

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

DM 07-011

**Verizon New England, Inc. et alia,
Joint Petition for Authority to
Transfer Assets and Franchise to FairPoint Communications, Inc.**

MAIN BRIEF OF

SEVEN INTERVENING MUNICIPALITIES:

**EXETER, HANOVER, KEENE, NEWMARKET, RAYMOND, SALEM AND
SEABROOK**

Robert D. Ciandella, Esq.
Katherine B. Miller, Esq.
225 Water Street
Exeter, NH 03833
(603) 778-0686

Dated: November 20, 2007

Table of Contents

	Page
I. Introduction: Municipalities Interest in Proposed Transfer	1
II. Address Problems with Verizon’s Neglect of Equipment in the Public Right of Way.....	3
A. Verizon’s Delays on Pole Maintenance and Public Works Projects/ Construction.....	3
B. Verizon’s Delays on Emergency Response	5
C. FairPoint’s Proposed Settlements through MOU’s with Electric Companies	5
1. Communication and Coordination	6
2. Emergency Response	7
3. Pole Inspection and Maintenance	7
4 and 5 Tree Trimming	7
6. Pole Relocation	7
7. Double Poles	8
8. New Pole Sets	8
9. Standards	8
10. Readoption of Joint Ownership Agreement & Intercompany Operating Procedures	8
D. The Municipalities Support the Electrics’ MOU’s with Conditions.....	9
E. Recommendation: Approve the Electric’s MOU’s With Protections for Municipalities	10
III. Municipal Licensing for Poles and Equipment in Public Right of Way.....	10
A. Verizon’s Failure to Comply with RSA Ch. 231.....	10
B. Recommendations: Require Compliance with RSA Ch. 231 and Sharing of Location Data	13

- C. Standard Forms of Municipal Licenses..... 14
- D. Recommendation: Require Good Faith Efforts to Develop Standard Forms 14
- IV. Municipal Facilities for Emergency Management and Other Governmental Purposes..... 15
 - A. Existing Copper and Upgraded Facilities Deployed by Municipalities 15
 - B. Recommendation: Protect Municipalities Rights to Attach for Governmental Purposes 20
- V. Broadband 21
 - A. Deployment of Video Product 22
 - B. Recommendation: Require Compliance with RSA Ch. 53-C..... 22
 - C. Broadband Extension to Promote Needed Economic Development ... 22
 - D. Recommendation: Require Further Build Out of Broadband 24
- VI. Conclusion 24

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

DM 07-011

**Verizon New England, Inc. et alia,
Joint Petition for Authority to
Transfer Assets and Franchise to FairPoint Communications, Inc.**

BRIEF OF SEVEN INTERVENING MUNICIPALITIES:

**EXETER, HANOVER, KEENE, NEWMARKET, RAYMOND, SALEM AND
SEABROOK**

NOW COME the Intervening Municipalities of Exeter, Hanover, Keene, Newmarket, Raymond, Salem and Seabrook (“Municipalities”) by and through their attorneys, DONAHUE, TUCKER & CIANDELLA, PLLC, and submit the foregoing Brief on their behalf, and state as follows:

I. Introduction: Municipalities Interest in Proposed Transfer

The seven municipalities jointly petitioned the Public Utilities Commission (“Commission”) to intervene in this docket, Exeter, Hanover, Keene, Newmarket, Raymond, Salem and Seabrook (“Municipalities”), in order to highlight issues of primary interest to municipalities in New Hampshire in the proposed transfer of the assets and franchise from Verizon New England, et al., (“Verizon”) to FairPoint Communications, Inc. (“FairPoint”), and to urge that the Commission consider and address these concerns in the review and approval process to determine whether this transfer is “for the public good” pursuant to RSA 374:30, specifically:

1. Whether FairPoint will dedicate sufficient personnel and resources to be able to safely and efficiently manage poles and equipment in the public rights-of-way, to

be able to perform pole installation, replacement, maintenance and removal in a timely fashion, to promote safety and meet the needs of municipalities and consumers;

2. Whether FairPoint will dedicate sufficient personnel and resources to be able to address emergency response issues regarding poles and equipment on a timely basis;
3. Whether FairPoint will comply with the law regarding obtaining licenses from municipalities for poles and equipment in the public right of way, pursuant to RSA Chapter 231, and will provide municipalities with timely and complete information on location of poles and other equipment in the public right of way;
4. Whether FairPoint will recognize the traditional reservation and use of space for governmental purposes on poles and in some conduits by many municipalities, pursuant to the terms of many pole or conduit licenses and/or the historical practices in many communities;
5. Whether FairPoint will comply with RSA Chapter 53-C regarding obtaining competitive cable franchises for video services in those communities in which it intends to offer cable or other video services;
6. Whether FairPoint's stated plans for deployment of broadband, including no additional fiber to the premises, for high speed internet access and upgraded telecommunications, will be sufficient to bring New Hampshire's telecommunications and information services infrastructure up to par, in order to promote economic development, and to meet New Hampshire's advanced

telecommunications and information services needs for business, educational, emergency management and other purposes.

These are issues of critical importance that go to core municipal responsibilities: management of the public ways and emergency management. The Commission granted the Municipalities' petition to intervene. Throughout the docket, the data requests, testimony and cross examination provided by the Municipalities have developed the facts and position of FairPoint on these issues. The Municipalities urge the Commission, if it approves the proposed transfer, to impose the conditions described below regarding these issues.

