STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 10-025

REQUEST FOR APPROVALS IN CONNECTION WITH THE REORGANIZATION PLAN OF FAIRPOINT COMMUNICATIONS, INC., ET AL.

POST-HEARING BRIEF OF ONE COMMUNICATIONS

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One Communications[1] hereby files this post-hearing brief regarding the request for approvals in connection with the reorganization plan and Regulatory Settlement of FairPoint Communications, Inc., Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE, and Northland Telephone Company of Maine, Inc. (collectively, "FairPoint") in the above-captioned proceeding.

I. INTRODUCTION

During the Commission's extensive proceeding evaluating FairPoint's proposal to acquire Verizon's assets in DT 07-011, FairPoint assured the Commission that it was ready and able to step into Verizon's shoes as incumbent LEC. One Communications and other CLECs cautioned the Commission that FairPoint had never provided wholesale

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[1] One Communications is a competitive local exchange carrier ("CLEC") that provides service in New Hampshire through its licensed subsidiaries – CTC Communications Corp.; Lightship Telecom LLC; Choice One of New Hampshire Inc.; and Conversent Communications of New Hampshire LLC – all of which do business as One Communications Solutions of New Hampshire ("One Communications"). One Communications provides retail telecommunications service in New Hampshire in large part by obtaining unbundled network elements ("UNEs"), interconnection, collocation, and other wholesale services from FairPoint.

services before and in order to protect competition in the telecommunications industry in New Hampshire, conditions on the Commission's approval of the transaction were needed to govern FairPoint's performance. Subsequently, as part of its Order in DT 07-011 (Exh. FP-1 ("Merger Order")), the Commission approved a Settlement Agreement between FairPoint, Verizon and Commission Staff which addressed a number of the CLEC-requested conditions. Exh. FP-2 ("2008 Settlement Agreement").[2] Then, when FairPoint assured the Commission that FairPoint was ready to cut over to its own systems, New Hampshire CLECs, including One Communications, cautioned the Commission that FairPoint might not be ready and that in order to protect wireline competition in New Hampshire, conditions should be included on any approval of FairPoint's notice of readiness to cutover. See Exh. OC-23, at 2-3 (One Communications recommends six conditions to address CLEC-affecting cutover issues, DT 07-011 (filed Nov. 20, 2008)). Now, following FairPoint's free-fall into bankruptcy after its disastrous cutover, One Communications and other CLECs are once again are urging the Commission to look twice at FairPoint's proposals and not simply take FairPoint's assertions at face value. FairPoint's track record requires nothing less.

The Commission should ask whether the new, post-bankruptcy FairPoint will not only be able to resolve the remaining post-cutover systems problems that the "old" FairPoint could not, but also whether FairPoint will become the company the

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[2] In the Merger Order, the Commission determined that the terms contained in an agreement between FairPoint and certain CLECs (specifically, Bayring, segTEL, Otel and Sovernet) attached to the 2008 Settlement Agreement as Exhibit 2 ("CLEC Settlement") were applicable to all CLECs in New Hampshire. Exh. FP-1, at 73-74. Also in the Merger Order, the Commission imposed additional competitive requirements beyond those contained in the 2008 Settlement Agreement and the CLEC Settlement. See id. at 77-78.

Commission expected FairPoint would be when it received the Commission's approval to purchase Verizon's New Hampshire assets a mere two years ago. Therefore, the Commission must not merely acquiesce to FairPoint's proposed Regulatory Settlement and reorganization plan, but instead should review and address the remaining systems, performance and other competitive issues prior to any approval of FairPoint's requests in this docket. One Communications urges the Commission to impose the specific requirements as discussed below.

II. THE COMMISSION SHOULD NOT APPROVE FAIRPOINT'S PROPOSED REORGANIZATION AND REGULATORY SETTLEMENT WITHOUT SPECIFICALLY ADDRESSING COMPETITIVE ISSUES

At the outset, it bears noting that the Regulatory Settlement between FairPoint and the Advocate Staff is devoid of any references to FairPoint's wholesale obligations and does not require FairPoint to provide any solutions for the systems or other CLEC issues which still remain post-cutover. Apparently this is because no CLECs were parties to the Regulatory Settlement, nor were they involved in the discussions that led to the Regulatory Settlement.[3] Given the absence of any discussion of wholesale issues in the Regulatory Settlement (although retail service quality, broadband, and other issues such as the composition of FairPoint's Board of Directors were included), as part of any

