LABOR EXH. 10 P
10/23/07

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on March 16, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 03-C-0972 - Joint Petition of Berkshire Telephone Corporation, FairPoint Communications, Inc., MJD Ventures, Inc. and FairPoint Berkshire Corporation for Approval of the Merger of FairPoint Berkshire Corporation with and into Berkshire Telephone Corporation.

ORDER APPROVING ACQUISITION SUBJECT TO CONDITIONS

(Issued and Effective March 18, 2005)

BY THE COMMISSION:

By joint petition filed July 2, 2003, FairPoint Communications, Inc. (FairPoint), MJD Ventures, Inc. (MJD), FairPoint Berkshire Corporation, and Berkshire Telephone Corporation (Berkshire) have requested authority under Sections 100, 108 and 222 of the Public Service Law to permit FairPoint to acquire 100% of the outstanding stock of Berkshire.

PROPOSED TRANSACTION

Berkshire, a New York corporation, has its principal place of business at 19 Broad Street, Kinderhook, New York, 12106. Berkshire is a telephone corporation that operates three exchanges (Kinderhook, Niverville and Stuyvesant Falls, New York) providing local exchange service in the northwest corner of Columbia County, New York, comprising approximately 50 square miles. Berkshire's service territory is predominately rural in nature. As of December 31, 2003, Berkshire served 6,703 total access lines (approximately 80%, or 5,381 access lines served residential customers).

Berkshire currently has four subsidiary companies: Berkshire Cable Corporation, Berkshire Cellular, Inc., Berkshire New York Access, Inc., and Berkshire Net, Inc. These entities will remain subsidiaries of Berkshire after the merger, but since Berkshire will be owned ultimately by FairPoint, all the subsidiaries come under FairPoint's control.

FairPoint, a Delaware corporation, has its principal office at 521 E. Morehead Street, Suite 250, Charlotte, North Carolina 28202. FairPoint, formerly known as MJD Communications, Inc., provides telecommunications services through 26 rural local exchange carriers in 17 states, with 272,691 access line equivalents (including voice access lines (242,271) and digital subscriber lines (30,420) ("DSL")) in service as of September 30, 2004. FairPoint, through its subsidiary MJD Ventures, Inc. (MJD), owns and operates two other New York local exchange companies: Chautauqua and Erie Telephone Corporation and Taconic Telephone Corporation.

FairPoint Berkshire Corporation (Acquisition Sub), a New York corporation, has its offices at One Taconic Place, Chatham, New York 12037. The Acquisition Sub was formed as a wholly owned subsidiary of MJD for the sole purpose of merging with Berkshire under the terms of a merger agreement. It neither has material assets nor liabilities. The Acquisition Sub currently does not provide telecommunication services in New York, nor does it own, operate, manage, or lease any telecommunication systems in New York.

Under the terms of the merger agreement, Berkshire would merge with and into the Acquisition Sub, with the surviving company being called Berkshire Telephone Corporation. Under the current corporate structure, Berkshire would be a wholly-owned subsidiary of MJD, which, in turn, is a wholly-owned subsidiary of FairPoint. The transfer and ownership of Berkshire's stock is governed by Section 100 of the Public Service Law. In addition, since the proposed transaction involves the merger of a temporary acquisition corporation, approval of Section 108 of the Public Service Law is required. The transfer of Berkshire Cable

Corporation requires Commission authorization under Section 222 of the Public Service Law.

BACKGROUND

Berkshire is a financially solid small telephone company with 75% equity and 8.4% reported earnings for the year ending 2003. Over the years Berkshire's primary source of capital for investment in its plant has been from depreciation, retained earnings, and the use of bank debt.

Although FairPoint's financial condition has improved significantly as a result of recent financial restructuring, its senior debt is currently rated B+ by Standard and Poor's Corporation with a negative outlook and B1 by Moody's Investor Service with a stable outlook. The company's non-investment grade bond rating indicates that the rating agencies have concerns about the company's ability to make debt interest and principal payments in the future.

FairPoint's relatively weak financial position is attributable to a combination of things, but primarily two factors. First, FairPoint experienced significant operating losses and write-offs related to certain competitive local exchange (CLEC) ventures that it no longer owns. As a result of these losses, FairPoint has not had a positive common equity balance for some time. Second, FairPoint's use of debt leverage to acquire small regulated rural telephone utilities at prices above book value has produced goodwill and debt balances that exceed net utility plant. As of September 30, 2004, FairPoint reported a total stockholder's deficit of $162.1 million. For the same period, FairPoint reported $910.9 million of long term debt and only $830.9 million of assets, including $468.8 million of goodwill. Exacerbating this situation was the fact that FairPoint faced debt and preferred stock maturities through 2011 that exceeded $1,140 million.

