

FairPoint Communications, Inc.
State of New Hampshire
Docket No. DT 07-011

Respondent: Peter G. Nixon
Title: Chief Operating Officer

REQUEST: BayRing, segTEL and Otel – CLECs
Follow-Up Data Requests Group III, Set 1
DATED: June 11, 2007

ITEM: CLEC FDR III-1 Will FairPoint voluntarily agree to some or all of the following conditions to the New Hampshire PUC's approval of the application it has filed in this proceeding? If so, please state which ones.

**ASSUME VERIZON REGULATORY OBLIGATIONS
WITHOUT NEED FOR LITIGATION**

- a. Agreement to be subject to all of the state and federal regulatory obligations that currently apply to Verizon, including but not limited to section 251 and 271 of the Act;
- b. Agreement not to seek the exemption, modification or suspension of any obligation under section 251 at any time under any circumstances;
- c. Agreement to comply with the New Hampshire PUC's orders and secretarial letters regarding Verizon's obligations to include dark fiber loops and transport and linesharing in tariff 84 regardless of any successful Verizon or Fairpoint appeal of such order;
- d. Agreement to continue Verizon/MCI merger condition that MCI will not be counted as a fiber based collocater for purposes of impairment;

**AGREE TO KEY VOLUNTARY CONDITIONS THAT
AT&T AGREED TO IN THE BELL SOUTH MERGER**

- e. Agreement to freeze or reduce rates for wholesale services, including UNEs, tandem transit, reciprocal compensation, interconnection and special access for at least 42 months;
- f. Agreement to withdraw or not give effect to Verizon's pending forbearance petition in so far as it includes wire centers in Strafford and Rockingham counties and agreement not to seek forbearance from its obligations to provide any loop or transport UNE for at least 42 months;

OSS AND PAP ISSUES

- g. Agreement to fund an independent third party to audit, test and verify that Fairpoint's OSSs are at least as good as Verizon's before any cutover is permitted from Verizon to Fairpoint;
- h. Agreement to support the creation of a rapid response team similar to the one in Maine to promptly resolve intercarrier complaints pre and post cutover.
- i. Agree to submit to the jurisdiction of the PUC in connection with a proceeding following the closing to revise the PAP so it is more streamlined and effective.

COMPETITIVE BEST PRACTICES

- j. Agreement to adopt competitive best practices in connection with terms and conditions for dark fiber and access to poles, rights of way and conduit.

REPLY:

FairPoint does not believe that data requests are the appropriate forum for determining any conditions to the New Hampshire PUC's approval of the merger. Notwithstanding this position, FairPoint will attempt to respond to the data requests.

- a. FairPoint will abide by all applicable federal and state legal obligations relating to wholesale service. In the to-be-acquired territories, FairPoint will operate as a non-rural incumbent local exchange carrier. Consequently, the obligations that apply under Section 251 of the Communications Act of 1934, as amended (the "Communications Act" or the "Act"), and the FCC's rules thereunder (for example, interconnection, unbundling, resale, collocation, etc.), will apply to FairPoint in the to-be-acquired service territories post-closing (to the extent that those obligations remain in effect under the law and the FCC's rulings). FairPoint will also provide all Section 271 services that CLECs are currently receiving under commercial agreements with Verizon; however, FairPoint does not concede that it will become a Bell Operating Company ("BOC"), and therefore generally subject to Section 271. Nor is there any basis to apply to FairPoint the broad swath of "all of the state and federal regulatory obligations that currently apply to Verizon" for reasons stated above and in the following responses.
- b. FairPoint already stated that it has no intention of seeking any exemption, suspension or modification of any obligation currently applicable to Verizon in New Hampshire pursuant to Section 251 of the Act. FairPoint has also represented to the

FCC that it has no intention of operating the acquired local exchange properties as a rural telephone company as defined in Section 3 of the Communications Act, so the rural exemption will not be available to FairPoint in these markets. If future circumstances warrant a request for suspension or modification of any aspect of Sections 251(b) or (c) for any reasons, FairPoint and the state should have the flexibility to so modify FairPoint's obligations at such time; however, the state would have the authority to make such a determination, and it would have to find the standards set forth in Section 251(f)(2) of the Act have been met prior to making any such determination. Therefore, there is no reason for FairPoint to commit not to ever seek any exemption or modification "at any time under any circumstances."

- c. FairPoint will continue to provide the dark fiber loops, dark fiber transport and line sharing that Verizon is providing, pursuant to the same commercially negotiated agreements under which Verizon is providing those services, at the time of closing. FairPoint is not a BOC and therefore should not be subject to a state order imposing requirements on Verizon pursuant to Section 271 of the Act.
- d. The conditions imposed by the FCC in its Memorandum Opinion and Order approving the Verizon-MCI merger will not apply to FairPoint. The conditions relate to Verizon's acquisition of MCI, which at that time was a significant competitor of Verizon's in the local and long-distance enterprise market and in the Internet backbone market. In contrast, FairPoint has only limited interconnection arrangements with Verizon, and is not a significant wholesale customer of Verizon's, nor a competitor of Verizon in New Hampshire. FairPoint is not acquiring any of the MCI assets of the customer base acquired by Verizon in the MCI merger. Therefore, as an unaffiliated carrier, FairPoint will have the right to count the MCI fiber-based collocations in evaluating "impairment" at any wire center in the state. However, even if FairPoint were to count MCI fiber-based collocations in the state, FairPoint does not expect that the impairment status of any wire center would change as of the closing. Moreover, the condition not to count MCI as a fiber-based collocater for purposes of impairment expires on January 5, 2008. For all of these reasons, the conditions imposed upon Verizon/MCI are not applicable to the FairPoint transaction in New Hampshire.
- e. As stated in FairPoint's response to Data Request CLEC 2-25,

