

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-011

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

Transfer of Assets to FairPoint Communications, Inc.

**Post-Hearing Brief of
FairPoint Communications, Inc.**

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I. INTRODUCTION

Service. Broadband. Investment. Jobs. Economic development. These key factors form the basis for the approvals sought in this proceeding by FairPoint Communications, Inc. (“FairPoint”). FairPoint, a leading provider of telecommunications services in rural and small urban communities, proposes to acquire control over the landline telecommunications business of Verizon New England Inc. (“VNE”) and affiliates in New Hampshire. FairPoint will bring to New Hampshire new commitments to service quality, broadband deployment, infrastructure investment, employment opportunities and economic development. FairPoint will bring to New Hampshire the managerial, technical and financial resources to meet these commitments. The proposed transaction will promote the public good and should be approved.

II. EXECUTIVE SUMMARY

Through a series of internal corporate transactions, VNE and other subsidiaries of Verizon Communications Inc. (“Verizon”) will separate their New Hampshire, Maine and Vermont landline telecommunications properties and convey them to two newly formed Verizon subsidiaries, one regulated (Northern New England Telephone Operations LLC or “Telco”) and the other non-regulated (Enhanced Communications of Northern New England Inc. or “Newco”).¹ Telco and Newco will be subsidiaries of Northern New England Spinco Inc. (“Spinco”), and following the internal Verizon corporate transactions, Spinco will be a direct subsidiary of Verizon. Verizon will distribute its shares of Spinco to Verizon’s shareholders, and Spinco immediately will be merged with and into FairPoint (the “Merger”). Verizon’s shareholders will receive shares of FairPoint’s stock in exchange for their Spinco shares. As of closing, Verizon’s shareholders will own approximately sixty percent (60%) of FairPoint and

¹ A detailed explanation of the steps involved with respect to the Merger is contained in the Private Letter Ruling issued by the Internal Revenue Service and provided as Verizon Ex. 7P.

FairPoint's shareholders will own approximately forty percent (40%) of FairPoint. Thereafter, Telco and Newco will be direct, wholly-owned subsidiaries of FairPoint. The transaction structure employed is the "Reverse Morris Trust" and results in the transaction being non-taxable under federal income tax laws. As a result, Verizon is able to realize the after-tax value necessary from the transaction, while FairPoint is able to assume control over the landline business at a very low cost.

As a legal matter, this transaction will be for the public good and should be approved. From a practical perspective, FairPoint and its proposed services will provide tremendous benefits to the people of the State of New Hampshire, as well as the entire Northern New England (sometimes referred to as "NNE") region. The transaction was designed to enable FairPoint to provide all of the regulated services offered by Verizon as of the closing, with a smooth transition and no degradation in service. FairPoint, however, has moved far beyond that minimum requirement in structuring the new landline business in New Hampshire. FairPoint will take the current fully functional Verizon network and make major investments to improve service quality and deploy broadband to more rural areas. FairPoint will assume Verizon's obligations to the employees who will be continuing employment after closing with subsidiaries of FairPoint and will bring new jobs to New Hampshire. FairPoint is making major commitments to improve service to retail and wholesale customers. Over time, FairPoint will bring an end to the "digital divide" in New Hampshire. FairPoint will find ways to use communications to promote economic development in New Hampshire. In short, FairPoint will go far beyond the minimum requirements of serving this utility franchise.

FairPoint has shown that it has the managerial, technical and financial capability to operate this business. Since the announcement of the transaction, FairPoint has spent tens of

millions of dollars to develop the back office systems that will be needed to replace the current Verizon systems. *See e.g.*, FairPoint Ex. 17HC (un-redacted Capgemini Work Orders 1 and 2) and 71HC (oral data request explaining costs to FairPoint if the transaction is rejected). FairPoint has augmented its management team with highly accomplished professionals in the various disciplines needed for this business. The Commission was able to see the caliber of the management team first hand as several of the team's members served as witnesses in this case. Members of the FairPoint team showed this Commission what they have brought to the task: the enthusiasm, experience and expertise to move this business to a new level. They provided new approaches to improving service quality and described the state-of-the-art technology that FairPoint will bring to New Hampshire's broadband network. They have engaged the interested parties in this case to find ways to achieve common objectives.

FairPoint structured the transaction with a strong financial plan that will enable FairPoint to achieve its objectives based on conservative assumptions. FairPoint's independent, third-party experts – Messrs. Michael Balhoff and William King – have demonstrated that FairPoint has an excellent opportunity to out-perform the forecast. At the same time, the cash flows provide ample cushion in the event of adversity.

The telecommunications business is changing. The monopoly business of providing dial tone has gone the way of the rotary phone. Success in the new competitive environment will require investment and innovation to provide the new services that customers will want and that competitors will stand ready to provide. FairPoint is the right company to meet this challenge for New Hampshire. The Commission should approve of the transaction as proposed, subject to the conditions offered herein and set forth within Appendix A to this Brief.

III. REQUIRED APPROVALS AND LEGAL STANDARDS

A. *Requested Approvals.*

Given the number of entities and transaction steps involved in the transaction, several approvals are required of the Commission. While FairPoint indicates below the approvals it believes are necessary, it requests issuance of a Commission order granting any and all approvals and authorizations that the Commission deems required under New Hampshire law with respect to the transactions described herein.

Accordingly, FairPoint hereby seeks all approvals and authorizations from the Commission as may be needed to complete the transaction described herein, including:

- (1) the transfer of Verizon New England's assets, business and franchise related to the provision of local exchange and intrastate toll service in New Hampshire, pursuant to RSA 374:30, to Telco;
- (2) the transfer of certain assets of Bell Atlantic Communications, Inc. ("BACI"), NYNEX Long Distance Company ("NYNEX") and Verizon Select Services Inc. ("VSSI") related to their intrastate interexchange telecommunications business and customer accounts to Newco, pursuant to RSA 374:30;
- (3) the authorization of Telco to commence business as a local exchange and intrastate toll service provider within the portions of the State of New Hampshire served by VNE, pursuant to RSA 374:26, following the Merger;
- (4) the authorization of Newco to provide intrastate toll services within the State of New Hampshire, pursuant to RSA 374:26, following the Merger;
- (5) the authorization of VNE to discontinue service as a public utility in New Hampshire, pursuant to RSA 374:28, following the Merger; and

(6) the designation of Telco as an Eligible Telecommunications Carrier (“ETC”) for those New Hampshire service areas for which VNE has previously been designated as an ETC pursuant to 47 U.S.C. § 254(e) and § 214(e)(2) and authorization for VNE to relinquish its designation as an ETC pursuant to 47 U.S.C. § 254(e)(4) and 47 C.F.R. § 54.205, following the Merger.

B. Legal Standards Regarding Approvals and Conditions under RSA 374:26, 374:28, and 374:30, and Any Other Required Approvals.

1. Legal Standards Applicable to the Transaction.

FairPoint respectfully requests that the Commission approve the proposed transaction pursuant to its authority under, *inter alia*, RSA 374:26, 374:28, and 374:30, all of which require a determination that the transaction will be for the public good. The Commission must find the transaction is for the public good where it is not forbidden by law and is reasonable under the circumstances of the case. *Grafton County Electric Light & Power Co.*, 77 N.H. 539 (1915). If a corporation’s actions with respect to its property are reasonable, then they are also for the public good. *Id.* See also *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606-614 (1986).

In deciding whether to permit an applicant such as FairPoint to commence operations, the Commission bases its public good determination under RSA 374:26 on an assessment of the applicant’s managerial, technical and financial capability. See *Hampstead Area Water Company, Inc.*, DW 05-092, Order No. 24, 592 at p. 4 (Feb. 24, 2006). If the Commission determines in its assessment that the transaction is in the public good, then it is obligated to grant a public utility franchise. *Appeal of Public Service Company of New Hampshire*, 141 N.H. 13, 17 (1996). When evaluating requests to transfer utility assets pursuant to RSA 374:30, the Commission has historically applied a “no net harm” standard. See *Re New England Power Company*, DR 97-

251, 83 NH PUC 392, 397 (1998). Under the “no net harm test,” the Commission must approve the proposed transaction if the public interest is not adversely affected. *Re New England Electric System*, DE 99-035, 84 NH PUC 502, 510 (1999) (citing *Re CCI Telecommunications of N.H., Inc.*, 81 NH PUC 844, 845 (1996)). This obligation requires the Commission to balance the interests of ratepayers against the right of shareholders to be free of regulation which unreasonably restrains legitimate corporate activities. *Id.* Consequently, in assessing those risks and benefits to determine the overall effect on the public interest, the Commission must approve the transaction if its effect “is at worst neutral from the public interest perspective.”² *Id.*

Pursuant to RSA 374:28, the Commission may discontinue public utility service where the public good does not require its continuation. *Boston & Maine Railroad v. State*, 102 N.H. 9, 9-10 (1959). What constitutes the public good is broad and includes not only the needs of the persons affected by the discontinuation of service but also takes into consideration the public at large and the general welfare of the utility. *Id.* at 10. The statute does not intend to unreasonably restrict the actions of the regulated utility. Rather, the New Hampshire Supreme Court has declared that it is not in the public good for public utilities to be “unreasonably restrained of

² FairPoint respectfully asserts that the provisions of RSA 369:8, II (a) and (b) regarding parent company mergers, restructurings or financings do not apply here. Unlike those transactions, this arrangement involves the transfer by VNE of assets, liabilities and customer relationships relating to its regulated local exchange and intrastate toll operations in New Hampshire to Telco, as well as the transfer by other Verizon Communications subsidiaries of long distance customer relationships to Newco. However, even if RSA 369:8 were applicable, because the proposed transaction directly involves the transfer of the assets and customers of the state’s largest incumbent local exchange carrier, FairPoint understands that the Commission will likely undertake a more in-depth review of the transaction than what is contemplated in RSA 369:8, 11. Therefore, it does not seek approval under that statute. FairPoint also avers that the transaction does not trigger the provisions of RSA 374:33 relating to the acquisition of a public utility’s stock by another public utility. In the event the Commission determines otherwise, the public interest standard of RSA 374:33 nonetheless translates into a “no net harm” test. *See Re National Grid Group, PLC*, DE - 00-287, 86 NH PUC 95, 98 (2001).

Additionally, no public utility securities are being issued that would require approval under RSA 369:1-4. If the Commission determines that any such securities are being issued, however, FairPoint avers that the issuance thereof is consistent with the public good and respectfully requests approval of the same. Moreover, to the extent the Commission determines that other approvals are necessary, FairPoint requests that the Commission issue an order granting any and all approvals and authorizations required in connection with or as a result of the transactions described in this petition.

liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.” *Id.* (quoting *Grafton*, 77 N.H. at 540).³

2. Scope of Commission Authority Regarding Conditions.

Parties to this proceeding have urged the Commission to impose a broad array of conditions to its approval of this transaction. However, even when a statute “delegates broad regulatory powers to the Public Utilities Commission...its powers are necessarily circumscribed by the purposes which the statute seeks to accomplish.” *Allied N.H. Gas Co. v. Tri-State Gas Co.*, 107 N.H. 306, 308 (1966). Consequently, the Commission cannot use its authority under one statute to attach as conditions activities that it could not require a utility to undertake outright. The conditions attached to a Commission order must be lawful incidents of its regulatory powers. *See Appeal of Milford Water Works*, 126 N.H. 127, 134 (1985) (noting that conditions attached to a PUC order may affect private rights so long as the Commission’s determination is related to its regulatory functions). Therefore, any conditions imposed by the Commission should be narrowly tailored to address a specific risk or harm posed by the reorganization, as opposed to imposing conditions based on a “wish list” provided by Intervenor for their own self-interests.

This principle of requiring conditions to be tailored to specific harms posed by a reorganization is also recognized in a parallel forum, the Federal Communications Commission (“FCC”). The FCC has stated that conditions imposed must be specific to the harms resulting from the transaction. *See Memorandum Opinion and Order, Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75 (2005), at ¶ 19:

³ The applicable standard for this transaction, contrary to the assertions of the Consumer Advocate, does not require FairPoint and Verizon to prove a “net public benefit” to customers. *See e.g.*, Tr. 10/24/07 at 173:16-18.

Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act. Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.” Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest. ***Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.***

Memorandum Opinion and Order, *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75 (2005), at ¶ 19 (footnotes omitted) (emphasis added).

C. Timing of Decision.

As the Joint Applicants have informed the Commission and the parties from early in this docket, FairPoint and Verizon plan to close the transaction on January 31, 2008. This is also the publicly announced projected date for closing in filings made with the Securities and Exchange Commission. In order for the Joint Applicants to be in a position to close by January 31, as planned, it is critical that the Commission’s decision granting approvals be issued by December 19, 2007.

Maintaining the closing date is necessary to provide FairPoint sufficient time and certainty in advance of closing to provide for an orderly process of hiring new employees. Unlike in many mergers where the acquired properties maintain their operations unchanged, here FairPoint is implementing new systems that require it to fill new positions and train its employees. This will be a complex closing in which many tasks must be coordinated and

completed in order, including a bond offering, closing transactions related to other credit facilities, notice to vendors and customers, hiring and other actions.

IV. FAIRPOINT'S COMMITMENTS TO NEW HAMPSHIRE AND ITS PROPOSED CONDITIONS

A. Overview.

FairPoint's success as a business will depend on satisfying the communications needs of its New Hampshire and Northern New England customers. Its business plan is driven by the provision of high-quality basic and advanced services, both traditional voice telephony and broadband access. As a result, FairPoint's interests are at the most fundamental level aligned with the goals of the State of New Hampshire and the objectives of this Commission. The fundamental alignment of interests is a far more powerful guarantor that policy goals will be achieved than imposing penalties and other sanctions. FairPoint is focused on providing great service to Northern New England, which will be the majority of its business, and which will be highly complementary to its existing incumbent local exchange carrier ("ILEC") operations.

FairPoint recognizes that the Commission may seek to impose some conditions of approval on the Joint Applicants to address certain of the issues raised by the Commission Staff and Intervenors. FairPoint therefore has evaluated the parties' divergent interests and proposed several conditions of approval within Appendix A to this Brief, and which is incorporated herein by reference.

B. Commitments to Retail Customers.

FairPoint's President, Peter Nixon, described FairPoint's commitment to providing "a customer experience that meets or exceeds customer expectations." See Prefiled Direct Testimony of Mr. Nixon at 23:13-20. FairPoint's overarching objective is to provide service that is comparable to and ideally better than that currently provided. This is a competitive business

and FairPoint understands that it will have to be a high-quality service provider in order to compete effectively. *Id.* at 23:10-11. To achieve these goals, FairPoint has committed to devote additional resources and to hire additional staff to address quality of service issues. *See* Tr. 10/29/07 at 89:19-24 – 93:1-9 (Mr. Smee explaining in detail FairPoint’s plan with respect to quality of service issues). *See also* Prefiled Rebuttal Testimony of Mr. Leach at 4:17-21 – 5:1-4. In Section IV.E., *infra*, FairPoint describes its various other commitments to ensure that retail customers (and wholesale customers) are not harmed as a result of the transaction.

FairPoint is also committing to increase dramatically broadband availability to its customers. *See* Prefiled Direct Testimony of Mr. Nixon at 7:2-8. FairPoint will initiate an immediate broadband deployment program at an estimated cost of \$16.4 million that will overlay a new advanced core broadband network to support further expansion and enhancements to broadband services. *See* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 27-34 and Exhibit B/H/S-1. Upon completion of FairPoint’s broadband build out, an additional one hundred fifty-two (152) communities in the State of New Hampshire will have access to digital subscriber service (“DSL”) broadband service that have no such access at this time. *Id.* at 32:6-8. Such expansion and network enhancements are core to FairPoint’s business plan.

C. Commitments to Employees.

FairPoint understands that employees are concerned about this transaction and wants to build a strong positive relationship with both represented and non-represented employees who will be critical to the post-closing operation of the company. These employees will be relied upon to provide excellent service to FairPoint’s customers in Northern New England. *See* Prefiled Direct Testimony of Mr. Nixon at 17:7-10. FairPoint views the experienced Verizon

workforce as the cornerstone of its organization going forward, and a skilled work force will be essential to meet its objectives. *Id.* at 16:8-11.

