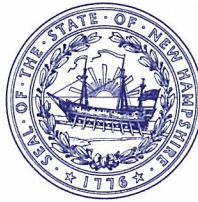


THE STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Meredith A. Hatfield

ASSISTANT CONSUMER ADVOCATE
Kenneth E. Traum



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

FAX No. 271-1177

Website:
www.oca.nh.gov

OFFICE OF THE CONSUMER ADVOCATE

21 S. FRUIT ST., SUITE 18
CONCORD, NEW HAMPSHIRE 03301-2429

September 3, 2009

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301



Re: DT 07-011 FairPoint Communications, Inc.
Report of the July 28 and 30, 2009 Technical Session and Recommendations of the
Office of Consumer Advocate

Dear Ms. Howland:

On July 21, 2009 the Commission issued a secretarial letter scheduling a technical session on FairPoint's progress to stabilize its operations. This letter directed the Staff to file "a report of the technical session and any recommendations for future action" by August 7, and invited other parties to do so as well. The Commission extended this filing deadline to August 21, and again to September 3, 2009. See Secretarial Letters dated August 7 and August 21, 2009. Please accept this letter as the OCA's report and recommendations.

We understand that the Commissioners will read the transcript and the Company's response to the Oral Data Requests (ODRs). Therefore, this letter is intended to highlight some of the key issues that were discussed and/or brought to light at the technical session and to provide examples of areas that we believe warrant immediate action by the Commission.

I. Report of Technical Session

Staff convened the technical session on July 28 and July 30. Staff questioned FairPoint witnesses on July 28, and until approximately 3:00 pm on July 30, during which time the other parties had an opportunity for limited follow-up questions. The OCA's primary opportunity for questioning occurred after 3:00 pm on July 30. Due to time constraints, Staff suggested near the end of the second day that the OCA could seek the opportunity to continue the technical session to an additional day. The OCA appreciated that offer, but we did not believe that continuing into a third day was a good use of anyone's time for many of the reasons discussed below.

08:30 PM 09/03/09 NH PUC



As you know, on July 17, 2009 the OCA petitioned the Commission to open a new adjudicatory docket to investigate FairPoint. In our petition, we urged the Commission to provide the parties with an opportunity to gather “additional, and possibly more accurate, information about FairPoint’s current status” in a formally docketed case, before convening the technical session. Again and again during the technical session FairPoint’s actions, such as taking requests for information “under advisement,”¹ or qualifying, recasting, or disavowing the contents of its written reports,² reinforced the OCA’s belief that a new approach is needed. We continue to believe that the PUC, working with its counterparts in Maine and Vermont, must immediately engage a truly independent third party to perform an objective assessment of FairPoint’s current status. It is clear that over two years of relying on FairPoint to develop its new operations systems and to address problems that prevent it from providing basic levels of service to customers has failed. FairPoint’s responses in the technical session also validated our perception that, going forward, it can not and should not be relied upon to provide objective or complete information to the Commission, to the parties, or to the public.

For example, FairPoint representatives confirmed that the data reported in its “Stabilization Plans” is extracted from its new IT systems, all of which have experienced problems functioning since cutover.³ In light of the substantial evidence that FairPoint’s systems continue to malfunction or require changes,⁴ the Commission can not be assured that this data is accurate or complete. In its review of FairPoint’s July Stabilization Plan Status Report, Liberty recognized that FairPoint has

¹ See e.g., Transcript of Technical Session, July 28, 2009 (“Day 1 Transcript”), p. 165, line 13 (Nixon: “I will take your request [for weekly public reports] under advisement.”); and Transcript of Technical Session, July 30, 2009 (“Day 2 Transcript”), p. 68, line 19 through p. 69, line 9 (FairPoint’s counsel and Mr. Murtha take “into consideration” a request of a CLEC for data about escalations coming directly into FairPoint); p. 298, line 13, through p. 299, line 6 (OCA’s request for copy of business plan filed with the Maine PUC taken “under advisement”); p. 299, lines 7-18 (OCA’s request for copy of the Weatherwax plan taken “under advisement”); and p. 300, lines 1-9 (OCA’s request to be included in the “scheduled meeting with FairPoint’s CEO and Ms. Weatherwax, will be “look[ed] into”).

² See e.g., Day 1 Transcript, p. 22, line 6 (“It was accurate to that point in time.”) (emphasis added); and Day 2 Transcript, p. 120, line 24 through p. 121, line 3 (““business as usual objective”[for late pending orders] that [FairPoint] reported in [its] ... status report ... is incorrect”).