In February 2005 FairPoint took significant steps to completely restructure its capitalization. On February 4, 2005, FairPoint completed an initial public offering (IPO) of 25 million shares of common stock, raising $462.5 million. FairPoint indicates that it expects to pay annual dividends of approximately $1.60 per share, an 8.6% yield. Concurrent with the IPO, FairPoint entered into a new secured credit facility worth approximately $590.0 million. The proceeds from the IPO and the new credit facility will be used to totally retire FairPoint's outstanding high cost debt and preferred stock. As a result, FairPoint's new capital structure will have a positive equity ratio of 23%. Combined, this transaction has eliminated $743 million of maturities over the next five years.

DISCUSSION

Public Interest

In approving a proposed telephone company acquisition under Section 100 of the Public Service Law, we must find that the transaction is in the public interest. To evaluate the instant transaction we address three primary areas of concern: (1) that a high level of local service quality be maintained at just and reasonable rates; (2) that competition be furthered; and, (3) that the financial integrity of the New York incumbent local exchange company (ILEC) be protected. Given the conditions we are requiring to ensure that these interests are maintained, we find that the transaction is in the public interest.

In the current telecommunications market, with its increasing financial and technical requirements, FairPoint's size and access to capital markets will better enable Berkshire to meet customers' demands. FairPoint will be able to leverage its size, expertise, and experience to provide Berkshire's customers access to the advanced services they demand. Through its economies of scale, and with the support of its affiliated companies, FairPoint can provide Berkshire's customers these services more efficiently than Berkshire could provide on its own. Moreover, FairPoint's access to the public equity and debt markets gives it financial flexibility which far exceeds that of any small independent telephone utility.

We have consistently required that purchasers of regulated utilities have investment grade bond ratings in order to assure ready access to the capital markets at reasonable terms.[1] FairPoint's non-investment grade bond rating and relatively weak overall financial condition do not satisfy this fundamental threshold. Given the company's bond rating and financial profile, FairPoint could face significant financial pressures at some point in the future. Nevertheless, considering the conditions on which our approval is based, we conclude that the transfer of ownership in Berkshire to a larger, more financially flexible entity is in the public interest.

Service Quality

FairPoint has demonstrated that it has the ability and experience to operate a small rural telephone company like Berkshire. In fact, FairPoint has successfully operated two ILECs in New York State since 1997[2]. Both Chautauqua and Erie Telephone Corporation (C&E) and Taconic Telephone Corporation (Taconic) have received commendations for exemplary service in the past; C&E from 1997 through 2001, and Taconic in each of the last 12 years.

Berkshire's service quality has been excellent, receiving commendations for the past 10 years. To ensure that the high level of service continues after the acquisition, as well as to ensure that the ratepayers are not subject to unreasonable increases in rates as a result of the acquisition, certain conditions will be attached to an approval of this transaction. These conditions, discussed below, are similar to those we have required in other proceedings.

---

[1] The one major exception to this approach was the 1999 acquisition of Frontier Corporation by Global Crossing.

[2] In an Order in Case 96-C-1069, issued June 27, 1997 we approved the acquisition of Chautauqua and Erie Telephone by MJD Communications Inc. - a predecessor of FairPoint. Likewise, by Order in Case 97-C-1618, issued February 25, 1998, we approved the acquisition of Taconic Telephone by MJD Communications.

To ensure the continuation of the high level of service currently provided by Berkshire, the following customer rebate system will be a condition of this approval. For the five-year period following the effective date of the acquisition, in instances where Berkshire has two or more monthly occurrences of Customer Trouble Report Rate (CTRR) of more than 3.3 reports per 100 access lines in the 12-month period ending each succeeding year, a customer rebate equal to 25% of the monthly service charge shall apply for all customers in exchanges in months with CTRR performance greater than 3.3 reports per 100 access lines. When a rebate is applicable, an additional 25% rebate of the monthly service charge shall apply (i.e., a total rebate of 50% of the monthly service charge) when CTRR performance exceeds 5.5 reports per 100 lines for a given month. Berkshire may seek relief from service quality performance standards (and the rebates) if it can demonstrate that there has been an extraordinary event or circumstance beyond the company's control that has so substantial an impact on service quality performance that the event or circumstance alone justifies relief from these targets and rebates.