II. Address Problems with Verizon's Neglect of Equipment in the Public Right of Way

A. Verizon's Delays on Pole Maintenance and Public Works Projects/ Construction

There has been long-standing frustration by the Municipalities, as well as by the electric companies that co-own or co-manage the poles in the public right of way, with Verizon's failure to respond to requests for new poles, to move or relocate poles due to construction or development or to transfer wires and facilities from old poles where the electric company has set a new pole and all other facilities have been transferred, resulting in "double poles" and the Verizon equipment alone remaining on the old pole. In her testimony, Julia Griffin, the Town Manager of Hanover, provides the following examples:

In the past, there has been a long-standing problem with excessive time intervals needed by utility companies, especially Verizon, to complete pole work. When communicating with Verizon, often Town officials are dealing with someone who can't make decisions or commitments for the company. When Verizon employees have attended our meetings, their response is that the Town should just work around the poles. This has become a standard practice for the Town of Hanover whether or not Verizon advises the Town to do so because of the unreliability of Verizon to complete pole work. Hanover has had to relocate sewers, drains, water mains, sidewalks, and intersections around poles that Verizon could or would not move. Sometimes, the Town has waited for years for poles to be removed. Even when we do receive a commitment from Verizon to do pole work, we never receive a schedule or time frame.

For example, there were problems with Verizon at the new water treatment facility project. Verizon intended to installed larger poles without notice of the new size or the location, without inquiry as to existing conditions on site, and failed to obtain pole licenses for the new poles prior to installation. The new project resulted in a reorganization of the site, including Town relocation of drain lines, sewer mains, and water mains. If the Town's construction crew has not been present when Verizon showed up to do their work, their intended new pole locations would have caused substantial damage as those locations conflicted with newly installed underground infrastructure. Verizon now has two sets of poles in this area as many of the older poles remain with telephone and cable wires still intact and the new poles continue to be unlicensed. Hanover has received no indication that Verizon plans to transfer the wires and remove the old poles.

In another example, the Town advised Verizon that their poles would need to be relocated approximately three years before scheduled work commenced to construct a roundabout at the intersection of Reservoir and Lyme Roads. Verizon failed to respond. Due to their lack of response, Hanover was forced to modify the intersection plan to accommodate a pole residing in the middle of the roundabout and an existing utility structure adjacent to the roadway.

Testimony of Julia Griffin, at pp. 3-4, Joint Municipalities Exhibit 1P. Similarly, Richard Malasky, Fire Chief and Public Works Director for the Town of Newmarket, provided an example of the problems his town faced with Verizon:

Newmarket has had problems in the past with Verizon performing necessary pole work within reasonable timeframes. Sometimes these time intervals are excessive. For examples, the Town completed a project on Route 108, and the poles within the project were not moved or transferred until two years after first requested. To comply with Town ordinances, the Town was forced to complete the project with the old poles in place. Some of these poles were located in the middle of sidewalks, making pedestrian traffic difficult and snow removal impossible in these areas.

Testimony of Richard Malasky, at p. 4, Joint Municipalities Exhibit 3P.

Municipalities in New Hampshire have the right and the duty to manage the public rights of way to promote safe vehicular and pedestrian traffic and the efficient provision of services, including public utilities such as telephone and electricity, as well as cable television, information services, and, in some communities, water and sewer. This also includes upgrading the roads and sidewalks in the public right of way through public works projects. This authority

is granted by statute, at RSA Chapter 231, pertaining to the exclusive authority of Municipalities over pole and conduit licenses on town public ways (RSA 231:160; 161 and 163) and at RSA 41:8 regarding the Municipalities' exclusive authority to manage the rights of way. See Data Response of Town of Hanover to segTEL Data Request 1-1, segTEL Exhibit 2P.

The above examples are merely emblematic of the ongoing struggles of municipalities across the state with Verizon's failure to dedicate sufficient resources to safely and expeditiously manage the poles for which it is responsible in the public rights of way. Verizon's failure in the past to meet its obligations has jeopardized the Municipalities' abilities to manage the public rights of way safely and effectively.

B. Verizon's Delays on Emergency Response

Of equal significance is Verizon's failure to meet in its own territorial areas for management the prompt responsiveness of the electrical companies in their areas of management to emergency situations, from vehicular accidents or natural disasters and weather. This problem was described extensively by Thomas P. Meissner on behalf of the electric company, Unitil, in his pre-filed testimony. Emergency responses are delayed by hours in areas where Verizon is responsible for maintenance, due to Verizon's failure to dedicate adequate resources to meet the needs as they arise. Unitil, Exhibit 1P, at pages 14-19. This has been extremely frustrating for municipal officials responding to such emergencies as well.

C. FairPoint's Proposed Settlements through MOU's with Electric Companies

The electric companies in Hew Hampshire have been as frustrated with Verizon's failure to execute its management responsibilities for poles, as the Municipalities have been. As a result, several electric companies also intervened in this action, to raise these concerns to the attention of the Commission, and likewise developed the facts, Verizon's practices and

FairPoint's positions through data requests and responses, direct testimony and cross examination.

The electric companies and FairPoint have entered into comprehensive Memoranda of Understanding that settle many of the issues of common concern to these electric companies and the Municipalities. See Memorandum of Understanding between National Grid and FairPoint, National Grid Exhibit 2P; Memorandum of Understanding between Public Service Company of New Hampshire and FairPoint, PSNH Exhibit 3P, and Memorandum of Understanding between Until and FairPoint, Until Exhibit 2P (collectively "the Electrics' MOU's"). Specifically:

1. Communication and Coordination:

The Electrics' MOU's provide for the electric companies and FairPoint to each designate a "Joint Pole Coordinator" to meet monthly during the first year after the transfer to FairPoint, and at least quarterly thereafter. The Joint Pole Coordinators shall be responsible for maintaining contact information relating to other relevant stakeholders, including other attachers to the pole, municipal and state officials, and all emergency response personnel. This will materially improve the communication and coordination with municipalities with regard to public works projects and emergency response issues.

