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April 25, 2007

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Debra A. Howland, Executive Director
& Secretary
Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

**Re: DT 07-011 Joint Application of Verizon New England and FairPoint
Communications for Transfer of Assets of Verizon New England**



Dear Ms. Howland:

Enclosed for filing on behalf of FairPoint Communications, Inc. are an original and seven (7) copies each of FairPoint's objections to the motions to compel filed by the Office of Consumer Advocate and the Labor Intervenors. The confidential information has been redacted from the public version of the objection to the OCA's motion. Seven copies of the objection, including the confidential information, are also enclosed pursuant to RSA 378:43.

A compact disk containing the public versions of the objections is also enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frederick J. Coolbroth".

Frederick J. Coolbroth

FJC:kaa

Enclosures

cc: Electronic Service List

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-011

VERIZON NEW ENGLAND, INC., BELL ATLANTIC COMMUNICATIONS, INC.,
NYNEX LONG DISTANCE CO., VERIZON SELECT SERVICES, INC.,
AND FAIRPOINT COMMUNICATIONS, INC.

Transfer of Assets to FairPoint Communications, Inc.

**Objection by FairPoint Communications, Inc. to
Motion to Compel by The Office of Consumer Advocate
(Group I Data Requests)**

NOW COMES FairPoint Communications, Inc. ("FairPoint") and pursuant to New Hampshire Public Utilities Commission (the "Commission") Procedural Order No. 24,733, objects to the Motion to Compel FairPoint's Responses to Data Requests (Group I) filed by the Office of the Consumer Advocate for the reasons set forth below.

I. Introduction

1. On March 16, 2007, the Commission issued a procedural schedule. Pursuant to that schedule, on April 13, 2007, FairPoint provided its objections to data requests concerning Group I, Transactional and Financial Issues, propounded by The Office of the Consumer Advocate ("OCA"). Counsel for FairPoint and the OCA have discussed the objections and reached agreement on most of the data requests. On April 20, 2007, the OCA filed a Motion to Compel certain responses from FairPoint. FairPoint objects to the OCA's Motion to Compel.

2. In proceedings such as these, "discovery should be relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence." Re Public Service of New Hampshire, 86 NH PUC 730, 731-32 (2001).

3. FairPoint has agreed to provide a response to the vast majority of data requests.

II. FairPoint's General Objections are Appropriate.

4. OCA takes exception to FairPoint's general objections and characterizes them as artificial obstacles and arbitrary choices. The objections are neither. Instead, they simply respond to overreaching instructions that were contained in the OCA's requests and make the discovery process, which involves thousands of requests, manageable. FairPoint intends to make its answers fully responsive, and the procedural schedule in this Docket provides for follow-up requests to the extent that OCA believes that a further response is necessary.

III. Requests to Which FairPoint Objected, But for Which Their Objection is Moot.

5. OCA's motion to compel is lengthy, in part because it lists each and every data request to which FairPoint originally objected but for which FairPoint has now agreed to provide a response. Although FairPoint does not waive the objections made, because FairPoint has agreed to provide documents responsive to a significant number of requests, OCA's motion as to those requests is moot. The Commission need not concern itself with those OCA requests.

6. The first of these requests is OCA 1-4, which requires that FairPoint delineate the differences between the petitions filed by Verizon and FairPoint in Maine, Vermont and New Hampshire. The petitions are public and have been provided to OCA. There can be no question that OCA has the ability to review the documents and determine the differences for itself. Moreover, this request goes beyond a request for documents; it is a request that FairPoint undertake analysis not generally included with a data request. It is improper to require FairPoint to go beyond the scope of the PUC rules and undertake a task that OCA can, and should, undertake itself. FairPoint personnel should not be required to undertake this analysis when they do not maintain that information in the form in which OCA requests it. Finally, FairPoint has

already indicated to OCA that the only differences concern the law or legal issues. Clearly, therefore, the assertion that this objection is improper is moot.