Verizon employees continuing with FairPoint after the closing will receive the same salaries and benefits as those in effect with Verizon at the time of the closing. *Id.* at 16:19-23. For purposes of benefits, an employee's years of service with Verizon will be credited as years of service with FairPoint. *Id.* Similarly, the existing collective bargaining agreements will be honored by FairPoint. *Id.* at 17:1-2.

To alleviate any employee anxiety about their level of compensation and benefits under a new collective bargaining agreement, FairPoint commits now not to reduce employee wages or benefits under that contract. The employees generally will continue in their existing roles and locations, performing functions consistent with those they perform today, after the transaction is completed. *See* Prefiled Direct Testimony of Mr. Leach at 9:20-23 – 10:1-12. Simply stated, FairPoint's obligations and commitments are intended to ensure stability of compensation and benefits to employees, while providing the operating and contractual flexibilities that FairPoint or any other employer should have in operating its business. *Id.*

FairPoint's plans for the merged company affirmatively do not include any layoffs. Indeed, moving the out-of-state back-office functions of Verizon back to the three-state area will result in the addition of at least 675 new positions to the employee base serving the three states. These new positions will provide opportunities for additional employees to join the company and for existing employees to seek out alternative career paths if they so choose. In addition, employees will see additional opportunities for professional development. *Id.*

Further, as previously announced, FairPoint will assume pension and other post-employment benefit obligations for all active, continuing employees of the Verizon companies

that become part of FairPoint. For employees who will be continuing with FairPoint, Verizon will transfer fully-funded pension assets to the new FairPoint pension plan which will provide the same retirement benefits as those currently provided by Verizon. See Prefiled Direct Testimony of Mr. Nixon at 16:15-17. FairPoint will be funding the pension plan and other retiree obligations that accrue for these employees after the closing in accordance with applicable law. The assets supporting the pension plan will be of the same quality as the assets in the employees' current Verizon pension plan. Verizon employees who have retired as of the timer of the merger will continue to receive their benefits from Verizon pursuant to the Verizon plans.

Finally, FairPoint has taken major steps to establish a Northern New England-based management presence focused on dedicating the necessary resources to benefit local operations and communities, and to ensure that the company can achieve its objectives. This commitment to local management will provide employees greater opportunities for internal advancement and professional development in these three states, and will provide greater localized decision-making authority, for the benefit of both employees and consumers.

D. Financial Commitments.

FairPoint is committing to investment in the NNE region. See Prefiled Rebuttal Testimony of Mr. Balhoff at 2:14-19. The investment will include incremental capital for service quality enhancements, broadband, and state-of-the-art back-office systems. As a result, FairPoint's proposed per-line capital expenditures will exceed recent Verizon levels of spending in these areas. The company's incentives and the other stakeholders' goals are properly aligned so that investment will occur rapidly. *Id.* at 3:19-20 – 4:1-2. As hereinafter discussed, FairPoint has established a strong financial plan to meet this commitment.

FairPoint has committed to protect ratepayers from financial risk. First, FairPoint's projections indicate that it has a significant "cushion" of available cash flow over and above those amounts required to meet all projected operating expenses, capital expenditures, tax payments and debt service requirements. *See* Prefiled Rebuttal Testimony of Mr. Leach at 4:12-16 and 30:15-16 – 31:1-3. Second, by proposing to limit its dividends under certain circumstances, FairPoint has constructed another layer of protection for ratepayers. Specifically, as stated in similar proceedings in Maine and Vermont, FairPoint has refined its proposed dividend restrictions and has set forth the restrictions within Appendix A to this Brief.

E. Additional Commitments and Conditions.

In addition to financial investments, FairPoint has made a strategic commitment embodied in its decision to pursue this transaction. With this transaction, and the related devotion of monetary and human capital, senior management focus, and the other resources, FairPoint is reaffirming a long-standing strategic commitment to local communications operations that serve rural and small urban areas. *See* Prefiled Direct Testimony of Mr. Leach at 4:17-19 and 42:15-21. As FairPoint considers allocation decisions regarding capital and management resources, there are no significant competing interests that distract the company from its focus on local wireline telecommunications operations (including voice and data services). *Id.* As has been the case throughout the history of FairPoint, the foundation of its success will be defined by its ability to provide high-quality wireline communications services at competitive rates for all of our customers – both in existing FairPoint markets and in the new NNE markets. This singular strategic focus will allow FairPoint to commit the resources required – financial and otherwise – to provide high-quality, advanced communications services at competitive prices to the new NNE service area. *Id.*

FairPoint recently provided a detailed articulation of its proposed commitments to wholesale customers as part of a comprehensive settlement with several CLECs in New Hampshire and Vermont (and discussed below in section V(G)), the New Hampshire terms having been filed with this Commission for its approval. *See* FairPoint Ex. 15. As FairPoint has stated, all of the provisions in the Joint Settlement Stipulation are available to CLECs. FairPoint is willing to enter into an agreement with the non-settling CLECs with the same terms and conditions as contained within the Joint Settlement Stipulation (FairPoint Ex. 15), and FairPoint seeks the Commission's approval of the Joint Settlement Stipulation in its entirety. Additional conditions related to the regulation of wholesale services proposed by other parties are simply inappropriate and their imposition risks harming consumers in New Hampshire by harming competition and by hindering FairPoint's ability to invest in and focus on improving service and deploying new services.

FairPoint has reached out to other constituencies as well. FairPoint has worked collaboratively with the electric utility Intervenors and seeks approval of the Memoranda of Understanding provided as exhibits PSNH Ex. 3P, Unitil Ex. 2P and National Grid Ex. 2P. Similarly, New Hampshire Legal Assistance agreed to a settlement with FairPoint for the benefit of low income ratepayers and FairPoint seeks approval of the Memorandum of Understanding marked as Schmitt Exhibit 1.

V. DISCUSSION OF ISSUES

A. Financial Strength: FairPoint has the Financial Strength to Deliver on its Commitments in Serving New Hampshire.

FairPoint is proposing to make major commitments to the telecommunications infrastructure of New Hampshire. The record is clear that FairPoint will have the financial capability to deliver on these commitments. The combined company will have strong internally-

generated cash flows and ready access to capital, allowing it to improve customer service and make the necessary investments in network improvements and broadband. FairPoint has structured its financial plan based on reasonable assumptions and has developed a prudent and efficient capital structure to support that plan.

1. FairPoint's Financial Plan is Based on Reasonable Projections.

In his prefiled direct and rebuttal testimony, Walter Leach, FairPoint's Executive Vice President of Corporate Development, who previously served as FairPoint's Chief Financial Officer, presented the company's best estimates of anticipated post-closing financial results. *See* Prefiled Direct Testimony of Mr. Leach at Attachment WEL-1; Prefiled Rebuttal Testimony of Mr. Leach at Ex. WL-3. These projections demonstrate that FairPoint has sufficient cash flow to cover all of its cash operating costs, capital expenditures, tax payments and interest expenses; maintain a cash dividend at current levels; and still have surplus cash available to cover contingencies or to make optional debt reduction payments. *See* Prefiled Rebuttal Testimony of Mr. Leach at 4:12-16; 30:15-16 – 31:1-4 (confidential). Indeed, the FairPoint projections demonstrate that it has a "substantial cushion" available to cover unexpected cash requirements, even after paying all projected but discretionary dividends. *Id.* at 4, line 12-16. The company's projections are reasonable, reflect a financially sound business plan, and should be relied upon by the Commission in approving the transaction.

2. Overall Reasonableness of FairPoint's Projections.

Before addressing individual elements of the projections, it is useful to consider the reasonableness of the larger, overall financial picture presented by FairPoint. Witnesses William King and Michael Balhoff took this approach, comparing the financial parameters of this transaction with actual results achieved by similar "guideline" companies. Based on his analyses

and the financial performance typically achieved by these guideline companies, Mr. King concluded that FairPoint's forecasts are reasonable and that FairPoint had a reasonable prospect of outperforming the projections. *See* Prefiled Rebuttal Testimony of Mr. W. King at 4:7-12. Independent financial consultant, Michael Balhoff presented a sensitivity analysis of the financial projections in his Confidential Prefiled Rebuttal Testimony and similarly concluded that the overall projections are reasonable with a prospect for outperforming. *See* Prefiled Rebuttal Testimony of Mr. Balhoff at 38:8-12 and 41-42.

Mr. Balhoff noted in his Prefiled Rebuttal Testimony that investors and equity analysts prefer that companies outperform projections:

Companies with publicly traded stocks are rewarded when they outperform their projected financials, and FairPoint is aware of this market dynamic. Investors prefer that there be a "surprise on the upside" that permits analysts to raise their ratings on the stock. At the same time, companies are cautious that they do not inflate expectations, since the stock of public corporations can lose value rapidly due to underperformance. Experienced financial analysts understand this dynamic and presume that company announcements are based on reasonable and sometimes conservative projections.

See Prefiled Rebuttal Testimony of Mr. Balhoff at 7:2-12. Given this dynamic, it is reasonable to conclude that such concerns would cause FairPoint and its financial advisors to be very careful in developing any financial projections that might be shared with the public and investors.

FairPoint's traditional conservatism in estimating the future performance of its acquisitions is demonstrated by its success following the completion of earlier transactions. Mr. Leach explained that FairPoint completed a number of acquisitions between 1998 and 2003, and the company consistently outperformed expectations following the completion of the transactions:

- (i) FairPoint always has increased dramatically (by a minimum of 38% for the acquisitions represented in the graphic) the operating cash flow of its acquired

companies versus the historical performance of those companies, and (ii) FairPoint in all cases outperformed its own 2-year forward projections.

See Prefiled Rebuttal Testimony of Mr. Leach at 44:11-15.

Importantly, the company's projections have received practical, independent affirmation outside of this proceeding. Mr. Leach noted that the financial projections were not developed solely by the company, but in conjunction with its financial advisors, Morgan Stanley and Lehman Brothers. *Id.* at 8, line 6-7. More to the point, multiple major lenders have reviewed FairPoint's financial projections, and based upon their review of the projections, have committed to lending the company **\$2.080 billion** to complete this transaction and to refinance the company's existing debt. *Id.* at 11-12; *See* Prefiled Direct Testimony of Mr. Smith at 13-14. This alone is a convincing demonstration of the reasonableness and credibility of FairPoint's financial projections as judged by outside financial professionals. These lenders are relying on FairPoint's projections to invest substantial amounts of their capital. The lending institutions' review of the projections in the context of putting their own capital at risk and the lenders' conclusion regarding the reasonableness of the modeled results merits substantial weight.

3. Functionality of the Financial Model.

Turning to individual elements of the projections, OCA witness Brevitz and Labor witness Barber have criticized a number of individual aspects of the company's financial model, including the functionality of the electronic spreadsheet. *See e.g.*, Barber Super Confidential Appendix A at A-8. Mr. Leach responds that the witnesses' expectations regarding the model are misguided:

Fundamentally I think that there is a disconnect between what Mr. Brevitz and Mr. Barber would like the financial model to easily do and what it actually was created to do. It is apparent that these witnesses would prefer that the model function more like a high-level acquisition analysis model capable of quickly and easily generating multiple scenario analyses for a first time user. FairPoint's

projection model was not created to be, nor was it ever intended to be, such a tool for a third party.

See Prefiled Rebuttal Testimony of Mr. Leach at 9, line 1-6. The basic criticisms of the spreadsheet boil down to the fact that the model is not transparent to the unfamiliar user.

However, despite all their criticism, witnesses for both the OCA and Labor Intervenors were able to generate sensitivity analyses using the very same financial model and actually use these sensitivities, at least in part, to formulate their opinions as expressed in their testimonies. *See, e.g.*, Prefiled Direct Testimony of Mr. Brevitz at 121-124; Prefiled Highly Confidential Direct Testimony of Mr. Barber at 4-6. There does not appear to be any serious issue as to whether the spreadsheet functions reliably in this manner when operated by FairPoint and its advisors. Indeed, witness Antonuk for the Commission Staff confirmed that through working with FairPoint, the Liberty consultants were able to satisfy themselves regarding the functionality of the financial model. *See* Tr. 10/25/07 at 75:9-10.

4. FairPoint's Estimates of Cost Savings.

Some witnesses have also questioned FairPoint's estimates of cost savings that will be achievable as a result of the transaction. *See* Prefiled Public Testimony of Mr. Barber at 11; Prefiled Direct Testimony of Mr. Vickroy at 19-21. Specifically, FairPoint estimates that it will be able to save \$60-75 million in allocated costs by replacing various functions that Verizon currently provides but is not transferring assets or employees to perform. *See* Prefiled Rebuttal Testimony of Mr. Leach at 55-66. Mr. Barber expresses skepticism that FairPoint can reduce Verizon's expenses. *See* Prefiled Public Direct Testimony of Mr. Barber at 7. However, these savings do not result from an analysis of Verizon's current expenses with arbitrary adjustments to them, nor do they result from what one would traditionally describe as synergies, where redundant functions are streamlined. *See* Prefiled Direct Testimony of Mr. Vickroy at 19-20.

Rather, certain allocated operating expenses are being eliminated completely and replaced by the combined company's expected direct costs for replicating the related operational functions. The savings resulting from the replacement of allocated costs with direct costs occur primarily in areas of operation that are currently performed by Verizon outside of NNE and are charged to Verizon's NNE units as corporate overheads. *See* Prefiled Rebuttal Testimony of Mr. Leach at 55-66. In developing the savings estimate, FairPoint was to avoid all allocated charges assigned by Verizon to the Northern New England operations, approximately \$270 million in 2006. *Id.* at 55, line 7-9. After assessing all of the operating functions related to these allocated overhead expenses, FairPoint developed a "bottom up" budget for provisioning and replacing these functions. *Id.* at 58, line 5-7. In some cases the direct expenses were higher than the prior allocations, but in total, this budgeting process resulted in the cost savings estimate now reflected in FairPoint's financial projections. While the result may seem "counter-intuitive" (*See* Prefiled Direct Testimony of Mr. Vickroy at 19), FairPoint's approach is sound.

5. Projected Operating Expenses.

Labor Intervenors' witness Mr. Barber has criticized FairPoint's estimate of relatively flat operating expense levels for the Northern New England properties, alleging that this assumption is unreasonable. *See, e.g.,* Prefiled Highly Confidential Direct Testimony of Mr. Barber at 5-6. Notably, Mr. Barber argues that the Verizon NNE operations have experienced growth in operating expenses in recent years at rates that exceed the levels assumed by FairPoint in its financial projections. *See* Prefiled Public Direct Testimony of Mr. Barber at Schedules 6 and 7. However, Mr. Barber's analysis is flawed for several reasons. First, Verizon's direct costs for its core business have actually been declining steadily in recent years. *See* Prefiled Rebuttal Testimony of Mr. Leach at 46. Further, the Verizon expense growth Mr. Barber points to is the

result of increasing cost allocations to the NNE region from elsewhere in the Verizon organization, none of which FairPoint will inherit. *Id.* at 46:19-21; Prefiled Rebuttal Testimony of Mr. W. King at 13. Accordingly, Mr. Barber's reliance on this historical Verizon NNE data is misplaced. *See* Prefiled Rebuttal Testimony of Mr. W. King at 14:10-11.

Looking at the projections themselves, it is true that Total Spinco Operating Expense is projected to decline slightly, at a -0.6% average annual rate. *See* Prefiled Rebuttal Testimony of Mr. Leach at 47-48. However, that decline is driven entirely by reductions in non-cash depreciation and amortization expense. *Id.* at 48:1-2. In fact, FairPoint is projecting an increase in cash operating costs, even in the face of significant projected line losses due to market pressure. *Id.* at 48:3-5 (confidential).

