

VERIZON NEW ENGLAND, INC.)
And FAIRPOINT COMMUNICATIONS, INC.)
et al.)
)
Request for Approval of Affiliated)
Interest Transaction and Transfer)
of Assets of Verizon's Property and)
Customer Relations to be Merged)
with and into FairPoint Communications, Inc.)

Docket No. DT 07-011

COMMENTS OF CRC COMMUNICATIONS OF MAINE, INC.

CRC Communications of Maine, Inc. (CRC) submits these comments in response to the Commission's July 21 and August 21, 2009 Secretarial Letters.

I. Introduction

As has been well-documented by FairPoint, regulators, and CLECs, there have been no significant improvements in FairPoint's wholesale performance since late May. Despite continuing to introduce new software fixes and other efforts, FairPoint has failed to make any appreciable progress towards the stated goal of timely and accurate provisioning of wholesale services. We are now eight months post cutover and still CLECs cannot get their orders processed within the stated intervals. Customers still lose dial tone during certain migrations, orders sit for days, if not weeks, in so-called work queues, inventory issues cause numerous errors and delays, directory listings lag well behind order completion, billing issues of every sort keep occurring, and escalations go unheeded by FairPoint management. CLECs spend countless hours calling, emailing, and escalating in order to get the most basic of orders provisioned by FairPoint.

Nobody – FairPoint, state regulators, CLECs, nor customers – can afford for this situation to continue unabated. FairPoint's problems have had, and continue to have, real world impacts on the lives, businesses, and economies of the three states and their

citizens. For CLECs, FairPoint's problems and failures have greatly increased the costs of doing business; CLECs must spend countless hours and resources forcing our orders through FairPoint's failed systems and processes. The state regulatory commissions must work together to set specific deadlines for improvement which are applicable to all three states – having varied deadlines, performance measures, and regulatory agendas will unnecessarily distract FairPoint from what should be its singular focus: significant improvement in its operational performance.

CRC respectfully suggests that the New Hampshire PUC, along with its colleagues in Maine and Vermont, take the following actions to ensure that FairPoint's wholesale provisioning substantially improves by December 31, 2009: (1) establish, after consultation with both FairPoint, Liberty Consulting, and the CLECs, specific interim wholesale performance measures and milestones/metrics; (2) require FairPoint to meet with the CLECs in a series of workshops designed to identify continuing problems and develop solutions that work for both FairPoint and the CLECs; (3) require FairPoint to retain an outside consultant to conduct a thorough review of FairPoint's wholesale processes and procedures to ensure efficiency and efficacy; (4) establish a date certain by which FairPoint must eliminate the backlog of orders; and (5) require FairPoint to retain an outside consultant to assist it and Cap Gemini with the identification and repair of all customer-impacting systems issues and errors.

II. Establish Wholesale Performance Measures

It is clear, both from the comments FairPoint made during a July 16th Status Conference before the Maine Public Utilities Commission, as well as from the sworn testimony given before this Commission on July 28th and 30th, that the data reported by

FairPoint in its daily and weekly filings with the state commissions is both incomplete and inaccurate. The information paints an overly optimistic picture of the true status of FairPoint's progress by relying upon unique definitions of commonly used terms (flow through, known billing errors) that leave out significant information¹ or by simply not mentioning other data points.² It is also clear, from a review of Performance Assurance Plan (PAP) and Carrier-to-Carrier Metric Reports (C2C) that the data regarding wholesale performance contained in those reports is inaccurate – FairPoint undercounts some data points, does not report others,³ and over reports still other metrics.⁴ This inaccurate performance reporting by FairPoint has been a source of contention between FairPoint and the CLECs as well as a source of confusion for the state commissions.

¹ For example, in an apparent effort to downplay wholesale billing issues, the July 8th Stabilization Report, in a section immediately following a discussion of “known billing error” on the retail side, states that “We currently don’t have any wholesale bills with known billing errors, however there have been billing issues.” This leaves the reader with impression that FairPoint was unaware of any significant problems with the bills. However, Jeff Allen testified that FairPoint has never had any “known billing errors” because, on the wholesale side of the house, they do not term known defects with the billing system as “known billing errors” but instead simply call them “billing issues.” When pressed, he then admitted that there were significant unresolved “billing issues,” including an instance of FairPoint applying a payment made by one CLEC on another CLEC’s bill and not informing either of the CLECs of that fact. Tr. 7/28/09 at 210-216.

² The July 8th Report contains a discussion of “unsubmitted orders” and reports progress towards reducing the backlog. The discussion does not state that the term “unsubmitted order” only applies to retail orders. During questioning at the New Hampshire technical conferences, FairPoint admitted that it uses the term “unsubmitted order” for retail orders only and that it still had a significant number of wholesale orders in the “not in order management” status that need to be resolved. *Id.* at 176.

³ In New Hampshire, FairPoint admitted that it does not include any wholesale orders that are not in order management in its late pending order counts. *Id.* 179-180.