7. There are numerous other requests to which FairPoint has agreed to provide a response, although it reserves the right to rely on the objections made. OCA's motion is moot as to those requests, which are: OCA 1-11, OCA 1-13, OCA 1-14, OCA 1-17, OCA 1-23, OCA 1-25, OCA 1-35, OCA 1-37, OCA 1-38, OCA 1-43, OCA 1-51, OCA 1-54, OCA 1-58, OCA 1-75, OCA 1-99, OCA 1-100, OCA 1-111, OCA 1-113, OCA 1-131, OCA 1-132, OCA 1-133, and OCA 1-143. *(The last 4 are within the proprietary information and should be removed from the public version of the objection).*

IV. OCA Requests to Which FairPoint Has Not Agreed to Provide A Response.

8. There are a few data requests to which FairPoint should not be required to respond, and to which it has objected. Those are the only data requests which need to be addressed by the Commission. They are: OCA 1-8, OCA 1-16, OCA 1-18, OCA 1-19, OCA 1-20, OCA 1-21, OCA 1-22, OCA 1-24, OCA 1-26, OCA 1-27, OCA 1-28, OCA 1-30, OCA 1-34, OCA 1-37, OCA 1-114, and OCA 1-115. FairPoint will address these data requests in order.

9. Request 1-8 requests documents that comprise the Hart-Scott-Rodino ("HSR") filing associated with the proposed transaction, to the extent not previously provided. OCA 1-8 is overly broad and seeks some of FairPoint's most confidential and proprietary information. It may seek confidential or proprietary information of a third party which FairPoint is not authorized to disclose. It seeks information not reasonably calculated to lead to the discovery of admissible evidence. The HSR Act enables the Federal Trade Commission (the "FTC") and the Antitrust Division of the Department of Justice (the "DOJ") to review mergers and acquisitions before they are completed. The HSR Act requires that certain proposed acquisitions of voting

securities or assets be reported to the FTC and DOJ prior to completion, the primary purpose being to improve the efficiency of merger and acquisition regulation. FairPoint made HSR filings (“premerger notification materials”) regarding this transaction, in accordance with the HSR Act. Section 7A(h) of the HSR Act provides that premerger notification materials obtained under the Act are exempt from the Freedom of Information Act (“FOIA”) and may not be made public, except as they may be relevant to any administrative or judicial action or proceeding. 15 U.S.C. §18a (h). The confidentiality provision ensures that no prejudice results from the submission of confidential information concerning a proposed merger or acquisition. Mattox v. FTC, 752 F.2d 116, 121 (5th Cir. 1985). In view of the confidentiality provision and the protective quid pro quo extended to potential merger and acquisition partners, federal courts have refused to compel disclosure of premerger materials to state attorneys general acting in their *parens patriae* capacities pursuant to the HSR Act. Lieberman v. FTC, 771 F.2d 32, 37 (2nd Cir. 1985); Mattox, 752 F.2d at 124. “Congress envisioned that only the [DOJ] and the FTC would use premerger information.” Lieberman, 771 F.2d at 39. Congress did not envision the disclosure of premerger notification materials in settings such as this.

10. The only specific statement by the OCA as to the claimed relevance of this material is in Paragraph 36 of the OCA motion that “it will show the extent to which Verizon intends to compete with FairPoint on a post-transaction basis in New Hampshire.” The OCA could simply ask FairPoint for information in its possession on this subject. The balance of the request is simply a part of OCA’s infinite document search.

11. Requests OCA 1-16, OCA 1-18, OCA 1-19, OCA 1-20, OCA 1-21, OCA 1-22, and OCA 1-24 are related to documents that are referenced in the S-4 Registration Statement filed by FairPoint and Verizon with the Securities and Exchange Commission. In accordance

with the requirements of Form S-4, the document includes a history of events leading up to the agreement which has been submitted to the Commission. In essence, it sets forth the history of the dealings between the parties. Those negotiations do not constitute the deal as struck, which is before the Commission. The S-4 is not used as a basis for the presentation for approval to the Commission. The Commission is charged with reviewing a specific proposed transaction to determine whether it is consistent with the public good. The requested documents are irrelevant to the deal before the Commission. See City of Nashua, Order No. 24,654 (August 7, 2006), pp. 3-4, *affirmed by* City of Nashua, Order No. 24,671 (September 22, 2006). OCA is engaged in a fishing expedition. OCA's burden is to demonstrate that any such documents requested are relevant to the deal before the Commission. It can not do so as to requests OCA 1-16, OCA 1-18, OCA 1-19, OCA 1-20, OCA 1-21, OCA 1-22, and OCA 1-24.

