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October 10, 2007

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

Re: Docket No. DT 07-011
Verizon New England et alia
Petition for Authority to Transfer Assets to FairPoint Communications
Informal Conference

Dear Ms. Howland:

At the Commission's request, I conducted an informal conference yesterday to discuss hearing logistics with the parties to the above-referenced proceeding. Please treat this letter as my report of the conference.

Participating were representatives of the joint petitioners, the Labor Intervenors (IBEW and CWA), the Office of Consumer Advocate (OCA), National Grid, Public Service Company of New Hampshire (PSNH), Unitil, three jointly appearing CLECs (BayRing, segTEL and Otel), One Communications (via phone), the jointly appearing New England Cable TV Association and Comcast, seven jointly appearing municipalities (Exeter, Hanover, Keene, Newmarket, Raymond, Salem and Seabrook) and Verizon customer Irene Schmitt. Discussions were productive and cooperative.

Hearing Schedule

There was agreement that, on or before Monday, October 15, 2007, each party would submit a document setting forth (1) any witness availability issues, (2) an estimate of how much time the party believes it will need to cross examine each witness, (3) a list of any witnesses the party believes it has no need to cross-examine, and (4) the number of persons who will attend the hearings on behalf of the party (of importance in light of the number of parties in relation to the size of the hearing room). The participants agreed that, following these submissions, I or another appropriate official of the Commission would develop a schedule for the hearings.

Counsel for PSNH and Unitil indicated that the intervening electric utilities either have entered or likely will be entering into a memorandum of understanding (MOU) with FairPoint, resolving poles-related issues that would arise in the event of petition approval. PSNH and Unitil indicated that the electric utilities intend to file these MOUs with the Commission. They requested, without objection, that their witnesses planning to testify about poles issues be grouped together. Unitil indicated that it still has an outstanding issue with Verizon concerning poles, separate from the FairPoint issues resolved in the MOUs.

I advised the parties that it is the Commission's current practice in hearings of this magnitude to convene at 9:00 (as is presently scheduled in this docket) and to hear testimony in four blocks of 1.5 hours each. There was general assent to such an approach among the participants, although some diversity of opinion about the optimal length of the lunch break. Among those with firm opinions, several people favored a 1.5 hour lunch break but at least one person expressed a preference for a one-hour midday break as a means of allowing an earlier end to the days proceedings.

Exhibits

We discussed how to handle exhibits. There was agreement to propose a rubric that is apparently similar to the one recently employed by the Vermont Public Service Board in its parallel proceeding. It calls for (1) the pre-filed testimony of all witnesses, including any attachments, being pre-marked as exhibits, (2) all parties stipulating to the admissibility of these exhibits, and (3) I or some other appropriate official of the Commission convening an informal conference each hearing day, a half-hour before the scheduled start of the hearing, for the purpose of allowing the parties to circulate copies of any additional exhibits they are likely to introduce that day. This informal pre-hearing meeting would also be an opportunity to discuss any scheduling or other issues expected to arise over the course of the day, with an eye toward resolving them. It was agreed it would be impractical to attempt to assign actual exhibit numbers to any potential exhibits circulated at the pre-hearing meetings. I advised the participants that, as to each exhibit other than pre-filed testimony, they should come to the hearing with a copy for each party, each commissioner, the testifying witness, the court reporter and the Commission clerk. PSNH and Unitil indicated that they do not need to receive copies of exhibits except those that relate to the poles issues they intend to address at hearing.

With respect to the possibility of limiting the time needed for cross examination, and/or possibly even excusing one or more witnesses from appearing altogether on the ground that no cross examination is necessary, there was agreement that parties would consider the extent to which any data responses on file might, if admitted into evidence by agreement as the witnesses' answer to a particular question, suffice as a substitute for

asking the same question on the stand. The participants agreed to explore the extent to which this would be possible as to each witness.

FairPoint indicated that it would be providing an “Elmo” system in the hearing room, which is essentially an overhead projector that can project paper exhibits onto a screen as well as monitors on the bench and witness stand. There was agreement that this would be useful and that it would be unnecessary to place any additional monitors in the hearing room to supplement what will be visible from the big screen.

There was agreement to use an exhibit identification convention that would involve separately numbering the exhibits introduced by each party, as opposed simply to numbering them sequentially. There was also agreement to use the letters “P,” “C” and “HC,” as necessary after the exhibit number, to designate the public, confidential and highly confidential versions of any exhibit subject to such designation(s). This approach was preferred to the idea of assigning a separate exhibit number to each version.

Hearing Logistics

We discussed the fact that it will likely be necessary from time to time to close the hearing to the public, limiting access to those parties that have entered into a confidentiality agreement with the joint petitioners and/or to all such parties provided they are not business competitors of the joint petitioners. There was agreement to attempt to minimize such closures by introducing confidential information into the transcript (as opposed to exhibits themselves) as infrequently as possible – and also to make efforts to consolidate questions that implicate confidential or highly confidential information so as to minimize disruption.

FairPoint and Verizon agreed to circulate a list of which parties have access only to public materials, which have access to confidential materials but not the highly confidential ones, and which have access to all materials regardless of confidentiality status.

Unresolved Issues

Certain issues remain unresolved despite our having discussed them at the conference. The major one involves the possibility of a so-called “global” settlement, i.e., a settlement in which the joint petitioners purport to resolve all issues in the case with some combination of Commission Staff, OCA and/or the Labor Intervenors. Concerns abound about the effect of such a settlement on the hearings themselves, even if the settlement is filed at least five days before the start of the hearings as contemplated by the Commission’s rules. My view, as I explained to the parties, is that it really is not possible to address this issue in the abstract – and that the Commission will simply have to hear

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the parties upon the filing of such a settlement on the issue of how such a development should affect the hearing schedule, if at all. It is likely that non-signatories to such a settlement would ask the Commission to continue the hearings, possibly for an extended period.

Also unresolved – and, it appears, requiring a ruling by the Commission – is the necessity for filing so-called “bilateral” settlements with the Commission. It is my understanding that certain telecommunications providers, and possibly others, have entered into such settlements with the joint petitioners and that these agreements entail the withdrawal of the signatory intervenor from further participation in the docket. The Joint Petitioners apparently do not plan to submit such settlements to the Commission, an approach several other parties find objectionable. Likewise, there is objection to the notion of intervenors simply withdrawing their witnesses (and their pre-filed direct testimony) in the event they settle with the Joint Petitioners.

Finally, there was discussion of the effect on the proceedings of a possible agreement among the Commission, the Vermont Department of Public Service (and/or the Vermont Public Service Board) and the Maine Public Utilities Commission to employ the services of a single consultant to conduct an independent review of FairPoint’s so-called “cutover” plan. Several parties expressed the view that both the fact of such an agreement, and the circumstances surrounding it, would be highly material to the upcoming hearings. Staff indicated that the three agencies have not yet entered into such an agreement. In the circumstances, the effect of such an agreement on the hearings would appear to be an issue the Commission cannot address at this time.

These discrete disagreements notwithstanding, I believe that yesterday’s discussions portend hearings that will find each party doing its best to cause the case to progress to its conclusion in a timely manner but with a full and fair record. Anyone with questions is welcome to contact me at 603.271.6006.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald M. Kreis". The signature is fluid and cursive, with a large initial "D" and "M".

Donald M. Kreis
General Counsel

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