

ATTACHMENT A
TO WHOLESALE PERFORMANCE PLAN
SECOND STIPULATION AND SETTLEMENT AGREEMENT

D. LATE OR INACCURATE REPORTS

The WPP includes the following provisions to address late or inaccurate WPP Reports. Late or inaccurate WPP penalties shall not be considered under Section F “Cap on Total Annual Bill Credits”.

1. Late Performance Reports:

If the FairPoint performance data and associated WPP Reports are not posted to the FairPoint website on the due day,⁴ FairPoint shall issue bill credits in the amount of \$250⁵ per day, per state, for each day the WPP Reports or raw data files are late. Such bill credits will be allocated among eligible CLECs pursuant to Section 1.B.2.a of this Plan.

2. Inaccurate Reports:

FairPoint will have an ongoing responsibility to identify and correct any inaccuracies in its monthly WPP Reports (including, without limitation, bill credit calculation and posting). CLECs receiving monthly Reports shall likewise review FairPoint’s monthly WPP Reports and identify possible inaccuracies utilizing the information provided by FairPoint and the CLEC’s own records.

FairPoint and CLECs each have the responsibility to notify one another of inaccuracies within 30 days of discovery. If FairPoint and CLECs agree the WPP Report(s) contain error(s), FairPoint will calculate the effect of such error(s) on an

⁴ If the 28th day is a weekend or holiday, the monthly reports will be provided by the next business day.

⁵ If the total per day penalty from all three states is less than \$750 a day, then the penalty in New Hampshire shall be the greater of: (a) \$250 or (b) \$750 less the combined per day penalties for Maine and Vermont.

aggregate and CLEC-specific basis. If the effect of the error(s) is material,⁶ FairPoint will correct and reissue all affected WPP Reports and data, and post corrective credits as follows:

- (a) If the error was identified by an audit, the period of time covered by the audit and all subsequent period of time after the audit period that identified such error, or
- (b) If the error was discovered by or reported to FairPoint, the period will encompass the monthly reports generated after the error was discovered or reported and the prior 12 months if correction of the error(s) would increase or decrease, on average, credits under the WPP by \$500 per month for an individual CLEC or \$2,500 on an aggregate CLEC basis, or 24 months if correction of the error(s) would increase or decrease, on average, credits under the WPP by \$1,000 per month for an individual CLEC or \$5,000 on an aggregate CLEC basis.

Revised Reports correcting material errors will be corrected and filed within 60 days of confirmation of the error(s).

If FairPoint cannot revise a monthly report to correct a material error that would increase bill credits for one or more CLECs due to an issue within FairPoint's control such as capturing and/or retaining the requisite data, FairPoint will pay a surrogate bill credit in the impacted month(s). The surrogate credit will be equal to the greater of: 1)

⁶ A material error is one where the correction of that error, or a combination of errors, would increase or decrease credits under the WPP for the month by at least \$500 for an individual CLEC or \$2,500 on an aggregate CLEC basis. Upon notification of an inaccuracy or potential inaccuracy by a CLEC, FairPoint will provide an estimate of the effect of that possible error on a CLEC-aggregate basis.

the monthly average bill credits paid in aggregate on that metric over the most recent six month period of accurate reporting less the amount of any bill credits previously issued in aggregate for that metric in the impacted month(s); or, 2) a per metric credit of: PO, OR & MR-1 = \$500, PR, MR (other than MR-1), NP & BI = \$1,000, less any bill credits issued in aggregate for that metric in the impacted month(s). Surrogate bill credits shall be subject to the escalation provisions set forth in Section 1.B.4. Surrogate bill credits will be allocated among eligible CLECs based on the allocation of the most recent six month period of accurate reporting less the amount of any bill credits previously issued for that metric in the impacted month(s). If no bill credits exist in that six month period, the volume of transactions (denominator values) in the previous six month period will be used to allocate credits to individual CLECs less the amount of any bill credits previously issued for that metric in the impacted month(s).

Non-material errors will be corrected on a prospective basis, beginning 30 days from confirmation of the error.