12. OCA 1-16 seeks information FairPoint submitted to Verizon on April 20, 2006 as part of a revised proposal. It also seeks the information provided with the original proposal. FairPoint objects to providing the information, because it is not reasonably calculated to lead to the discovery of admissible evidence. The information is not related to the deal as struck and as submitted to the Commission. Therefore, it is not relevant to the proceedings.

13. OCA 1-18 requests a copy of the management presentation which Verizon made to FairPoint on June 26, 2006, as well as a list of the employees of both companies and outside advisors present at the meeting on that date. FairPoint objects to this request, because it seeks confidential or proprietary information of a third party, which FairPoint is not authorized to disclose. Moreover, the request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. As with the prior request, this request seeks information

which is not related to the proposed deal before the Commission. OCA can not meet its burden to demonstrate that any of the information requested is relevant to the proposed deal.

14. OCA 1-19 seeks any and all documents reviewed during the course of due diligence as referenced in the S-4. First, these documents are the property of Verizon, not FairPoint, and FairPoint is not authorized to disclose the documents. Moreover, this request is the consummate fishing expedition. OCA seeks *any and all* documents reviewed during due diligence. OCA's request is overly broad, unduly burdensome and not calculated to lead to the discovery of admissible evidence. OCA must delineate with specificity any document that it seeks, and the basis on which it alleges the document is relevant to the request for the Commission to approve the transaction before it. It has not done so.

15. OCA 1-20 also seeks information referenced in the S-4; specifically copies of the management proposal FairPoint gave to Verizon on July 12, 2006. As with the other requests seeking documents referenced in the S-4, this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. OCA can not demonstrate a need for the documents and their relevance to the proposal before the Commission.

16. OCA 1-21 requests any and all documents prepared by Lehman Brothers and Merrill Lynch regarding the proposed transaction and specifically references a conference call on November 29, 2006. First, the request seeks confidential or proprietary information that does not belong to FairPoint and which FairPoint is not authorized to disclose. In addition, this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. It seeks discovery of communications between FairPoint and its investment bankers, which is clearly confidential and proprietary. In addition, the request goes beyond the search for

information related to the proposed transaction. Moreover, neither Lehman Brothers nor Merrill Lynch have been offered as experts related to the proposal now before the Commission.

17. OCA 1-22 seeks documents prepared for and used during meetings of FairPoint and Verizon's senior management on December 11, 2006 and December 13, 2006, as well as a report on the progress of negotiation and a proposed transaction schedule. These are documents referenced in the S-4 filed with the SEC. FairPoint is not required to provide this information. First, it includes confidential and proprietary information of a third party which FairPoint is not authorized to disclose. Moreover, this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence, as the documents are not related to the proposal before the Commission. FairPoint has already agreed to provide information related to the materials considered at the January 14, 2007 Board meeting at which the Board approved the deal as struck and as before the Commission. It is not required to provide documents related to prior proposed deals which were not approved by the Board and which are not before the Commission.

18. OCA 1-24 seeks "background materials" provided to FairPoint's Board of Directors at or for a meeting on January 10, 2007, as well as drafts of bank financing commitment letters and presentation materials of FairPoint's management team. OCA seeks confidential or proprietary information of a third party which FairPoint is not authorized to disclose. Moreover, this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. The documents sought were drafts, not related to the deal as struck and before the Commission. Moreover, FairPoint has agreed to provide information related to the materials considered at the January 14, 2007 Board meeting during which the deal which is before the Commission was approved by the Board.

19. OCA 1-26 seeks any and all information, assumptions and documents upon which Deutsche Bank relied in order to conduct its discounted cash flow analysis, including the rationale for any and all assumptions. First, FairPoint is not able to disclose confidential or proprietary information of a third party. Moreover, this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. Finally, to respond would require FairPoint to create evidence that does not currently exist. The request is another way to obtain FairPoint's financial model. FairPoint is a publically traded company; its financial projections are its most confidential information regarding its business. The information requested is competitively sensitive, and not subject to disclosure.

20. OCA 1-27 seeks the assumptions that Deutsche Bank made in connection with its financial analysis. For the reasons set forth in the previous paragraph, OCA is not entitled to this information. FairPoint is not authorized to provide confidential or proprietary information of a third party. Moreover, this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence.