In addition, these MOU's have a process for senior management to step in to resolve any disagreements and, finally, a dispute resolution process, which involves expedited mediation, and then the possibility of the parties taking their dispute to any available forum, including the Commission and the courts. This expedited resolution should hasten decisions on issues raised by municipalities and others with regard to coordination on these issues.

2. Emergency Response:

The Electrics' MOU's provide for a six (6) month transition period following the transfer after which, FairPoint will move to meet the response time of the electric companies in each of their maintenance areas within twenty-four (24) months of the transfer. This will be a tremendous improvement over the current slow response times in some areas for Verizon.

3. Pole Inspection and Maintenance:

The Electrics' MOU's reconfirm the need to inspect poles by the time they have reached twenty (20) years of age, and at ten (10) year intervals thereafter. The Intercompany Operating Procedures (IOP's) and National Electrical Safety Code will be the standards for replacement. This will address the Municipalities' concerns regarding old poles needing replacing on a more timely basis.

4. and 5. Tree Trimming:

FairPoint and the electrics have reached an agreement for cost sharing going forward, to address safety and maintenance needs.

6. Pole Relocation:

There is a re-codification of the need to participate in meetings with the New Hampshire Department of Transportation and public works officials to coordinate and schedule relocation work, and "committing the necessary resources to meet the agreed upon schedules." This is an enormous change from Verizon's paradigm, in which it deployed available resources to meet the needs no matter how great the needs were, without expansion of the resources available. There is a specific understanding of the agreement that relocation schedules also include the removal of double poles once all of the attachments have been removed.

7. Double Poles

On the issue of double poles, FairPoint commits to eliminating the estimated 7,000 double poles in New Hampshire within four (4) years of the transfer. This is an important step forward and will address the safety issues pertaining to the Verizon backlog.

8. New Pole Sets

FairPoint commits to scheduling and executing pole setting on a much more expedited basis than had been Verizon's practice, "On average not later than the date the customer has requested the installation be completed which shall be no shorter than 15 days for small jobs (no more than 3 pole sets) or no shorter than 30 days for large jobs after the date that all-payments have been made and all necessary property rights and governmental permits have been obtained." This is a significant improvement over Verizon's practice in the past.

9. Standards

FairPoint agrees that all practices pursuant to the Joint Operation Agreements ("JOA's") between FairPoint and the electric companies will be conducted in accordance with the National Electrical Safety Code and all applicable regulatory requirements. This is a welcome restatement of a commitment to safety on the part of FairPoint, and re-affirms the Commission's continuing jurisdiction to monitor compliance through its jurisdiction over compliance with the National Electrical Safety Code, pursuant to NH Code of Administrative Rules, Part Puc 413.

10. Readoption of Joint Ownership Agreement & Intercompany Operating Procedures

The electric companies and FairPoint will negotiate and revise their existing JOA's and IOP's to conform with the terms of these Memoranda of Understanding. The negotiations are to begin within six (6) months of the transfer and be completed within twelve (12) months. This will provide an opportunity for the Municipalities to work together with the electric companies and

FairPoint, should the transfer occur, to address pole attachment issues for governmental purposes, as discussed more fully below, at Section IV. This paragraph also provides for disagreements to be resolved pursuant to the expedited dispute resolution provisions in the MOU's.

D. The Municipalities Support the Electric's MOU's with Conditions

The Memoranda of Understanding provide significant improvements over the current procedures that have dogged Municipalities and led to their participation as intervenors in this docket as well as in the Commission's original pole docket, DM 05-172, which remains open. The Electric's MOU's addresses a great many of the communications, safety and timeliness issues that communities have struggled with. Municipal officials will be very eager to participate in the Joint Pole Coordinator meetings that are anticipated on a monthly and then quarterly basis, according to #1 above, as well as to work on better communications surrounding emergency response planning, pole relocations and new pole setting, as outlined in ##2 , 6 and 8 above. The Electric's MOU's also provide an excellent foundation for further developing resolution with FairPoint, should the transfer occur, on pole attachment issues, through discussions on revisions to the JOA's and IOP's. The Municipalities also endorse the commitment for FairPoint to remove the backlog of double poles by a date certain (#7) and abide by the requirements of the National Electrical Safety Code (#9). However, the Electric's MOU's will only resolve these matters satisfactorily for the Municipalities if municipal officials are included in all appropriate meetings as described in Paragraph 1 above, and if they are part of the discussions on revisions to the JOA's and IOP's as those pertain to municipal attachments to poles for governmental purposes.

E. Recommendation: Approve the Electric's MOU's with Protections for Municipalities.

The Municipalities urge the Commission to approve the Electric's MOU's with the condition that municipal officials be included in all appropriate meetings on a scheduled basis with the electrical utilities and FairPoint regarding public works projects, emergency response and revisions to the IOP's and JOA's on municipal use of space on the poles or in conduits.

Further, the Municipalities urge the Commission to make a condition of any approval of the transfer the following: That the Commission shall retain jurisdiction over all issues in the Electric's MOU and shall conduct further hearings and issue further orders if necessary to enforce the terms of the Electric's MOU's, in this docket, in the Pole Docket, DM 05-172, or in a new docket on FairPoint's compliance with these MOU's and the terms of approval of the transfer, and to include the option of the electrical companies using independent contractors to perform the necessary work if FairPoint proves unwilling or unable to meet the time tables provided in the Electric's MOU's, and/or the option of ordering liquidated damages for any such failure to compensate the electrical utilities and/or Municipalities for the cost of performing that work.

III. Municipal Licensing for Poles and Equipment in Public Right of Way

A. Verizon's Failure to Comply With RSA Chapter 231

The Municipalities have had difficulty in requiring Verizon to comply with the law regarding licenses for placement of poles and equipment in the public right of way. For example, Jeffrey Brown, the Fire Chief in the Town of Seabrook stated in his pre-filed testimony:

Seabrook has been unable to conduct extensive studies of unlicensed poles. The Town, however, has recorded GIS location data for 2665 poles, yet only has 527 pole petitions for licenses. Some of these petitions describe multiple poles, but the Town estimates that approximately 25% of the poles in the Town are unlicensed. One large example of unlicensed poles is in new subdivisions. When new subdivisions are built, the poles are placed without the licensing required by the Board of Selectmen, and any approvals by the Planning Board are not forwarded to the Town Clerk for recording pursuant to RSA 231:160-a. Unlicensed poles have not posed a safety issue yet. They do, however, create problems for assessing the value of the public right-of-way, and for purposes of taxing the use by the pole owners, pursuant to New Hampshire law.

Joint Municipalities Exhibit 2P at pages 2-3. Similarly, Ms. Griffin testified about the problems with unlicensed poles in Hanover as follows:

Historically, Verizon has set many poles without obtaining licenses from the Town pursuant to RSA 231:161, and many poles in Hanover are unlicensed. This complicates plowing the roads after snow fall, because unlicensed poles are often closer to the road than they should be. When the poles are damaged by snowplows Verizon attempts to blame the Town and collect repayment, but we routinely decline those requests.

Pole placement also impacts road and sidewalk construction. In one example, Hanover's Howe Library was undergoing expansion and renovations. It took 18 months for Verizon to move the necessary poles which physically blocked a sidewalk. This resulted in the need to install a temporary sidewalk and corresponding warning signage. The Town received hundreds of complaints from pedestrians, but we were powerless to do anything about it. Verizon was unresponsive to the Town's needs.

Unlicensed poles also tend to be too close to drainage courses. This has resulted in overwhelmed drainage systems and damages to the structural integrity of the poles. Costly repairs are required from Verizon, and service interruptions occur for customers. The Town has also incurred expenses to repair water, sewer, and drain lines.

Unlicensed poles can also be too close to existing poles, and all poles set immediately adjacent to existing poles are unlicensed. The right-of-way frequently becomes overly congested with the placement of so many duplicate poles, causing unsightly pole conglomerations that can sometimes obscure the driver's view at critical intersections. Hanover is often unaware when Verizon places new poles, and it has been impossible to determine what poles are unlicensed because Verizon has failed to provide the Town with its pole inventory. Hanover was forced in the summer of 2006 to hire a seasonal employee to complete a pole inventory for the Town. We counted 2,800 poles within our jurisdiction and are currently in the process of determining which poles are unlicensed.

Joint Municipalities Exhibit 1P, at pp. 4-5. For these reasons, the Municipalities propounded data requests to FairPoint regarding its plans to comply with the license requirements of RSA Chapter 231, specifically pertaining to license for poles and equipment in the public right of way. These requests arose from concern over the current cavalier practice of Verizon with regard to compliance with the law, including failing to obtain license from municipalities at all for placing poles and equipment in the public rights of way or placing the poles there first and seeking a license after, thus preventing the Municipalities from requiring that poles be set in locations consistent with Master Plans, Capital Improvement Plans, anticipated public works projects or other developments.

FairPoint's responses were encouraging. Set out below are the Municipalities' relevant data requests on this issue along with FairPoint's responses:

Municipal 2-5: What are FairPoint's plans and processes to comply with New Hampshire law regarding the licensing of poles in the rights of way, pursuant to N.H. Revised Statutes Annotated, Chapter 231, including but not limited to: (1) applying for pole licenses and obtaining licenses prior to setting poles, unless another arrangement has been agreed to between FairPoint and the municipality, (2) providing municipalities with copies of all poles licenses issued by the New Hampshire Department of Transportation for poles located in state highways, and (3) providing municipalities with copies of the information required by RSA 231: 160-a for poles permitted through a land use board process?

FairPoint's Reply: FairPoint will develop systems and processes to track, monitor and report on the commitments and requirements as they may be set and established. The specific systems, practices and organization are being developed at this time. (Joint Municipalities Exhibit 4P).

Municipal 2-6: Please describe how FairPoint will track compliance with each commitment it has made in its filing and those that may be added by the Commission, regarding (1) maintenance and safety of infrastructure, (2) adequate personnel for carrying out the same, (3) compliance with RSA Chapter 231 regarding pole licenses and (4) communications with the municipalities in which its plant will be located for emergencies and for public works construction planning.

FairPoint's Reply: FairPoint is in the process of developing procedures to meet those requirements. FairPoint's intention is to comply with applicable laws and regulations.

(Joint Municipalities Exhibit 5P).

Municipal 5-3: If the answer to either or both of the preceding questions was in the affirmative, please state whether FairPoint will file an assignment with the municipal clerk for each municipality for each such pole/conduit license issued by a municipality or the State of New Hampshire, to be recorded by the municipal clerk, as required by NH RSA 231:170.

FairPoint's Reply: Northern New England Telephone Operations Inc. will make all filings if and to the extent required by applicable law.

(Joint Municipalities Exhibit 6P).

Municipal 5-8: Will FairPoint be willing to share GIS/GPS type information on its pole, conduit and structure locations in the public rights of way with the municipalities in which such equipment is located?

FairPoint's Reply: FairPoint will work in a collaborative fashion to understand the municipalities' needs and anticipates that FairPoint will provide such information for use by and for the municipalities.