[3] Staff Advocate witness Kathryn Bailey stated that CLEC issues were omitted from the Regulatory Settlement because it was her belief that all wholesale requirements contained in the Merger Order, the 2008 Settlement Agreement and the CLEC Settlement are unaffected by the Regulatory Settlement and proposed reorganization. Tr. 5/25/10, at 118-119 (Bailey) ("I heard criticism that 'the CLECs were not involved in the Regulatory Settlement process.' And it's my position that the reason they weren't involved is because nothing changed."); see also Exhs. OC-3, OC-5. However, as discussed in Section B below, FairPoint does not share this view.

approval the Commission should ensure that competition is not impaired by its approval by addressing the following specific wholesale issues.

A. Wholesale Service Quality

The post-cutover spike in the service quality penalties imposed by the New Hampshire Performance Assurance Plan ("PAP") clearly demonstrates the magnitude of FairPoint's CLEC-affecting post-cutover problems. The Commission imposed Verizon's PAP and Carrier to Carrier ("C2C") Guidelines on FairPoint as one of the requirements included in the 2008 Settlement Agreement. See Exh. FP-2, Exhibit 2, at § 4(e) ("Telco will be subject to the Performance Assurance Plan (PAP) in effect as of the Merger closing date . . .") and § 6(a) ("Telco will adhere to the applicable PAP and C2C Guidelines as implemented in each of the three states and be subject to the potential penalties and enforcement mechanisms set forth in these documents."). Penalties under the PAP are triggered when FairPoint's wholesale performance falls below absolute standards or when FairPoint discriminates in favor of its retail services or both. Yet, despite FairPoint's repeated claims that its wholesale service quality is improving, there has only been a modest downward trend in the level of PAP service quality penalties assessed since the high-water mark in April-May 2009. See Exh. OC-21 (FairPoint New Hampshire PAP/CCAP Market Adjustment Summaries show that beginning in April 2009, FairPoint's reported service quality penalties under the PAP exceeded one million dollars per month – reaching $1.7 million in May 2009 –and did not dip below the one million dollar monthly threshold until December 2009). Even the most recently available PAP reports show New Hampshire service quality penalties many magnitudes higher

than pre-cutover levels. Id. (reported New Hampshire PAP service quality penalties for the month of March 2010 exceed $600,000).

As noted above, in the CLEC Settlement, FairPoint assured the Commission that it would assume Verizon's obligations to comply with the PAP and C2C. FairPoint also agreed that it continues to remains subject to the PAP and C2C in its discovery responses in this proceeding. Exh. OC-8. Yet, since issuance of the Commission's Merger Order, FairPoint has repeatedly sought to dilute the PAP and its requirements by petitioning for waivers, modifications, and revisions to the PAP and C2C in March, June, and August of 2009.[4]

Given the number and scope of the petitions filed by FairPoint, it quickly became apparent to New Hampshire CLECs that FairPoint's agreement to "adhere to the applicable PAP and C2C Guidelines" simply meant that FairPoint would comply with those PAP and C2C provisions it wanted to, and would seek waivers or modifications of, or simply ignore, the rest. In addition, while the Regulatory Settlement and FairPoint's testimony in this proceeding contain going-forward commitments regarding FairPoint's improvements to retail service quality, in response to discovery in this proceeding

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[4] Exh. OC-22(A) (Petition of Fair Point Communications for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines, DT 09-059 (filed March 26, 2009)); (B) (Petition of Northern New England Telephone Operations LLC db/a FairPoint Communications-NNE for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines; DT 09-113 (filed June 10, 2009)); and (C) (Supplement to Petition of Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines, DT 09-113 (filed August 7, 2009) (w/o attachment)).

FairPoint has committed only to continue its efforts to dilute its wholesale service quality requirements. See Exhs. OC-9, OC-10, OC-11, OC-12.