³ See e.g., Day 1 Transcript, p. 35, line 9, through p. 36, line 3 (“well over 700” pending system fixes, not including the 300 front-end improvements recommended by Aricent); p. 54, lines 5-9 (“The systems were not ... working as we had anticipated”); p. 56, line 20 through p. 60, line 5 (describing three “system performance issues” occurring in late June and early July 2009). See also Day 2 Transcript, p. 73, lines 11-12 (FairPoint’s IT department has “got a list of work that’s greater than what we can perform”); p. 179, line 15, through p. 180, line 18 (FairPoint “introduce[d] some changes from the software that did result in a downstream process or problem”); p. 211, line 22, through p. 212, line 7 (in the past year as FairPoint has had up to 727 Capgemini people working on its IT systems and as many as 480 to 500 Capgemini people “for the better part of four months”); p. 248, lines 6-8 (FairPoint’s Genesis system, from which the “percent calls abandoned data” is obtained for the Stabilization Reports has had problems since cutover); and p. 259, lines 16-18 (“(Allen) I think it’s fair to say that, since cutover, there have been some issues with every system we’ve had”).

⁴ See, e.g., Day 2 Transcript, p. 175, lines 10-16 (FairPoint’s ability to complete software changes in a timely fashion constrained by not enough time in the day); p. 177, line 1, through p. 178, line 12 and p. 178, line 22, through p. 179, line 14 (FairPoint currently making weekly, bi-weekly and daily changes to its IT systems); p. 181, line 22, through p. 182, line 1 (Each Wednesday night [FairPoint’s IT department] get[s] the full list of [system changes] that have gone through testing [and need to be deployed]. This list is typically around 156 --150 to 160 items); p. 181, lines 15-16, and p. 183, lines 20-24 (“project configurator “a “big” change recommended by Aricent will be deployed after testing); p. 203, lines 7-18 (currently 192 Capgemini people supporting FairPoint’s IT organization, working on change requests, defects and IT projects); p. 204, lines 7-9 (“There are pockets ...[in] various applications” that are “still not functioning as they were requested”).

continued work to do on its systems “before it can claim it is operating at normalized or BAU levels.”⁵ Without accurate or complete information about FairPoint’s functioning, the OCA questions how the Commission can meaningfully monitor the company now or hold it accountable at some point in the future for its continuing failures to meet service quality standards.

In addition, FairPoint senior management revealed that the measurement figures reported to the Commission – as proof of FairPoint’s “progress” toward stabilization – are derived in a number of different ways: some are monthly averages; some are daily numbers; some date from the beginning of a month; some date from the end, etc.⁶ Perhaps using different sources of data is not problematic in and of itself. However, the OCA got the sense that FairPoint may be directly comparing differently-derived metrics to assert progress, which would be problematic. Consequently, there is even more reason to believe that FairPoint’s measurements for assessing “progress” – or lack thereof – may be flawed and unreliable.⁷

There is also now evidence that FairPoint is not reporting to the Commission the results of its own “internal” analyses.⁸ In fact, during the technical session, FairPoint reported percentages which were not found in either its June 30 Milestone Report or its July Stabilization Plan Status Report.⁹ For

⁵ Liberty Assessment of FairPoint’s Stabilization Plan Status Report dated July 13, 2009, pp. 8-9. *See also* Id. pp. 8-9 (“In addition to the operational areas addressed by FairPoint in its report, there are a number of other issues that FairPoint needs to address and correct before it can claim it is operating at normalized or BAU levels ...[including] Improved accuracy and consistency in the performance results reported by FairPoint”).

⁶ *See, e.g.*, Day 1 Transcript, p. 21, lines 4-12 (“variety of sources used” to prepare the July Stabilization Plan Status Report); p. 23, lines 11-22 (measurements reported in July Stabilization Plan Status Report derived in different ways, from different dates); p. 112, line 17 through p. 113, line 6 (“flow through” percentage for retail POTS in June 30 Milestone Report and “flow through” percentage in July Stabilization Status Report measure “two distinctly different events” and compare “an apple to an orange”); p. 114, lines 2-4 (“the measure really is more about timing than what the actual current results are”); p. 114, lines 9-10 (numbers change as the course of the month goes on); p. 118, lines 8-12 (measurements reported to the Commission may have been better “because of timing”); and Day 2 Transcript p. 271, lines 17-24 (in response to question about how the “bills with known errors” measurements were calculated, Mr. Allen of FairPoint responded: “Those were calculated -- current was taken from the last item or the last [daily] report that we had... don’t recall if I took a monthly average, which I believe I did, but I’m not 100 percent certain, or if I took a result from the end of the month. I would have to check that”); and p. 294, lines 11-13 (“All of these numbers [in the Stabilization Plan Status Report], a large majority of these numbers came from either the milestone [or weekly] reports or the daily reports”).