(Joint Municipalities Exhibit 10P).

FairPoint's responses indicate its commitment to comply with license requirements in New Hampshire and to sharing location data.

B. Recommendations: Require Compliance With RSA Ch. 231 and Sharing of Location Data.

The Municipalities urge the Commission to make (1) compliance with the terms of RSA Chapter 231 pertaining to licenses for poles and equipment in the public rights of way and (2) sharing GIS/GPS type information on pole, conduit and structure locations in the public rights of way with all municipalities in the state who request it, conditions of any approval of the transfer. Furthermore, the Municipalities urge the Commission to retain jurisdiction over this issue in this docket, the pole docket, DM 05-172 or a new docket, pursuant to RSA 365:1. ("Any person may make complaint to the commission by petition setting forth in writing any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law

or of the terms and conditions of its franchise or charter, or of any order of the commission.”) and issue any further orders necessary to enforce those conditions.

C. Standard Forms of Municipal Licenses

In addition to compliance with RSA Chapter 231 and with FairPoint’s commitments to provide GIS/GPS type information on its pole, conduit and structure locations in the public rights of way with the municipalities in which such equipment is located, the Municipalities urge the Commission to encourage and facilitate if necessary discussions and negotiations among FairPoint, the electric utilities and the Municipalities on standard language for petitions to municipalities for pole and conduit licenses, for equipment in the public right of way, and the licenses themselves. Standard language would create uniformity across the state and recognize and incorporate into those licenses established rights under the law, specifically: (1) the right of municipalities to reserve space on poles for governmental purposes, as a condition of granting the pole license, as more fully discussed below in Section IV; (2) the inclusion of GIS/GPS type information on its pole, conduit and structure locations in the petitions for licenses and the licenses themselves, to enable municipalities to maintain a current database of such information, and (3) the obligation for FairPoint to pay properly assessed taxes on the use of the public right of way, pursuant to RSA 72:23, I(b), as established through New England Telephone and Telegraph Co. v. City of Rochester, 144 N.H. 118 (1999) and Verizon New England, Inc. v. City of Rochester, 151 N.H. 263 (2004).

D. Recommendation: Require Good Faith Efforts to Develop Standard Forms

The Municipalities urge the Commission to make as a condition to approval of the transfer herein the conduct of good-faith negotiations by FairPoint on development of such uniform language on petitions for pole and conduit licenses to use the public rights of way and

for the licenses themselves, to be offered to all municipalities. Further, the municipalities urge the Commission to retain jurisdiction over this issue pursuant to RSA 365:1 and RSA 374:34-a, in either this docket, the Pole Docket, DM 05-172, or another docket on FairPoint's compliance with the conditions of approval.

11 IV. Municipal Facilities for Emergency Management and Other Governmental Purposes

A. Existing Copper and Upgraded Facilities Deployed by Municipalities

Historically, many municipalities in New Hampshire have deployed copper alarm signal wire, known as "c-wire," on poles or in communications conduits installed by utilities. Many municipalities have such a system throughout the community; others have it in some areas but not others. In some communities, the practice is recognized in the licenses granted by municipalities to utilities for permission to install poles, conduits and other equipment in the public right of way. In others, it has been a long-standing practice, sometimes over a hundred years in duration, well understood by municipal officials and the utility companies, without formal recognition in the licenses themselves.

Many communities with such existing "c-wire" on the poles or in conduits have been upgrading those facilities, to bring their emergency management communications systems up to current standards. This has often involved upgrading the existing wire or cable on the poles and then over-lashing optical fiber for greatly enhanced speed and capacity for emergency communications. For example, Fire Chief Malasky testified on behalf of the Town of Newmarket regarding that municipality's historical use of space on the poles as well as its more recent upgrade to bring its emergency communications system up to current standards for emergency management:

Newmarket maintains a network attached to poles for safety and fire-alarm purposes. This network has been in place for many years. The network is expanded, maintained and upgraded when necessary. It currently includes an optical fiber network over lashed to the original alarm cable. The Town does not have any formal agreements for its attachments, and it has never paid any fees for the attachments. None of the Town's networks are used to complete with any utility. All networks are used for governmental purposes to link government buildings, including the police department, town hall and fire stations.

Newmarket claims the right to such attachments without fees based on provisions on NH RSA Chapter 231, its licenses with the pole owners and its obligations for emergency management and management of the public rights of way. When the Town must replace, repair, or perform routine maintenance on the network, it works within the space reserved for the municipality. The Town also works with other entities when appropriate to determine height requirements. For example, when the Town placed its fiber network, it worked with the railroads so the cables would be at the appropriate height at railroad crossings.

Joint Municipalities Exhibit 3P, at pages 3-4.

Ms. Griffin described the existing municipal facilities on poles and in conduits in the Town of Hanover as follows:

Hanover possesses records of pole and conduit licenses dating back to 1910. **Some of these licenses reserved municipal space.** Starting in 1941, all underground conduit licenses and many pole licenses included a requirement that space be reserved for municipal fire, police, telephone, and telegraph use. The conduit licenses also permit the Town to install fiber in the telephone conduit without charge.

Hanover has an extensive municipal fire-alarm cable network and continues to install such cable when new facilities require connection. The fire-alarm network is placed 40 inches below power lines and is at least 14 feet from the ground. Any repairs or maintenance is completed according to the International Municipal Signal Association. Transfers occur in a timely fashion by request of National Grid. Hanover has not been required to seek approval for the fire-alarm network, and it has not paid any fees to do so.

Hanover also maintains a municipal fiber communication network. Hanover was not required to obtain utility approval for this network and its expansions. Hanover has been permitted to attach without agreement or fee for many years. Neither has Hanover been asked to pay make-ready nor survey costs to attach to poles or in the conduit.