Counsel for the Labor Intervenors also explored FairPoint's assumptions regarding workforce attrition. *See* Tr. 10/23/07 at 179:4-24 – 187:1-15. In essence, FairPoint is assuming, based upon Verizon data from recent years, that 4-4.5% of the NNE workforce will leave the company voluntarily each year moving forward, and that FairPoint will not have the need to replace all of these workers. The Labor Intervenors' suggestion seemed to be that the projected level of workforce attrition is unrealistically high, thereby undermining projected cash operating expense projections (i.e., operating expenses should be higher as there will be more employees than projected). FairPoint's cash operating expense projections, however, are consistent with those of similarly situated utilities, and as noted above, are projected by FairPoint to increase in FairPoint's model. *See* Prefiled Rebuttal Testimony of Mr. King at 11-13.

Increases in productivity are further driven by the acute level of competition for telecommunications customers. It will be imperative for FairPoint to find efficiencies in its operations wherever possible, because the marketplace limits the prices FairPoint can charge. In

competitive markets, companies that retain artificially inflated cost structures will suffer losses of customers due to uncompetitive pricing or losses of profitability, or both. FairPoint, with a singular focus on NNE, though, will be in a far better position to implement efficiency improvements in a manner that does not jeopardize service quality. Moreover, Mr. Nixon pointed out that the decline in employee count over time is driven in part by the declining business results conservatively assumed in the model.

6. Projected Capex.

Messrs. Barber and Brevitz also questioned the adequacy of FairPoint's projected levels of capital expenditures or "Capex." In his prefiled testimony, Mr. Barber expresses particular concern regarding the gap between projected depreciation expense and Capex. He opines that depreciation "should be reinvested in [FairPoint's] networks" and not used for other capital needs of the company, and further characterizes FairPoint's projections as "disinvesting" in the company. *See* Prefiled Public Direct Testimony of Mr. Barber at 6:16-17 and 40:9. Mr. Barber is incorrect in asserting that depreciation, a non-cash accounting charge, can be used to make any sort of cash investment – operating, capital, financial or otherwise. *See* Prefiled Rebuttal Testimony of Mr. Balhoff at 23-25.

Mr. Barber's argument fundamentally misconstrues the nature of depreciation and its ratemaking treatment and, as a result, woefully oversimplifies the appropriate level of Capex for a utility. Utility rates include depreciation expense to allow the utility the opportunity to recover past capital expenditures that have been previously made. One would need to make a large number of simplifying assumptions, including among others that the cost of new plant has the same nominal cost and useful life as the plant it replaces, to contend that Capex actually should equal depreciation. As Mr. Balhoff explains:

[C]apital expenditures across the local exchange carrier industry do not match depreciation expense dollar-for-dollar today and is a backwards-looking measure that is inappropriate when planning future investments. An analysis of virtually all the industry-comparables reveals that FairPoint's plans are in line with those levels. In short, it is not underinvestment that FairPoint is modeling but it is a level consistent with industry trends.

See Prefiled Rebuttal Testimony of Mr. Balhoff at 16:3-9. Indeed, FairPoint's projected Capex to fully loaded depreciation ratio of 55.4% is comparable to the median Capex-to-depreciation ratio for similar rural carriers and, excluding the FiOS investment, is nearly identical to the median Capex-to-depreciation ratio for those carriers. *Id.* at 17:8-11 – 18:1-6. Further, this industry trend is not surprising given the lack of growth in access lines, freeing some plant to be redeployed, and that electronics prices are falling, meaning that replacement equipment is frequently less expensive and more efficient. *Id.* at 18:9-16.

Indeed, on cross examination, Mr. Barber distanced himself from the proposition that capital expenditure levels should be determined based on historical depreciation. According to Mr. Barber his concern "...was not specifically or totally based on the observation about depreciation exceeding Capex." See Tr. 10/24/07 at 245:19-20. Mr. Barber "...never said that depreciation should be no larger than Capex." See Tr. 10/24/07 at 245:10-11. Moreover, neither Mr. Barber nor any other witness for the Labor Intervenors offered any expert testimony as to required network investment from the viewpoint of technical analysis of need.

FairPoint's plans to make capital investments to meet service quality objectives have been described by FairPoint's witnesses and are discussed in further detail elsewhere in this Brief. It is sufficient for purposes of the discussion here to state that the company's projected Capex budget includes key investments that have been identified as necessary to achieve defined service quality objectives. The adequacy of the projected Capex is further supported by the thorough due diligence performed by FairPoint, as described at hearing by Messrs. Harrington,

Brown and Smee. *See* Tr. 10/29/07 at 142:8-24 – 145:1-21. Mr. Brevitz, on the other hand, has presented no analysis of the necessary level of expenditures to meet service quality goals.

With respect to Mr. Brevitz' second concern, the company notes that the Capex levels in the financial projections were not the result of a "bottoms up" budget developed for 2008-2015. Rather, ongoing investment is projected based upon historical Verizon spending levels adjusted as necessary to meet anticipated future needs based on what is reflected in the projected operating results. This overall level of investment has been confirmed as consistent with capital expenditure levels of similarly situated companies. *See, e.g.*, Prefiled Rebuttal Testimony of Mr. Balhoff at 33-35.

7. Projected Access Line Losses.

Mr. Brevitz has also questioned FairPoint's assumptions regarding access line losses, principally on ground relating to increasing competition. *See* Prefiled Direct Testimony of Mr. Brevitz at 101 and 122. To be clear, FairPoint has indeed projected in its model continuing losses in switched access lines for the entirety of the projection period. *See* Prefiled Rebuttal Testimony of Mr. Leach at Ex. WL-3, p. 1-2. Moreover, despite continued capital expenditures which average \$132 million per year throughout the projections, FairPoint has conservatively assumed that total revenues will remain flat-to-slightly-declining over this same period. *Id.*

Mr. Brevitz expressed a specific concern regarding competition from cable companies and from Verizon (with its former MCI CLEC business). *See* Prefiled Direct Testimony of Mr. Brevitz at 101. Such claims lack merit.

With respect to Verizon's former MCI CLEC business, there is no credible evidence that Verizon has any plans to increase marketing for its CLEC services in New Hampshire. With respect to the UNE-L projections, FairPoint intends to actively support its wholesale customers

in efforts to serve retail customers through the use of FairPoint's network. From a strategic perspective, FairPoint believes that it makes sense to encourage the significant use of FairPoint's facilities to generate wholesale revenues for the company. This philosophy is reflected both in FairPoint's business plans and financial projections.

FairPoint is also well aware of the challenge that it faces in meeting cable competition, and FairPoint does not dismiss its impact. FairPoint has an aggressive plan to address the data services market through its commitment to the rapid deployment of broadband across the combined company's New Hampshire service territory.

FairPoint's witness Mr. King considered the competitive variables and reviewed the experience of similarly situated telecommunications companies. Based on his analysis, Mr. King concluded that FairPoint's access line loss projections are entirely reasonable. *See* Prefiled Rebuttal Testimony of Mr. King at 22:19.

8. FairPoint's Projected Revenues.

Access line trends are only one component of projected revenues. Revenues are affected not only by changes in access line counts, but also by rate levels, and perhaps most importantly, by the company's ability to generate incremental revenue from value-added services supplied to existing and new customers. Such services could include broadband, cellular phone service, long distance service, and IPTV or satellite television service. *See* Tr. 10/30/07 at 30-31. Marketing additional services to customers not only directly increases the company's revenues, but also can help retain customers who might otherwise move to other providers for more comprehensive product bundles. Providing additional services and product bundles can also help recapture customers from competing providers by increasing the attractiveness of FairPoint total communications service offering.

As Mr. King points out, there is a significant amount of “low hanging fruit” allowing FairPoint to increase its revenue per line above what is included in the projections. *See* Prefiled Rebuttal Testimony of Mr. W. King at 18. Indeed, FairPoint’s projections assume only an 8.8% increase in revenues per line for the entire period 2008 through 2015, and a majority of this comes from increased broadband penetration. *Id.* at 19. This level of per line growth reflects a conservative approach to revenue projection. For instance, Iowa Telecom increased revenue per line by 15% in its first three years after acquiring Verizon’s Iowa assets, and has grown revenues over 27% in its first five and a half years operating the acquired lines. *Id.* Further, this growth has come almost exclusively from increased sales of internet service and long distance. *Id.* Similarly, Valor Telecom achieved a 19% increase in revenue per line within three years after acquiring Verizon properties in the Southwest. *Id.* at 19-20. Mr. King concedes that the opportunity for growth in long distance sales, while still meaningful, is not as great today in NNE as it was several years ago. *Id.* at 19-20.

Nonetheless, the opportunity for increasing broadband sales and penetration here is far greater. *Id.* Further, since FairPoint will be constructing a high-throughput hybrid broadband infrastructure capable of delivering in the future IPTV and other services beyond traditional broadband internet access connectivity, it will be able to leverage the investment in this infrastructure to deliver products not possible in Valor Telecom’s or Iowa Telecom’s experience. Mr. Nixon testified, for example, that FairPoint could to begin marketing an IPTV video product over its planned broadband network as early as 2009. *See* Tr. 10/29/07 at 208-209. Thus, this Commission should rely upon FairPoint’s revenue projections.

9. FairPoint's Financial Structure is Sound.

Considering all of these factors, FairPoint's financial projections are reasonable and should be relied upon by the Commission in approving this transaction. The individual assumptions underlying the projections are reasonable and the overall projected results are achievable. Indeed, FairPoint's projections were viewed as sufficiently credible and reliable by major lenders and financial institutions to support their commitment to lend over \$2 billion in support of the transaction. Moreover, because these projections do not fully reflect all potential to reduce operating costs and enhance revenue streams, there is "a reasonable opportunity for FairPoint to outperform the projections, providing additional 'cushion' for the overall plan." *See* Prefiled Rebuttal Testimony of Mr. King at 4:7-12.

10. FairPoint's Capital Structure is Sound.

In this proceeding, several parties have explored the potential impact on customers of the capital structure and dividend policy employed by FairPoint as part of the transaction structure to attract capital and fund its operations. One issue that has been raised is the projected level of FairPoint's common stock equity account. However, the percentage of equity in the capital structure, by itself, is not a concern. *See* Prefiled Direct Testimony of Mr. Vickroy at 10-11; Prefiled Rebuttal Testimony of Mr. Balhoff at 28-29. The single most important indicator of a utility's financial condition is its cash flow. *See* Prefiled Rebuttal Testimony of Mr. Leach at 26; Prefiled Direct Testimony of Mr. Vickroy at 10-12. It follows, therefore, as further discussed below, that if a utility has strong operating cash flow, sufficient to cover required capital investment, debt service and discretionary dividends, its book capital structure should have little or no impact on customers. Given the cash flows generated by the combined company, the

FairPoint pro forma capital structure and dividend policy are reasonable and are structured to attract capital on just and reasonable terms.

In comparing the capital structure of FairPoint after the merger with other companies, it is important to note the effects of accounting for the Reverse Morris Trust tax treatment. With this transaction structure, Spinco is deemed to have acquired FairPoint for purposes of accounting. Therefore, the resulting balance sheet reflects no goodwill or franchise valuation of the Spinco business. As Mr. Balhoff points out, major industry players such as Cablevision and Comcast would have huge common stock equity deficits if the goodwill and franchise right components were excluded from their balance sheets. *See* Prefiled Rebuttal Testimony of Mr. Balhoff at 29.

Mr. Brevitz represented clients that stipulated to the approval of the transaction involving the transfer of Sprint wireline properties to Embarq. *See* Tr. 10/25/07 at 21-22. The common stock equity account of Embarq at December 31, 2006 was negative by \$468 million. *See* Tr. 10/25/07 at 23:3-6. These accounting book balances provide no indication of the cash flow generation and prospects of the business. *See* Prefiled Direct Testimony of Mr. Vickroy at 10-11. The focus by Mr. Barber on this account for his “cannibalism” theory is entirely misplaced.

In traditional utility regulation, a company’s capital structure is important for three reasons. First, the utility’s weighted average cost of capital should not be unreasonably high. Second, a utility must be able to raise capital to fund new plant and to refinance existing obligations so that it can meet its public service obligations. Third, a utility should have adequate resources and financial flexibility to weather short-term financial crises. FairPoint’s approach to capitalization and capital allocation, consistent with the guideline companies, employs a relatively higher percentage of debt and a higher dividend payout ratio than may have

historically been typical for Regional Bell Operating Companies (“RBOCs”). However, as indicated, this capitalization and dividend structure is commonly utilized today by local exchange carriers throughout the U.S., as it generates a much lower overall cost of capital, and has been endorsed by the financial markets. As the Commission is aware, since common equity is generally the most expensive form of capital, a fact that is further magnified by its tax treatment, lowering the ratio of common equity in a capital structure also tends to lower a company’s Weighted Average Cost of Capital (“WACC”). For this reason, this Commission has rejected as inefficient capital structures comprised primarily of equity. *See Re Kearsarge Telephone Company*, Order No. 24,281, February 20, 2004 (Slip Op. at 49); *Re Verizon New Hampshire*, Order No. 24,265, January 4, 2004 (Slip Op. at 50).

As an industry segment with relatively flat to declining demand for traditional voice services, rural local exchange carriers have optimized their capital structures and dividend policies in a manner tailored to their operating environment. FairPoint’s business and financial model is a rational and appropriate response to the evolving marketplace and is consistent with the capital structure and dividend approaches of comparable companies. *See* Prefiled Rebuttal Testimony of Mr. Balhoff at 3. The reality is that, in order to generate appropriate returns for financial stakeholders while continuing to provide high-quality service, FairPoint and other very capable carriers are successfully responding to new and unavoidable pressures in their industry with these capital allocation strategies. *See id.* at 26-27.

11. FairPoint’s Dividend Policy is Sound.

OCA witness Brevitz and Labor witness Barber challenge FairPoint’s dividend policy and propose conditions to this transaction that would materially inhibit FairPoint’s ability to pay dividends. *See* Prefiled Direct Testimony of Mr. Brevitz at 11:12-13; Prefiled Public Direct

Testimony of Mr. Barber at 56. These proposed conditions are without merit and should be rejected. This is the correct dividend policy for this company in this business. As Mr. Balhoff points out:

FairPoint and its peer companies are paying relatively higher dividends precisely because fundamental growth (hence capital appreciation) is harder to generate than it was in the past. In this case, *if policymakers expect FairPoint or any carrier to maintain some appropriate market-responsive balance between debt and equity, they will have to permit appropriate returns for holders of debt securities and equity securities.* Total return considerations drive the markets' pricing of equity, which is critical in running a capital-intensive business. The level of the dividend yield reflects the market's return-requirements in the face of a more competitive marketplace, changing technologies, and lesser opportunity to generate capital appreciation. Equity investors understand that the ultimate risk is borne by those who hold shares in the companies.

See Prefiled Rebuttal Testimony of Mr. Balhoff at 22.

FairPoint's projected payout ratio, a measure of FairPoint's dividend in relation to free cash flow, is directly in line with similarly situated companies. See Prefiled Rebuttal Testimony of Mr. Balhoff at 23-24. Further, a number of these companies paid out dividends in excess of earnings during 2006 and some also have negative book equity. *Id.* at 26:14-21 and Table 5. All of these companies have substantial positive market capitalizations⁴, clearly demonstrating the significant financial strength of these organizations. *Id.* Mr. Barber's argument places excessive emphasis on the accounting book value of the equity, which is only one financial metric and has significant limitations in capturing the asset base's true economic value. *Id.* at 26. Tailoring FairPoint's capital strategy to accommodate the preferences of the capital markets should ultimately lower the company's cost of capital and enhance its ability to raise capital as necessary.

⁴ Market Capitalization is the financial accounting term represented by the combined fair market value (i.e., what a willing buyer would pay to a willing seller) of shareholders' equity interests.

Mr. Barber theorizes that FairPoint would prioritize making dividend payments over meeting customer service obligations. *See* Prefiled Public Direct Testimony of Mr. Barber at 37-39. In reaching this conclusion, it appears Mr. Barber incorrectly has inferred priority based upon the order in which various unnumbered alternatives were presented in Mr. Leach's Direct Testimony. Obviously, any public company has a fiduciary duty to its shareholders to take reasonable actions intended to provide a reasonable return on their investment, and certainly investors value predictability in their returns. However, failing to adjust financial strategy to changing operating conditions would cause greater harm to a company's long-term business prospects than failing to steadfastly "stay the course" in its dividend policy.