Also, to ensure the operational integrity of Berkshire's telephone network, dividends on common stock must be suspended if service quality at Berkshire deteriorates, such that its CTRR level, based on "measurement opportunities"[3] at Berkshire, is less than 90% of measurements at or below 5.5 reports per 100 access lines for three consecutive months. This level shall be measured using a rolling average of the previous 12 months. The dividend suspension ends upon a return to a rating of 90% or better of measurements at or below 5.5 reports per 100 access lines for three consecutive months, on a 12-month rolling average.

We also seek to ensure that our conditions imposed on this transaction do not result in actions which could jeopardize the service quality of C&E and Taconic. Accordingly, to protect the customers of C&E and Taconic and to further the public

[3] Measurement opportunities are measurements for each month at each central office.

interest, we will extend the suspension of dividends on common stock, as described above, to C&E and Taconic.

Rate Filings

Significant cost savings will be possible as a result of the merger. In order for the public interest to be served by the acquisition, these savings will be flowed to Berkshire's customers through three mechanisms: elimination of touchtone service charges; a requirement that Berkshire not increase rates for five years; and an excess earnings sharing provision while rates are frozen.

Berkshire currently charges its customers for touchtone service. Within 90 days of the effective date of the merger, Berkshire will eliminate its touchtone service charge.

Berkshire will be prohibited from filing for any rate increases that will become effective within five years from the effective date of the merger. Berkshire will be permitted to petition for rate increases, and must file rate decreases, for net exogenous changes having a material effect on earnings. Examples of exogenous changes for which rate requests may (or must) be entertained are major changes in accounting or financial standards, taxes or regulatory requirements. Critical factors in deciding whether a particular change qualifies as exogenous are the potential impact on earnings, and the treatment the Commission affords the effect of similar changes on other local exchange companies.

In order to further protect customers, Berkshire will be required to share any earnings in excess of 12% return on equity; 50/50 between the customers and shareholders. The customers' share will be deferred for disposition at a later time.

Acquisition Costs

It is important to insulate Berkshire from the cost of this transaction. Any excess of purchase price over book value will not be charged to ratepayers or included on the books and records of Berkshire. Similarly, any costs related to the change in control (e.g., stock transfer taxes) will not be recovered from Berkshire ratepayers, nor will they be recovered from a larger group of ratepayers through charges to the access pool.

The financing for the acquisition will not be secured by Berkshire's assets, nor shall FairPoint or its affiliates be allowed to pledge Berkshire's assets. In addition, Berkshire will not provide any financial guarantees to facilitate this, or any other acquisition.

Cable Construction and Competitive Services

As discussed above, Berkshire Cable Corporation will remain a subsidiary of Berkshire after the merger. In order to assure that customers of Berkshire cable system continue to receive access to advanced services, we will require that FairPoint/Berkshire complete an upgrade of the Berkshire cable system within twelve months of the effective date of the merger. The technical configuration of the resulting cable system shall be deployed at a 750 MHz level and employ the use of two-way communications for advanced services.

In order to support and promote competition within its New York service territories, within six months of closing the transaction, FairPoint will provide a single point of contact for CLEC inquiries regarding its New York ILECs. The company shall develop uniform processes and guidelines for CLECs across its three New York ILECs within 180 days from the date any of the three companies receives a bona fide request for interconnection services or network elements.

Dividend Restrictions

It is possible that any further weakening of FairPoint's financial condition could impact Berkshire's ability to complete future construction programs. To assure that Berkshire retains funding sufficient to complete necessary capital expenditures, maintain an operationally sound network and continue its high quality service, we will limit the amount of annual dividends Berkshire can distribute to FairPoint. The cumulative dividend Berkshire can declare in any year may not exceed the difference between that year's earnings (income or loss) before interest, taxes, depreciation, and amortization (EBITDA) and 100% of its depreciation expense. This restriction will require that an amount of cash, equal to 100% of that year's depreciation expense, will be available for Berkshire's capital expenditures.

In any year that the amount of depreciation expense retained by Berkshire is in excess of its capital expenditures, Berkshire shall account for such funds in a subaccount of Account 1410, Other Noncurrent Assets. The cumulative annual depreciation expense retained at Berkshire will assure adequate funds are available to complete future capital expenditures, as required. In years when the total depreciation expense does not cover capital expenditures, Berkshire may use the accumulated depreciation funds to pay for this incremental amount of capital expenditures, provided that Berkshire notifies the Commission of such a need no later than 45-days prior to the use of the funds.

