

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**JOINT PETITION BY VERIZON NEW ENGLAND, INC.)
ET AL. AND FAIRPOINT COMMUNICATIONS, INC)
TRANSFER OF NEW HAMPSHIRE ASSETS OF) DOCKET NO. DT 07-011
VERIZON NEW ENGLAND)**

**PRE-FILED TESTIMONY OF
BENJAMIN P. THAYER
PRESIDENT
OF
FREEDOM RING COMMUNICATIONS, LLC D/B/A
BAYRING COMMUNICATIONS**

AUGUST 1, 2007

1 **Q. Please state your full name, business address, title and professional background.**

2 A. My name is Benjamin P. Thayer. My business address is 359 Corporate Drive,
3 Portsmouth, New Hampshire 03801. I have been employed by Freedom Ring Communications,
4 LLC d/b/a/ BayRing Communications (“BayRing” or the “Company”) since 1996. I am currently
5 the President of BayRing. In this capacity, I am responsible for complete oversight of all
6 operations at the Company.

7

8 **Q. Please describe BayRing’s operations in New Hampshire.**

9 A. Following the passage of the Telecommunications Act, BayRing became the first
10 competitive local exchange carrier (“CLEC”) authorized by the New Hampshire Public Utility
11 Commission. BayRing would not exist without the market opening provisions of the Act and the
12 oversight provided by this Commission.

13 BayRing provides a vast array of voice and broadband services to customers throughout
14 New Hampshire using its own facilities in combination with leased unbundled network
15 elements from and interconnection arrangements with Verizon. In addition to relying on
16 Verizon for unbundled network elements and interconnection, the Company is dependent on
17 Verizon’s Operational Support Systems (“OSSs”) and wholesale department in connection with
18 the ordering, preordering, provisioning, maintenance and repair, and billing of the wholesale
19 services that BayRing uses to serve its New Hampshire customers.

20 BayRing’s clients include small and medium size businesses and enterprise customers. It
21 is important to note that BayRing serves a number of hospitals, medical facilities, doctors’
22 offices, police departments, fire departments, ambulances, schools and municipalities that

1 depend on BayRing for high quality service and which, because of the critical nature of services
2 they provide, simply cannot afford any delay or disruption in their telephone service.

3 **Q. What is the purpose of your testimony?**

4 A. The purpose of my testimony is to make the Commission aware of the concerns
5 BayRing has regarding the impact of the proposed Fairpoint-Verizon transaction on BayRing
6 and its New Hampshire clients unless the Commission imposes certain crucial conditions on
7 FairPoint. These conditions are set forth in the testimony of Gary Ball.

8 **Q. Please describe the concerns you have regarding the proposed transaction between**
9 **Verizon and Fairpoint.**

10 A. There is already a significant amount of regulatory uncertainty in New Hampshire as a
11 result of 1) Verizon's unwillingness to abide by the conditions the Commission established in
12 connection with its favorable recommendation on Verizon's 271 application and 2) Verizon's
13 pending forbearance application at the FCC, which if granted would relieve Verizon of the
14 obligation to continue to offer section 251 unbundled network elements to BayRing and other
15 CLECs that provide a competitive alternative to Verizon in Strafford and Rockingham counties.

16 As the testimony of Gary Ball makes clear, the proposed transaction would greatly add
17 to the risks and uncertainties faced by competitors such as BayRing. Mr. Ball testifies that
18 FairPoint has neither the financial resources nor the experience Verizon has in providing
19 wholesale service to CLECs. FairPoint's own recent statements in Amendment 3 of its S-4 filing
20 with the Securities and Exchange Commission seem to acknowledge these risks as follows:

21 "All of the risks associated with the integration process could be exacerbated by
22 the fact that FairPoint may not have a sufficient number of employees to
23 integrate FairPoint's and Spinco's businesses or to operate the combined

1 company's business. Furthermore, Spinco offers services that Fairpoint has no
2 experience providing, the most significant of which are competitive local
3 exchange carrier wholesale services. FairPoint's failure or inability to hire or
4 retain employees with the requisite skills and knowledge to run the combined
5 business may have a material adverse effect on Fairpoint's business. The
6 inability of FairPoint's management to manage the integration process
7 effectively, or any significant interruption of business activities as a result of the
8 integration process, could have a material adverse effect on the combined
9 company's business, financial condition and results of operations."
10

11 Amendment 3 to FairPoint's S-4, Registration Statement Under the Securities Act of 1933, June
12 29, 2007, page 25. I agree with Mr. Ball's and FairPoint's own assessment regarding these risks.
13 I am highly concerned that if the integration does not work out as planned, especially in
14 connection with "competitive local exchange carrier wholesale services," the transfer from
15 Verizon to FairPoint will result in increased costs and decreased service quality to BayRing, to
16 the detriment of its end user customers, many of which provide critical emergency services and
17 support to the residents of New Hampshire.