For these reasons, the Commission should require FairPoint to withdraw with prejudice its request for retroactive modification of the PAP in DT 09-113, in which FairPoint seeks to reduce by 65% the dollars-at-risk subject to service quality penalties.[5] Granting FairPoint's requests in this docket without addressing this vital issue will only continue the harm and uncertainty CLECs now face. FairPoint should also be prohibited from filing further petitions for modifications, waivers or revisions of the PAP and C2C until a new successor PAP has been approved by the Commission.[6]

Further, in testimony in this proceeding, FairPoint in several instances refers to metric corrections, restatements of prior metrics reporting, and remediation of metrics reporting. See Exh. FP-9P at 15 (lns. 6-7) (discussing FairPoint's restatement of prior reported measurements "when appropriate and data is available"); Exh. FP-11, at 9 (lns. 18-21) and 10 (lns. 1-2) (discussing Metrics Remediation project designed to ensure timeliness and accuracy of metrics reporting). In response to discovery, FairPoint indicated that its CAMP metrics reporting system has been under review since February 2009 and issues, once identified, have been "triaged and resolved" including "42

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[5] Under FairPoint's proposal, New Hampshire CLECs would be required to reimburse FairPoint for any service quality penalties in excess of the 65% reduction retroactive to January 2009. Exh. OC-22(C) at 1.

[6] In the event the Commission declines to address substantively these matters in its Order in this docket, the Commission should nonetheless expeditiously dismiss or deny FairPoint's pending waiver petitions in the underlying dockets. Notably FairPoint omitted these dockets from the list of dockets it sought to have stayed during its bankruptcy case (Exh. OC-19), although FairPoint was unable to clarify whether its omission was an oversight or was intentional. Tr. 5/25/10, at 27-28 (Skrivan).

potential CAMP reporting-code-related issues, 38 source-system-related issues, and 108 process-related issues that affect the metrics results." Exh. OC-16.

Moreover, at the evidentiary hearing in this proceeding, FairPoint indicated that although it considers its Metrics Remediation project to be completed, FairPoint is still unable to report 111 of the wholesale service quality metrics required by the PAP and C2C. Tr. 5/25/10, at 29-32 (McLean). And while some of the 111 metrics have service quality penalties associated with FairPoint's inability to meet the metric, FairPoint simply doesn't report the metrics or otherwise include them on the PAP reports and, therefore, does not pay any penalties on those metrics it does not report. See id. at 32.

These statements confirm the testimony of segTEL witness Kath Mulholland who indicates that FairPoint is not reporting all the metrics that were required of Verizon. See Exh. segTEL-1, at 16 (lns. 8-10), as well as the testimony of CRC witness Nicholas Winchester in Exh. CRC-1, at 4 (lns. 7-8) ("The validity and integrity of the data FairPoint is reporting to the Commission is incomplete and unreliable") and 4 (lns. 13-15) ("There is a large gap between FairPoint's representation . . . and the reality experienced daily by CLECs and their customers.").

Given FairPoint's own statements regarding the reliability of its metrics reporting and CLECs' actual experience, any reliance by FairPoint on its reporting as support for its position that FairPoint is "providing service . . . at an outstanding level" (Exh. FP-8P at 4 (lns. 7-8)) is seriously in question. Moreover, because the PAP and C2C require complex calculations of data to which only FairPoint has access, it is impossible for CLECs or the Commission to independently corroborate the reported results.

For these reasons, the Commission should require an independent audit of FairPoint's wholesale service quality metrics reporting – as was envisioned by the 2008 Settlement Agreement – in conjunction with any approval of FairPoint's requests in this proceeding.[7] It would be extremely useful for an independent third party auditor to review FairPoint's reporting under the PAP and C2C to include an in-depth validation and verification of all the PAP and C2C metrics, reporting methods and penalty calculations.

B. The Merger Order Requirements

In the Commission's Merger Order, the Commission noted:

> Perhaps no issue has proven more controversial in the field of telecommunications in recent years than the question of how to promote competition among providers in light of the historically dominant position of Verizon . . ., the network-opening provisions of the federal Telecommunications Act that are ostensibly designed to promote competition, and the limits of our authority that result from a federal statute that is broadly preemptive.

Exh. FP-1, at 72. Therefore, in order to promote competition in light of the challenges it noted, the Commission approved the 2008 Settlement Agreement finding that "FairPoint's agreement to extend the interconnection agreements for three years, to cap all wholesale rates for thee years, and to not seek changes in existing wholesale obligations for three years provides significant regulatory certainty for competitors." Id.

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7 See Exh. FP-2, at 25:

> FairPoint agrees to pay for the conduct of an independent audit of its wholesale [PAP]. . . . If no simplified [PAP] is in effect by June 1, 2010 . . . then FairPoint agrees to such independent audit of the existing wholesale [PAP]. The Commission will be solely responsible for the choice of the independent auditor, but will afford FairPoint the opportunity to submit the names of firms to be included within the list of firms to receive requests for proposals for the provision of such services.

at 73. Thus, the Commission determined that these "stand-still" requirements would provide a three year period of stability and certainty to the benefit of both CLECs and New Hampshire consumers.