FairPoint shall post corrective and/or surrogate bill credits to all affected CLEC BANs within 30 days of reissuance of the previously erroneous WPP Report(s). In addition to the posting of corrective and/or surrogate credits, FairPoint shall also post bill credits equal to the greater of (i) interest on the corrective or surrogate credits at the interest rate FairPoint charges CLECs for late payments under its wholesale tariffs or (ii) an inaccuracy penalty of 15% of the corrective or surrogate credits. FairPoint shall not be responsible for paying interest or an additional inaccuracy penalty, if FairPoint identifies and corrects an inaccuracy within 30 days of issuance of the first report in which an inaccuracy appeared. To the extent the correction of an inaccuracy decreases

FairPoint's liability for bill credits previously posted to CLEC BANs, FairPoint may offset such over-issuance only through a corresponding reduction in the posting of future bill credits otherwise due the affected CLECs.

FairPoint and the CLEC(s) will consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to the WPP. If FairPoint and the CLEC(s) cannot agree on whether a WPP Report is incomplete or erroneous, or if they cannot agree on whether an inaccuracy is material, either FairPoint or the CLEC(s) may file a petition asking the Commission or Board to resolve the dispute. If the Commission or Board determines that one or more WPP Report(s) were incomplete or erroneous, said Report(s) shall be corrected and credits adjusted, as appropriate, in accordance with the provisions stated above.

With approval of the Commission or Board, or authorized Staff, a CLEC may initiate an independent audit or review conducted by a qualified independent third-party, at the CLEC's expense. Such audit or review will be limited to the data collection, computing, and reporting process issue(s) raised by the CLEC. FairPoint shall have the opportunity to review the independent third-party's proposed audit or review approach, fees and schedule, upon proposal of the audit or review to the Commission, Board or Staff. Any concerns between the parties regarding the proposed audit or review costs, approach and schedule are to be negotiated in good faith.

In the event the audit or review affirms the issue initially presented by the CLEC and denied by FairPoint, as materially affecting reported performance results, FairPoint shall reimburse the CLEC for the costs of the independent third-party audit or review. A

Attachment A

CLEC may not request, pursuant to these provisions, more than one audit or review within a six month period, and may not request an audit or review of the same performance measurement more than once in a twelve calendar month period, although these provisions do not modify a CLEC's audit rights under other provisions of this WPP, agreement, or any applicable Commission/Board Order. FairPoint agrees to inform all CLECs via Accessible Letter of any problem identified during an audit/review initiated by any CLEC. The CLEC-initiated audit or review is distinct from the Commission or Board-directed audit addressed separately in Section I of this Plan.

c. Situations Beyond FairPoint's Control

The third ground for filing an Exception relates to situations beyond FairPoint NNE's control that negatively affect its ability to meet measures with benchmark standards or to report monthly performance results. The performance requirements dictated by benchmark standards establish the quality of service under normal operating conditions, and do not necessarily establish the level of performance to be achieved during periods of emergency, catastrophe, natural disaster, severe storms, work stoppage, or other Force Majeure events beyond FairPoint NNE's control. FairPoint NNE may petition the Commission/Board for a waiver of specific performance results for benchmark metrics if FairPoint NNE's performance results do not meet the specific standard or petition for a waiver from monthly performance reporting requirements if a Force Majeure event impedes FairPoint's ability to report performance results.

Any Exception petition pursuant to this provision shall clearly and convincingly demonstrate the extraordinary nature of the circumstances involved, the impact the circumstances had on FairPoint NNE's wholesale service quality, why FairPoint NNE's normal, reasonable preparations for abnormal situations may have proved inadequate, and the specific dates FairPoint's service performance was adversely affected by the event. The petition shall also include an analysis for informational purposes of the extent to which the parity metrics (retail and wholesale) also were affected by the subject event.

FairPoint's petition must be filed within 21 calendar days from the date the monthly data is reported. CLECs and other interested parties may file an initial reply to

Attachment A

the petition within 21 calendar days of the filing. The Commission/Board shall endeavor to issue its ruling within 90 calendar days of the petition filing date.

The Commission/Board shall determine which, if any, of the daily and monthly results should be adjusted in light of the extraordinary event cited, and will have full discretion to consider all available evidence submitted. Insufficient filings may be dismissed for failure to make a *prima facie* showing that relief is justified.