It is not our intent to permanently restrict the payment of dividends between Berkshire and FairPoint. Therefore, we will suspend this dividend restriction to the extent Berkshire is able to maintain an average daily balance in the depreciation fund subaccount of Account 1410 for a calendar year of 1.0 times its average annual capital expenditures for the last five calendar years. The dividend restriction will become operative whenever this criterion is not satisfied. Further, we will suspend the restriction if FairPoint obtains an investment grade bond rating.

Capitalization

To ensure that enough common equity remains at Berkshire, and thereby assure the ability of the company to obtain future financing at reasonable terms, Berkshire must maintain a consolidated common equity ratio of at least 40% of total capitalization before any declaration of a dividend on common stock. Total capitalization includes: long term debt (including current sinking fund requirements), short term debt (including capital leases), minority interest, and stockholders' equity. Further, no dividend payment will be permitted which would cause Berkshire's consolidated common equity ratio to fall below 40%.

To further enhance the financial strength of Berkshire, FairPoint will retire all of Berkshire's outstanding debt that does not have any associated prepayment penalties, within 60 days of consummation of the merger.

Affiliated Transactions

Except to allow for the one-month lag discussed below, Berkshire and its subsidiaries shall be prohibited from making any loans or financial advances to FairPoint. Currently, FairPoint's cash management system involves the daily sweep of cash from each subsidiary, including its New York ILECs, to FairPoint (recorded as an accounts payable at FairPoint). FairPoint pays all of the bills for the subsidiaries (recorded as an accounts receivable at FairPoint). On a monthly basis, to the extent that accounts payable to the subsidiary exceeds the accounts receivable from the subsidiary, that subsidiary records a dividend to FairPoint. If the accounts receivable exceed accounts payable, FairPoint is deemed to have made an equity infusion into the subsidiary. Thus, there is a lag between the daily cash sweep/bill payment and the recorded monthly dividend, which is a loan or advance to FairPoint under Section 106 of the Public Service Law. Therefore, within the context of this lag under the cash management system, Berkshire must have our approval under Section 106.

The State Administrative Procedure Act requires a notice and comment period prior to Commission action pursuant to Section 106. Accordingly, we will entertain comments after which we will determine whether approval should be granted. Until such a determination, Berkshire may not make any net cash advances to FairPoint.

In addition, the proceeds of any securities with maturities less than twelve months issued by Berkshire may not be advanced to FairPoint or any other affiliate.

FairPoint and its affiliates intend to have transactions with Berkshire and/or its affiliates. Therefore, the Department must have unrestricted access to the books and records of FairPoint, Berkshire and their affiliates with respect to transactions by and among affiliates and between affiliates and third parties. This access must be to all books and records, thereby allowing the Department to make comparisons of cost allocations and internal pricing. Further, the books and records of Berkshire must not be removed from New York State unless permission to do so is granted by the Commission. Information deemed proprietary shall be afforded appropriate protection.

Finally, in the event of future rate proceedings, the reasonableness and cost effectiveness of service contract charges between Berkshire and FairPoint must be demonstrated. Costs to be supported in future rate cases include (but are not limited to) employment contracts, board of director charges, pension cost, debt issuances undertaken and affiliated charges between Berkshire and any of its affiliated corporations.

Other Miscellaneous Conditions

As part of our review of the proposed acquisition we sought to ensure Berkshire's compliance with the Commission's Statement of Policy on Pension and Postretirement Benefits Other than Pensions (OPEBs), issued in 1993.[4] Our initial review indicated that the company may not be recording deferrals or maintaining an internal reserve as required by the Policy Statement. This situation could have long-term accounting implications on the company's balance sheet and future revenue requirement calculations. Thus, we will require Berkshire to file a report with the Director of the Office of Accounting and Finance detailing its accounting for pensions and OPEBs and demonstrating compliance with the Policy Statement, within 90 days of this Order, or as the Secretary may prescribe. Such

---

[4] Case 91-M-0890, Pension and OPEB Proceeding, Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions (issued September 7, 1993).

report shall cover the time period from January 1, 1993 to the present.

Berkshire will continue to record a royalty pursuant to the Order in Case 95-C-0505, issued January 30, 1996. Berkshire will be permitted to petition for relief of this provision by providing a detailed rebuttal to the royalty presumption.

