

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 07-011**

**VERIZON NEW ENGLAND, INC. et alia**

**Joint Petition for Authority to Transfer Assets and Franchise  
to FairPoint Communications, Inc.**

**Order Revising Procedural Schedule**

**ORDER NO. 24,779**

**July 20, 2007**

**I. BACKGROUND**

On July 17, 2007, the Office of Consumer Advocate (OCA) filed a motion seeking “an extension of the procedural schedule for all parties (except for the settlement conferences scheduled for July 25-27) to allow the parties and Staff sufficient time to analyze newly received information so that it can be included in Intervenor testimony.” The OCA also requested that the Commission direct the parties to develop a new procedural schedule during their upcoming settlement conferences. Verizon New England, Inc. d/b/a Verizon New Hampshire (Verizon) filed an opposition to the OCA motion on July 18, 2007. FairPoint Communications, Inc. (FairPoint) also filed an opposition to the motion on July 18, 2007. By secretarial letter of July 18, 2007, the July 20 deadline for the submission of testimony by OCA, Staff and Intervenors was suspended pending further action.

The essence of the OCA motion is an allegation that the information it has received in discovery, and continues to receive, is in such flux that it cannot reasonably comply with the current procedural schedule, which includes the July 20 filing date for

OCA's testimony and concludes with seven days of merits hearings, commencing on September 20, 2007, followed by written briefing. The OCA also asserts that an extension of time will result in more complete testimony and thus assist the Commission in its review of the petition.

In opposition, Verizon contends that OCA has not demonstrated the undue hardship required by Puc 202.04 (governing extensions of time). According to Verizon, the new information OCA has received consists either of (1) data the Commission specifically declined to require FairPoint to provide in discovery on grounds of relevancy, and (2) information that is too tangential to the issues in the case to warrant revisitation of the procedural schedule. Further, Verizon points out that the procedural schedule currently provides OCA and other parties with a second opportunity to submit pre-filed testimony, on August 22, 2007, an occasion Verizon views as an opportunity for those parties to address any new information.

Both Verizon and FairPoint allude to their obligation under Puc 203.09(k) to supplement discovery responses prior to the issuance of the final order when "the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response." According to FairPoint, a "small handful" of such supplementations have been necessary, thus engendering OCA's motion. FairPoint further contends that OCA's allegations about the effect of these supplementations are conclusory and/or related to tangential matters, and do not justify a suspension of unspecified duration. Relying on a 1986 order of the Commission, FairPoint also takes the position that OCA was obliged to demonstrate its entitlement to an extension of time by submitting an affidavit.

## **II. ANALYSIS**

Puc 202.04 requires the Commission to grant a timely request for an extension of time if (1) the party making the request has demonstrated that circumstances would cause undue hardship or inconvenience under the otherwise applicable deadline, and (2) the extension would not unduly delay the proceeding or adversely affect the rights of any party. The Commission must grant a request for the postponement of a hearing pursuant to Puc 203.13 when such postponement would promote the orderly and efficient conduct of the proceeding.

In our view, the OCA has demonstrated, in light of the voluminous discovery in this momentous proposed transaction, the requisite hardship or inconvenience under the circumstances to justify extending into early August the deadline for its initial testimony. Furthermore, recognizing the importance and complexity of this proceeding, as well as competing obligations in other proceedings, we find, pursuant to Puc 203.13, that it would promote the orderly and efficient conduct of the proceeding to reschedule the merits hearing in this case to October 22, 23, 24, 25, 29, 30 and 31. This change will accommodate changes in earlier deadlines, including the filing of Staff, OCA and Intervenor testimony, which will be necessary to protect the parties' rights given the extension of the July 20 deadline for testimony. This revision to the procedural schedule will still allow a final determination in the case on a timeline reasonably close to the one originally contemplated by the joint petitioners, and therefore does not unduly delay the proceedings or adversely affect the petitioners' rights. Finally, contrary to the suggestion of FairPoint, Puc 202.04 does not require OCA to support its position with an affidavit.

The parties should confer during their upcoming settlement discussions and, to the extent possible, agree upon the dates for filing of Staff, OCA and Intervenor testimony and other revisions to the procedural schedule consistent with the foregoing. Staff is directed to file a report of these discussions on or before July 31, 2007, after which the Commission will issue a fully revised procedural schedule. To the extent the relief requested by the OCA in its motion exceeds that provided above, the OCA motion is denied.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the procedural schedule is revised as discussed herein.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 2007.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary