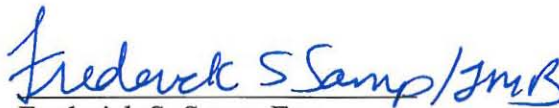
Respectfully submitted,

A handwritten signature in blue ink, reading "Trina M. Bragdon", followed by a horizontal line.

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## CLECS' PROPOSED CONSOLIDATED SCHEDULE

The following is a proposal from CANNE ("CLECs") for the administration of a three state collaborative effort to review FairPoint's filing of its SMP and WPP Plans ("Plans"). The CLECs propose that FairPoint present its Plans through a series of structured and focused workshops during which the CLECs and Commissions would be permitted to ask questions and raise concerns. This process, which has proven to be fruitful to date, would narrow the contested issues and would allow the Commissions time to gather the information needed to consider effectively the need for revisions to the current C2C and PAP plans. The CLEC proposal would combine the workshops (and to the extent practicable, the litigation) for Maine, New Hampshire and Vermont in order to reduce the total workload and to avoid unnecessary differences among the three states' performance plans.

The following series of workshops/milestones and litigation schedule would be structured to combine the proceedings in all three states. The schedule also incorporates workshops for updates based upon preliminary results from the NH audit.

<b>Develop a draft master list of current metrics</b> and each party's position. Establish differences between FP proposed PAP metrics and CLEC proposed metrics (identify specific metrics that are different based on exclusion/inclusion).	July 11, 2011 – Draft from Canny
<b>Comments on draft metric list</b> (ensure parties' positions are accurate, etc.) – schedule conference calls as needed.	Complete by July 18, 2011
<b>Redline of current C2C and PAP plans</b> – FairPoint to provide redline of current C2C guidelines and PAP Plans including rationale for all metric changes.	Complete by July 20, 2011
<b>Metric Workshop #1</b> – Review of all current metrics. Identify basis(es) for differences in inclusion/exclusion. Identify any issues associated with metric definitions. Identify any issues with metric standards/measures.	Wednesday – July 27, 2011
<b>Metric Workshop #2</b> – Complete review of current metrics and follow up on any open items from Metric workshop #1.	Wednesday– August 10, 2011
<b>New Metric Workshop</b> – Review current list of operational issues and new proposed metrics. Review operations issues not covered by current metrics/ new metrics	Wednesday– August 24, 2011
<b>Metric recap workshop</b> – Review open items from metric workshops. Come up with agreed upon lists for new metrics, disagreement lists, definition/standards disagreement list, and questions requiring Commission resolution.	Wednesday – September 7, 2011

<b>Comparison pro forma calculations</b> - FairPoint to provide pro forma calculations for 3 separate months for each state.	Complete by September 12, 2011
<b>Structure and Scoring System Workshop #1-</b> Review FairPoint's proposed structure and scoring. Identification of areas of agreement and disagreement.	Wednesday – September 21, 2011
<b>Structure and Scoring System Workshop #2 and dollars at risk</b> – Complete review of FairPoint's proposed structure, scoring, and issues regarding FairPoint's dollars at risk proposal.	Wednesday – October 5, 2011
<b>NH Audit Update and Summary of Progress Workshop</b> – Summary of audit status and identification of areas of agreement and disagreement between FP and CLECs and questions requiring Commission resolution. Review of 3 state litigation schedule.	Wednesday - October 19, 2011

### Litigation Process

FairPoint Testimony	Wednesday - November 2, 2011
Discovery on FairPoint testimony	Wednesday - November 16, 2011
Response to CLECs' discovery on FairPoint testimony	Wednesday - December 14, 2011
NH Audit Update workshop	Monday - December 19, 2011
CLECs' testimony	Wednesday - January 18, 2012
Discovery on CLECs' Testimony	Wednesday February 1, 2012
NH Audit Update workshop	Wednesday - February 22, 2012
Reponses to FairPoint's discovery on CLECs' testimony	Wednesday February 29, 2012
Auditors issue final report	Wednesday March 14, 2012
NH Audit Workshop - Parties review findings and discuss remaining schedule.	Wednesday – March 28, 2012
Discovery on NH Audit	Wednesday – April 4, 2012
Response to CLECs' discovery on NH audit	Wednesday – April 18, 2012
Rebuttal Testimony	Wednesday – April 25, 2012
Data Requests on Rebuttal Testimony	Wednesday – May 2, 2012
Data Responses	Wednesday – May 16, 2012
Hearings	Week of June 4, 2012