Shareholders generally understand and follow the businesses in which they invest. As Mr. Leach explains, dividends are discretionary. *See* Prefiled Rebuttal Testimony of Mr. Leach at 31 and 90. Shareholders understand this fact. In the event that FairPoint faced unforeseen financial challenges, Mr. Leach states that "it would be irrational for us to take any actions that would risk our relationship with customers or employees or cease making adequate investment in operations. To do so would risk the underlying long-term health of the business and the value of the assets." *Id.* at 5. Thus, contrary to Mr. Barber's suggestion, FairPoint does not view its dividend as "sacrosanct." Rather, FairPoint recognizes that the portion of cash flows allocated to dividends ultimately is available to meet unforeseen challenges, meaning that the "substantial cushion" in cash flow described by FairPoint's witnesses is even greater than initially may be apparent, because dividend payments are not mandatory obligations.

12. Review of Mr. Brevitz' Analysis.

OCA witness Brevitz states that this case is different from the transactions involving the "guideline companies" cited by Mr. King and Mr. Balhoff. In fact, Mr. Brevitz states that the

only significant similarity between this case and the Embarq and Windstream transactions is that “both were structured to be tax-free transactions.” *See* Prefiled Direct Testimony of Mr. Brevitz at 46. In point of fact, the transactions had many similarities. Mr. Brevitz goes to great lengths in his prefiled testimony to recite the risk factors stated in the securities filings by FairPoint relating to this transaction. However, the disclosures of risk factors in the Embarq and Windstream transactions closely parallel the disclosures here.

- “We may experience increased costs or decreased operational efficiencies as a result of our need to replace corporate functions previously provided by Sprint-Nextel.”
- “Following the spin-off, we will have substantial indebtedness which could restrict our ability to pay dividends and have a negative impact on our financing options and liquidity position.”
- “We face widespread competition that may reduce our market share and harm our financial performance.”
- “Due to competitive, technological and regulatory changes, we cannot assure you that our core business will grow, and it could decline, which could have an adverse effect on our business and future prospects.”
- “A significant portion of our workforce is unionized. And, if we are unable to reach new agreements before our current labor contracts expire, our unionized workers could engage in strikes and other labor actions that could materially disrupt our ability of providing service to our customers.”
- “Windstream may not realize the anticipated synergies, cost savings, and growth opportunities from the merger.”
- “The integration of Spinco and Valor following the merger may present significant challenges to Windstream management, which could cause management to fail to respond effectively to increasing forms of competition facing Windstream’s business and accelerate Windstream’s rate of access line loss.”
- “Failure to complete the merger could adversely impact the market price of Valor common stock, as well as Valor’s business and operating results.”

See Tr. 10/25/07 at 27-31.

No testimony was filed by Mr. Brevitz in the Embarq case due to the fact that his clients stipulated to approval of that transaction. However, his testimony in this case uses the same analysis as in his testimony before the Kentucky Public Service Commission with regard to the Alltel – Windstream transaction, even though he characterizes this transaction as different. The Labor Intervenors also participated in that regulatory process. *See* Tr. 10/25/07 at 31:19.

Mr. Brevitz' claim that Windstream is not comparable to the present transaction is not well founded. In reviewing the testimony proffered by Mr. Brevitz in the Windstream proceedings, the similarities cannot be ignored and (compellingly) weigh in favor of approval of the present transaction. Mr. Brevitz testified that Windstream would have an "excessive debt burden." *See* Tr. 10/25/07 at 32:6-9. He testified that Windstream was unlikely to achieve projected synergies. *Id.* at line 15-18. He relied on board of director materials relating to discussions that led up to the transaction. *Id.* at line 19-21. Mr. Brevitz discussed the consequences of a high debt level. *Id.* at line 22-24. He discussed interest rate risk. *Id.* at 33:1-3. He called Windstream a "high debt/high dividend company." *Id.* at 33:4-6. He questioned Windstream's estimates of free cash flow to pay dividends. *Id.* at line 10-12. Mr. Brevitz even provided testimony questioning Windstream's "transparency" with the Kentucky Commission. *Id.* at line 16-21.

Importantly, Mr. Brevitz concluded that the Kentucky Commission should reject the transaction. *Id.* at 34:15-17. Alternatively, he proposed that if the Kentucky Commission were to reject this recommendation and approve the transaction, that the Commission should adopt a series of conditions, many of which are virtually verbatim to those proposed here. *Id.* at 34-35. The Kentucky Commission rejected Mr. Brevitz' recommendations. *Id.* at 35:11-14. That

decision proved to be in the best interests of Kentucky's ratepayers. This Commission similarly should reject Mr. Brevitz' recommendations and conclusions.

13. Risk Analysis by Mr. Brevitz and Mr. Barber.

Messrs. Brevitz and Barber share a bleak view of the future of telecommunications in New Hampshire. Verizon's Annual Report to the PUC showing New Hampshire intrastate operations for the fiscal year ended December 31, 2006 shows a company losing \$18 million per year before the imputation of Yellow Pages revenues and \$4.3 million after such imputation.⁵ From the starting point of these negative numbers, Messrs. Brevitz and Barber question FairPoint's ability to achieve synergies or savings through the transition to new back office systems. *See, e.g.*, Public Prefiled Direct Testimony of Mr. Brevitz at 82-84.⁶ They argue that more needs to be spent to improve service quality. *See* Public Prefiled Direct Testimony of Mr. Barber at 36; Tr. 10/25/07 at 37. They expect revenue losses due to competition. *See, e.g.*, Tr. 10/25/07 at 37. They expect higher labor costs. *See, e.g.*, Tr. 10/25/07 at 37. Mr. Brevitz cites the possibility that wholesale customers will become bankrupt and cause bad debts. *See* Tr. 10/25/07 at 38. They question the ability to generate revenues, both from the traditional telephone business and from broadband. *See, e.g.*, Prefiled Public Direct Testimony of Mr. Brevitz at 95-101. In their world, there really is no viable prospect for this business.

While it is easy to take a financial model and plug in negative assumptions, investment decisions are made in the real world. Financial experts King and Balhoff deal in this real world daily, and they do not share this negative view. Based on their experience and judgment, they have determined that FairPoint's projections are reasonable, and FairPoint has good prospects to

⁵ Ironically, when confronted with these book operating losses, Witness Barber suddenly found that tremendous amounts of free cash flow were nonetheless available to the business. *See* Tr. 10/24/07 at 259-260.

⁶ Neither Mr. Barber nor Mr. Brevitz provided any analysis from an systems engineering perspective of the FairPoint replacement back office systems.

outperform the projections. Most importantly, lenders have agreed to provide over \$2 billion in financing for this transaction. Not only do the lenders believe in the projections and FairPoint's business model, the lenders have put billions of dollars at risk in reliance on such information.

14. Conclusion Regarding Financial Issues.

The capital structure and capital allocation strategy proposed by FairPoint reflects current market realities for similarly situated utilities that have arisen from competitive pressures throughout the telecommunications industry. The principal risks facing NNE telephone customers arise from the competitive environment in which their incumbent telephone company must operate. The most effective way to overcome these risks is with FairPoint, a locally focused utility with a plan to serve the telecommunications needs of rural and small urban markets.

As FairPoint's conservative financial forecast demonstrates, the company has the financial strength, cash flow, and access to capital necessary to acquire the Verizon's NNE assets, provide quality service, and support the state's public policy objectives. Further, FairPoint's capital structure and capital allocation strategy ensures access to capital on just and reasonable terms. FairPoint's capital strategy therefore is consistent with the interests of New Hampshire ratepayers.

B. FairPoint's New Back Office Infrastructure: Retail and Wholesale Customers Will Benefit From FairPoint's State-of-the-Art Systems and Infrastructure.

1. FairPoint's New Systems Architecture.

Through this transaction, FairPoint offers the State of New Hampshire (indeed the entire NNE region) an opportunity to fundamentally update the back-office systems serving telecommunication customers, both retail and wholesale. These systems will enhance FairPoint's ability to respond to customer requests and serve as a platform for providing

enhanced services in the future. These systems primarily will be located in the Network Operations Center (“NOC”) in the City of Manchester, New Hampshire. Investing in new systems and the location of the NOC within the NNE region will have a direct positive impact on quality of service, as well as on the economy, and is thereby consistent with the interests of ratepayers and in the “public good.” *See* Tr. 10/30/07 at 74:22-23 – 75:1-2.

Today, nearly all of Verizon’s back-office activities for creating bills, responding to customer service issues, and managing network issues are performed at locations outside Northern New England. If approved, FairPoint will bring those functions back into the NNE region. The employees responsible for maintaining the systems functionality will be located in the NNE region, not in some distant state by employees with no connection to New Hampshire or NNE.

Additionally, FairPoint’s back-office systems will be technologically more advanced than Verizon’s legacy systems as FairPoint will be building its back-office systems from the ground up. As explained by Mr. Haga:

[FairPoint has] focused our selection process on functionality, vendor expertise and strength, the continuing support by vendors of the products and systems to be purchased and price. In addition, Capgemini and FairPoint have evaluated existing implementation within the marketplace of the various products considered to date. FairPoint intends to install commercially available systems in use today in order that FairPoint may benefit from customer knowledge, as well as vendor experience and familiarity with the systems.

See Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 10:5-11.

Indeed, “[t]he new [systems] architecture will provide FairPoint with the opportunity to offer new products, as well as existing products and services in a way that is as efficient or more efficient than Verizon has offered in the past. More importantly, the new systems will allow easier introduction of new services and new products in a very cost-efficient way. This is beneficial to the residents of New Hampshire.”

Id. at 48:11-16. FairPoint's plans with respect to its new systems are discussed below in Section V.G.2.

2. Capgemini's Expertise and Experience.

FairPoint has hired world-class consultants, Capgemini U.S., to assist in the integration of these back-office systems and the transfer of customer and business data from the legacy Verizon systems to FairPoint's new state-of-the-art systems. Capgemini's telecommunications business unit has over 30 years of experience in the field, and includes over 3,500 professionals. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 3. Capgemini has been retained in prior engagements with most major telecommunication carriers, both wireline and wireless, in the United States, including such projects as the implementation of a new billing system for one local exchange carrier affecting 3 million customers. *See* Tr. 10/22/07 at 165:17-24; *see also* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 33:11-17.

Capgemini, with the direction of FairPoint, is preparing the systems, the hardware and the software, while FairPoint is ramping up the workforce that will operate the systems and software to deliver the services. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 3. The cost for systems development and integration will be approximately \$200 million. *See* FairPoint Ex. 17HC (Capgemini Work Order #1).

These joint efforts commenced in January, 2007, virtually simultaneously with the announcement of the transaction. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 6:8-16. All major components of the system have already been purchased and integrated. The project team is now completing its analysis of the first round of test data extracts from Verizon, with a second test round scheduled to begin January 31, 2008. *See* Tr. 10/22/07 at 176:20-23. The project also remains on budget because it has a fixed price for hardware and software and

services, and the intervening deliverables have been delivered on time. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 47:13-16.

3. The Hawaiian Telcom Analogy Is Not Well Founded.

As the Commission is aware, several parties have expressed concern regarding potential risks relating to the cutover from the legacy Verizon systems to the new FairPoint systems. *See, e.g.,* Pelcovits Direct Testimony at 6-7. These parties cite the facts that one former Verizon business unit, Hawaiian Telcom, had difficulty in completing a cutover. *See id.* However, upon closer examination, these comparisons are not well founded, as discussed below and in Verizon's post-hearing brief.

As Mr. Smith explained, the cutover process here has been overwhelmingly superior to the Hawaiian Telcom experience. Mr. Smith described the differences between Hawaiian Telcom and FairPoint as the difference between "night and day" and stated that "...it is that dramatically different." *See* Tr. 10/24/07 at 224:8-10. FairPoint presents with a seasoned leadership team, with extensive telecommunications experience. Yet in the Hawaiian Telcom transaction, "the process didn't occur until late in the game and [Carlyle]" – a private equity firm with no such experience – "hired in some senior folks who had not worked together..." *Id.* at 224:9-24 – 225:1-4. Not only is the FairPoint/Verizon cutover process more rigorous than Hawaiian Telcom's experience (*id.* at 225:20-24), but Hawaiian Telcom failed to even utilize the first data extract provided by Verizon. *Id.* at 227:2-4 (Mr. Smith explaining that "Hawaiian Telcom never used the first data extract that we provided to them. **They just weren't ready and so they got it and parked it.**") (emphasis added).

As Mr. Kurtze explained, the Hawaiian Telcom system development and cutover process was scheduled for a nine-month period while FairPoint has provided Capgemini a seventeen-

month period to develop and implement approximately the same number of systems. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 36:3-10. The additional time allows for a more deliberate systems build and testing process. *Id.* Indeed, with over six (6) months remaining until cutover, FairPoint has already completed the initial development of all of its systems, created a Cutover Task List, a detailed Testing Strategy for the cutover, and begun the testing process – including stress testing. *See* NECTA/Comcast Ex. 3C and 8C; *See also* Tr. 10/22/07 at 170-171 and Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 36.

The primary safeguard for the cutover is effective testing and Capgemini has developed an impressively comprehensive test strategy. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 32. As Mr. Kurtze explains: “Years of data will work its way through the testing. Testing will occur at the level of individual applications as well as at the level of groups of applications. End-to-end testing and then load testing will follow. Finally, critical user acceptance testing will occur.” *Id.*

4. Independent-Third Party Monitor.

To ensure the efficacy of the testing strategy, FairPoint has further agreed to fund the retention of an independent consultant to review the strategy and the testing jointly on behalf of the Maine and New Hampshire Commissions and the Vermont Public Service Board. In fact, FairPoint has recommended such a process for several months. The process described by Mr. Haga has resulted in the selection of Liberty as the independent consultant. FairPoint understands that the scope of work is agreeable to the three states and that final arrangements will be completed soon. FairPoint stands ready to continue with this process and to meet its commitment to fund the costs.

Mr. Robert Falcone and Charles King, PhD., provided extensive testimony concerning the role of Liberty with respect to the systems monitoring process. Systems monitoring is applicable to Maine, New Hampshire and Vermont. Dr. King explained the process as including three (3) distinct functions.⁷ First, Liberty plans to assess FairPoint's testing plans and readiness for cutover. This testing includes the systems, "situation with personnel...and business processes". See Tr. 10/30/07 at 106:8-15. Second, Liberty plans to monitor the specific testing, and acceptance of testing measuring criteria (*i.e.*, severity levels) as the testing process occurs through the cutover. *Id.* at 107:2-10. Third, Liberty plans to provide information to the staffs of the three (3) states, to answer questions and to advise whether Liberty agrees with FairPoint's assessment of the readiness to issue the Notice of Cutover. *Id.* at 107:11-21.

The independent expert witness retained by NECTA/Comcast, Dr. Michael D. Pelcovits, provided support for this process. Dr. Pelcovits could not more clearly express his support for the contemplated independent monitoring process. In Dr. Pelcovits' own words:

And let me just start off by saying that I think it's really a very, very strong, excellent effort by the parties involved in developing this scope of the third-party involvement in the transition from the Verizon to the FairPoint system. So I certainly give a -- really commend the people that put the work into this and think that it really addresses quite a number of the concerns that were raised in my testimony.

See Tr. 10/31/07 at 250:8-16. Although Dr. Pelcovits had additional questions, *id.* at 250:17-24, FairPoint is confident that it can work in a cooperative fashion with Liberty and proceed with an effective cutover. See, *e.g.*, Tr. 10/30/07 at 124:12-15 (Dr. King explaining that Liberty may make recommendations to FairPoint) and Tr. 10/30/07 at 172:11-24 – 173:1-3 (Mr. Nixon

⁷ FairPoint also recognizes that the responsibilities of the independent consultant should be limited to exclude any role in the actual development of the systems.

explaining that FairPoint intends to fully cooperate with Liberty and be collaborative during the process).