21. OCA 1-28 requires FairPoint to identify the advisors and consultants engaged by FairPoint regarding the proposed transaction, the date and scope of the engagement of each consultant, and the compensation for each consultant. To the extent the advisors and consultants are attorneys, this information is clearly within the attorney-client privilege and the work product doctrine. Moreover, as to each and every consultant, the information is not relevant. FairPoint has provided information which is not otherwise privileged related to the consultants who have produced information related to the proposal before the Commission. Any information from advisors and consultants not offered to the Commission as a basis for approval is not relevant

and is not reasonably calculated to lead to the discovery of admissible evidence. This request seeks to inappropriately make work for FairPoint.

22. OCA 1-30 seeks materials reviewed by any and all advisors and consultants FairPoint has engaged. OCA is not entitled to these documents for the reasons set forth in the previous paragraph. The information is protected by the attorney-client privilege and attorney work product doctrine where the advisors and consultants were attorneys. In addition this request is overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence.

23. OCA 1-34 requests copies of documents that will be used for purposes of transition to support the proposed transaction. First, this request is vague to the point of being incomprehensible. Moreover, it is overly broad, unduly burdensome and seeks information protected by the attorney-client privilege and the attorney work product doctrine. It is important to be mindful that the transition will be an immense undertaking. This request is an incredibly burdensome fishing expedition and is totally unnecessary.

24. OCA 1-35 seeks any and all documents regarding any and all financial analyses concerning the transaction. This request is vague, overly broad, unduly burdensome and seeks information protected by the attorney-client privilege and the attorney work product doctrine. Again, it is a fishing expedition. Documents related to the proposal before the Commission are being provided.

**** BEGIN PROPRIETARY****

25.

****END PROPRIETARY****

26. OCA counsel and witnesses and FairPoint counsel and witnesses spoke by telephone on April 18, 2007. The parties were able to resolve most of their differences. However, some of the differences remain.

WHEREFORE, FairPoint respectfully requests that the Commission:

- A. Deny OCA's Motion to Compel; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

FAIRPOINT COMMUNICATIONS, INC.

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: April 25, 2007

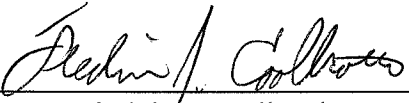
By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

April 25, 2006

By: 

Frederick J. Coolbroth, Esq.

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-011

VERIZON NEW ENGLAND, INC., BELL ATLANTIC COMMUNICATIONS, INC.,
NYNEX LONG DISTANCE CO., VERIZON SELECT SERVICES, INC.,
AND FAIRPOINT COMMUNICATIONS, INC.

Transfer of Assets to FairPoint Communications, Inc.

Objection by FairPoint Communications, Inc. to
Motion to Compel by Labor Intervenors
(Group I Data Requests)

NOW COMES FairPoint Communications, Inc. ("FairPoint") and pursuant to New Hampshire Public Utilities Commission (the "Commission") Procedural Order No. 24,733, objects to the Motion to Compel Answers to Data Requests of Labor Intervenors, April 20, 2007 as follows:

1. On April 6, 2007, Labor Intervenors served Data Requests of Labor Intervenors Set 1 (Group I issues) (the "Data Requests") on FairPoint. Data Request Labor 1-5 states, in pertinent part: "provide documents as they are so produced and delivered by FairPoint, including but not limited to: ... f) FairPoint Hart-Scott-Rodino filings (Merger Agreement, 7.6(c), p. 85)."
2. On April 13, 2007, FairPoint filed Objections to the Data Requests. FairPoint objected to Data Request Labor 1-5 on the grounds that it is overbroad and seeks some of FairPoint's most confidential and proprietary information. FairPoint further objected that the Request may seek confidential or proprietary information of a third party which FairPoint is not authorized to disclose. The Request seeks information not reasonably calculated to lead to the discovery of admissible evidence.

3. The Hart-Scott-Rodino Act of 1976 (the “HSR Act”) enables the Federal Trade Commission (the “FTC”) and the Antitrust Division of the Department of Justice (the “DOJ”) to review mergers and acquisitions before they are completed. The HSR Act requires that certain proposed acquisitions of voting securities or assets be reported to the FTC and DOJ prior to completion, the primary purpose being to improve the efficiency of merger and acquisition regulation.

