

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

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| <b>VERIZON NEW ENGLAND INC., BELL</b>    | <b>:</b> |                  |
| <b>ATLANTIC COMMUNICATIONS, INC.,</b>    | <b>:</b> |                  |
| <b>NYNEX LONG DISTANCE COMPANY</b>       | <b>:</b> |                  |
| <b>AND VERIZON SELECT SERVICES, INC.</b> | <b>:</b> | <b>DT 07-011</b> |
| <b>TRANSFER OF ASSETS TO FAIRPOINT</b>   | <b>:</b> |                  |
| <b>COMMUNICATIONS, INC.</b>              | <b>:</b> |                  |

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**BRIEF OF UNION TELEPHONE COMPANY**

Union Telephone Company d/b/a Union Communications (“Union”) is an intervenor in this proceeding as a rural local exchange carrier (“RLEC”) and an Eligible Telecommunications Carrier (ETC).<sup>1</sup> Unlike other RLECs in New Hampshire, Union does not have a settlement agreement with FairPoint Communications, Inc. (FairPoint) regarding this transaction and the future of services to Union from FairPoint -- services that would replace those currently received from Verizon New England, Inc. (Verizon). These services are important to Union in order to serve its territory. The lack of such a settlement agreement, as well as the balance of the record in this proceeding, indicates that there are not yet clear assurances in place showing that, if this petition is approved, these services will continue under reasonable rates, terms and conditions in the forthcoming years. Thus, Union opposes approval of the requests in the petition in this case unless such assurances are in place.

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<sup>1</sup> *Re Implementation of the Federal Communications Commission's Order on Universal Service Pursuant to the Telecommunications Act of 1996*, NHPUC Order No. 22793, 82 N.H.P.U.C. 819 (November 26, 1997).

**I. THE COMMISSION MUST DENY THE APPROVALS REQUESTED DUE TO LACK OF ASSURANCES REGARDING THE CONTINUITY OF SERVICES IN UNION'S SERVICE TERRITORY**

Under New Hampshire law, the Commission may only authorize the transfer of Verizon assets to FairPoint and the discontinuance of service by Verizon only if they find such action is in "the public good." RSA 374:28, 374:30. Minus a finding of "public good", the statutes simply do not allow the Commission to approve the petition. The lack of any clear, enforceable assurances that FairPoint will continue in the coming years to provide the Union service territory with rates, terms and conditions similar to the service now received from Verizon shows that, for at least Union's service territory, services to the incumbent RLEC have not been adequately addressed for the transaction to proceed. At this point, it is impossible to reasonably find that the sale and transfer are in the public good. Thus, the Commission must deny the transaction.

**II. A SETTLEMENT BETWEEN UNION AND FAIRPOINT REMAINS THE BEST APPROACH TO THIS ISSUE**

Union continues to take the position that the best way to provide for such assurances is for Union and FairPoint to consensually enter into an appropriate settlement agreement. Unfortunately, as the record indicates in this docket, there is no such settlement agreement. Union hopes that FairPoint will eventually consider its requests and enter into a settlement agreement addressing continuation of services without extraneous issues.

**III. COMMISSION CONDITIONS IN AN ORDER OF APPROVAL MAY ALSO PROVIDE ASSURANCES**

In the alternative, the Commission has the power to condition approvals such as the one requested in this docket and may attempt to bring about the necessary assurances to Union's service territory via conditions imposed in an order approving the sale and transfer.

Conditions that might bring about reasonable assurances for the Union service territory would read as follows:

For any RLEC that does not have a settlement agreement in place pursuant to this docket governing services that it receives from Verizon that are to be provided by FairPoint, FairPoint shall continue to make available to such RLEC all services that Verizon provided prior to the merger on the following terms:

1. FairPoint shall continue to provide such services for at least five years without any change in terms and conditions and without any increase in rates, unless FairPoint and RLEC agree to any such change or increase.
2. FairPoint shall not at any time after the five year period terminate such service or increase the rates or change the terms and conditions of such without providing 180 days notice to the RLEC and shall continue such service without change if, prior to the effective date of the change or termination, the RLEC files a complaint regarding such notice of termination or change in service at the Commission. Upon the filing of such a complaint, FairPoint shall not implement any such change or termination until Commission action on said complaint is final and shall comply with any Commission action thereon. Parties are free to appeal any such Commission action to a tribunal of competent jurisdiction.
3. The conditions herein are integral and necessary to the findings necessary to grant the approvals granted herein.

The initial five year time frame, and the 180 day (6 month) notice period is supported by the fact that sophisticated, special contracts proposed by Verizon and approved by this commission can involve ten year commitments.<sup>2</sup> While the services and arrangements surely differ, the receipt of services by an RLEC certainly deserve protection at least as strong as those agreed to by Verizon and continued by FairPoint to commercial customers.


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<sup>2</sup> See e.g. *RE Freedom Ring*, LLC, DE 96-420, Order no. 24,225 (October 24, 2003)

While imposing such conditions via a Commission order is a less optimal route, such conditions, along with vigorous enforcement by the Commission, should provide for the public good in the Union service territory.

Respectfully submitted,

**UNION TELEPHONE COMPANY d/b/a  
UNION COMMUNICATIONS**

A handwritten signature in black ink, reading "Martin C. Rothfelder", written over a horizontal line.

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