Cable Subsidiary

Under PSL Section 222, a transfer of the ultimate ownership of a cable television franchise, such as Berkshire's subsidiary, Berkshire Cable Corporation, requires prior Commission approval. Based on a review of the cable aspects of the instant transaction, and subject to certain conditions discussed above, we will approve the transfer of ownership of Berkshire Cable Corporation to FairPoint conditioned on the parties acquiring any municipal approvals required under the franchise or by law.

CONCLUSION

Inter-modal telecommunications competition is diminishing the monopoly position of ILECs and new technologies are driving down the cost of bringing competitive options to rural areas. Cable voice-enabled networks, wireless substitution, and potentially broadband over power lines and WiMax are bringing competition and new advanced services into areas traditionally served by the rural ILECs. While such impacts have not yet eliminated the dominance of ILECs in terms of market share, the potential exists for such changes. Considering the challenges facing the owners, managers and customers of small independent phone companies now and in the future, we believe that the acquisition of Berkshire by a larger, more financially flexible entity is in the public interest. FairPoint's size and access to capital markets will better enable Berkshire to meet customer's demands. FairPoint will be able to leverage its size, expertise, and experience with rural telephone companies to provide Berkshire's customers access to the advanced services they demand at a lower cost than Berkshire could provide on its own.

Thus, subject to the conditions discussed above, we find that the proposed acquisition of Berkshire by FairPoint meets the public interest standard of Section 100 of the Public Service Law. Therefore, the joint request of Berkshire and FairPoint for the acquisition, through an affiliate, of all the outstanding shares of common stock of Berkshire will be approved, subject to the conditions contained in this Order.

The Commission orders:

1. The acquisition of Berkshire Telephone Company (Berkshire) by MJD Ventures, Inc., a wholly owned subsidiary of FairPoint Communications, Inc., as described in this Order, is approved, pursuant to Sections 100, 108, and 222 of the Public Service Law, and subject to the conditions set forth in this Order. Except where contrary to the provision of this Order, the acquisition shall be as prescribed in the Agreement and Plan of Merger dated June 18, 2003.

2. The filing of a Certificate of Merger effectuating the transaction approved herein is approved.

3. The Secretary of the Commission is directed to endorse this consent and approval upon the certificate of merger.

4. Within ten days after the filing with the Secretary of State of the certificate approved by this Order, the petitioner shall submit to this Commission verified proof of such filing.

5. Within 90 days of the closing, Berkshire shall submit to the Director of the Office of Accounting and Finance for approval, all journal entries necessary to effectuate the merger as well as journal entries required to comply with the requirements contained herein.

6. For the five-year period after the date of the acquisition, in instances where Berkshire has two or more monthly occurrences of Customer Trouble Report Rate (CTRR) of more than 3.3 reports per 100 access lines in the 12-month period ending each succeeding year, a customer rebate equal to 25% of the monthly service charge shall apply for all customers in exchanges in months with CTRR performance greater than 3.3 reports per 100 access lines. When a rebate is applicable, an additional 25%

rebate of the monthly service charge shall apply (i.e., a total rebate of 50% of the monthly service charge) when CTRR performance exceeds 5.5 reports per 100 lines for a given month. Berkshire may seek relief from the Commission from service quality performance standards (and the rebates) if it can demonstrate that there has been an extraordinary event or circumstance beyond the company's control that has so substantial an impact on service quality performance that the event or circumstance alone justifies relief from these targets and rebates.

7. Dividend payments by Berkshire Telephone Corporation, Chautauqua and Erie Telephone Corporation, and/or Taconic Telephone Corporation shall be individually suspended in the event the company's service quality deteriorates such that the CTRR level based on measurement opportunities at that ILEC is less than 90% of measurements at or below 5.5 reports per 100 access lines for three consecutive months. This level shall be measured using a rolling average of the previous 12 months. The dividend suspension ends upon a return to a rating of 90% or better of measurements at or below 5.5 reports per 100 access lines for three consecutive months, on a 12-month rolling average. The ILECs may seek relief from the Commission from service quality performance standards (and the dividend restrictions) if they can demonstrate that there has been an extraordinary event or circumstance beyond the companies' control that has so substantial an impact on service quality performance that the event or circumstance alone justifies relief from these targets and dividend restrictions.

8. The cumulative dividend declared in a year by Berkshire may not exceed the difference between that year's earnings (income or loss) before interest, taxes, depreciation, and amortization (EBITDA) and 100% of depreciation expense.