In the event that problems arise following cutover, FairPoint will have contingency plans in place to ensure continuity of system services. See Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 31-32. Mr. Kurtze explained that FairPoint will use the “first two data extract processes to obtain an understanding of the type of manual efforts that will have to be in place for correcting information (if the need arises) and for adding information which requires manual input.” *Id.* This will help us to again mitigate the risk post-conversion in the event any issues develop. *Id.*

FairPoint and Capgemini, in partnership with Verizon, have devised comprehensive planning, implementation, testing and risk mitigation strategies to ensure cutover will be successful. Verizon’s witness Mr. Smith remarked: “[Verizon has] been, as a company, very impressed.” Tr. 10/24/07 at 228:14. Following this successful cutover, FairPoint will have state-of-the-art systems that will have a direct positive impact on quality of service, an outcome that is clearly consistent with the interests of ratepayers, this Commission and the State of New Hampshire.

C. *Broadband: FairPoint’s Data Centric Business Strategy and Broadband Deployment Plan Benefits Customers Specifically and the New Hampshire Economy in General.*

1. FairPoint’s Business Plan – An Overview.

FairPoint believes that its business should be oriented around the needs of the consumers of today and tomorrow. Increasingly, customers rely on data-centric products and services. From broadband internet access at homes and businesses, VOIP and IPTV, and remote

education, to fully redundant world-class business enterprise connectivity, FairPoint believes that the future lies in data-centric services.

FairPoint has invested a significant amount of time, capital, and resources in evaluating strategies to serve this public need. Through this process, FairPoint has developed a data-centric business plan that will enable it to grow its customer base and customer service levels while also expanding its business. The heart of this plan is the development and deployment of a fundamentally new backbone for data transmission across the network.

As a starting point, through the proposed transaction, FairPoint will acquire Verizon's robust and efficient network in the NNE region. *See* Prefiled Direct Testimony of Mr. Harrington at 4-6. Verizon has already made significant investment in transport infrastructure, including a substantial number of SONET (synchronous optical network) rings, interoffice fiber, and a number of fiber-fed digital loop carrier systems. These provide FairPoint with a base network that it can augment efficiently in order to support the provision of new and enhanced services to the entire Northern New England customer base. *Id.* at 9:9-10.

2. FairPoint's Broadband Build Out.

In terms of additional investment in the communications network, one of FairPoint's top priorities will be to significantly enhance the broadband network by using the existing fiber cabling to build a new advanced IP based network. This network will provide enhanced broadband services for businesses and provide broadband-enabled services to customers that do not have high-speed access and broadband-enabled services available today. *Id.* at 9-10. FairPoint will build out broadband infrastructure that first supports existing service and product offerings, but can also accommodate a wide variety of future technologies and customer-oriented products and services. FairPoint will accomplish this by augmenting and expanding Verizon's

existing broadband network by overlaying a new advanced core broadband network that can accommodate such products and the additional traffic that they would generate. *See* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 28; Prefiled Rebuttal Testimony of Dr. Douglas Sicker at 22:1-5. In following this philosophy, FairPoint will implement a robust Internet Protocol/Multiple Protocol Label Switching (“IP/MPLS”) core backbone, which will support 10 Gigabit per second data rates. *Id.* at 20:16-18. The FairPoint approach makes use of newer technology, namely Gigabit Ethernet, which allows the Ethernet frame from the customer to be more easily routed through the network with less overhead and higher efficiencies. *Id.* at 20:19-22. As Dr. Sicker testified, this is a modern technology allowing for more efficient network use and network management. *Id.* at 20-22.

Concurrently with this redevelopment of the backbone infrastructure on the customer end of the network infrastructure improvements, FairPoint’s first step is the aggressive deployment and utilization of broadband technology to homes and businesses. FairPoint will make use of Multi Service Access Nodes (“MSANs”) – network equipment that can support a range of access technologies, e.g., basic telephone service, ADSL, VDSL and Fiber-to-the-Home (“FTTH”). *See* Prefiled Rebuttal Testimony of Dr. Sicker at 21:3-11. FairPoint presently plans to deploy ADSL2+ and VDSL2, which will support up to 25 Mb/s and 100 Mb/s, respectively (depending upon distance). *Id.* As Dr. Sicker testified, DSL is the most efficient technology that can be deployed in most of the areas in which broadband availability is lowest. *See also* Prefiled Direct Testimony of Mr. Harrington at 9:16-10:4. DSL utilizes the current network, allowing a build-out to a wider footprint than would be economically feasible through removing and replacing or overbuilding existing infrastructure. *Id.* Utilizing DSL technology is consistent with FairPoint’s practice of building out broadband technology in a way that positions the network for future

advances in technology such as FTTH and internet protocol television (“IPTV”). *Id.* FairPoint will also use other technologies (*e.g.*, cable modem and wireless) as necessary to further its broadband roll out.

FairPoint plans to invest heavily in broadband infrastructure for the purpose of substantially increasing broadband availability in the state. *See* Prefiled Direct Testimony of Mr. Harrington at 3:8-9. FairPoint’s initial spending budget of \$16,400,000 is projected to increase broadband “addressability” from approximately 72% of Verizon’s access lines today to 83% of access lines within two years of closing. *See* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 32:11-14; FairPoint Ex. 59P. “Addressability” means that “...a wire center (central office or remote terminal) has been equipped with the capability to offer DSL service, *i.e.*, that it has the requisite digital access multiplexing equipment. This definition does not mean that every access line served by that wire center can be immediately connected to provide DSL service (although the vast majority of lines would have immediate access to DSL).” *See* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 32:17-20 – 33:1-2. Using the term “available”, which means that an access line is conditioned such that a customer can order broadband service (*see* Tr. 10/31/07 at 18:4-7), FairPoint’s plan would increase DSL availability from 61% today to 71% of access lines within two years of the closing. *See* FairPoint Ex. 59P and Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 28:5-8. As FairPoint conditions the lines, it anticipates being able to expand DSL availability to more customers and increase availability to 80% of access lines. *See* Tr. 10/31/07 at 26:16-24 – 27:1-7; *see also* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 33:5-18 – 34:1-2. Further, FairPoint’s intent is to provide quality service for the people of the State of New

Hampshire and new services in the future as driven by the market. *See* Prefiled Direct Testimony of Mr. Harrington at 3:12-14.

3. Responses to Criticisms of the Labor Intervenors.

Some critics, primarily the Labor Intervenors, appear to be holding out hope for FTTH/FiOS⁸ roll out by Verizon in the NNE region. *See, e.g.*, Tr. 10/24/07 at 222:5-8; Tr. 10/31/07 at 169-174. The Labor Intervenors also raised this issue in its extensive public relations campaign to “Stop the Sale”. *See, e.g.*, FairPoint Ex. 68-69. As far back as August 2006, the Labor Intervenors had plans to “ramp up” its public relations campaign to “Stop the Sale” – well before the present transaction even was announced. *Id.* One of the major ironies in this case is that while the public relations campaign by the Labor Intervenors criticizes DSL technology, they presented no record evidence critical of FairPoint’s broadband expansion plans. The Commission should not forget that Dr. Peres is the co-author of “*Speed Matters*” (*see* FairPoint Ex. 66P), a white paper for the Communication Workers of America, and that he does not address issues raised by FairPoint’s witnesses Mr. Brown or Dr. Sicker.

Moreover, it cannot be argued seriously that the denial of the present transaction will cause Verizon to install FiOS in New Hampshire, Maine or Vermont. Verizon has multiple strategic business opportunities. Each of these opportunities competes for cash and other resources. *See* Tr. 10/24/07 at 230:3-13. Simply stated, the NNE region does not rank high on the Verizon priority list for FiOS or other leading products. As Mr. Smith explained during cross examination:

[Verizon has] limits to where and how quickly we can transform the business to FiOS. Ultimately, it may not prove to be economical in every market that we serve ... This was, you know, three states that would not be priority states, in terms of FiOS rollout. Frankly, if you look back to the history of Verizon in these

⁸ “FiOS” is a Verizon service mark for their FTTH product.

three states, for many -- most of the leading products that -- the process we rolled them out, they don't come first to New Hampshire or to Maine or to Vermont. **They go to New York. They go to Massachusetts. They go to our major -- our large and dense markets.**

Tr. 10/24/07 at 232:23-24 – 233:1-17 (emphasis added).

Suggestions to the contrary notwithstanding, DSL is a robust and reliable broadband technology. As Dr. Sicker testified, DSL "...is an emerging technology. It's advancing." See Tr. 10/29/07 at 168:10-11. Broadband technology is improving and continues to improve with advances in data compression and throughput capabilities over existing copper plant. See Prefiled Rebuttal Testimony of Dr. Sicker at 8:20 – 9:1-2. This level of advancement is supported by Moore's Law, which embodies the understanding that technology improves exponentially with time. *Id.* at 8:fn 3. The reality is that FairPoint and other carriers will soon be able to provide additional data services over existing plant.

While there are some areas in the U.S. where companies are deploying FTTH, those regions typically are either greenfield developments or areas where deployment costs are low relative to the potential returns (more urban and suburban, high population density regions). See Prefiled Rebuttal Testimony of Dr. Sicker at 17:7-10. Almost all major telephone company broadband projects in the United States use DSL and cable modem technology (and, to a lesser extent, wireless) as the primary "last mile" connection to customers; in fact, it is well documented that DSL is the technology of choice for most telephone companies investing in broadband and that FTTH comprises only a small percentage of the deployed broadband. *Id.*

Finally, and most fundamentally, nothing in FairPoint's plan is inconsistent with the deployment of FTTH; indeed, FairPoint views FTTH as a possible technology for future deployment. FairPoint has designed its proposed network infrastructure upgrades with this future compatibility as a key element. See Prefiled Rebuttal Testimony of Dr. Sicker at 22:1-5.

4. Consumer Advocate's Criticism of the Broadband Plan.

Through its witness, Ms. Susan Baldwin, the Consumer Advocate has criticized FairPoint's broadband expansion plans by asserting that the plan does not render the proposed transaction as being for the "public good." *See* Baldwin Prefiled Direct Testimony at 128-129. Yet the Consumer Advocate "...remains hopeful that in some other forum the State takes affirmative steps to promote broadband service." *Id.* at 129. Despite the failure to identify this "other forum," Ms. Baldwin sets forth an extensive list of conditions of approval related to FairPoint's post-closing broadband offerings. *Id.* at 129-130. Significantly, the Consumer Advocate fails to explain how this Commission has jurisdiction to impose broadband related obligations on FairPoint above and beyond what FairPoint has offered to accept. *See, e.g.,* Tr. 11/01/07 at 98:9-11 (Chairman Getz stating that "... [S]uch conditions go to some matters beyond our jurisdiction in the normal course, such as broadband.") Thus, the Commission should look beyond the plethora of broadband-related conditions proposed by the Consumer Advocate (and other parties) and focus on the issue of whether FairPoint's plan is in the "public interest."

As explained by several witnesses, FairPoint is proposing to spend \$16,400,000 dollars within the first 18-24 months after the merger closing date to improve the network and bring additional broadband capacity to consumers. *See* FairPoint Ex. 59P. FairPoint proposes to increase broadband availability and make broadband accessible to an additional fifty seven thousand eight hundred (57,800) access lines within two years of closing. *See* Tr. 10/31/07 at 22:24 – 23:1-7.

The testimony from FairPoint witness Mr. Michael Brown is compelling:

The FairPoint plan will be focusing on rural offices as well as the larger New Hampshire offices. Thus, with the incremental expenditures, FairPoint will be

reaching many more communities than presently served. Upon completion of the proposed FairPoint broadband build out, an additional one hundred thirty (130) RT locations (above the number to which Verizon already provides broadband) will gain broadband access and an additional twenty-two (22) central offices (above the number Verizon already furnishes with broadband) will gain broadband access. This means that an additional one hundred fifty-two (152) communities in the State of New Hampshire will have access to DSL broadband service that have no such access at this time.

See Prefiled Direct Testimony of Messrs. Brown/Harrington/Smee at 31:20-21 – 32:1-8.

In addition, Mr. Brown confirmed during cross examination that FairPoint's goal is to expand broadband availability to an additional forty thousand (40,000) access lines (over and above the initial 57,800 discussed above). *Id.* Ultimately, it is FairPoint's goal to reach all of its customers with some form of broadband access. *See* Tr. 10/29/07 at 43:23-24 – 44:1-2. There is no suggestion in this case that Verizon has any intention of expanding broadband availability to New Hampshire's customers. FairPoint's proposal therefore constitutes a dramatic increase over current levels of broadband availability and this factor weighs in favor of approval.

D. Jobs and Economic Development: FairPoint Will Provide Benefits to Customers and the General Public in New Hampshire by Creating Jobs and Providing Leadership in Economic Development.

1. Economic Benefits will Result from New Jobs.

The transaction will provide further benefit to FairPoint's customers and to the general public through the creation of jobs and through FairPoint's commitment to economic development. Although facilitating economic development activities is a prudent practice for utilities, FairPoint's specific and structured commitments, including its "connectivity – enabled economic development initiative," *see* Prefiled Rebuttal Testimony of Mr. Nixon at 5:12-14, are unique, and flow directly from the alignment of FairPoint's business plan with the interests of New Hampshire. FairPoint's commitments to New Hampshire also flow from its corporate philosophy, including its "customer facing" organization. *Id.* at 14:5-7.

The nature of the economic benefits resulting from the transaction will be multifold: the direct addition of new jobs; the additional jobs created in the local economy by FairPoint's direct purchase of services in the region; FairPoint's special program of direct economic development initiatives; the increased productivity of many businesses resulting from the availability of enhanced telecommunications services; and the multiplier effect arising from the infusion of dollars into the economy from each of these sources.

FairPoint has committed to the addition of at least 675 positions in Northern New England, with approximately 250 of them located in New Hampshire.⁹ *See* Prefiled Rebuttal Testimony of Mr. Nixon at 23:9-17. These positions will perform functions that are currently being performed by Verizon outside of Northern New England, and will improve service quality and increase FairPoint's focus on the residential and business customers. "The positions in New Hampshire will include the functions required in the data center, network operations center, accounting, marketing, collections, and other support functions. FairPoint will also have other positions located in New Hampshire including service technicians, business sales and field marketing." *Id.* at 23:13-17.

2. FairPoint's Presence Will Result in Additional Benefits for NNE.

FairPoint also is committed to being a leader in economic and community development in the communities it will serve, as well as those it already serves. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 5-6. FairPoint is creating a connectivity-enabled economic

⁹ In cross examination, Mr. Rubin inquired regarding projected employee attrition numbers. *See e.g.*, Tr. 10/23/07 at 179:12-24. While the rate of decline is projected for financial modeling purposes to continue at the current rate, this would likely occur regardless of whether FairPoint or Verizon is operating the Northern New England system. *Id.* Moreover, it is clear that under FairPoint there would also be an immediate and substantial boost in the current number of employees and therefore a higher starting point.

development initiative¹⁰ based upon community, region and state collaboration. *Id.* This initiative is designed to work with the existing economic development agencies, providing resources, expertise and tools to assist them in establishing and meeting measurable objectives for economic growth based upon broadband connectivity and collaboration. *Id.* FairPoint also will pursue opportunities to enter into arrangements with local businesses for products and services.

FairPoint will create and staff a department for community development, reporting to Mr. Nixon, the President. Further, FairPoint has engaged Mr. Frank Knott, president of ViTAL Economy, a nationally recognized leader in connectivity enabled economic transformation in rural and small urban communities to initiate and launch the program. *Id.* This economic development initiative will further the policies already established in the state and provide additional resources and tools to help the communities meet their goals. *Id.*

Whether specifically targeted by FairPoint's initiatives or not, local businesses will benefit from the additional availability of broadband services throughout New Hampshire. As described in the Communications Workers of America's white paper "Speed Matters," co-authored by Labor witness Dr. Kenneth Peres:

Technology can break down the barriers of distance allowing residents of more remote communities to participate fully in economic and civic life. For example, farmers and ranchers increasingly need broadband for monitoring weather, market quotes, crop reports, and quicker access to parts and feed/seed suppliers. **One report found that broadband saved 1-3 hours per day and improved service quality. Rural businesses also can use broadband to expand markets and increase access to such critical services as banking, accounting, order fulfillment, and freight forwarding....** Broadband also allows rural communities to attract businesses and individuals that would not be able otherwise to live and work in rural communities.