18 The proposed transaction does not include Verizon's wholesale organization or its OSS
19 (other than during the transition). As a result, FairPoint will have to create from scratch its
20 own wholesale department and will have to develop and make available to CLECs such as
21 BayRing entirely new and untried wholesale systems. FairPoint's own statements in its June
22 29, 2007 Amendment to its S-4 filing with the SEC acknowledge the "significant systems
23 integration risks" associated with the transaction. Specifically, at page 26 of its June 29, 2007
24 Amendment, FairPoint notes that "[i]n order to operate as the combined company, Fairpoint
25 will be required to identify, acquire or develop, test, implement, maintain and manage systems
26 and processes which provide the functionality currently performed for the Northern New

1 England business by over 600 systems of Verizon. “ Further, FairPoint admits that the “inability
2 or failure to implement successfully their plans and procedures or the insufficiency of those
3 plans or procedures could result in failure of or delays in the merger integration and could
4 adversely impact the combined company’s business, results of operations and financial
5 condition. This could require the combined company to acquire and deploy additional systems,
6 extend the transition services agreement and pay increasing monthly fees under the transition
7 services agreement.”

8 I remain extremely concerned, that lacking significant oversight by this Commission, as
9 described in the testimony of Gary Ball, Fairpoint may opt to implement wholesale related
10 systems (OSS) that are substandard in relation to those provided by Verizon today, the result
11 being a significant degradation of service to companies such as BayRing and its New Hampshire
12 clients.

13 BayRing uses Verizon’s GUI and other OSS interfaces for the ordering, preordering,
14 provisioning, maintenance and repair of the unbundled network elements we lease from
15 Verizon that enable us to provision various services to our New Hampshire telecom end users..
16 BayRing has expended significant resources to learn these complicated systems and it is likely
17 that it will take substantial time and resources to learn new FairPoint systems.

18 To date, FairPoint has not agreed to fund an independent third party auditor and has
19 not agreed to Commission oversight and approval in connection with the testing and cutover
20 process to insure that its systems are at least as good as Verizon’s. Instead, FairPoint’s position
21 appears to be that it alone has the authority to decide when to cutover from Verizon’s systems
22 to its own. In response to CLEC FDR III-1(g), Fairpoint witness Nixon states that “FairPoint

1 knows its systems and is best able to determine readiness for cutover.” Incredibly, FairPoint
2 does not even need to self-certify that its systems are at least as good as Verizon’s prior to
3 cutover. See, Faipoint’s response to CLEC FDR III-2. And, if in the course of OSS testing BayRing
4 were to experience problems with FairPoint’s systems and notified FairPoint it was not ready
5 for the cutover, FairPoint claims it would still have the right to cutover to its systems. See,
6 FairPoint’s response to CLEC FDR III-3. Given that a premature cutover could have widespread
7 effects on FairPoint’s own customers as well as the customers of CLECs such as BayRing, it
8 would seem prudent to have an independent auditor assist the Commission to oversee the
9 process to insure that FairPoint’s systems are at least as good as Verizon’s systems prior to any
10 cutover.

11 With respect to post-cutover issues, FairPoint has not even agreed that the PAP applies
12 to the so-called “dark period” it referenced for the first time at the Technical Conference. In
13 response to CLEC FDR III-10, FairPoint witness Lippold states that “FairPoint has not yet
14 determined whether the PAP will apply during the Transition Period.” It is important to note
15 that the PAP will not adequately protect CLECs if there are widespread system failures following
16 the cutover since many of the metrics in it are based on parity. But it does offer some
17 protection. This tends to highlight the importance of safeguards to ensure that FairPoint’s
18 systems are at least as good as Verizon’s before, not after, the cutover. It also emphasizes the
19 importance of a fund to compensate CLECs for costs they incur and for problems that arise in
20 the post cutover period.

21 On the subject of the PAP in general, I support the creation of a more streamlined and
22 understandable PAP that is based on FairPoint’s systems in New Hampshire. FairPoint asserts

1 that it is not a BOC and not subject to section 271 of the Act but that it will assume Verizon's
2 PAP. BayRing is extremely troubled by these assertions since the PAP and the 271 checklist
3 items are section 271 obligations that currently apply to Verizon today. FairPoint has expressed
4 a willingness to make improvements to the Verizon PAP but it has not expressly agreed to
5 submit to Commission jurisdiction in connection with the development and enforcement of a
6 streamlined PAP that works for New Hampshire.