⁴ During a Maine technical conference on PAP issues, FairPoint’s witness, Mr. Sargent, admitted that the PAP data did not reflect situations where an order erroneously flowed through to billing completion, thus ensuring that flow through rates were over reported and rejection rates under reported. MPUC Docket No. 2009-185, 6/11/09, Tr. at 94.

Until FairPoint is able to produce and fully report reliable wholesale performance data, neither the state commissions, FairPoint, nor the CLECs will be able to accurately assess whether FairPoint has made any progress toward meeting its requirements under both state and federal law for providing adequate wholesale service. During the testimony in the New Hampshire technical sessions, it became clear that FairPoint tracks additional relevant data points that would provide a much more complete view of FairPoint's performance and progress. While CRC maintains that FairPoint must be able to accurately report on PAP metrics and be held to those standards,⁵ it is clear that they are not doing so today and that interim measures may be in order. Thus, CRC suggests that a small working group consisting of representatives from the state staffs, FairPoint, the CLECs and Liberty Consulting be established for the purpose of developing interim wholesale measurements and recommended milestones/metrics for FairPoint to achieve by December 31, 2009. The group would file its recommendations with the three state commissions which would, in turn, order compliance by FairPoint and set penalties for missing the milestones/metrics. Assessment would be done a weekly basis. If FairPoint fails to meet a measure for two weeks in a row, FairPoint would be required to meet with the Working Group, develop a specific mitigation plan, and re-establish compliance within two weeks. If FairPoint still failed to achieve compliance, the state commissions would impose penalties.⁶

⁵ CRC believes that, ultimately, FairPoint's wholesale performance metrics (which include C2C and PAP metrics) must be fully audited by a third party to ensure that: (1) the underlying data is being pulled from the correct systems and is valid/accurate; (2) any performance calculations are being done correctly; and (3) any exclusions/changes made to the metrics that are not documented are identified.

CRC believes such specific steps need to be taken in order to ensure that FairPoint's wholesale performance is brought back into parity with retail performance and/or compliance with the PAP **by December 31, 2009**. The data contained in FairPoint's August 14, 2009 Responses to Oral Data Requests in NH Docket 07-11 indicate quite clearly that wholesale performance lags significantly behind retail performance. *See* Responses to ODR Nos. 8 and 10. Indeed, even the inaccurate PAP reports for July 2009 reflect continued poor performance when compared to retail.⁷ As the Commission is well aware, both federal and state law, as well as conditions imposed by all three state commissions during approval of the FairPoint transaction, demand that FairPoint provide non-discriminatory service to wholesale providers. FairPoint is not meeting any of those requirements today and does not appear on track to meet them anytime soon. Imposition of the interim performance measures, additional penalties, and the December 31st deadline will provide FairPoint with the specific direction it so desperately needs.

III. CLEC and FairPoint Working Groups Should Be Established

Currently, efforts are underway to set up several meetings between CLEC representatives and FairPoint to look very closely at issues arising with the submission of local service requests (LSRs) and access service requests (ASRs). CRC believes these

⁶ While CRC appreciates the Commission's concerns about FairPoint's financial situation, CRC respectfully urges the Commission not to let itself be held hostage by that situation. Indeed, given FairPoint's financial troubles, additional penalties might be the only effective motivation for getting FairPoint to make significant headway in addressing its problems.

⁷ Penalty amounts for July in New Hampshire were over \$1.3 million dollars while Maine topped out at over \$875,000 – both way above any amounts ever paid by Verizon.

meetings are a step in the right direction but that additional groups and/or meetings should be established to address other important issues such as trouble ticket administration, hot cut process problems, billing issues, and others. The weekly Thursday calls between FairPoint and the CLECs do not provide an appropriate forum for a real understanding of the issues by both FairPoint and the CLECs and the development of appropriate solutions. Too often issues are raised over the telephone and then lost in the chaos of other issues and questions. Calls or meetings dedicated to singular topics with specific deadlines have a much better chance of achieving real progress. Accordingly, CRC requests that the Commission order FairPoint to participate in a series of topical meetings with CLECs. CRC also requests that Commission Staff and/or Liberty Consulting participate or monitor these meetings so that the Commission can accurately assess FairPoint's compliance with this requirement and its progress toward addressing the substantive issues plaguing its wholesale operations.

IV. Review of Internal Processes and Procedures

It is clear to those who have observed FairPoint's wholesale operations closely that a large part of FairPoint's problems lies with incomplete and inaccurate processes and procedures. In order for both FairPoint's operation systems and its employees to function at their expected capacities, there need to be complete and accurate processes and procedures underlying their functions and work. If these processes and procedures do not reflect the correct order flow or the current state of automation of the FairPoint OSS, orders fall out of the system to employees who do not understand how to properly process them, which leads to increased errors, delays in provisioning, and an overall unsatisfactory experience for FairPoint, the CLECs and the CLECs' customers.