⁷ *See e.g.*, Day 1 Transcript, p. 114, lines 10-23 (“flow through” measure, as reported to the Commission, “not a very good measure”); p. 115, lines 16-19 (“I would suggest to you that neither one of the two flow through numbers that we reported on are an accurate reflection of the current flow through”); p. 115, lines 21-22 (similar); p. 120, lines 10-14 (measurement of “flow through can give you a skewed result, because there are variables associated with it”).

⁸ *See e.g.*, Day 1 Transcript, p. 116, lines 7-22 (describing FairPoint’s “internal” analysis of “flow through”); p. 118, lines 5-8 (“flow through” measurements in June less accurate than FairPoint’s internal measurements); p. 120, lines 8-10 (“an awful lot” of internal “information and reports” used by FairPoint); p. 120, lines 14-16 (“internally, we use a different process to measure flow through”); p. 120, lines 16-17 (“there are internal operational metrics that we use to manage the business”); p. 123, line 15, through p. 124, line 1 (FairPoint evaluating daily reports because it “use[s] different information internally”); p. 163, lines 13-20 (measurements in reports to the Commission “not necessarily the measurements we use internally to get better”); and Day 2 Transcript, p. 258, lines 2-4 (flow-through percentages in July Stabilization Plan Report “maybe not reflective in all instances of what -- the way that we currently measure it internally”); p. 261, lines 8-14 (discussion of FairPoint’s “internal measurement” of flow through); and p. 309, line 20, through p. 310, line 5 (FairPoint uses a different way to measure flow through internally, and has different goals for flow through, than the ways and the goals in the Stabilization Plan reports).

⁹ *See e.g.*, Day 1 Transcript, p. 117, line 9 through p. 119, line 20.

instance, in its June 30 Milestone Report and July Stabilization Plan Status Report, FairPoint reported retail POTS “flow through” percentages of 68.15 percent and 97 percent, respectively. However, at the technical session, FairPoint revealed that its internal analysis results in a “flow through” percentage only “in the ... low 80 percent range.”¹⁰ FairPoint pointed to flow through percentages as one instance where the Stabilization Report “does not reflect the accurate – the true and accurate status of FairPoint’s current circumstances.”¹¹ When will the Commission have a “true and accurate status” of this – and the other – important metrics?

FairPoint officials also confirmed that certain of its reported “objectives” for “Business as Usual”¹² are without any historical or industry basis¹³ and that some may not be accurate, useful or even realistic.¹⁴ Also, at least one objective used by FairPoint to define “BAU,” known billing errors, is more narrowly understood by FairPoint than it may be understood by customers or the public.¹⁵ FairPoint

¹⁰ See Day 1 Transcript, p. 112, lines 17-23 (retail POTS “flow through” was 68.15 percent in the June 30 Milestone Report and 97 percent in the July Stabilization Status Report, both of which were filed with the PUC); and p. 116, line 22 through p. 117, line 12 (retail POTS “flow through” is “in the ... low 80 percent range” according to FairPoint’s “internal” analysis).

¹¹ See Day 2 Transcript, p. 243, line 23 through p. 244, line 3.

¹² See Day 1 Transcript, p. 22, lines 17-22 (FairPoint considers Business as Usual synonymous with “normalization”).

¹³ See, e.g., Day 1 Transcript, p. 24, lines 8-11 (“In many instances, the measurements that we were incorporating into the Milestone and the Daily Reports were not measurements that had been utilized before or that we had any data to support”); p. 26, lines 13-16 (“We may not have set the goals and objectives with the precision and the historical reference that we would have liked to have had”); p. 119, lines 2-3 (“a lot of objectives that I set in the Stabilization Plan based on my best guess in March”); p. 139, lines 8-12 (“flow through” percentages were not based upon historical information); and Day 2 Transcript, p. 71, lines 4-6 (FairPoint witness Murtha testified: “I mean the definition of “business as usual” is different for each of us here”); p. 71, lines 8-11 (“a lot of the measurements that we were asked to provide for [the Stabilization Plan] were new measurements that had not existed before”); p. 257, lines 6-7 (POTS flow through objective, in the Stabilization Plan, was an “estimate ... without any industry or historical background”); p. 260, line 19, through p. 261, line 2 (Retail DSL “flow through” objective in Stabilization Plan is without any industry or historical background); and p. 305, line 24 through p. 306, line 6 (late pending orders objective in Stabilization plan was a “guesstimate of what I thought was reasonable at the time, without any knowledge of historical numbers or any knowledge of what the late orders – what categories they were in at the time”).

¹⁴ See e.g., Day 1 Transcript, p. 119, lines 7-8 (FairPoint stated that, based upon its experience, some objectives are not accurate); p. 163, lines 13-20 (“many of the measurements in the plan were really not the most valid measurements as we worked our way through the plan, that’s what I was describing before, whether it was flow through or late orders or, in this case, whether we’re measuring pre-order functionality”); p. 183, lines 13-22, and p. 184, lines 5-11 (FRP believes that measurement of unsubmitted orders by total number, as it has been reporting to the Commission, is not useful); and Day 2 Transcript, p. 72, lines 2-4 (“many of the measurements that are in [the Stabilization Plan] need to be revised, as far as even what is being measured”); p. 130, line 17, through p. 131, line 9 (Objective for customer escalations in FairPoint’s Stabilization Plan not based upon New Hampshire data; not “accurate”); p. 306, lines 17-19 (original objective for late pending orders and objective in FairPoint’s July Stabilization Plan Status Report not “realistic”); and p. 309, lines 7-19 (FairPoint stated that “there is a better way to measure” FairPoint’s operational performance than the way that is done in the Stabilization Plan). See also Letter accompanying FairPoint’s July 2009 Service Quality Metrics Report filed with the Commission (“There were five (5) areas that FairPoint reported on in February, March, April & May 2009 that were reported incorrectly”).

¹⁵ See, e.g., Day 1 Transcript, p. 196, line 16, through p. 197, line 16 (“known billing errors” as used by FairPoint in its reports to the Commission does not necessarily include all bills with errors); p. 215, lines 17-19 (“Because, actually, in many instances, there were no known billing errors, but there were bills that were being delivered in error”); and p. 216, lines 16-18 (CLEC describes FairPoint as having “drawn this distinction between ‘known billing errors’ and ‘issues with bills’”); and Day 2 Transcript, p. 270, lines 20-23 (possible that “customers might have a perception of errors that don’t necessarily fit within [FairPoint’s] definition ... of ‘known billing errors’”).

also stated that regulators had input into these metrics.¹⁶ FairPoint also admitted that since it began reporting its stabilization efforts to the Commission, FairPoint has unilaterally changed some of its objectives¹⁷

In addition, FairPoint's own representations during the technical session lacked consistency.¹⁸ FairPoint also repeatedly spoke of its "aspirational" goals for service and operations¹⁹ – above and beyond its Business as Usual objectives – but FairPoint could not give the parties any definitive sense of when it would achieve them.²⁰ Also, FairPoint acknowledged that, after seven months since cutover, FairPoint reports only meeting four of its own 29 objectives.²¹

¹⁶ See e.g., Day 1 Transcript, p. 164, lines 4-9 (some measurements reported to Commission requested by "regulatory staffs"); and Day 2 Transcript, p. 71, lines 15-16 ("the process of determining what measurements we use was a collaborative effort"); p. 246, lines 3-13 (FairPoint assisted by PUC staffs and/or Liberty Consulting in choosing objective for Stabilization Plan); p. 249, lines 18-22 (PUC staffs and Liberty suggested lower objective for Repair Center section of the Stabilization Plan); and p. 255, lines 12-23 (FairPoint reviewed Stabilization Plan objectives with the PUC Staffs and Liberty and made some changes that were suggested).

¹⁷ See, e.g., Day 1 Transcript, p. 23, lines 7-10 (FRP adjusted stabilization objectives); p. 138, line 22, through p. 139, line 6 (FairPoint changed "flow through" objective for both Wholesale AB orders and Wholesale DB orders from 90 percent, as used in the Milestone Report for June 26, to 75 percent, as used in its July Stabilization Plan Status Report); p. 181, line 7, through p. 182, line 6 (March 2009 report used 1,000 to 2,000 as Business as Usual, but later changed the upper boundary to 2,500); and Day 2 Transcript, p. 114, lines 14-17 (FairPoint, "between July 2nd and the end of July...changed [the Stabilization Plan's] categorization of where an order would sit in a different category").

¹⁸ Compare p. 138, lines 3-7 ("Q. Doesn't the fact that an order flowed through, rather than is subject to manual handling, also affect the accuracy with which the provisioning is done? A. (Allen) I would say that, I don't know what their percentage is, but, logically, yes. Absolutely") with p. 138, lines 8-13 (Q. So, therefore, if you've got a lower percentage of orders that are flowing through for wholesale, versus retail, it may be true that the accuracy is less form wholesale, is that correct? A. (Allen) ... I don't know if the accuracy is different"). Compare Footnote 26 (FairPoint's references to performance by Verizon, or by FairPoint when it used Verizon's systems) with Day 1 Transcript, p. 146, lines 16-18 ("I'm not sure we can ever say 'Verizon's 90 percent is the same as our 90 percent'"). Compare Day 2 Transcript, p. 73, lines 11-12 (FairPoint's IT department has "got a list of work that's greater than what we can perform"); with p. 77, lines 7-10 ("Q. You stated that you have more changes or more defects than should be on your plate or that the volume -- you've indicated that the volume is very high. A. (Haga) I did not indicate that").

¹⁹ See, e.g., Day 2 Transcript, p. 121, lines 18-24 (FairPoint witness described "two very different numbers" in response to a question about "Business as Usual" objective for late pending orders including "a[n] optimum number that we will strive for to provide the level of service that we'd like to give the customers, and that would be a number that is less than where we are today in each of the different categories"); p. 122, line 15 through p. 123, line 11 (FairPoint's current level of late pending orders below pre-cutover levels, but "not the level that [it] need[s] to get to or aspire to"); p. 153, lines 15-16 (process for handling customer escalations "[c]ertainly...[has] gotten better, [but it's] not where we want them to be"); and p. 307, lines 14-18 (FairPoint's aspiration "is to exceed the level of service that customers received prior to cutover").

²⁰ See, e.g., Day 2 Transcript, p. 133, line 21 through p. 134, line 12 (FairPoint aspires to clear customer escalations within 24 hours, but can not say when it will achieve this goal); and p. 204, line 19, through p. 209, line 7 (Despite repeatedly being asked when all of the IT systems would function as expected, FairPoint witness did not give a time and said instead, "it's just a difficult question to answer").

²¹ See Day 2 Transcript, p. 307, line 19 through p. 308, line 8 (The four objectives of the 29 in the Stabilization Plan which FairPoint has met are: "The percentage of wholesale JB orders, the percentage of calls abandoned in the CSSC, the average wait time in the CSSC, the average wait time in repair"). But see Day 1 Transcript, p. 112, lines 4-16 (FairPoint witness testified that as of the week ending June 26, 2009, FairPoint had met five of its 29 Stabilization Plan objectives).

Importantly, none of FairPoint's data has been independently audited for accuracy and completeness, which the company confirmed during the technical session.²² Therefore, the OCA decided that spending any more time in the context of a technical session – even a recorded technical session – was not a prudent use of anyone's resources, given the questionable nature of FairPoint's data and our limited ability – without an independent and objective assessment – to test it. Our experience at the technical session demonstrates that unless and until the Commission takes affirmative action to obtain an objective and independent assessment of FairPoint's systems and operations, and holds the company accountable for its many failures, FairPoint will continue to control the Commission's and the parties' access to accurate and complete information, the process by which it packages this information and reports it to the Commission, and even what goals are set for the Company. This must not be allowed to continue.

Aside from the realization that FairPoint's data continues to not be reliable, most striking to the OCA was the utter lack of familiarity that FairPoint's upper management has with the retail service quality metrics it committed to in exchange for the Commission's approval of the transfer from Verizon,²³ as well as a lack of any specific plan to satisfy these retail service quality commitments.²⁴ As the Commission is aware, these service quality commitments included in the Settlement Agreement approved by Commission Order No. 24,823 on February 25, 2008 far exceed the level of service presently contemplated by FairPoint's Stabilization Plans, let alone the levels of service provided to customers by FairPoint since cutover.²⁵ As such, FairPoint's reassurances in the technical session that it is getting back to pre-cutover "Business as Usual" – or functioning comparably or better than Verizon did during that time or earlier²⁶ – provide no comfort to the OCA, and in fact would violate the

²² See, e.g., Day 2 Transcript, p. 294, lines 7-20 ("Q. ...jumping back to the Status Report, Mr. Allen, has any of the data been audited or verified by any independent party outside of FairPoint? A. (Allen) Audit -- it depends on your definition of 'audit'... One of the processes that Liberty has been doing is compiling information from [FairPoint's milestone and daily reports] ... I don't know that I would call [Liberty's review of FairPoint's reports] an 'audit,' but I would say it had a review"); and p. 294, line 21 through p. 295, line 3 ("A. (Allen) [A formal audit] "would be a third party that would come in and do some stringent review of both the source of the information and how it was compiled and a verification of that information").

²³ See, e.g., Day 2 Transcript, p. 239, line 14, through p. 240, line 2 (FairPoint's executive in charge of Northern New England operations is not familiar with the specific service quality commitments contained within the settlement agreement approved by the Commission in DT 07-011).

²⁴ See, e.g., Day 1 Transcript, p. 46, lines 11-18 (FairPoint not meeting retail quality of service standards and has no "specific schedule" to meet them).

²⁵ See, e.g. Day 1 Transcript, p. 46, lines 11-13 ("is FairPoint currently meeting the existing retail quality of service standards? A: (Allen) No"). See also, Day 2 Transcript, p. 240, lines 17-23 (FairPoint not meeting all service quality standards).

²⁶ See, e.g., Day 1 Transcript, p. 16, line 23, through p. 17, line 10 (comparing late orders on Verizon's systems in September 2008 with late orders today); p. 38, line 22, through p. 39, line 1 ("even [Verizon's] systems did not 100 percent flow through"); p. 39, lines 10-12 ("But even Verizon, after 35 years, wasn't at 100 percent"); p. 41, lines 7-10 ("There's not a date that you can say we're going to be at the end of flow through, nor was that, in Verizon, ever a date that we were at the end of flow through"); p. 47, lines 6-8 ("I think we can go back to pre-cutover [when FairPoint was using Verizon's systems,] and I don't believe, again, subject to check, we were meeting all the SQIs at that time either"); p. 153, lines 18-20 ("When I ran the Wholesale operation for Verizon, I still got this same issue every day"); p. 194, lines 6-7 ("prior to cutover, [when FairPoint was using Verizon's systems,] 100 percent of the bills were probably not accurate"); and Day 2 Transcript p. 79, line 19 ("Verizon never had 100 percent flow through"); p. 79, lines 21-22 ("No product in Verizon ever flowed through at 100 percent"); p. 207, lines 15-18 ("Are [FairPoint's IT systems] functioning across the board at peak levels?

Commission's Order. And as the Commission must recall, the service provided by Verizon, for a number of years prior to the merger, was not of a character that would engender feelings of nostalgia.²⁷ Therefore, FairPoint's "aspirations" to raise its level of service to or above Verizon's service levels should be considered within the context of this history, and are of no consequence to the public unless these "aspirations" are enforceable. At the very least, the end result should be consistent with the service quality requirements approved by the Commission's Order in the Verizon/FairPoint merger, which also includes provisions for penalties to which FairPoint agreed.

We recognize that FairPoint's most basic levels of functioning and service must be the company's highest priority. However, we are very troubled by the discovery at the technical session that FairPoint's current efforts to stabilize its operations are without any consideration (or knowledge) of its own retail service quality commitments in New Hampshire, as required by the Commission's Order in this docket.²⁸ This compartmentalizing of goals – "BAU" vs. Commission ordered service quality requirements – seems ill-advised and inappropriate, particularly in light of the substantial risk of penalties that accompany violations of these requirements, and FairPoint's current fragile financial circumstances.

The scope of the technical session did not include financial issues, at the Commission's direction. However, we would be remiss if we did not at least mention the fact that the Company has stated in its recent filings with the Securities and Exchange Commission that it faces a real threat of bankruptcy after September 30, 2009.²⁹ The managerial, technical and financial issues faced by FairPoint are inextricably linked.

The OCA also learned for the first time in the technical session that the Commission's Consumer Affairs Division has nearly 200 customer "escalations" (*i.e.*, complaints that reach the PUC and are forwarded to FairPoint for resolution) pending with FairPoint.³⁰ This volume of PUC "escalations" is five times higher than pre-cutover level and these escalations are taking almost twice as long to resolve.³¹ Since the technical session, the OCA now receives information about these escalations from FairPoint, but we are not aware of what steps the Commission is taking to resolve

No. But were Verizon's systems functioning across the board or were they done changing their systems? Were they done improving their systems? No").

²⁷ See, generally, DT 04-019 (Verizon service quality docket).

²⁸ See, e.g., Day 2 Transcript, p. 242, lines 2-9 (FairPoint is not "looking at how [the Stabilization Plan] objectives ... relate to what the Company has to meet under the Commission's order" in terms of retail service quality). See also footnote 23.

²⁹ See, e.g., FairPoint Communications, Inc. Form 10-Q filed with the U.S. Securities and Exchange Commission on August 5, 2009, pp. 41-42 ("Recent Developments" include an exchange of approximately 83% of 13¹/₈% senior notes due 2018, in order to avoid breaching the interest coverage ratio maintenance covenant in FairPoint's credit facility, dated as of March 31, 2008. But, even with the consummation of the exchange offer, FairPoint is still at risk of breaching this covenant and the leverage ratio maintenance covenant for the measurement period ending September 30, 2009. Consequently, the Company has engaged a consultant to assist it with restructuring its debt, and if these efforts fail to produce a voluntary restructuring, the Company may proceed with involuntary restructuring through Chapter 11 bankruptcy). See also, *Id.* at p. 55 (similar); and p. 63 ("***A chapter 11 proceeding may result in a protracted process which could disrupt our business, divert the attention of our management from the operation of our business and the implementation of our business plan and may ultimately be unsuccessful.***") (emphasis in original).

³⁰ See Day 2 Transcript, p. 131, lines 10-13 (190 NH Consumer Affairs customer escalations as of July 27, 2009).

³¹ See FairPoint's response to ODR 36 (Attachment 1).

them. FairPoint also disclosed at the technical session that they are maintaining a list of “executive escalations” which seem to be distinct from the Commission escalations. However, FairPoint refused to provide information on these escalations to Staff or the OCA,³²

There was also brief discussion about the ongoing three-state communications with FairPoint during the technical sessions. It is our understanding that these communications include weekly calls with the Commission Staffs on a wide range of issues, and also include communications with the Commissions. The OCA continues to be concerned about these off the record communications for which there is neither documentation nor records provided to the parties.³³

In light of our statutory charge to represent the interests of residential customers, our efforts throughout and since the merger proceedings to protect customers, and our repeated requests for full involvement in the Commission’s monitoring of FairPoint, the OCA has difficulty understanding why we continue to learn after-the-fact about new problems with FairPoint, or important dialogues between Staff and FairPoint, in which we are not included. It is unproductive and wasteful for the OCA to continue to have to fight with FairPoint to simply try to stay informed in a case that is so important to residential customers, and to the state as a whole. It is also unfortunate that we continue to have to pursue, largely unsuccessfully thus far, formal recourse with the Commission in order to be included fully in the largely informal processes in place to try to get FairPoint back on track. The Commission’s approach to regulating this weak and underperforming utility is not working and needs to change immediately.

II. Recommendations for Future Action

The OCA recommends that the Commission take the following action:

- A. Grant the relief requested in the OCA’s Petition to Establish a New Adjudicatory Proceeding, which the OCA incorporates herein by reference. Such relief includes:
 - a. Opening a new adjudicatory proceeding to formally investigate FairPoint’s efforts and achievements to stabilize its operations and service to customers; and
 - b. Engaging an independent third party to conduct a thorough and objective assessment of FairPoint’s functioning and data, and to review FairPoint’s plans to address its current problems. This third party consultant should be empowered to work in cooperation with all of the parties, not just with the Commission Staff;

³² See Day 2 Transcript p. 286, line 23 through p. 287, line 12 (Q: Would you be able to provide a report on [the executive] escalations for New Hampshire to the OCA and to Staff? ... A: (Nixon). Yes. I think we report and we would continue to report on the PUC escalations. I don’t know that there’s a need for us to report on all other escalation types that come throughout the Company. I think the PUC escalations are sufficient. Q: So, the answer is ‘no’? A: (Nixon) Yes, ma’am. Yes ma’am, the answer is ‘no.’”).

³³ See, e.g., Day 2, p. 297, line 18, through p. 298, line 12 (“And, would the Company be willing to provide the New Hampshire Office of Consumer Advocate with information that they provided to Staff on [the call with Mr. Giammarino on the topic of “payment of exchange consideration”]? A. (Nixon) I would consider it. I would have to consider it further”). FairPoint’s responses to oral data requests from the technical session did not include a response to this request, however.

DT 07-011 FairPoint Communications, Inc.
Report of July Technical Session and Recommendations of the OCA

- B. Require FairPoint to provide to the Commission copies of all documents provided by FairPoint's Vice President and General Auditor to FairPoint's Board of Directors, FairPoint's Audit Committee and Senior Management since March 31, 2008 (see Attachment 2, FairPoint's Response to ODR #47);
- C. Require FairPoint to provide to the OCA **all** documents and filings, confidential or otherwise, which are provided to the Commission and its Staff;
- D. Require FairPoint to provide to the OCA all data and documents requested at the technical session, which requests FairPoint took "under advisement" but which requests FairPoint did not respond to in its responses to the ODRs. Following this filing, the OCA will communicate to FairPoint any outstanding ODRs and will provide a copy of this list to the Commission;
- E. Require FairPoint to provide all public documents provided to the Commission and its Staff to the parties in DT 07-011 and make these public documents available to the public on the Commission's website;
- E. Provide access to the OCA to all records maintained by the Commission, its Staff and its consultants that are related to the ongoing communications between Staff, the Commission, the three states and FairPoint;
- F. Direct any interested parties to DT 07-011 to convene and develop a plan for an adjudicatory proceeding to enforce the penalties authorized for any violations by FairPoint of its retail service quality commitments for 2009.
- G. In light of the recent allegations about the veracity of FairPoint's testing results during the pre-cutover period (*i.e.*, complaint filed with the three Commission's by David "Unavailable"), require Peter Nixon, Jeffrey Allen and all executives involved in the testing of FairPoint's operations systems to provide, under oath, a response to those allegations to the Commission. The Commission should also independently investigate these allegations, including Liberty Consulting's knowledge of the accuracy and veracity of the testing information;
- H. Require the PUC's Consumer Affairs Division to provide the OCA with copies of all customer escalations sent to FairPoint to date, and all future customer escalations;
- I. Retain bankruptcy counsel to advise the PUC, the OCA, and the State, as to how best to prepare to protect the interests of customers and the State in the event that FairPoint files for bankruptcy protection; and
- J. Any other actions as needed to ensure that FairPoint complies as soon as possible with the terms of its settlement agreement with Staff and Verizon, and with the Commission's Final Order approving the merger transaction between FairPoint and Verizon.

DT 07-011 FairPoint Communications, Inc.
Report of July Technical Session and Recommendations of the OCA

Thank you for this opportunity to report on the events of July 28 and 30, and to make recommendations for future action by the Commission.

Sincerely,

for *Ron E.P. Hollenberg*
Meredith A. Hatfield
Consumer Advocate

cc: DT 07-011 service list (electronically only)

36. With respect to complaints escalated through the New Hampshire Public Utilities Commission to the company, FairPoint must provide information related to the average time and/or days it takes to resolve complaints on a pre-cutover basis and a post cutover basis. **[Rush]**

Response:

State	Month/Year	Number of Complaints	Average Days	Timeframe
NH	Jan-08	57	4.23	VZ pre-sale
NH	Feb-08	52	2.99	VZ pre-sale
NH	Jan-07	42	6.64	VZ pre-sale
AVG		50.3	4.62	
NH	Dec-08	100	3.3	FRP pre-cut
NH	Nov-08	31	3.48	FRP pre-cut
AVG		65.5	3.39	
NH	May-09	342	16	FRP Post Cut
NH	Jun-09	324	9	FRP Post Cut
NH	Jul-09	261	8	FRP Post Cut
AVG		309	11	

**RESPONSE TO ODR # 47
JOB DESCRIPTION****FairPoint Communications
Job Description**

Job Code: 10674
Job Title: Vice President and General Auditor
Career Band: EXL
Department: Internal Audit
Reports to: EVP and General Counsel
FLSA Status: EX
EEO Classification: 14
Travel %: 40%
Prepared By & Date: L. Engel 06/2005. B. Shimberg 12/2008

Job Summary:

The Vice President and General Auditor (VPGA) supports the Board of Directors, the Audit Committee and Senior Management in maximizing shareholder value, achieving our strategic objectives, ensuring financial reporting integrity and complying with laws and regulation. The scope of the VPGA includes any activity relating to the assessment of risk, control processes and execution of those processes, including our commitment to compliance with the Sarbanes-Oxley Act of 2002.

The VPGA reports to the Audit Committee on policy and the General Counsel for administrative purposes. The VPGA will have unfettered access to the Audit Committee as well as all necessary records, assets and personnel of the company. Results are reported to management who are responsible for remediation of any deficiencies. Significant findings and management's responses are reported to the Audit Committee. While the independence of the VPGA is primary, it is expected that a consultative relationship with management will exist on a day to day basis.

Performs job duties consistent within safety, legal and regulatory requirements; company standards, culture and business practices.

Essential Duties and Responsibilities:

- Establish an initial risk assessment, assess and prioritize the risks to our strategic and operating objectives; develop a plan of action and provide regular updates.
- Review the reliability and integrity of financial, operating and management information and evaluate the effectiveness of financial and operating controls. Develop and execute an annual

audit plan (including budget) and provide measurement metrics for each individual component of the audit plan.

- Assist in structuring new initiatives to incorporate adequate control throughout the process
- Evaluate governance both for control and integration of business objectives across the company
- Test for the best use of resources
- Assist in due diligence in new initiatives, including acquisitions and partnerships

Additional Duties:

Contributes to departmental activities and programs by accomplishing related tasks as needed.

Knowledge, Skills and Abilities:

- Must have an in-depth knowledge of all aspects of Sarbanes -Oxley and in auditing measures and controls.
- Must have an in-depth knowledge of all areas of accounting and finance and be CPA certified.
- Ability to drill down into processes to determine root causes, and ability to take those causes and develop and execute an action plan.
- Ability to be able to communicate at all levels throughout the organization and with the public.

Education/Experience

In order to accomplish the essential duties of this position, the incumbent must have a 4 year degree in Accounting, Finance, Internal Auditing or related field. CPA certified and 7-10 years experience in increasingly progressive position, with at least 5 years in management roles and 2 in a role requiring application of Sarbanes-Oxley Law of 2002.

Physical Demands and Work Environment:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Normal office environment with approximately 40% travel

FairPoint Communications reserves the right to change or revise duties and responsibilities as the need arises. This document is not a written or implied contract of employment.