According to the information provided in this proceeding, there is at least as much reason, if not more so, to provide needed certainty and stability to the CLEC-FairPoint relationship as when the transaction was first approved. See Exh. segTEL-1, at 15 (lns. 1-3) ("It is my opinion that FairPoint, despite a great deal of apparent activity, lists of problems, meetings with CLECs, and repeated fixes to the systems, still lacks a basic understanding of the problems CLECs are facing on a daily basis."); Exh. CRC-1, at 1 (ln. 22) and 2 (lns. 1-3) ("FairPoint's failure to 'right the ship' and bring its operations in line with pre-cutover service levels has materially impacted our business and, more importantly, our ability to support our customers and their telecommunications needs."); Exh. BR-1, at 14 (ln. 23) and 15 (lns. 1-6):

> I fear that FairPoint is beginning to consider the manual intervention and information we now are required to provide FairPoint in order to process orders to be the new "business as usual." I see this as a big step backward from the wholesale service that we experienced with Verizon. I also see this as a failure of FairPoint to live up to the conditions imposed by the Commission in its Approval of the transfer of operations from Verizon, and in FairPoint's promise that it would provide service improvements.

Unfortunately, FairPoint has not only refused to voluntarily extend the current wholesale conditions under which it operates (see Exh. OC-7(discussing interconnection agreements ("ICAs")); Exh. OC-13 (discussing wholesale rates)), but FairPoint has also has indicated that, by virtue of its bankruptcy filing, it believes it is no longer bound by at least some of the competitive requirements in the Commission's Merger Order, the 2008 Settlement Agreement and the CLEC Settlement.

For example, the CLEC Settlement requires: "The applicable FairPoint affiliate will extend in writing all inter-carrier agreements in effect as of the Merger closing date for three years following their stated expiration date. . . . For agreements that have expired or are renewed only on a month to month basis as of the Merger closing date, FairPoint will extend the then-current rates and other terms in writing for three years following the Merger closing date." Exh. FP-2, Exhibit 2, at § 4(a), (b).

Nowhere in the Regulatory Settlement or in FairPoint's Request for Approvals in this docket did FairPoint ask for the Commission's permission to modify or change the above requirements regarding inter-carrier agreements. However, in response to discovery in this proceeding FairPoint indicated to CLECs and other parties that it is considering rejection of its contracts with them, including ICAs, as part of the bankruptcy process, notwithstanding that FairPoint is required by the Commission to have these existing agreements remain in place for a specified period of time which has not yet expired. Exhs. OC-1, OC-2, OC-6, OC-17, Exh. FP-25; Tr. 5/24/10, at 74 (Hood) (FairPoint objects to Commission condition that ICAs remain in place for the time specified by the Merger Order). Given that FairPoint has requested that the Commission issue its order before FairPoint makes its "final" decision whether to reject any CLECs' contracts in the bankruptcy case (Tr. 5/24/10, at 72-73, and 75 (Hood) (FairPoint indicates that the projected effective date of its Bankruptcy Plan is currently late third quarter 2010); Tr. 5/25/10, at 79 (Nixon) (FairPoint indicates it is seeking a Commission decision on or before June 24, 2010)), the Commission should address this issue in its Order and make clear that FairPoint remains subject to the Commission's requirement

that existing ICAs and other agreements must remain in place for at least the period of time the Commission mandated in the Merger Order.

Notwithstanding FairPoint's vague and unenforceable promise to "continue to offer the CLEC the same service at the same rates, terms and conditions as contained in the rejected contract pending the parties' entering into a new [ICA]" (Exh. FP-25), it is difficult to see how competition will not be adversely impacted in New Hampshire when the circumstances governing something so basic to competition as the terms under which FairPoint provides UNEs and interconnection services is subject to so much uncertainty. Moreover, CLECs are concerned with the effort, resources and time that will be consumed by the need to litigate, renegotiate, or arbitrate new agreements, therefore FairPoint's "promises" in this regard provide no real comfort. See Exh. segTEL-1, at 16 (lns. 1-3) and 17 (lns. 1-2) (segTEL recommends that "to mitigate and reverse the continuing deterioration of [FairPoint's] wholesale performance" the Commission should require FairPoint to honor and extend its existing agreements).

Similarly, nowhere in the Regulatory Settlement or in FairPoint's Request for Approvals does FairPoint indicate that it is seeking a modification to the requirement in the Commission's Merger Order that "[i]n the event a CLEC incurs substantial and extraordinary costs directly related to the transition from Verizon to FairPoint, [the CLEC] may petition the Commission for reimbursement." Exh. FP-1, at 78. Yet, during the evidentiary hearing in this proceeding, FairPoint testified that it believed it was no longer bound by this requirement because "depend[ing] on the circumstances" of the CLEC's claim, FairPoint considers such a claim to be a "pre-[bankruptcy]petition claim" that would have had to be brought by the CLEC in the bankruptcy proceeding rather than

to the Commission as allowed by the Merger Order. See Tr. 5/25/10, at 28-30 (Skrivan).

Likewise, FairPoint has not requested the Commission's permission to alter the provision in the CLEC Settlement which states "FairPoint will not now or in the future seek any suspension or modification of any of Telco's 251(b) or (c) obligations pursuant to Section 251 (f)(2) of the Act." Exh. FP-2, Exhibit 2, at § 1(c). Yet, on the witness stand, FairPoint testified that the commitment to "not now or in the future seek any suspension or modification" (emphasis added) means only that FairPoint will seek no changes to its obligations now, but if the law changes in the future, then FairPoint believes that its obligations under this provision in the future would change as well.[8]

These are but three examples of how FairPoint's construes its wholesale obligations under the Merger Order and 2008 Settlement Agreement to have changed. These examples also demonstrate that FairPoint does not share the Staff Advocates' view that FairPoint's wholesale obligations will remain the same pre- and post-reorganization. The Commission should not let FairPoint pick and choose which provisions of the Merger Order it remains subject to. Instead, as part of any approval of FairPoint's requests in this proceeding, the Commission should clearly affirm that FairPoint remains

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[8] See Tr. 5/25/10, at 38:

> MS. BRAGDON: So, you're going to go along with it for now, but, if circumstances change, you might want to do something different?
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> MR. SKRIVAN: Well, I wouldn't say "if circumstances change," I would say "if the law changes," we would want to consider our rights within the context of changes to the underlying law and rules.
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> MS. BRAGDON: And, once again, if the law allowed you to do something, but did not compel you, you're still saying you might take advantage of the "allow' part?
>
> MR. SKRIVAN: Well, I think we ought to.

bound by all the wholesale requirements imposed by the Commission in its Merger Order and may not seek to "undo" any of the wholesale requirements by virtue of the bankruptcy process or otherwise.

In addition, the Commission should further extend the three-year stand-still requirements for an additional reasonable period of three years beyond their current expiration date. Doing so will provide much needed stability – the stability which has been non-existent since cutover – until FairPoint finally resolves its remaining performance issues and shows that it not only has returned to pre-cutover service levels but is performing at the "better than Verizon" levels it promised when the transaction was approved. According to FairPoint, it has not assumed any increases to special access rates, switched access rates, UNE rates or collocation rates in its post-reorganization revenue projections through 2013 (Exhs. OC-4, OC-15; Tr. 5/24/10, at 51-52 (Allieri/Newitt)), therefore a three-year continuation of the Merger Order requirements related to these services (see Exh. FP-2, at 24 and Exhibit 2, at §§ 1(d), 2(d), 4(a)-(b), 4(d)-(e), 4(h), 5(a)-(b), 7(a)-(b)) should have little to no effect on FairPoint. Moreover, the Commission's Non-Advocate Staff witnesses agree that it is in FairPoint's own economic interests to take no actions – such as significantly increasing rates to its CLEC customers – that could cause the CLECs' customers to transfer their service to an alternate service provider, such as a cable company. Tr. 5/26/10, at 36 (Gross). FairPoint should have no objection to an action which is in its own economic interest as it emerges from bankruptcy.

C. FairPoint's Systems Issues

From testimony filed in this proceeding as well as filings made in other dockets, it is evident that FairPoint's systems problems since cutover have been extensive, unprecedented in their scope, and have seriously affected, and continue to affect, CLECs' operations and ability to provide services to retail customers in New Hampshire. See Exh. segTEL-1, at 4 (lns. 9-10) ("The problems do not occur at the same rate and severity as they did immediately post-cutover, but yes, significant problems still occur."); Exh. BR-1, at 6 (lns. 16-20) ("FairPoint promised CLECs that it would deliver wholesale services and operations on terms equal to or better than what [CLECs] experienced with Verizon, while keeping basic wholesale arrangements, tariffs, pricing and service quality metrics and penalty plans in place as they existed with Verizon prior to the merger. To say that they have failed in this promise is an understatement."). See also Exh. OC-24, at 4-5 (One Communications argues to the FCC that the proposed Verizon-Frontier transaction will result in the same devastating systems problems that arose after the Verizon-FairPoint cutover).

What is of most importance in this proceeding, however, is whether FairPoint recognizes and acknowledges the problems which remain and whether it is in a position to resolve effectively the remaining problems in a timely and nondiscriminatory way. Because it has been over a year since cutover with no complete resolution despite implementation of first FairPoint's Stabilization Plan and then FairPoint's CDIP (see Tr. 5/24/10, at 174-176 (Allen)), CLECs are justifiably skeptical that FairPoint's remaining systems and other issues will be timely addressed post-bankruptcy to anyone's

satisfaction.[9] Given the fact that CLECs must rely on FairPoint in order for the CLECs to provide services to their own retail customers, if FairPoint is unable to fix its systems, it is not just at FairPoint's peril, but the CLECs' as well. Thus, FairPoint's prolonged inability to "right the ship" raises serious concerns about the effect that FairPoint's continuing systems issues could have on the viability of CLEC competition in New Hampshire following FairPoint's emergence from bankruptcy.

Although FairPoint represents that it is making progress to ultimately return to pre-cutover levels of performance at some point in the future and has consistently made similar representations since cutover, the Commission should assure that it, the Office of Consumer Advocate ("OCA"), and the CLECs continue to have independent verification of and reports on FairPoint's progress. As part of any approval of FairPoint's requests in this docket, the involvement of Liberty Consulting Group ("Liberty") should be continued and expanded beyond simply monitoring and reporting to include recommendations to the Commission, FairPoint and the parties on problem resolution.

Of particular concern to One Communications and other CLECs is whether FairPoint is discriminating in favor of its retail services and an independent monitor such as Liberty is essential for such a determination. For example, Liberty's graphs in Exh. OC-20, at 4-8, show that while FairPoint is continuing to make progress to reduce the number and percentage of late and very late (i.e., late more than 20 days) retail orders, FairPoint's performance regarding certain wholesale orders (particularly access service

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[9] For example, Exh. segTEL-2 demonstrates that even when FairPoint claims a systems issue has been resolved (in this case, the ability to identify a remote terminal as part of a loop qualification), the issue is in fact not resolved as requested by the CLECs, which causes a further round of requests for action by CLECs to FairPoint. Tr. 5/25/10, at 86-91 (Mulholland).

requests ("ASRs") – the more complex wholesale orders) has not shown the same improvement during the six month period from November 2, 2009 to April 26, 2010. In fact, over that six month period, the percentage of very late ASR orders has actually increased despite implementation of FairPoint's CDIP initiatives. Id. at 8; Tr. 5/24/10, at 240 (Lamphere). Without Liberty's involvement, this information would not be readily available in this format to the Commission or the parties. In addition, as recently as late April 2010, Liberty held two conference calls with CLECs and identified over 100 pending wholesale systems and process issues that FairPoint has yet to resolve. See Exhs. CRC-11, CRC-11A; Tr. 5/24/10, at 252-254 (Murtha). Having Liberty involved in such a process as a neutral go-between for FairPoint and the CLECs has proven to be beneficial. Moreover, the Commission's Non-Advocate Staff witnesses agree that monitoring of FairPoint's steps to improve the operational aspects of its relationship with its wholesale customers is a valuable function. Tr. 5/26/10, at 46 (Gross); see also Exh. NHPUC Non-Advocate Staff-3P at 15:

> In addition to the Commission's monitoring of broadband implementation, for at least one year after the effective date the Company should retain a monitor selected by the Commission to closely monitor the implementation of all steps taken by FairPoint to achieve the revenue projections and operational improvements.

(Emphasis added). Therefore, Liberty's participation should continue at FairPoint's expense until FairPoint has finally returned to, at a minimum, pre-cutover levels of wholesale and retail performance and has proven it has done so to Liberty's, the Commission's, the OCA's and the CLECs' satisfaction.

III. CONCLUSION

For the foregoing reasons, if the Commission approves FairPoint's requests for approval of its proposed reorganization and Regulatory Settlement, One Communications requests that the Commission impose requirements consistent with the arguments herein.

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Respectfully Submitted,

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