See FairPoint Ex. 66 at 9 (emphasis added).

¹⁰ "Connectivity-enabled" is used to recognize the key role of broadband connectivity as the enabling infrastructure for multiple economic development efforts. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 5.

3. Jobs & Economic Benefits Weigh in Favor of Approval.

The success of FairPoint's new employees, its vendors, and its customers will all contribute to the success of the local economies in the State and the NNE region. FairPoint submits that each new job created will indirectly generate additional jobs in the economy through the "multiplier effect." The Commission need only look to FISC Solutions and Maine Printing Company, two regional businesses benefiting from a relationship with FairPoint, to verify this claim. Each of these economic benefits, the jobs, the expanded broadband access, and the economic development initiative, derive directly from FairPoint's presence. Further, these will benefit many FairPoint customers on an individual basis through enhanced services. FairPoint's commitment to providing these benefits is a salient component of the broad demonstration in the record of substantial benefits as a consequence of this transaction. Consequently, this factor demonstrates that the proposed transaction is in the public good and should be approved.

E. Quality of Service: FairPoint has the Organizational Capability and Strategy to Benefit Customers by Providing a Superior Level of Service.

1. Development of FairPoint's Business Organization.

FairPoint has the experience, organization, and financial capability to provide New Hampshire customers with high quality service. Through this proceeding, some parties have questioned whether FairPoint can translate this high quality of service it provides currently to the larger post-merger enterprise. FairPoint is committed, both philosophically as well as in terms of planning and investment, to doing so.

To ensure superior customer service, FairPoint is creating a customer facing organization to serve Northern New England. At the core, FairPoint will employ an experienced Verizon workforce of approximately 2,700 to 2,800 employees. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 17:14-15. As noted above, FairPoint will also add at least 675 new positions to perform

back office functions currently performed by Verizon outside of the Northern New England region, **with at least 250 of these positions being located in New Hampshire.** *Id.* at 23 (emphasis added). As explained by Mr. Nixon:

The positions in New Hampshire will include the functions required in the data center, network operations center, accounting, marketing, collections, and other support functions. FairPoint will also have other positions located in New Hampshire including service technicians, business sales and field marketing.

See Prefiled Rebuttal Testimony of Mr. Nixon at 23:13-17.

In developing the growth of its organization, the “core principle is that [FairPoint] will be a ‘customer facing’ organization. In other words, we will be primarily organized around the customer experience.” *See* Prefiled Rebuttal Testimony of Mr. Nixon at 5:2-4. A second guiding principle is local decision making. *Id.* FairPoint will have senior-level employees in New England and significant decision-making authority will reside in the region. *Id.* Consequently, decision makers will be accessible and decisions will be timely. *Id.*

FairPoint already has hired key employees who will augment FairPoint’s existing management team and oversee the transition and integration process. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 14-15, and 20-21. Each of these key employees has substantial success within the telecommunications industry relevant to the position for which each person has been hired. *Id.*; *see also* Ex. PGN-2 through PGN-7. Indeed, three (3) of these leaders, Messrs. Skrivan, Smee, and Lippold, have testified as witnesses in this proceeding. The key employees that have already been hired are responsible to help select the systems they will be converting to, develop the processes and the procedures that FairPoint is operating on, and then to build the organization. *See* Tr. 10/30/07 at 16-17. The company worked closely with state economic development agencies to ensure that locations selected for support offices would have

adequate labor pools from which to draw necessary skill sets. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 22:17-21 – 23:1-5.

2. The Quality of the Existing Verizon Network.

In addition to developing its organization, in order to provide quality service, FairPoint must ensure that the system's physical plant is adequate. This process commenced prior to the execution of the merger agreement during the due diligence process, and continues today. As Mr. Brown explained, the condition of the outside plant is generally good. *See* Tr. 10/29/07 at 144; Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 6:19-21 – 7:1-2. Mr. Harrington confirmed that, based upon a review of a significant percentage of the critical equipment and records covering 100% of such equipment, the condition of the inside plant is also generally good. *See* Tr. 10/29/07 at 143-144.

Verizon employs a commonly used technology in its network. That technology is known as asynchronous transfer mode ("ATM") over a synchronous optical network ("SONET"). *See* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 5:14-17. Contrary to assertions from various Intervenors, FairPoint's due diligence with respect to the state of the network has been extensive. FairPoint's team has examined both central plant and outside plant facilities. In addition, Verizon provided FairPoint with extensive documentation related to the network. FairPoint has reviewed diagrammatic representations of interoffice copper and fiber facilities, and state-level representations of the various gauges and lengths of 26-gauge, 24-gauge and 22-gauge copper cable. *See* Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 6-10. As stated by Mr. Harrington, FairPoint "will receive a network with which we will be able to provide high quality communication services." *Id.* at 10:6-7.

3. Quality of Service Improvements and Related Metrics.

FairPoint's confidence in the network, along with FairPoint's due diligence review of the network, is demonstrated in its willingness to accept all existing quality of service metrics. In fact, Verizon today meets most of the existing quality of service metrics. *See* Tr. 10/29/07 at 57:15-17. Two of the quality of service metrics that are "problematic" are the troubles not cleared within 24 hours and certain of the individual wire center report rates. *Id.* at 57:17-21. FairPoint has developed a well thought out plan to address these issues.

Mr. Smee explained FairPoint's plan to address the above referenced service quality issues and other perceived issues, testifying:

FairPoint will take several actions with regard to installation appointments not met, repair appointments not met, trouble reports per hundred access lines, repeat trouble reports and, most significantly, the percent of residential troubles not cleared within twenty-four hours. FairPoint will take several actions to improve performance. First, FairPoint will ensure that scheduling of repair dispatches is properly prioritized, including extending hours of dispatch as necessary. Second, and most fundamentally, FairPoint will ensure the retention of adequate technician staff to handle the volume of trouble reports and installation requirements. At this time we will add at least ten (10) outside plant installation and maintenance technicians in New Hampshire to the FairPoint work force. FairPoint also plans to commit the resources to equip and train those technicians. We are working with the local wire center and garage level reporting to identify specifically which garage locations will require the additional headcount in order to achieve the service levels on the 24 hour clearance measurement for residential customers, while maintaining the others at target or better.

Prefiled Rebuttal Testimony of Messrs. Brown/Harrington/Smee at 10:16 – 11:8. With respect to wire-center-related problems, Mr. Smee presented FairPoint's phased approach. Under cross examination, Mr. Smee testified:

That targeted project approach to those wire centers that are significantly higher will include identifying specific problem areas within the outside plant in those wire centers for remediation, which might mean a replacement of a remote terminal battery string. It might mean closing a closure that had not been properly closed and weather was impacting service there. It might mean replacement of some spans of old cable that are defective. And, all of that effort takes time. So, there are, in our first year, we anticipate going after about 16 of these wire

centers. The smaller ones total about 36,000 lines or so in those 16 wire centers. And, we will be begin work and we will focus the effort on these 16 wire centers. But, in terms of your question about the phased effort, it will take time to get the work done in each of these 16 wire centers. We expect we can do those 16 in the first year. There's another dozen or so that we look to do in the second year. And, you know, over those two years post cutover, we expect that those wire centers that are running in what is described I believe as the "surveillance level" routinely, it will no longer be doing that. As a result, there will be fewer troubles for customers. They will have better service.

Tr. 10/29/07 at 58:9-24 – 59:1-9.

In summary, FairPoint has developed a well thought out plan to address service quality issues. As with the other factors cited herein, this factor weighs in favor of approval of the transaction and demonstrates that the proposed transfer of Verizon's network to FairPoint is in the public good.

4. Labor Intervenors' Testimony Concerning Service Quality.

Notwithstanding FairPoint's well developed plans concerning service quality, the Labor Intervenors, through their witness Dr. Peres, heavily criticize Verizon's service quality in New Hampshire. Dr. Peres argues that the Commission needs to impose draconian penalties on FairPoint in the event of approval of the transaction.

Dr. Peres fails to reference, other than a minimal acknowledgement, that many of FairPoint's service quality problems in Maine and Vermont resulted from a billing vendor that no longer serviced the system it sold to FairPoint and the resulting conversion to a new system. Dr. Peres excluded any discussion of the efforts to correct the problem. However, as explained by Mr. Nixon:

FairPoint stayed in contact with the Maine Commission's Consumer Assistance Division Director to keep him informed as the billing conversion and cleanup progressed. Ultimately, FairPoint changed billing vendors to a well-known telecommunications billing vendor. After additional informal meetings with the MPUC, FairPoint agreed to submit monthly reports, beginning in March 2006, to document our progress in three specific areas: Call Center Performance, Billing

Performance, and Accuracy of E911 records. The Commission set benchmark goals for us, and we have successfully reached them and are sustaining these service levels. The Commission has reported that they are satisfied with our results....

Prefiled Direct Testimony of Mr. Nixon at 25:10-20. At this time, FairPoint no longer needs to report to the Commission in Maine on service quality.

Moreover, Dr. Peres' proposed penalties can not be considered as anything other than punitive. Dr. Peres refused to acknowledge FairPoint's proposal in a credible manner. Instead, Dr. Peres simply cited the testimony offered by Mr. Barber and argued that FairPoint would not have the financial capability to improve service quality. As such, Dr. Peres' testimony and recommendations should be given minimal weight as they serve only to promote the Labor Intervenors' stated goal of "Stopping the Sale." *Cf.* Prefiled Direct Testimony of Dr. Peres at 28-29 addressing FairPoint Ex. 68-69.

Lastly, Dr. Peres' assertions that employees will leave the company en masse or in significant numbers if the Commission approves this transaction are unfounded. *See, e.g.*, Prefiled Direct Testimony of Dr. Peres at 3:11-15. The Labor Intervenors argue that a "survey" of their membership tends to prove that the approval of the transaction might lead to a "large exodus" of workers. Tr. 10/31/07 at 207:5-8. Importantly, however, Dr. Peres never opines that workers in fact will leave the NNE region to work elsewhere upon approval – nor could Dr. Peres offer such opinions. *Id.* at 224:17-24 – 225:1-3.

A closer review of the alleged survey reveals the fact that the evidence at issue is not a survey at all. Dr. Peres never provided information or testimony concerning where all of the employees might relocate and where they might find jobs with the same wages and benefits as they currently enjoy. Dr. Peres never opines as to whether employees actually might uproot their families and move away from the NNE region. Moreover, the questioning of Verizon's current

employees “...was not a simple random sampling...” *Id.* at 221:1-4. The questioning did not include an end factor sample process. *Id.* at 221:5-6. Dr. Peres did not know how or when the questions were submitted to the union members. *Id.* at 221:9-24 – 222:1-17. In fact, Dr. Peres truthfully admitted that the process was not in the least bit scientific. *Id.* at 221:7-8. As such, the Commission should give this testimony no weight and disregard these assertions. Verizon’s post-hearing brief discusses these and other flaws in these survey results.

5. The Consumer Advocate’s Testimony Concerning Service Quality.

The Consumer Advocate, through its witness Ms. Baldwin, provided extensive testimony concerning Verizon’s service quality and devotes multiple pages to her complaints with Verizon’s service quality. *See* Prefiled Direct Testimony of Ms. Baldwin at 57-65. Despite FairPoint’s plan, Ms. Baldwin “cannot be entirely comfortable that FairPoint has enough information to know that it is fully prepared to fix” the network. *See* Tr. 11/01/07 at 11:7-10. Ms. Baldwin also concludes that FairPoint has not demonstrated an understanding of the root cause of the service quality issues and has not demonstrated a willingness to “take service quality standards in New Hampshire seriously.” *See* Prefiled Direct Testimony of Ms. Baldwin at 58:18-19. For such reasons, Ms. Baldwin asks this Commission to impose penalties and other conditions on FairPoint to address poor service quality.

As with the conditions proffered by the Labor Intervenors, the Commission ought to reject the conditions advanced by Ms. Baldwin. Instead, the Commission should afford FairPoint a meaningful opportunity to carry out its plan, hire additional employees and work on the various service quality issues. Rather than simply deciding that FairPoint’s efforts will fail and impose extensive conditions, FairPoint urges the Commission to allow FairPoint the

opportunity to prove its critics wrong. FairPoint should be provided with a two year transition period to improve service quality and meet the current service quality metrics.

F. Retail Rates: FairPoint's Plan to Adopt Verizon's Rates is Reasonable and Consistent with the Interests of Ratepayers.

1. Rates for Local Services.

Upon closing, the regulated assets of Verizon New Hampshire will be transferred to Telco, and Telco will become an operating subsidiary of FairPoint Communications, Inc. Verizon-New Hampshire will cease to provide local exchange services, and Telco will be authorized to provide service in the former service area of Verizon-New Hampshire. Accordingly, Telco will be a new public utility and required by law (*see* RSA 378:1) to file schedules of rates, terms, and conditions. In this regard, it should be noted that Section 7.6(g) of the Merger Agreement, Exhibit 1 to the Joint Application, provides that upon closing, Telco must adopt the tariffs of Verizon-New Hampshire. As discussed below, FairPoint has committed in this proceeding not to raise basic local exchange rates for one year, provided that the Commission does not commence any rate proceeding during that same period of time. FairPoint also has committed to continue offering Lifeline and Link-up discounts, as Verizon has. *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 21. Moreover, FairPoint has reached out to interested parties and has agreed to expand these programs as set for within the Memorandum of Understanding between FairPoint and New Hampshire Legal Assistance. *See* Schmitt Ex. 1.

As the existing approved set of rates, the current rates have been accepted by the Commission as just and reasonable for the services provided. The continuation of Verizon's current existing rates clearly satisfies the statutory standard that the transaction cause "no net harm," (*see Re New England Power Co.*, DR 97-251, 83 NH PUC 392, 397 (1998)), because there will be no adverse impact on rates as a consequence of the transaction, and because the

Commission will retain its regulatory authority after the transaction to assure that rates are just and reasonable.

2. Rates for Interexchange Service.

Telco's adoption of the Rate Schedules of Verizon New Hampshire will include the adoption of the rates for intrastate interexchange services provided by Verizon New Hampshire as an ILEC. At the same time, Newco will adopt the Rate Schedules of Verizon's competitive IXC's (BACI, NYNEX, and VSSI) for intrastate interexchange services.

3. DSL Services.

The Commission should not require FairPoint to provide DSL service at a particular price or speed. The FCC has ruled unequivocally that ILECs should be permitted to provide DSL-based wireline broadband Internet access services (whether to wholesale or retail customers) on an unregulated basis, given the extensive competition that exists in this market. *See generally Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005). As a competitor in this market, FairPoint has strong market incentives to develop innovative service broadband offerings at a range of prices designed to meet customers' needs. *See id.* at ¶64. Imposing such regulatory requirements on FairPoint's DSL offering would dampen those incentives. Prescribing pricing (and potentially other aspects of DSL service, such as transmission speeds) would limit FairPoint's ability to innovate and respond to customer demands in this fast-changing, highly competitive market. *See id.* at ¶65 (stating that regulation "would impede the development and deployment of innovative wireline broadband Internet access technologies and services"). Since its competitors are subject to no such regulation, this would not only put FairPoint at a competitive disadvantage but also could be disadvantageous to its customers, who would risk being denied the benefits of robust, market-driven competition. This outcome could

cause the Commission to run afoul of the Communications Act as well – in particular, section 706, which directs both the FCC “and each State Commission” to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” 47 U.S.C. § 157 note (a). Accordingly, no DSL pricing or technical specifications should be prescribed.

G. Wholesale Service: The Transaction Will Cause No Harm to Wholesale Customers or to Competition in New Hampshire.

The transaction will not disrupt existing wholesale arrangements or harm wholesale customers. FairPoint will provide the same types of wholesale services Verizon otherwise would provide, and it has undertaken substantial efforts to ensure that it can fulfill those obligations. As a result, wholesale customers in New Hampshire will not experience any diminution in the services they currently receive from Verizon – in fact, they will be in an even better position with FairPoint following the transaction. The result will be to preserve and even improve competitive conditions in New Hampshire.