The Town of Hanover provides usage of the right-of-way to utility companies without payment. Therefore, it seems unfair that Verizon could then charge the Town for attaching to the poles placed in public spaces.

Joint Municipalities Exhibit 1P at pages 5-6. In addition, Ms. Griffin submitted representative samples of the conduit licenses the Town of Hanover has from Verizon's predecessor, reserving space in the conduits for municipal purposes. segTEL Exhibit 2P.

Likewise, Fire Chief Brown testified on behalf of the Town of Seabrook as follows:

Because of the importance of up-to-date emergency management in the Town due to the location of the nuclear station, Seabrook maintains a fiber-optic network, municipal fire-alarm system, and sewer-monitoring system on poles. The Seabrook Fire Department has maintained the fire-alarm system since 1963. The Department also completes any work for additions to the network. Seabrook has never paid fees for attaching to poles. Seabrook has constructed its municipal fiber-optic network by over-lashing the fiber onto existing cables within the reserved municipal space. Seabrook did not pay fees associated with the fiber or execute any agreements to do so as the upgrade was merely an extension of the Town's existing facilities for governmental purposes. All cable maintained is for governmental purposes only and does not compete with the private industry.

Seabrook's network provides essential communication for emergencies. Because the Town has a nuclear power plant within its jurisdiction, the Town must be especially alert and able to respond to situations quickly. Maintaining the network it currently has, the Town is able to serve its residents' need in this respect.

Joint Municipalities Exhibit 2P, at pages 2 and 4.

Historically, such municipal attachments have been acknowledged by Verizon. Additionally, the Federal Communications Commission ("FCC"), until recently the entity with jurisdiction over pole attachments in New Hampshire pursuant to the federal Pole Attachment Act, 47 U.S.C. §224, has recognized that it is appropriate for municipalities (or states) to condition grant of a license to use the public right of way on reservation of space at no charge for governmental purposes. See Report and Order, in the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, (the "Pole Attachment Act"), FCC Docket No. 97-151, (hereinafter "FCC Order") at ¶¶52-54.

Furthermore, the FCC noted in the same Order that it has historically supported the ability of those with attachments to poles to upgrade those attachments with more

technologically advanced materials, such as optical fiber, through over-lashing of the fiber onto the existing attachments. Id., at ¶59-64. In fact the FCC has ruled that such upgrades (1) do not constitute a new attachment, and are therefore not subject to an additional attachment fee; (2) place no additional burden on the pole, and (3) are beneficial for upgrading communications facilities. Id. Finally, the FCC noted the “serious anti-competitive effects” from the owners of utility poles preventing attachers from adding fiber to their facilities by over-lashing. Id. at ¶60.

The critical emergency management function of governmental emergency communications, which goes to the very core of the obligations and responsibilities of municipalities, makes the importance of the right to upgrade such facilities even more apparent. We are not dealing with mere economic competition but with human lives when it comes to such upgrades. The ability of New Hampshire municipalities to bring their emergency communications into the 21st century is vital to our communities.

John F. Smee, on behalf of FairPoint, acknowledged the appropriateness of such upgraded facilities for governmental purposes during cross examination at the Hearing.

Q. (Mr. Ciandella) All right. And, what I want to ask you is, to the extent an emergency management plan adopted by a municipality requires a municipality to have fiber connections, two-way communication to its government infrastructure, in a full sense, water supply, police, fire. I take it that would be within your understanding of an appropriate emergency management use.

A. (Mr. Smee) Yes, that’s true.

Transcript of Hearing on DT 07-011, on Day VI, October 29, 2007 at pages 15-16.

The Commission recently acquired broad jurisdiction over pole attachments, through S.B. 123, Chapter Laws 2007, Ch. 340, now codified as RSA 374:34-a. This new law became effective on July 16, 2007. Chapter 340:2 charged that the Commission “shall expeditiously adopt interim rules and then final rules to carry out the provisions of RSA 374:34-a.” That

section also provided that, at least for the first two years, the Commission's rules shall be consistent with the regulations adopted by the FCC under the federal Pole Attachment Act, 47 U.S.C. §224.

The Municipalities have engaged in discussions with FairPoint's representatives in an effort to reach agreement on the issue of incorporating language on the reservation of space on poles and in communications conduits for governmental purposes and addressing the variety of situations across the state, where some communities have municipal equipment on poles, some pursuant to conditions in the pole or conduit licenses, and some based upon well-understood, longstanding practice. Progress has been made. In his pre-filed rebuttal testimony, John Snee provided a proposed definition of "governmental services" for inclusion in license language regarding reservation of space as follows:

"Governmental Services" means and refers to those non-commercial and non-retail communication based services delivered by the municipality or governmental entity at issue to individuals employed by said governmental entity or its administrative agencies. The communication based services are limited to non-fee based purposes of inter-connecting governmental administrative facilities, emergency management systems and public safety systems.

FairPoint Exhibit 14P, at pages 16-17. While the Municipalities have some suggestions for this proposed definition, it is largely acceptable, with minor modifications, to ensure that all facilities used for emergency management purposes, including non-governmental facilities used for emergency shelters, such as churches, hospitals, private schools, American Legion halls and the like, would be eligible for connection to the municipal network, and to ensure that all workers in an emergency, whether employed or volunteer, would be eligible to use the system. On cross-examination, Mr. Snee agreed that connecting an upgraded, two-way governmental network to all such facilities for emergency management purposes is appropriate. (Transcript of Hearing at DT 07-011, Day VI, October 29, 2007, at pages 15-17.)