A full review of the wholesale processes and procedures must be done.

FairPoint's failure to "get it right" over the past year and half means that somebody else, somebody new and with significant, proven wholesale expertise, must be brought in to assist with this task and to ensure that FairPoint actually makes the necessary changes to its processes and procedures. This new expert should also work with FairPoint to ensure that FairPoint employees are fully trained on these processes and procedures and tested on their aptitude. CLECs have put up with months of unhelpful responses from well-meaning but poorly trained employees who do not understand the fundamentals of the wholesale marketplace. If FairPoint is to have any chance of improving its wholesale performance, it must take very seriously the need to overhaul its processes, procedures, and training.

Accordingly, CRC requests that the Commission order FairPoint to retain a wholesale processes and procedures expert to conduct the work described above. This new expert should be required to report back to the Commission and the CLEC community on a bi-weekly basis regarding the status of FairPoint's operations, the plan for making improvements, and the progress towards implementing said plan. A thorough review must be completed no later than **November 30, 2009**.

V. Elimination of the Backlog

FairPoint has labored under the albatross of a significant backlog of orders since the dark period began in January. FairPoint has yet to catch up to a "normal" level of backlogged orders. While FairPoint made statements during the July technical conferences that claimed its current backlog is less than Verizon's was in September 2008, nobody in the industry took such statements seriously because they are directly

contravened by carriers' experiences. Specifically, CRC never experienced the level of backlogged orders under Verizon that it has with FairPoint. For FairPoint to claim that the current situation is somehow better than that under Verizon is insulting and completely undermines FairPoint's credibility with the CLEC community.

Regardless of the cause or the comparative burden under Verizon, FairPoint needs to resolve the backlog issue so that its human and operational resources can be appropriately focused on, and devoted to, current provisioning requirements. If FairPoint is in a constant state of re-directing employees and other resources to tasks they would otherwise not be required to address, its employees and systems never settle into a normal flow.

In order to incent FairPoint to devote the resources necessary to overcome the backlog, the Commission should establish a deadline of **October 31, 2009**, for elimination of the wholesale cutover-related backlog. The specific method of measuring the backlog as well as the milestones for "business as usual" should be established by the Working Group described in Section II above and should be included in their schedule of milestones. If FairPoint fails to meet the deadline, penalties should be assessed and a new deadline established.

VI. Identification and Repair of Customer-Impacting Systems Issues

CRC supports the Maine Public Advocate's request that FairPoint be required to retain an outside consultant to assist FairPoint and Cap Gemini with evaluation and repair of the FairPoint's OSS. FairPoint and Cap Gemini have had three years to produce workable systems and yet significant systems issues continue to impact wholesale and retail customers every day. Indeed, FairPoint's systems issues are at the root of a number

of other issues. If the OSS were working properly, FairPoint could eliminate the myriad of manual processes it has put in place since cutover which, in turn, would eliminate the impact human error has had on FairPoint's operations. Properly functioning systems would help reduce the backlog because new orders would flow through and not be added to the backlog. Finally, a functional OSS would also lessen the number of escalations to FairPoint management, freeing them to actively manage their operations and employees, which would further improve performance.

CRC agrees that the state regulatory commissions should have unfettered access to any systems consultant hired by FairPoint. Further, there should be transparency to the regulatory community (public advocates, CLECs and other interest parties) regarding the current state of FairPoint's systems, the plans for addressing the problems, and the schedule for implementing the fixes. Close attention should be paid, and priority given, to: (1) fixes that directly impact customers (such as elimination of the loss of dial tone on certain migration orders); and (2) fixes that would eliminate cumbersome manual processes that have been put in place because of systems problems. To the extent that certain wholesale-related fixes must be delayed for any reason, FairPoint should communicate that information to the CLECs and work with them to ensure that any interim measures and procedures are workable for both FairPoint and the CLECs.

VII. Conclusion

FairPoint's failure to bring its operations back to normal over the past eight months indicates fundamental problems with both its systems and its management. We cannot afford to wait any longer for FairPoint to take the proper actions. State commissions cannot bank on FairPoint's latest plans getting the job done. Our collective

experience tells us that regulatory intervention and accountability is needed. While we appreciate the Commission's invitation to submit questions for the September 9th Hearing, CRC respectfully suggests that the time for questions has passed. What we need now is action. Hard deadlines must be set, regular and independent assessment conducted, and penalties imposed if there is to be any hope of changing FairPoint's course. CRC is willing to work with the Commission, its Staff, and FairPoint to bring this change about but needs the promise of real accountability by FairPoint if those efforts fail.

Respectfully Submitted,



Trina M. Bragdon, Esquire
CRC Communications of Maine, Inc.
900 D Hammond Street
Bangor, Maine 04401
(207) 992-9920
Trina.Bragdon@midmaine-teleplus.com

September 2, 2009