7 In his pre-filed testimony, Mr. Ball points out that "[c]ompetitors could very well end up
8 with the worst of both worlds, inheriting Verizon's hostile regulatory stance combined with
9 FairPoint's inexperience and limitations as a wholesale provider." I agree with Mr. Ball's
10 statement that Fairpoint's current offer to simply adopt Verizon's regulatory approach is
11 insufficient for competitors. Alternatively, Fairpoint could reduce some of the overall
12 operational and regulatory risks regarding this transaction if it would agree to the
13 recommendations in Mr. Ball's testimony, including but not limited to the inclusion of section
14 251 and 271 elements in Verizon's Tariff 84 as set forth in Commission orders and agreeing that
15 it will not give effect to any forbearance grant for wire centers in Rockingham and Strafford
16 counties in connection with Verizon's pending forbearance petition at the FCC . Unfortunately,
17 FairPoint has not agreed to even these conditions. For example, in its response to CLEC FDR III-
18 1 a, FairPoint witness Nixon states that "FairPoint will abide by all applicable federal and state
19 legal obligations relating to wholesale service." Yet, in his response to paragraph c of the same
20 data request, which asked whether FairPoint would agree to comply with the New Hampshire
21 PUC's orders and secretarial letters regarding Verizon's obligations to include dark fiber loops
22 and transport and line sharing in Tariff 84 regardless of Verizon's pending appeal, he states in

1 pertinent part: “FairPoint is not a BOC and therefore should not be subject to a state order
2 imposing requirements on Verizon pursuant to Section 271 of the Act. “

3 **Q. Can you give a specific example where Fairpoint’s lack of wholesale experience or lack
4 of untried systems could disrupt BayRing’s operations?**

5 Yes. As stated earlier, if the transaction is approved, we will have to rely on FairPoint’s
6 wholesale department and its systems for all of our preordering, ordering, provisioning,
7 maintenance and repair, and billing in connection with the unbundled network elements and
8 interconnection services we use. While, BayRing has myriad concerns relative to FairPoint’s
9 ability to construct an adequate OSS, let’s just review one aspect of the provisioning function
10 as an example of the challenges facing FairPoint and the potential impact on CLECs such as
11 BayRing.

12 BayRing currently relies on Verizon to perform hot cuts whenever BayRing orders a 2
13 wire analogue loop to serve a BayRing customer. If the hot cut is not performed correctly, it
14 will result in a loss of service for the end user. It is important to note that when Verizon first
15 began performing hot cuts, in the late 1990s, customers converting to BayRing frequently lost
16 dial tone as a result of Verizon’s failure to properly manage the hot cut. To my knowledge,
17 FairPoint has never performed a hot cut and its management team has certainly never had to
18 manage the performance of hot cuts at commercial volumes. Today BayRing can monitor and
19 track the status of hot cuts using Verizon’s WPTS hot cut process. In responses to discovery,
20 Verizon says the WPTS process will be available during the transition period. Fairpoint states it
21 will address this at a later date. FairPoint provides the same response when asked if WPTS will
22 be available after the cutover. BayRing is concerned that Fairpoint apparently has not focused

1 on the systems that will apply in connection with the seamless transfer of small business
2 customers from FairPoint to CLECs. In any event, whatever system Fairpoint develops must be
3 at least as good as Verizon's. And whatever system Fairpoint develops will require BayRing to
4 devote resources to learning how it works.

5

6 **Q. Based on BayRing's experience as the longest operational CLEC in New Hampshire, do**
7 **you have any other concerns regarding the proposed transaction that you would like to make**
8 **the Commission aware of.**

9

10 A. Yes. As a result of the Telecommunications act of 1996 and in concert with the
11 regulatory guidance of this Commission, New Hampshire residents have begun to enjoy the
12 advantages of competition in the local telecom market. Hence, it is imperative that approval of
13 the proposed merger contain sufficient and enforceable conditions to ensure that the New
14 Hampshire competitive telecom market does not suffer from this transaction. Lacking the
15 imposition upon FairPoint of the conditions described in Gary Ball's testimony, it is BayRing's
16 fear that we will find ourselves back in the convoluted early years of local telecom competition
17 when New Hampshire consumers often went without service as a result of Verizon's inability to
18 successfully transition services to CLECs or affect timely repair of outages including those of
19 critical emergency services providers such as hospitals.

20

21 **Q. Does this conclude your testimony?**

22

1 A. Yes.

2

3