B. Recommendation: Protect Municipalities' Rights to Attach for Governmental Purposes

The Municipalities urge the Commission to make the transfer, if approved, conditioned on continued, good faith negotiations among FairPoint, the electrical utilities and the Municipalities to resolve issues regarding development of language on the reservation of space on poles and in communications conduit for governmental purposes, as they shall define the term, for new licenses going forward.

Further, the Municipalities urge the Commission to retain jurisdiction to address existing pole and conduit licenses by category, depending on whether municipal facilities exist on the poles or in the conduits and whether or not the right to place municipal facilities on the poles or in the conduits is reserved in the existing licenses, confirming the rights that already exist and the practices currently in place, and addressing make ready costs and safety code compliance.

Further, the Municipalities urge the Commission "expeditiously," as required by Chapter Laws of 2007, Ch. 340, to adopt rules to implement its jurisdiction over pole attachments and do all things necessary pursuant to 47 U.S.C. §224 and FCC regulations, to obtain certification from the FCC that it has such authority.

Further, the Municipalities urge the Commission to adopt rules consistent with the FCC Order cited above, regarding over-lashing existing pole attachments with fiber, including without limitation that such over-lashing shall not require an attachment fee, execution of an attachment agreement or, in the normal course, any make-ready costs.

Further, the Municipalities urge the Commission, to retain jurisdiction, to be able to conduct further hearings and make further orders, if necessary, in either this docket, the pole docket, DM 05-172, or a new docket, to enforce any of the above conditions.

V. Broadband

A. Deployment of Video Product

There was much testimony, many data requests and responses and much cross-examination regarding FairPoint's plans for deployment of broadband for high speed internet services throughout this proceeding. It is an issue of concern to the Municipalities on several fronts. First, Verizon has deployed fiber to the premises, through its product known as "FiOS." Initially, Verizon touted plans to provide video services over this fiber, and began negotiations with several of the Municipalities to obtain cable franchises pursuant to the federal Cable Act, 47 U.S.C. §521, et. seq. and RSA Chapter 53-C. RSA 53-C: 3-b contains so-called "level playing field" language, requiring that "[n]o municipality shall grant any additional franchises to cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within such municipality." These requirements place an obligation on the parties negotiating a competitive franchise agreement, such as the proposed Verizon franchises, to meet those requirements for a "level playing field" for both the incumbent operator and the competitor seeking a new franchise. Abruptly, in June 2006, Verizon halted all such negotiations and has not resumed them.

At the outset of the instant docket, FairPoint stated that it intends to pick up this thread and develop and deploy video products in the future. In an effort to ensure that such deployments would meet the requirements of RSA 53-C: 3-b, the Municipalities propounded a follow-up data request to FairPoint, based on the pre-filed rebuttal testimony and received a response that was not illuminating. At the final hearing, Attorney Robert D. Ciandella, representing the Municipalities, asked Peter G. Nixon about FairPoint's plans to seek franchises, and they had the following exchange:

A. (Mr. Nixon): We would comply with the rules, regulations and statutes as they (are) current at the time.

Q. (Mr. Ciandella): Just a quick follow-up on that. As part of your – you had mentioned that franchising is obviously going to be a part of what you do as a prerequisite to rolling out the video product. Will you be looking at the incumbent franchises to begin to at least get some sense of what the existing cable franchises are in a particular community?

A. (Mr. Nixon): We will. We have experience within our own markets in cable franchising. We'd look at those within the existing communities, certainly to understand what the current expectations are. That would be the most logical place to start. Again, that's – we'll put that – that will become one of the duties of the market -- of the product manager, getting in the market and begin(ning) to do that work."

Transcript of Hearing on DT 07-011, on Day VI, October 29, 2007, at pages 211-212.

B. Recommendation: Require Compliance with RSA Ch. 53-C

In light of FairPoint's intention to develop a video product and the current requirements under federal and state law for franchises to provide such services, and particularly the "level playing field" requirements of RSA 53-C: 3-b, the Municipalities urge the Commission to make a condition for the approval of the transfer the compliance with all local, state and federal laws and regulations regarding the provision of video services, including but not limited to, the federal Cable Act, 47 U.S.C. §521, et. seq. and RSA Chapter 53-C.

C. Broadband Extension to Promote Needed Economic Development

State-of-the-art telecommunications infrastructure is critically important to the economic vitality of New Hampshire. This is the second broadband topic with which the Municipalities are concerned. The Municipalities are acutely aware of the need in many parts of the state for high speed internet access by even one provider. In many other areas, there is only one provider, and competition is needed to improve services and prices for consumers. FairPoint has made clear again and again that it does not intend to deploy more fiber-to-the- premises in the

foreseeable future, but plans to use a different technology instead to extend broadband. Leaving aside the question of whether this choice is for the public good, as the technical details are beyond the scope of the Municipalities to address, the extent of build-out that FairPoint proposes is itself extremely troubling.

The Municipalities applaud any extension of such deployment, but question whether the proposed expenditures and the scope of the deployment are sufficient to justify the proposed transfer to FairPoint as being in the public good. For example, in her pre-filed testimony, Ms. Griffin stated: “The Town of Hanover is home to a great many high-tech, research institutions and others that rely on up-to-the-minute telecommunications. The Town is concerned that FairPoint has not provided sufficient commitments to deploy and maintain expanded optical fiber facilities necessary for the fastest telecommunications.” Joint Municipalities Exhibit 1P at page 6.

