

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 11-061

**FairPoint Communications, Inc. Petition for
Approval of Simplified Metrics Plan and Wholesale Performance Plan**

**JOINT MOTION FOR APPROVAL OF
WHOLESALE PERFORMANCE PLAN
SECOND STIPULATION AND SETTLEMENT AGREEMENT**

1. Pursuant to Rule Puc 203.20, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) and the following competitive local exchange carriers (“CLECs”): CTC Communications Corp., Lightship Telecom LLC, Choice One of New Hampshire Inc. and Conversent Communications of New Hampshire LLC, all d/b/a EarthLink Business; Freedom Ring Communications LLC d/b/a BayRing Communications; Comcast Phone of New Hampshire, LLC; Biddeford Internet Corporation, d/b/a/ Great Works Internet; CRC Communications LLC d/b/a/ OTT Communications, and National Mobile Communications Corporation d/b/a Sovernet Communications (each being a “CLEC” and a “Party”, and collectively FairPoint and the CLECs being the “Parties”), respectfully request approval of the attached Wholesale Performance Plan Second Stipulation and Settlement Agreement (“WPP Amendment”) for the resolution of a certain issue in the subject proceeding.

2. As part of its settlement of various issues related to the purchase of certain telecommunications based assets in Northern New England, FairPoint agreed to adopt the terms of the existing Performance Assurance Plan (“PAP”) and its underlying Carrier to Carrier

(“C2C”) wholesale service quality assurance plans.¹ Furthermore, FairPoint agreed that it would work cooperatively with the Commission Staff and interested CLECs to develop and implement a simplified, uniform PAP applicable in Maine, New Hampshire and Vermont.

3. Over the period September 2011 through February 2012, Staffs of the three state regulatory commissions, FairPoint and interested CLECs participated in a series of workshops, which were held at various locations throughout Northern New England. The workshops were facilitated by the New Hampshire, Maine and Vermont regulatory staffs. The goal of these workshops was to reach tentative agreement on the structure of a new simplified PAP plan and on the specific metrics that would be included in the new plan.

4. The workshops and a series of settlement negotiations culminated in a partial settlement (“2012 Agreement”) between FairPoint and the CLECs on a simplified PAP plan which was filed with the Commission on October 23, 2012, and approved by the Commission on December 12, 2012.²

5. FairPoint and the CLECs filed a Stipulation and Settlement Agreement with the New Hampshire Public Utilities Commission (the “Commission”) on October 11, 2013 in which the Parties requested the approval of a new Wholesale Performance Plan (“WPP”) and the establishment of a procedural schedule for deciding three unresolved issues pertaining to the WPP.

¹ Maine Docket 2007-67, Order (February 8, 2008), New Hampshire Docket DT 07-011, Order No. 24,823 (Feb. 25, 2008), Vermont Docket 7270, Order of December 21, 2007 and Order of February 15, 2008.

² Also on October 23, 2012, FairPoint and the Maine and Vermont CLEC Parties filed the same Settlement Stipulation in partial settlement of the issues in Maine and Vermont, which state regulatory bodies also approved. *See* Maine Docket 2009-334, Order of June 13, 2013 and Vermont Docket 7506, Order of June 12, 2013.

6. The Commission issued on January 24, 2014 an Order,³ and on May 6, 2014 an Order on Reconsideration and Clarification,⁴ in which it approved the WPP and resolved the three aforementioned issues, except that it established further proceedings “with respect to an appropriate level of penalty for FairPoint’s failure to revise any monthly performance report to correct a material error, due to an issue within its control such as maintaining accurate source data.”⁵

7. As a result of negotiations concerning this issue, FairPoint and the CLECs have reached agreement. Attachment 1 attached hereto contains the WPP Amendment memorializing this agreement.

8. Commission Rule 203.20(b) provides that “[t]he commission shall approve a disposition of any contested case by stipulation, settlement, consent order or default, if it determines that the result is just and reasonable and serves the public interest.” The WPP Amendment represents concerted, good-faith effort by FairPoint and a strongly represented CLEC community. The WPP Amendment resolves, without litigation, the matter for which the Commission established further proceeding in its May 6th Order. FairPoint and the CLEC Parties submit that the WPP Amendment produces a result that is just and reasonable and serves the public interest, as required by the Commission’s rules.

9. FairPoint and the CLEC Parties request that the Commission approve the WPP Amendment. As with the prior approved agreements in this proceeding, the Parties specifically request that discovery be waived, or strictly limited, and that no hearing be conducted before the Commission. The Commission’s rules provide that the Commission may waive its rules if such

³ Order No. 25,623 Approving Wholesale Performance Plan and Resolving Outstanding Issues (Jan. 24, 2014).

⁴ Order No. 25,662 Granting in Part and Denying in Part Reconsideration and Clarification of Order No. 25,623 (May 6, 2014).

waiver “serves the public interest” and “will not disrupt the orderly and efficient resolution of matters before the commission.” Rule Puc 201.05(a). All of the parties to this case have been aware of the proceedings leading to the WPP Amendment and all affected carriers, including those not party to the WPP Amendment, have had the opportunity to participate. Therefore, the proposed method of handling this settlement will not unduly prejudice any party and will be consistent with the public interest, and thus will contribute to the orderly and efficient resolution of this matter.

⁵ Order No. 25,662 at 20.

WHEREFORE, FairPoint and the CLEC Parties respectfully request that the Commission approve and incorporate the terms and conditions of the WPP Amendment into a final order that resolves all issues in this proceeding.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC, d/b/a
FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,
DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: June 27, 2014

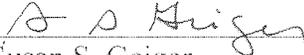
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Dated: June 27, 2014

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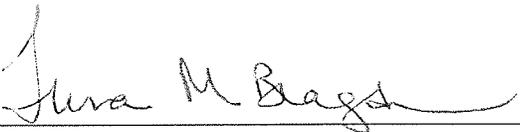
CTC COMMUNICATIONS CORP.,
LIGHTSHIP TELECOM LLC, CHOICE ONE
OF NEW HAMPSHIRE INC. and
CONVERSENT COMMUNICATIONS OF NEW
HAMPSHIRE LLC, all d/b/a EARTHLINK
BUSINESS

BIDDEFORD INTERNET CORPORATION
d/b/a GREAT WORKS INTERNET

CRC COMMUNICATIONS LLC d/b/a OTT
COMMUNICATIONS

NATIONAL MOBILE COMMUNICATIONS
CORPORATION d/b/a SOVERNET
COMMUNICATIONS

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