1. FairPoint’s Existing Legal Obligations and Voluntary Commitments Will Ensure That Wholesale Services Are Not Disrupted.

FairPoint will be subject to many requirements designed to benefit wholesale customers that will apply independent of any conditions that may be imposed in the Commission’s order approving this transaction. *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 14. As an ILEC, FairPoint’s operations in the acquired properties will be subject to sections 251 and 252 of the Communications Act, 47 U.S.C. §§ 251, 252. Thus, FairPoint, through its operating affiliate, will be obligated to interconnect with other telecommunications carriers, *see* 47 U.S.C. § 251(a); to provide access to poles, ducts, conduits, and rights-of-way, dialing parity, and number portability to the extent technically feasible, *id.* at § 251(b); to establish reciprocal compensation

arrangements with other local carriers, *id.* at § 251(b); and to negotiate in good faith agreements for interconnection, resale, UNEs, and collocation. *Id.* at § 251(c). Furthermore, FairPoint has made clear that it will not be exempt from any section 251(c) obligations as a rural telephone company pursuant to section 251(f)(1). *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 14. As an additional benefit to wholesale customers and competitors, FairPoint agrees that it will not seek *any* suspension or modification of any section 251(b) or (c) obligation in the acquired properties pursuant to section 251(f)(2), notwithstanding the company's status as a two-percent carrier.¹¹

FairPoint's voluntary commitments in this proceeding – which go well beyond its legal obligations – will further promote competition and benefit wholesale customers. *See generally* Prefiled Rebuttal Testimony of Mr. Skrivan at 3-7. During the course of this proceeding, FairPoint has made numerous offers and concessions that it believes should resolve any concerns that wholesale customers might have in connection with the transaction. For example, from a contractual standpoint, FairPoint will provide wholesale customers immediate benefits by not only adopting Verizon's interconnection agreements and other inter-carrier contracts in effect as of the closing date, but also extending them for one year following their stated expiration date. *Id.* at 4. FairPoint also will extend other inter-carrier agreements that have expired and are renewed only on a month-to-month basis as of closing, for a fixed term of one year following the transaction closing. *Id.* This offer includes an extension on services not required to be provided under the Communications Act, such as UNE-P replacement services offered under Wholesale

¹¹ This is a concession to CLECs in response to their specific concerns. FairPoint previously stated that it had no present intention of utilizing the mechanism under section 251(f)(2), but that it should be allowed to do so in the future as necessary. *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 14-15.

Advantage agreements, *id.* and line-sharing arrangements provided under Verizon's VISTA agreements. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 9.

FairPoint will adopt or concur in the terms, conditions, and prices of Verizon's tariffs as of the closing, and it will file, at a reasonable time after the closing, new tariffs that replicate as closely as possible Verizon New Hampshire's current tariffs. *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 3, 5. FairPoint will refrain from withdrawing any tariffed interstate or intrastate special access circuits or seeking any increase in tariffed rates for interstate or intrastate special access circuits, effective for three years after the merger closing date, unless required by law.¹² These proposals are benefits that wholesale customers would not enjoy absent the merger.

In addition, FairPoint's local operating affiliate will provide access in the acquired territory to all "competitive checklist" items required of BOCs pursuant to section 271(c)(2)(B) of the Act, on just and reasonable terms, to the extent the FCC has ruled that BOCs in general are (or that Verizon in particular is) required to provide such items. *Id.* at 18. The applicable rates, terms, and conditions for such checklist items should be determined in accordance with the standards set by the FCC.¹³ To the extent that the BOCs' (or Verizon's) obligations to provide such items change over time, FairPoint's obligations correspondingly should change. Thus, for example, the Commission should give effect to the First Circuit's recent ruling that states have no independent authority to require network elements pursuant to Section 271 that the FCC has delisted under section 251, such as line sharing and certain dark fiber facilities.¹⁴ The FCC has

¹² This is another concession to CLECs, as FairPoint previously had offered to cap special access rates for 18 months. *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 7.

¹³ *See Verizon New England, Inc. v. Maine Public Utilities Commission*, 2007 U.S.App. LEXIS 21349 (1st Cir. 2007), *rehearing pending*; *see also* Prefiled Rebuttal Testimony of Mr. Skrivan at 18.

¹⁴ *See Verizon New England, Inc. v. Maine Public Utilities Commission*, 2007 U.S.App. LEXIS 21349 (1st Cir. 2007).

determined that wholesale customers will not be “impaired” without access to those services at regulated rates, given the availability of alternatives.¹⁵

FairPoint’s proposal to provide access to Section 271(c)(2)(B) checklist items on just and reasonable terms represents a significant concession, since neither FairPoint nor any of its subsidiaries is or will be a BOC or a successor or assign of a BOC under section 3 of the Communications Act. *See* 47 U.S.C. § 153(4). To the extent any party continues to believe that FairPoint should be treated as a BOC, FairPoint’s proposal effectively moots the issue.¹⁶ Section 271(c)(2)(B) checklist items will be provided to all wholesale customers in the state to the same extent as Verizon would have provided them.¹⁷ Were the Commission to pursue this novel federal statutory interpretation, it would open up a veritable Pandora’s Box of complex legal questions, including questions concerning jurisdiction to interpret Section 3 of the Communications Act, as well as those regarding how other aspects of the BOC regulatory framework should apply to FairPoint under federal law. Were it ever to be necessary to decide

¹⁵ *See, e.g., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ¶¶ 255-63 (2003) (subsequent history omitted) (addressing line sharing); *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533 ¶¶ 133-35, 182-85 (2005) (subsequent history omitted) (addressing dark fiber transport and dark fiber loops).

¹⁶ There is no precedent for treating a buyer of BOC exchanges as a BOC. *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 19.

¹⁷ *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 18-19. Although another consequence of BOC classification presumably would be to trigger section 272, that provision is unnecessary to protect consumers or promote competition in this market. The detailed cost allocation requirements set forth in Parts 32, 36, 64, and 69 of the FCC’s rules will adequately ensure that FairPoint’s cost allocation practices neither harm consumers nor improperly disadvantage competition. Indeed, virtually every provision in Section 272 addressing affiliate transactions and accounting safeguards for BOCs has a comparable provision in the FCC’s dominant carrier regulations rules. FairPoint also will be subject to various nondiscrimination requirements under the Communications Act as well as the FCC rules and the PAP, that render Section 272’s similar obligations unnecessary. In addition to the requirements set forth in Parts 32 and 64 of the FCC’s rules, FairPoint, like all local exchange carriers (“LECs”), will be required to provide interstate telecommunications services on terms that are just and reasonable, and not unreasonably discriminatory, under Sections 201(b) and 202(a) of the Communications Act. 47 U.S.C. §§ 201(b), 202(a). Moreover, all ILECs are subject to specific nondiscrimination obligations in their provision of interconnection, network access, and wholesale services pursuant to Sections 251(b) and (c) of the Communications Act. Finally, the state may enforce parity in the fulfillment of wholesale orders through the PAP. Therefore, enforcement of Section 272 would be redundant and unlikely to yield any discernable public benefit.

the question, it should be the FCC – before which the matter has already been fully briefed – that takes on this significant challenge.¹⁸

FairPoint also has proposed to abide by Verizon's PAP, for the benefit of all wholesale customers, even though it was adopted as part of Verizon's Section 271 approval process, and thus would not apply to FairPoint in the normal course. FairPoint also will work cooperatively with interested parties to create a simplified PAP for all three states, and will propose a first draft of such a three-state PAP following closing, as wholesale customers have requested. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 16; *see also* Prefiled Rebuttal Testimony of Mr. Skrivan at 5. Further, FairPoint will not seek to recover expenses arising out of this transaction from wholesale or retail customers.¹⁹

As noted above in Section IV, FairPoint recently filed with the Commission a comprehensive settlement with several CLECs in which FairPoint agreed, *inter alia*, to extend those parties' inter-carrier agreements for three years – two more years than FairPoint's one-year proposal noted above. Further, the settling parties have agreed to a process for resolving questions of access to Section 271(c)(2)(B) checklist items that the FCC has ordered BOCs to provide, again conditioned upon adoption by the relevant state of the settlement terms in total, as conditions of merger approval. Specifically, under this agreement, if any of the settling parties request such a Section 271(c)(2)(B) checklist item, FairPoint and the requesting carrier will

¹⁸ For example, classifying FairPoint as a BOC would require the untangling of various follow-on questions that are uniquely within the FCC's expertise, such as whether and to what extent FairPoint would be required to comply with the various safeguards recently introduced by the FCC in exchange for relief granted the BOCs from certain dominant carrier obligations, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, WC Docket No. 02-112, ¶ 8 (rel. Aug. 31, 2007); with the FCC's reporting rules, *see, e.g.*, 47 C.F.R. § 64.903(a); and with the FCC's *Computer Inquiry* rules, *see generally Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 ¶¶ 21-29 (2005).

¹⁹ *See* Prefiled Rebuttal Testimony of Mr. Skrivan at 12. However, FairPoint expects to capitalize certain costs such as systems development costs, and reserves the right to seek recovery of such costs in future rates cases. *See id.* at 13.

negotiate in good faith the rates, terms, and conditions for such items during a 9-month period, after which any remaining dispute may be submitted to the Commission for resolution, provided the Commission applies the federal standard for determining whether rates, terms and conditions are “just and reasonable” as required by the agreement. State orders disposing of these disputes may be challenged in the appropriate court, but none of the parties will challenge the state’s jurisdiction to resolve the dispute under the settlement agreement, provided the state has applied federal precedent as required by the agreement. FairPoint also will provide those parties with wholesale DSL and line sharing at agreed upon rates, where available, for a three-year period. In return, the settling CLECs have agreed to refrain from seeking decreases in FairPoint’s wholesale and special access rates in the affected jurisdictions for three years, among other agreements. FairPoint has offered to make these same terms available to other wholesale customers, including those in New Hampshire, in exchange for their support for the transaction. *See* Tr. 10/22/07 at 24-29.

The public interest would be served by adoption of these settlement terms in their entirety, as a comprehensive framework of wholesale conditions. These terms are consistent with what FairPoint has advocated in this proceeding and has discussed with wholesale customers in the course of settlement negotiations, but they also confer further benefits on wholesale customers. If adopted without modification, these terms would substantially benefit competition, and therefore, the public.

In sum, FairPoint has undertaken to provide substantial benefits to wholesale customers in New Hampshire. With these additional benefits, it is clear that wholesale customers will not just be in the same position following the transaction – they will be better off because of it.

Some parties have insisted that the Commission impose numerous conditions on its approval of the transaction. *See, e.g.*, Prefiled Direct Testimony of Mr. Ball at 34-36. Many have been proposed by FairPoint. For example, as noted above, FairPoint already has acceded to CLEC requests that it extend inter-carrier agreements and provide Section 271(c)(2)(B) checklist items to the same extent as Verizon. To the extent parties request additional conditions beyond those described here and in FairPoint's other filings, the Commission should reject them.²⁰ For example, FairPoint should not be subject to any greater unbundling obligation, as determined by the courts, than Verizon would have with respect to Section 271 unbundling obligations. In affirming a federal district court's reversal of the Commission's decision to require Verizon to offer various services pursuant to Section 271, the First Circuit has made clear that Section 271 services are under the FCC's jurisdiction, and that the states may not impose rules that conflict with the FCC's decisions. *See Verizon New England, Inc. v. Maine Public Utilities Commission*, 2007 U.S. App. LEXIS 21349 (1st Cir. 2007).

More generally, burdening FairPoint with additional requirements would undermine its ability and incentive to provide consumers in New Hampshire the high-quality service to which it is committed. FairPoint has refrained from using this approval process to modify Verizon's current legal obligations or to otherwise seek any competitive advantage. By the same token, FairPoint does not believe it should be forced to relinquish any legal rights now available to Verizon or assume obligations that would not apply to Verizon in the absence of the transaction. That is particularly true given the many benefits that FairPoint already has committed to provide. The cumulative effect of the commitments that FairPoint has made in this proceeding will be

²⁰ This includes Mr. Brevitz catch-all request that the Commission impose all conditions imposed in other states. *See* Prefiled Rebuttal Testimony of Mr. Brevitz at 14. Such action would subject FairPoint's New Hampshire operations to requirements that likely will be specific to the other states and that are neither appropriate for New Hampshire nor supported by the record in this proceeding. Uniformity can otherwise be achieved across all three states, to the extent appropriate, through the use of regional commercial agreements.

more than just continuity in the provision of wholesale services – these commitments will put wholesale customers in a far better position than would otherwise be the case. Indeed, were Verizon not to sell its assets in the state, there is no reason to believe that its wholesale customers could obtain such benefits as a three-year cap on tariffed rates for interstate and intrastate special access circuits or an automatic, one-year extension of all of their agreements with Verizon. Therefore, there is no reason to impose conditions that exceed the commitments made by FairPoint in this proceeding. To the extent any future problems should arise, the Commission retains its authority to address them through the normal regulatory oversight processes.

2. FairPoint Will Provide High-Quality Service to Wholesale Customers.

Apart from these legal requirements and commitments, wholesale customers in New Hampshire will benefit from FairPoint's substantial efforts to develop state-of-the-art wholesale systems and provide first-class service. FairPoint has every incentive to provide these benefits: the wholesale segment is the second-largest revenue stream in the three-state area and is absolutely critical to the success of the company. *See* Prefiled Rebuttal Testimony of Mr. Nixon at 10. As such, FairPoint is determined to expand the wholesale side of the business through providing high-quality service, competitive prices and diverse product offerings. *Id.*

CLECs will benefit from the transition to FairPoint's systems. FairPoint will provide competitors with well-functioning, user-friendly systems that will have improved functionality over time, because they were designed for a competitive environment. *See* Prefiled Rebuttal Testimony of Messrs. Haga and Kurtze at 10-11, 15-16. In addition, the transition to FairPoint's back-office systems will require minimal changes to CLECs' already-existing systems. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 23-24. As noted above, FairPoint has partnered with Capgemini to develop state-of-the-art back-office systems and wholesale ordering,

provisioning, and billing processes. *Id.* at 3. Each system and process – most importantly, those related to ordering, billing, and trouble management – at a minimum, will perform the same functions as Verizon’s existing systems, and will use the same industry standards as Verizon currently uses. *Id.* at 3-4. With respect to ordering, FairPoint will utilize gateway systems, using either a Web GUI or an EDI interface, that will allow it to accept orders in a manner similar to Verizon’s systems.²¹ FairPoint has selected Wisor gateway as the vendor for the system; the Wisor system has virtually identical features and functionality that the existing Verizon system has, which will make the transition seamless for wholesale customers. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 4:11-26 and Tr. 10/22/07 at 194:5-15

FairPoint has solidified a detailed testing process for these new systems; consequently, wholesale customers and the Commission can be confident that the systems will be fully installed and tested prior to cutover. In particular, as noted above, following FairPoint’s proposal, the Commission (with its counterparts in Maine and Vermont) have chosen Liberty as an expert to review and validate its testing criteria. Liberty will view test cases and test reports, as well as the test results of wholesale customers, *see* Prefiled Rebuttal Testimony of Messrs. Haga and Kurtze at 39, and FairPoint can address any of Liberty’s concerns in advance of cutover. *Id.*

FairPoint seeks to further enhance the level of service it provides to wholesale customers by incorporating productive suggestions from those customers. This inclusion of suggestions from wholesale customers will help to provide a healthy wholesale business, and in return, will foster competition in New Hampshire. For example, FairPoint demonstrated the capability of the Wisor system with CLECs in August 2007 and gave CLEC participants the opportunity to ask

²¹ *Id.* There will be few changes required for EDI customers, *see id.* at 22-23; therefore, little training will be required for those customers. Training already has begun for Web GUI customers.

questions and provide feedback. *See* Tr. 10/22/07 at 72 and 94. FairPoint plans to continue this open dialogue going forward. It has proposed CLEC involvement with respect to a review of the CLEC systems test plan and conducted technical discussions with each CLEC that is currently using the EDI interface; FairPoint is adjusting its testing plan based on those discussions. FairPoint will also conduct a CLEC User Forum to share the Wisor process overview, final CLEC plan, CLEC training plan and the cutover process. Where travel is necessary for training events, FairPoint will offer wholesale customers a reasonable *per diem* expense reimbursement, as set forth below. Finally, FairPoint will continue to host the CLEC User Group Forum that Verizon currently sponsors, which it hopes will foster a continuing process for wholesale customers to provide input. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 8.