In fact, New Hampshire now ranks dead last in the percentage of residential end-users with access to high-speed internet services, at 61%. Pre-filed Rebuttal Testimony of Mr. Brown, FairPoint Exhibit 14P, at page 28. This is an abysmal statistic and bespeaks Verizon’s abandonment of the state long before this transfer was proposed. It is essentially a failing grade, a D-. FairPoint best proposal is to bring the level of high speed internet access to 83% of Verizon’s current customers. Id. at p. 32. This is a large improvement, but brings the grade from failing to mediocre. By contrast, Commission staff recommends reaching 95% of Verizon’s current customers, a solid “A.” Is New Hampshire not worth that? Our communities rely on 21st century telecommunications and high speed internet access, as traditional manufacturing, logging, farming and other industries decline. This infrastructure is essential for economic development and for the continued vitality of our state. FairPoint’s proposal is simply

not enough to earn it approval by the Commission. This transaction, without significantly more investment in the deployment of broadband, is not in the public good.

D. Recommendation: Require Further Build Out of Broadband

The Municipalities urge the Commission to require as a condition of approval of this transfer, that FairPoint provide significantly greater investment in broadband, to reach more than mid-way between its proposal (83%) and that of the Commission's staff (95%), to strive for at least an A- for New Hampshire.

VI. Conclusion

For the foregoing reasons, the Municipalities urge the Commission to impose the above conditions on the transfer of assets and franchise from Verizon to FairPoint, or not to approve this transfer.

Respectfully submitted,

The Municipalities of Exeter, Hanover, Keene,
Newmarket, Raymond, Salem and Seabrook, New
Hampshire

By their attorneys,
DONAHUE, TUCKER & CIANDELLA, PLLC

Date: Nov. 20, 2007

By: K B Miller
Robert D. Ciandella, Esq.
Katherine B. Miller, Esq.
225 Water Street
Exeter, NH 03833
(603) 778-0686

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief has this day been forwarded via e-mail to the electronic service list.

K B Miller
Katherine B. Miller, Esq.

S:\PO-PZ\PUC Intervention - Verizon-FairPoint Merger\Brief Draft 11 19 07.doc

DT 07-011
Verizon Transfer of Assets and Sale to FairPoint
E-mail List

Last update: 8/27/2007 4:11 PM

smbaldwin@comcast.net;
sbosley@nc.rr.com;
dbrevitz@cox.net;
mark@markdelbianco.com;
ibew2320erickson@verizon.net;
cjohnson@globe.com;
karen.m.melanson@verizon.com;
tprice@onecommunications.com;
scott.j.rubin@gmail.com;
sasawyer@cox.net;
whamilton@aarp.org;
bthayer@bayring.com;
smwoodland@ch.cityofportsmouth.com;
Stacey_Parker@cable.comcast.com;
jamesg_white@cable.comcast.com;
thansel@covad.com;
mclancy@covad.com;
klk@curtisthaxter.com;
srockefeller@curtisthaxter.com;
fcoolbroth@devinemillimet.com;
katwood@devinemillimet.com;
pmchugh@devinemillimet.com;
rciandella@dtclawyers.com;
kmiller@dtclawyers.com;
Sdandley@dscicorp.com;
scnelson@gsinet.net;
wleach@fairpoint.com;
slinn@fairpoint.com;
aprior@fairpoint.com;
rtulk@fairpoint.com;
rtuttle@fairpoint.com;
pfundstein@gcglaw.com;
matthews@gcglaw.com;
alexandra.blackmore@us.ngrid.com;
crand@gstnetworks.com;
bstafford@gstnetworks.com;
organize2320@verizon.net;
kbarker@kelleydrye.com;
antonuk@libertyconsultinggroup.com;
mike@iainc.mv.com;
charlesking@optonline.net;

vickroy@libertyconsultinggroup.com;
steven.camerino@mclane.com;
sarah.knowlton@mclane.com;
rmunnelly@murthalaw.com;
rmihalic@murthalaw.com;
nbrockway@aol.com;
kaufmanh@nhec.com;
c_miller@ncia.net;
dfeltes@nhla.org;
jody.carmody@puc.nh.gov;
pradip.chattopadhyay@puc.nh.gov;
lynn.fabrizio@puc.nh.gov;
josie.gage@puc.nh.gov;
david.goyette@puc.nh.gov;
f.anne.ross@puc.nh.gov;
merle2101@yahoo.com;
jcilley@aol.com;
jclark@nhaficio.org;
alinder@nhla.org;
kate.bailey@puc.nh.gov;
amanda.noonan@puc.nh.gov;
jody.omarra@puc.nh.gov;
Meredith.A.Hatfield@oca.nh.gov;
Rorie.E.P.Hollenberg@oca.nh.gov;
Christina.Martin@oca.nh.gov;
Ken.E.Traum@oca.nh.gov;
pfoley@onecommunications.com;
njacobson@onecommunications.com;
gkennan@onecommunications.com;
gent@otel.us;
judy.messenger@paetec.com;
pphillips@ppeclaw.com;
eatongm@nu.com;
hybscrt@psnh.com;
nolinka@nu.com;
allwacj@nu.com;
rustyb313@verizon.net;
agree@metrocast.net;
mcrothfelder@rothfelderstern.com;
cpollart@rubinrudman.com;
jeremy@segstel.com;
kath@segstel.com;
kforbes@shaheengordon.com;
mjohnston@shaheengordon.com;
asaunders@shaheengordon.com;
amandl@smithduggan.com;

melaniegates@leg.state.nh.us;
brian@destek.net;
jmonahan@dupontgroup.com;
dwinslow@utel.com;
epler@unitil.com;
sheila.gorman@verizon.com;
ellen.m.cummings@verizon.com;
victor.delvecchio@verizon.com;
john.f.nestor.iii@verizon.com;
alan.s.cort@verizon.com;
june.tierney@state.vt.us;
karen.potkul@xo.com;