AT&T made *voluntary* commitments in connection with obtaining FCC approval of the AT&T – Bell South merger in WC Docket 06-74. FairPoint does not agree that the conditions that AT&T voluntarily agreed to in the Bell South merger proceeding should apply to the instant transaction. The AT&T – Bell South transaction merged AT&T, the largest BOC and largest long-distance carrier in the nation, with Bell South, another large BOC; both had significant wireless holdings; and the companies had significant market overlap. The FCC found the merger would significantly increase market concentration and pose a danger of anticompetitive effects in several markets. In contrast, FairPoint’s acquisition of Verizon’s lines does not pose any anticompetitive threats. If anything, FairPoint’s acquisition of these local exchanges decreases market concentration and vertical integration in the affected markets—for example, neither MCI nor Verizon Wireless will be affiliated with the ILEC after the closing. Nor is FairPoint a nationwide provider of long-distance, broadband or wireless services. The Verizon/FairPoint transaction bears no resemblance to the AT&T – Bell South transaction; consequently, the conditions imposed should not apply. However, FairPoint has stated it will assume Verizon’s existing contractual and tariffed obligations to provide wholesale services in effect at closing, including UNEs, tandem transit, reciprocal compensation, interconnection and special access, and intends to discuss in settlement talks the possibility of extending some or all of such arrangements for a reasonable period of time following the closing. FairPoint does not agree that its rates for any services should be frozen “for at least 42 months” notwithstanding any agreement AT&T may have made with the FCC.

- f. As stated above in the response to part (e), FairPoint does not agree that any of the conditions that AT&T agreed to in the BellSouth merger should apply to the instant transaction. In response to the specific question, FairPoint does not agree to withdraw or not give effect to Verizon’s pending forbearance petition with respect to wire centers in Strafford and Rockingham counties. It remains to be decided by the FCC whether such forbearance is merited, and if the FCC does make such a finding, it will be based on the statutory standard under Section 10 of the Act, which requires the FCC to conclude that forbearance will harm neither competition nor consumers. Therefore, there is no justification to ask FairPoint to refuse to give effect to any such FCC determination. Additionally, FairPoint will not agree not to seek forbearance from its

obligations to provide any loop or transport UNE. As noted, Section 10 of the Act permits forbearance only if the FCC finds that enforcement of those provisions is not necessary either to protect consumers or to promote competition. The public, including the state, may comment on such petitions before the FCC rules on them, and the FCC typically takes 12 to 15 months in deliberating on such petitions. Thus, forbearance petitions provide valuable opportunities for evaluating the competitive and consumer harm that can come from continued enforcement of outmoded regulations, versus the potential threat to competition and consumers that could arise if the regulations in question are forborne, based on a market-specific analysis of the facts in evidence when the forbearance petition is evaluated. Because parties such as BayRing, segTEL and Otel will have ample opportunities to make their cases at the time any such petition may be filed (if ever), there is no need for the suggested conditions.

- g. FairPoint does not agree that an independent third party should audit FairPoint's systems before cutover is permitted, nor does FairPoint agree to fund such an audit. FairPoint will take the systems through extensive testing to ensure readiness for cutover. FairPoint will share the criteria for testing and acceptance with Commission staff and their outside consultants prior to testing, and accept input on additional testing criteria, if any is offered. FairPoint knows its systems and is best able to determine readiness for cutover. FairPoint has every incentive to ensure complete readiness, because FairPoint has voluntarily agreed to be bound by the PAP. The FairPoint employees that lead the transition team have expert knowledge in the systems and processes that will be implemented. FairPoint is committed to ensuring a successful cutover that will be a smooth process for its wholesale customers.
- h. FairPoint will consider agreeing to support the creation of a rapid response team similar to the one in Maine to promptly resolve intercarrier complaints pre- and post-cutover, if such a proposal is made as part of a comprehensive settlement discussion.
- i. FairPoint has stated it will voluntarily submit to the jurisdiction of the PUC in enforcement of the PAP applicable to Verizon's incumbent local exchange operations in New Hampshire, even though that PAP was adopted as part of Verizon's request for permission to enter the interLATA market pursuant to Sections 271 and 272 of the Act, which do not apply to FairPoint.

Further, FairPoint is willing to consider a new proceeding following the closing to revise the PAP so that it is more streamlined and effective, provided it also results in a uniform PAP for the three states, New Hampshire, Vermont and Maine.

- j. FairPoint will abide by all applicable state and federal requirements for access to poles, ducts, conduits and rights-of-way, including Section 224 of the Act. FairPoint is not aware of what BayRing, segTEL and Otel mean by “competitive best practices” with respect to dark fiber, but FairPoint already has stated its intention to comply with any dark fiber requirements under Section 251 of the Act, and to assume Verizon’s existing agreements with respect to other dark fiber arrangements.