Although FairPoint's systems will be familiar to CLECs, to make certain that wholesale customers enjoy a smooth transition to the new systems, FairPoint will provide a complete wholesale Operations Support Systems ("OSS") training, testing, and education process. The training will be provided at no cost to the customers, consequently, no costs will be passed on to any consumers. *Id.* at 22. FairPoint's comprehensive program will train customers on all systems, order process and billing resolution training, and other product training. *Id.* at 7-8. Part of the training plan will include an opportunity to submit test orders and trouble tickets to ensure system compatibility with customers' systems and process, including a certification that each customer is fully trained to interface with the FairPoint systems. *Id.* This training will provide assurance to wholesale customers that their businesses will continue to function using FairPoint's systems, and will also help ensure that the transition to FairPoint's systems will run smoothly and service to consumers will continue uninterrupted.

In addition, FairPoint is in the process of assembling an experienced and fully staffed division of nearly 100 people to meet wholesale customers' needs. The wholesale organization leaders are telecommunications industry veterans, and managers have significant experience that will benefit wholesale customers. The wholesale division will be a fully-functioning unit comprised of customer-specific account teams, a sales engineering team, a contract management team, wholesale customer operations, a program management team, and business customer operations. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 9-11. Many current Verizon employees will transfer into the FairPoint wholesale organization. *See* Tr. 10/22/07 at 45. Most of the wholesale division personnel, with the exception of the account teams, will be located in the three-state area. *See* Tr. 10/30/07 at 18-19. The wholesale division will be close at hand to handle any problems, and they will have constant communication with CLECs and a firsthand understanding of wholesale customers' needs. The wholesale division aims to have an excellent working relationship with wholesale customers; to that end, it will provide concrete escalation procedures to resolve any disputes or problems in a timely and professional manner. *See* Tr. 10/22/07 at 46-47.

To promote competition in New Hampshire and to satisfy wholesale customers, FairPoint is committed to maintaining parity between retail and wholesale orders. All wholesale orders will be treated with the same dispatch and will be placed into the same provisioning queue as the retail orders. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 4-5. Trouble tickets will be handled by the same systems as retail orders and will be treated in the same manner as their retail counterparts. *Id.* at 6. The only difference between wholesale and retail will be the gateway into the FairPoint order management systems. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 43. However, recognizing the importance of safeguarding all private

information, FairPoint will implement a firewall that precludes retail service representatives from gaining access to wholesale customers' information. *Id.* at 44. CLECs will enjoy premier service without any risk to confidentiality of proprietary information.

Upon cutover to FairPoint's wholesale systems, customers will encounter a wholesale service organization that is committed to developing the wholesale business and a company that has implemented systems to ensure parity with retail customers. FairPoint's wholesale plan ensures that there will be no interruption to high-quality service and will foster competition from which New Hampshire consumers will benefit.

With respect to the wholesale systems, intervenors have proposed the condition of an independent audit of FairPoint's wholesale systems. *See* Prefiled Direct Testimony of Messrs. Falcone/King at 124. This is an unnecessary burden. To satisfy concerns relating to the functionality of FairPoint's systems, FairPoint has developed an extensive testing process and, as noted, will work cooperatively with Liberty as a three-state independent consultant. FairPoint has no incentive to cut over until the systems are fully functioning, and the testing process (for which FairPoint has solicited input from CLECs and approval by the expert chosen by the state commissions) provides a concrete mechanism to ensure that functionality. *See* Prefiled Rebuttal Testimony of Messrs. Haga/Kurtze at 38-39. FairPoint is far along in the process of developing its systems. *Id.* at 37. Input on testing criteria and the testing plan and oversight of the test results provide a secure option for the Commission and CLECs to ensure full system functionality.

With respect to conditions for the transition process, intervenors have suggested that FairPoint compensate CLECs for development costs to integrate with the new systems. *See* Prefiled Direct Testimony of Dr. Pelcovits at 16-17. Such a condition would be wholly

unnecessary – as explained above, FairPoint will utilize systems that are industry standard and already used by most CLECs. The only required change for Web GUI customers will be to visit a different website. Furthermore, FairPoint will provide ample training and training materials, as well as informational meetings, to facilitate any learning process for the new systems. Where pre-cutover training or information-sharing sessions require travel for two days or more, FairPoint will reimburse an amount equal to \$400 per day per participant, for up to three participants from each company, covering hotel, meals, and travel expenses, *see* Tr. 10/22/07 at 52-53. FairPoint also will simulcast such meetings via Webex and teleconferencing for those customers who choose not to travel. Moreover, when existing systems require updates, ILECs do not compensate CLECs for modifications that they must make to interconnect to the more efficient system. CLECs will be the beneficiaries of newer, more efficient systems, so they should not be compensated for the minimal costs that might be incurred. *See* Prefiled Rebuttal Testimony of Mr. Lippold at 23.

VI. CONCLUSION

As noted in Section I of this Brief, this transaction presents the Commission with the opportunity to bring to New Hampshire the managerial, technical and financial resources to support a first class, telecommunications network. Approval of the proposed transaction and welcoming FairPoint to the NNE region would lead to substantial investment in the telecommunications network, the expansion of broadband availability, new jobs and economic development in the State of New Hampshire. Approval would be in the public good and this opportunity should not be missed. FairPoint, therefore, respectfully requests that the New Hampshire Public Utilities Commission grant the approvals as requested in Section III.A of this

Brief, subject to only those conditions submitted herein, and requests that the Commission adopt the requests for findings and rulings as set forth within Appendix B to this Brief.


Respectfully Submitted,

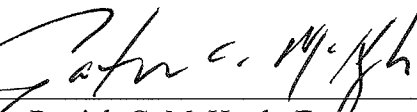
FAIRPOINT COMMUNICATIONS, INC.

By Its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: November 21, 2007

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APPENDIX A

PROPOSED CONDITIONS OF APPROVAL

- FairPoint will assume all of VNE's inter-carrier contracts, including all interconnection agreements, in effect in the NNE region. Where it is not possible for these agreements to be assigned to FairPoint, FairPoint will execute contracts with substantially the same rates, terms, and conditions. FairPoint will agree to extend in writing all such agreements for one year beyond their stated expiration dates.
- For interconnection and other inter-carrier agreements that have expired and are renewed only on a month-to-month basis as of the closing, FairPoint will extend the terms in writing for one year following the transaction closing. This includes agreements for services or network elements not required to be provided under section 251 of the Communications Act of 1934, as amended (the Communications Act) such as UNE-P replacement services offered under Verizon's Wholesale Advantage agreements, and line sharing arrangements provided under Verizon's VISTA agreements.
- FairPoint will not file any proposed increase in basic local exchange rates to become effective within one year of closing, provided that it is agreed that during the same period no general rate proceedings shall be initiated.
- Within a reasonable period of time following the closing, FairPoint will file new tariffs matching the current ILEC tariffs for Verizon New Hampshire with the same rates, terms, and conditions at closing.
- FairPoint will be an ILEC and its operations of the acquired properties will be subject to sections 251 and 252 of the Communications Act. *See* 47 U.S.C. §§ 251, 252. FairPoint will not classify its operations in the acquired territory as "rural" for purposes of Section 251(f)(1) of the Communications Act, nor attempt to seek suspension or modification of any of its obligations under Section 251(b) or (c) of the Communications Act pursuant to Section 251(f)(2).
- FairPoint will provide any item on the 14-point "competitive checklist" set forth in section 271(c)(2)(B) of the Communications Act that Verizon would be required to provide, pursuant to the applicable pricing standard adopted by the FCC, even though FairPoint is not a Bell Operating Company ("BOC") and will not be a BOC after closing.
- FairPoint will abide by the Performance Assurance Plan ("PAP").
- FairPoint will work cooperatively with other parties to consider revisions to the PAP following closing, with the objective to develop a simplified, single, uniform PAP appropriate for use across the three states, depending on the interest of the Commission and competitive local exchange carriers ("CLECs") in doing so.

- FairPoint will provide all of the services required to qualify as an ETC in the state.
- FairPoint's wholesale operational support systems ("OSS") will conform to industry standards as described in Mr. Brian Lippold's rebuttal testimony and his cross examination testimony in Docket DT 07-011.
- FairPoint will not recover transaction expenses from end-users or wholesale customers (although FairPoint expects to capitalize certain costs related to its new operations in the region, such as systems development costs, and reserves the right to seek recovery of such costs in future rates cases). No acquisition premium or other intangible will be recovered from New Hampshire ratepayers.
- FairPoint will install and test its wholesale OSS and provide wholesale customers an opportunity for testing, prior to cutover; further, FairPoint will provide training on such systems at no charge to wholesale customers. Related to this condition, FairPoint commits to cooperate with Liberty Consulting Group ("Liberty") as the independent monitoring consultant for the states of Maine, New Hampshire and Vermont. FairPoint also will reimburse wholesale customers for certain travel expenses related to training functions sponsored by FairPoint.
- FairPoint will continue to offer all CLECs (and wholesale customers) services required to be offered by Verizon immediately prior to closing, including access to E911 services, back-office support systems, directory listings, automated directory assistance, published network specification sheets, CLEC User forum information, and a CLEC handbook.
- FairPoint will not withdraw any tariffed interstate or intrastate special access circuit or seek to increase any of its tariffed rates for interstate or intrastate tariffed special access circuits effective for three years after the transaction closing, unless required by law.
- FairPoint will work with Verizon and wholesale customers to prorate all volume discount pricing provided for in inter-carrier agreements so such volume pricing terms will be deemed to exclude volume requirements from states outside of the three-state area following the closing; Verizon is contractually bound to make a comparable pro-ration with respect to services it will continue providing in states outside the three-state area acquired by FairPoint.
- FairPoint proposes that 1) dividend payments from the parent to its shareholders shall be prohibited if the debt leverage test (total net debt divided by EBITDA) exceeds 5.50 to 1.0 the first year following the closing and thereafter 5.25 to 1.0; and 2) dividend payments from the parent to its shareholders shall be prohibited if the interest coverage test (EBITDA divided by total interest expense) drops below 2.25 to 1.0.
- To ensure investment in the network occurs as projected by FairPoint, FairPoint would agree that total dividend payments from FairPoint to shareholders following

the two-year anniversary of the closing will be reduced the following year by the amount the annual average capital expenditures made in New Hampshire over the two years is less than \$52 million; dividends paid in the year following the three-year anniversary of the closing will be reduced by the amount the annual average capital expenditures over the three year period is less than \$51 million.

- FairPoint would agree to limit the cumulative amount of payments of dividends on its outstanding common stock to not more than the “cumulative free cash flow” generated from and after the effective date of the Merger (provided that this limitation shall not apply during the first two fiscal quarters following the fiscal quarter in which the Merger occurs). The term “cumulative free cash flow” means, commencing on the closing date, the “Cumulative Distributable Cash” of FairPoint as defined in FairPoint’s existing Credit Agreement, adjusted by adding (1) all add-backs allowed in the Commitment Letter dated January 15, 2007, as issued by Lehman Commercial Paper Inc. and Bank of America, N.A. (the “Commitment Letter”); (2) all one-time capital expenditures for DSL expansion and for conversion to the new FairPoint systems to replace the Verizon operations support systems; and (3) consistent with the Commitment Letter, \$40,000,000.
- FairPoint further seeks approval of: (i) the Joint Settlement Stipulation between FairPoint and the CLEC Coalition (*see* FairPoint Ex. 15P)²²; (ii) the Memorandum of Understanding between FairPoint and New Hampshire Legal Assistance (on behalf of Ms. Irene Schmitt) (*see* Schmitt Ex. 1); (iii) the Memorandum of Understanding between FairPoint and Public Service Company of New Hampshire (*see* PSNH Ex. 3P); (iv) the Memorandum of Understanding between FairPoint and National Grid (*see* Nat. Grid Ex. 2P); and (v) the Memorandum of Understanding between FairPoint and Unitil (*see* Unitil Ex. 2P).

²² FairPoint also has entered into a Settlement Agreement, dated as of November 20, 2007, by and among FairPoint and Rural Economic Development Networks, Inc. (“REDNET”), which contains essentially the same CLEC Settlement Conditions as contained within FairPoint Ex. 15. Minor differences arise solely because references to states other than New Hampshire have been deleted in the agreement with REDNET.

APPENDIX B

REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

1. In accordance with applicable New Hampshire law, this Commission must find that the present transaction is for the public good where it is not forbidden by law and is reasonable under the circumstances of the case. *Grafton County Electric Light & Power Co.*, 77 N.H. 539 (1915). If a corporation's actions with respect to its property are reasonable, then they are also for the public good. *Id.* See also *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606-614 (1986).

2. When evaluating requests to transfer utility assets, the Commission has historically applied a "no net harm" standard. See *Re New England Power Company*, DR 97-251, 83 NH PUC 392, 397 (1998). Under the "no net harm test," the Commission must approve the proposed transaction if the public interest is not adversely affected. *Re New England Electric System*, DE 99-035, 84 NH PUC 502, 510 (1999) (citing *Re CCI Telecommunications of N.H., Inc.*, 81 NH PUC 844, 845 (1996)).

3. The transfer by VNE of its telephone utility assets, business and franchise related to the provision of local exchange and intrastate toll service in New Hampshire to Telco will be for the public good and is hereby approved. [RSA 374:30]

4. The transfer by BACI, NYNEX and VSSI of their telephone utility assets related to their intrastate interexchange telecommunications business and customer accounts in Newco will be for the public good and is hereby approved. [RSA 374:30]

5. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, Telco will have the financial, managerial and technical capability to operate the telephone utility business of VNE in New Hampshire.

6. The authorization of Telco to commence business as a telephone public utility serving the franchise service territory operated immediately prior to the closing by VNE, subject to the conditions set forth within FairPoint's Post-Hearing Brief, will be for the public good and is hereby approved. [RSA 374:26]

7. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, Newco will have the financial, managerial and technical capability to engage in business in New Hampshire as a telephone public utility providing intrastate toll service.

8. The authorization of Newco to commence business as a telephone public utility providing intrastate toll service within New Hampshire will be for the public good and is hereby approved. [RSA 374:26] Prior to exercising such authority, Newco shall register as a competitive toll provider pursuant to Puc 451.01.

9. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, the public good does not require the further continuance of public utility service in New Hampshire by VNE, and the permanent discontinuance of such service by VNE is hereby approved. [RSA 374:28]

10. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, Telco is authorized to assume and perform the retail and wholesale tariffs of VNE in effect immediately prior to the closing. [RSA 378:1] FairPoint shall file compliance tariffs effecting such assumption in accordance with the Commission's Part 1600 Rules.

11. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, Telco is authorized to assume and perform

all special contracts, interconnection agreements and other contracts regulated by this Commission, to the extent relating to the furnishing of service in New Hampshire by VNE, as in effect immediately prior to the closing. [RSA 378:18; RSA 378:18-b; 47 U.S.C. §251.]

12. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, Newco is authorized to assume and perform any tariffs or contracts of BACI, NYNEX and VSSI pertaining to the provision of intrastate toll service within New Hampshire.

13. Effective as of the merger of Spinco with and into FairPoint in accordance with the merger agreement presented to this Commission, Telco is hereby designated as an eligible ETC for those New Hampshire service areas for which VNE has been previously designated as an ETC pursuant to 47 U.S.C. § 254(e) and § 214(e)(2), and VNE is authorized to relinquish its designation as an ETC in New Hampshire pursuant to 47 U.S.C. § 254(e)(4) and 47 C.F.R. § 54.205.

14. To the extent not otherwise approved above, the transactions to effect assumption of control of the New Hampshire landline telecommunications business, assets and franchises of VNE, BACI, NYNEX and VSSI by FairPoint as described in the Petition and with the conditions set forth within FairPoint's Post-Hearing Brief are for the public good and are hereby approved.