9. In any year, subject to the provisions of clause 10 below, the amount of depreciation expense retained by Berkshire, in excess of capital expenditures will be held in a subaccount of Account 1410, Other Noncurrent Assets. The cumulative annual depreciation expense retained at Berkshire shall be used to assure adequate funds are available to complete all necessary

capital expenditures. In years when the total depreciation expense does not cover capital expenditures, Berkshire may use the cumulative depreciation funds to pay for this incremental amount of capital expenditures, provided that Berkshire notifies the Commission 45-days prior to the use of funds. Berkshire shall be required to retain depreciation funds on a monthly basis equal to one twelfth the difference between 100% of total depreciation expense and 100% of capital expenditures for the previous 12 months. At the end of the year, the total amount in the fund shall be reconciled to the actual difference between 100% of that year's depreciation and 100% of capital expenditures.

10. The dividend provisions established in clauses 8 and 9 are suspended for Berkshire to the extent Berkshire is able to maintain an average daily balance in the depreciation fund subaccount of Account 1410 for a calendar year of 1.0 times its average annual capital expenditures for the last 5 calendar years. The dividend provisions in clauses 8 and 9 become operative whenever this criterion is not satisfied.

11. Clauses 8, 9, and 10 will be suspended if the ultimate parent of Berkshire obtains an investment grade bond rating.

12. Berkshire shall be prohibited from filing for any rate increases that will become effective within five years from the effective date of the merger. Berkshire may petition for rate increases, and must file rate decreases, for net exogenous changes having a material effect on earnings, consistent with this Order.

13. Any Berkshire earnings in excess of 12% return on equity will be shared 50/50 between shareholders and customers. The customers' share will be deferred for disposition by the Commission at a later date.

14. Any costs related to the change in control shall not be recovered from ratepayers.

15. The excess of purchase price over book value shall not be charged to ratepayers or included on the books and records of Berkshire.

16. The acquisition shall not be secured by Berkshire's assets, nor shall FairPoint or its affiliates be allowed to pledge Berkshire's assets. Berkshire shall not provide any financial guarantees to facilitate this, or any other acquisition.

17. Berkshire must maintain a consolidated common equity ratio of at least 40% of total capitalization before any declaration of a dividend on common stock. Total capitalization includes: long term debt (including current sinking fund requirements), short term debt (including capital leases), minority interest, and stockholder's equity. No dividend payment shall be permitted which will cause Berkshire's consolidated common equity ratio to fall below 40%.

18. FairPoint shall retire all of Berkshire's outstanding debt that does not have any associated prepayment penalties, within 60 days of consummation of the merger.

19. The Department of Public Service shall have unrestricted access to all books and records with respect to transactions by and among affiliates and between affiliates and third parties. The books and records may not be removed from New York State without prior Commission approval. The company shall provide access to the records and all necessary personnel in New York State, or reimburse for expenses incurred in such an examination.

20. Within twelve months of the effective date of the merger, FairPoint/Berkshire shall complete its upgrade of the Berkshire cable system. The technical configuration of the resulting cable system shall be deployed at a 750 MHz level and employ the use of two-way communications for advanced services.

21. Within 90 days of the effective date of the merger, Berkshire shall eliminate its touchtone service charge.

22. Within 90 days of this Order, or as the Secretary may prescribe, Berkshire shall submit a report with the Director of the Office of Accounting and Finance detailing its accounting for pensions and OPEBs and demonstrating compliance with the Commission's Policy Statement. Such report shall cover the time period from January 1, 1993 to the present.

23. Within six months of closing the transaction, FairPoint shall provide a single point of contact for CLEC inquiries regarding its New York ILECs. The company shall develop uniform processes and guidelines for CLECs across its three New York ILECs within 180 days from the date the company receives a bona fide request for interconnection services or network elements.

24. Berkshire shall continue to record a royalty pursuant to the Order in Case 95-C-0505, issued January 30, 1996. Berkshire will be permitted to petition for relief from this provision by providing a detailed rebuttal to the royalty presumption.

26. This Order shall be without force and effect until there has been filed with the Commission an unconditional written acceptance by the petitioners agreeing to obey all the terms and conditions of this Order, as well as by Chautauqua and Erie Telephone Corporation and Taconic Telephone Corporation with regard to their dividend restrictions. If such acceptance is not filed within a period of 30 days from the date of this Order, this Order may be revoked by the Commission without further notice.

27. The parties to this transaction shall notify the Commission within 30 days of its completion that this approved transaction has taken place. If the authority granted by this Order is not exercised within one year of the effective date of this Order, the Order may be revoked by the Commission without further notice.

28. This proceeding is continued pending compliance with ordering clauses 4, 5, 22, 26, and 27, following which it should be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary