



November 22, 2010

PATRICK C. MCHUGH, ESQ.
V.P. AND ASST. GENERAL COUNSEL
207.535.4190
PMCHUGH@FAIRPOINT.COM

NHPUC NOV23'10 PM 1:42

VIA HAND DELIVERY

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

Re: DT 07-011; Transfer of Assets to Fair Point Communications, Inc.

Dear Ms. Howland:

On behalf of Northern New England Telephone Operations LLC d/b/a FairPoint Communications ("FairPoint") this correspondence responds to the submission dated November 17, 2010, from six competitive local exchange carriers (the "CLECs"). In that submission, the CLECs advised the Commission "of issues that have arisen with respect to..." the New Hampshire Performance Assurance Plan ("PAP"). The CLECs suggested that an audit should be undertaken with respect to the PAP as well as *all* carrier-to-carrier ("C2C") metrics, and they announced a moratorium on their cooperation with FairPoint to develop a simplified PAP. FairPoint disagrees that an audit of the current PAP is a worthwhile commitment of FairPoint's resources and this Commission's resources, nor does FairPoint understand how concerns about the current PAP should explain or excuse any interference in the development of the simplified PAP. The letter is nothing other than a delaying tactic on the part of the CLECs, inasmuch as it merely affirms their philosophical belief in an audit (and an extensive one, at that) but suggests no practical goal, requests no discrete relief, and provides no specifics regarding "perceived inaccuracies and issues", other than those that have already been discovered and remedied -- *without* Commission involvement.

The CLECs have suggested that the simplified PAP development cannot proceed without an audit of the current PAP and the C2C metrics. FairPoint does not understand how an audit of the accuracy of FairPoint's reporting process can have any bearing on decisions about what should be measured and reported in the current or any future PAP, any more than the past accuracy of a standard financial report should influence what should be reported in the future. The CLEC's logic is further called into question when one notes that the original PAP metrics were derived without an audit, since there was obviously nothing to audit to begin with. Given the potential demands on the resources of FairPoint, the Commission, and all of the carriers who participate in the PAP, it makes more sense to forego the audit of an obsolete plan in favor of an audit of a new simplified PAP once such a simplified PAP has been in place for some reasonable period of time.

Debra A. Howland
Executive Director & Secretary
November 22, 2010
Page 2

Furthermore, the financial interests of the CLECs do not appear to justify the commitment of resources. Of the six signatories, only two of them, BayRing and One Communications, have operations in New Hampshire significant enough to merit current average monthly PAP billing credits above four figures, and these two carriers are subject to settlement agreements with FairPoint that foreclose any recovery of billing credits prior to August 2010. Simply put, if any of the CLECs are convinced that the PAP accounting inaccuracies are so extensive as to present the prospect of significant recovery over and above their reported billing credits, the PAP provides that the CLEC can challenge the results – a process the CLECs have employed, as they relate in their letter, without Commission involvement.

In support of the suggested audit, the CLECs cite Section 9.4 of the Settlement Agreement between the Commission's Staff, FairPoint and Verizon New England Inc. (the "Staff Settlement Agreement") approved of by this Commission in Docket No. DT 07-011. FairPoint notes, however, that it strains credibility to state that an immediate audit is compelled merely by the passing of the June 1, 2010, deadline incorporated in Section 9.4 of the Staff Settlement Agreement. All of the parties are aware that, except for routine reporting provisions, DT 07-011 and other contested proceedings have been inactive in accord with the automatic stay under FairPoint's Chapter 11 bankruptcy cases. Furthermore, it would have made little sense to launch any significant initiatives until the Commission approved FairPoint's reorganization, which it did on July 7, 2010.

Even if the Commission agrees that an audit of the existing PAP is appropriate, we still find it particularly perplexing that the CLECs believe that a moratorium on simplified PAP development is in order, particularly since two of them, BayRing and segTEL, have a pending petition in DT 09-206 to establish a Commission proceeding to oversee simplified PAP development. It is unclear how this tactic accomplishes anything other than preservation of the status quo (which, to be sure, has been unusually lucrative for some of the CLECs), and of course the infliction of collateral damage on the simplified PAP processes in Maine and Vermont. Regardless, the CLECs have since boycotted the scheduled simplified PAP meeting on November 19, 2010, stating through their representative that they would not participate, but only listen, and would continue to boycott further meetings and other outreach efforts. In short, such behavior confirms the obvious – the CLECs have no intention of working cooperatively with FairPoint and intend to take every effort to further harm FairPoint's business.

In addition, FairPoint submits that the CLECs' interpretation of Section 9.4 constitutes a material expansion of the Staff Settlement Agreement. Section 9.4 of the agreement is specific – FairPoint agreed to pay for the cost of an audit of the PAP. FairPoint did not agree to pay for the cost of an audit of the C2C metric reports. FairPoint reports 358 PAP metrics and 550 C2C metrics. An audit of the PAP metrics alone would be costly and time consuming. Including an audit of the C2C metrics would drive up significantly the cost of such an audit as well as consume significant resources. It only is to the CLECs' advantage to consume FairPoint's money, time and effort in regulatory matters while the CLECs remain free to compete with minimal to no regulatory oversight. Undoubtedly, this effort is exactly what the CLECs desire.

Such an audit was not contemplated by FairPoint when it signed the Staff Settlement Agreement and the plain language of the Staff Settlement Agreement contains no provision for an audit of

Debra A. Howland
Executive Director & Secretary
November 22, 2010
Page 3

the C2C metric reports. The Commission should not revise what is a clearly worded provision in the Staff Settlement Agreement. Indeed, the Commission should not be drawn into a protracted legal proceeding over the interpretation of Section 9.4 of the agreement when that provision needs no such interpretation. The CLECs' suggestion should be denied and the Commission should advise the CLECs to participate in good faith in the simplified PAP process.

FairPoint cannot imagine, nor have the CLECs presented, any plausible theory of how the results of the type of audit they are endorsing will positively affect the development of the simplified PAP. On the one hand, if the audit establishes that PAP metrics have been accurately reported, the parties will find themselves at the starting gate with nothing to show for the time that has been lost (albeit this is one of the CLECs' likely goals). On the other hand, even if the audit reveals that any particular metrics have been misreported, the result (or lack thereof) will be identical, since there is no likelihood that an important and measurable metric will be discarded or modified in the simplified PAP simply because of any past reporting errors. Thus, there appears to be no logical reason why the simplified PAP process cannot be conducted in parallel with an audit, if an audit is truly necessary. Consequently, FairPoint only can conclude that the CLECs' correspondence and their accompanying boycott of the simplified PAP process are not made in good faith. The CLECs' actions appear to be strategically motivated to exploit the Commission's procedures for the purposes of delay and to divert FairPoint's attention away from running its business.

In addition, FairPoint reserves its right to argue that proceeding with this audit violates the automatic stay provisions of chapter 11 of title 11 of the United States Code issued in connection with the cases jointly administered under the caption *In re FairPoint Communications, Inc.*, Case No. 09-16335 (BRL) in the United States Bankruptcy Court for the Southern District of New York. FairPoint reserves its right to argue that any and all proceedings and actions related to FairPoint's performance under the PAP are stayed or should be stayed, and to seek appropriate relief with the Bankruptcy Court.

A compact disk containing this filing is enclosed.

Please feel free to contact me with any questions.

Sincerely,



Patrick C. McHugh, Esq.
Vice President and Assistant General Counsel

Cc: DT 07-011 Service List
Teresa R. Rosenberger, State President, New Hampshire