4. FairPoint made HSR filings (“premerger notification materials”) regarding this transaction, in accordance with the HSR Act.

5. Section 7A(h) of the HSR Act provides that premerger notification materials obtained under the Act are exempt from the Freedom of Information Act (“FOIA”) and may not be made public, except as they may be relevant to any administrative or judicial action or proceeding. 15 U.S.C. §18a (h).

6. The legislative history of Section 7A(h) reveals Congress’s intent to protect confidential premerger notification materials against public disclosure. “The Senate Bill would have permitted wide disclosure of the required premerger notification materials. The materials would have been subject to the [FOIA], making them available to anyone on demand.” This approach was rejected, and the confidentiality provision was incorporated. Mattox v. FTC, 752 F.2d 116, 120 (5th Cir. 1985). “Much of the legislative history simply reveals the obvious; Congress wanted premerger information kept confidential.” Lieberman v. FTC, 771 F.2d 32, 38 (2nd Cir. 1985).

7. The confidentiality provision ensures that no prejudice results from the submission of confidential information concerning a proposed merger or acquisition. See Mattox, 752 F.2d at 121. “[T]here was concern over the disclosure of materials Congress was

requiring to be filed. Congress may have been worried that such disclosures would be a disincentive to prompt and complete compliance with the premerger notification procedures by potential merger partners.” Id. at 122.

8. In view of the confidentiality provision and the protective quid pro quo extended to potential merger and acquisition partners, federal courts have refused to compel disclosure of premerger materials to state attorneys general acting in their *parens patriae* capacity pursuant to the HSR Act. Lieberman, 771 F.2d at 37; Mattox, 752 F.2d at 124.

9. Federal courts have also recognized that the HSR Act did nothing to alter the application of existing rules of civil and criminal procedure. See In re State of Ill. Petition to Inspect and Copy of Grand Jury Materials, 659 F.2d 800, 808 (7th Cir. 1981) (holding that section 4F(b) of Title III of the HSR Act does not authorize the disclosure of grand jury materials to a state attorney general without the showing of particularized need, as required by Fed.R.Crim.P. 6(e)); In re Grand Jury Investigation of Cuisinarts, Inc., 516 F.Supp. 1008, 1012 (D.Conn. 1981). “There is no indication that its draftsmen ever regarded the existing rules of procedure concerning discovery as a problem... or that they intended to modify, no less contravene, the existing rules.” In re State of Ill., 659 F.2d at 807-808.

10. The above noted limitations have been enforced against state attorneys general, even in spite of “the important place State attorneys general occupy in Congress’s scheme for antitrust enforcement.” In re state of Ill., 659 F.2d at 804, *quoting* U.S. v. B.F. Goodrich Co., 619 F.2d 798, 801 (9th Cir. 1980).

11. New Hampshire’s Superior Court Rules governing discovery provide that “Parties may obtain discovery regarding any matter, *not privileged...*” Sup.Ct.R. 35(b)(1) (emphasis added). “[A] party may obtain discovery of documents ... otherwise discoverable... and prepared

in anticipation of litigation ... only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case *and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.*" Sup.Ct.R. 35(b)(2) (emphasis added).

12. As to matters properly subject to data requests in this proceeding, Labor has other means to obtain the information, namely, it can make a proper data request.

13. "Congress envisioned that only the [DOJ] and the FTC would use premerger information." Lieberman, 771 F.2d at 39. Congress did not envision the disclosure of premerger notification materials in settings such as this. The Commission must not compel disclosure.

WHEREFORE, FairPoint respectfully requests that the Commission:

- A. Deny Labor's Motion to Compel FairPoint to respond to Data Request Labor 1-5(f); and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

FAIRPOINT COMMUNICATIONS, INC.

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: April 25, 2007

By:



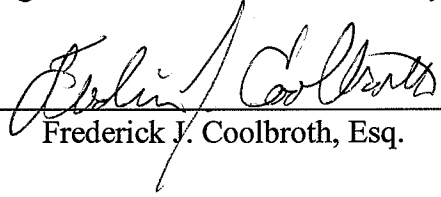
Frederick J. Coolbroth, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

Dated: April 25, 2007

By: _____


Frederick J. Coolbroth, Esq.