

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 07-011

VERIZON NEW ENGLAND ET AL.

Transfer of Assets to FairPoint Communications, Inc.

Second Order Addressing Broadband Investment with Service Quality Penalties

ORDER NO. 25,379

June 26, 2012

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2007, Verizon New England and affiliated entities (Verizon) filed a joint application for merger with FairPoint Communications, Inc. (FairPoint) whereby Verizon would transfer its assets and franchise in Northern New England, including New Hampshire, to FairPoint. By Order No. 24,823 (February 25, 2008), the Commission approved a settlement agreement that permitted the transfer, subject to certain conditions. Under that settlement and the subsequent order, FairPoint agreed to abide by certain service quality standards and to self-enforcing penalties should it fail to meet those standards. *Verizon New England, et al.*, Order No. 24,823 (Feb. 25, 2008) at 33, 72. The standards and penalties were modified in a settlement agreement reached in the context of FairPoint's bankruptcy and approved by the Commission. *FairPoint Communications, Inc., et al.*, Order No. 25,129 (July 7, 2010) at 17. In particular, under the new settlement, FairPoint was subject to a service quality penalty of \$6,000,000 for service quality failures in calendar year 2009, but that amount could be reduced based upon improvements in its performance in calendar year 2010. Significantly, the penalty and reporting conditions of the original settlement were, in all other relevant respects, retained following the new settlement.

On January 25, 2012, Staff filed a memorandum and recommendation relative to the service quality penalties. According to Staff's recommendation, following review of FairPoint's calculations and the potential reductions to the amount owed for failures in 2009, Staff and FairPoint agreed that FairPoint was entitled to a reduction of the 2009 penalties from \$6,000,000 to \$2,400,000. In addition, they agreed that FairPoint had incurred an additional penalty of \$190,418 in calendar year 2010. Accordingly, Staff's memorandum and recommendation specified that FairPoint and Staff agreed that FairPoint owed \$2,590,418 for service quality failures in 2009 and 2010. Staff recommended that the Commission direct FairPoint to refund the money to customers through a credit of \$0.99 per month beginning on April 1, 2012 and ending upon full payment of the penalty amount.

On January 31, 2012, FairPoint responded to Staff's memorandum and recommendation and requested that the Commission not adopt Staff's recommendation but instead grant FairPoint and Staff a period of time to discuss possible use of the service quality penalty funds for the expansion of broadband in Northern New Hampshire. FairPoint contended that the credit recommended by Staff would have only minimal economic benefit to the residents of New Hampshire, but that expanding broadband would provide meaningful economic benefits. Under existing agreements FairPoint is obligated to achieve 95 percent broadband availability statewide, including 75 percent broadband availability in rural areas of the state, by March 31, 2013. FairPoint stated that the service quality penalty funds would be used to deploy broadband beyond those existing commitments. FairPoint further stated that if it and Staff could not reach an agreement on the use of the funds for broadband expansion, the Commission could then act upon Staff's memorandum and recommendation.

On February 6, 2012, the Commission issued Order No. 25,331 adopting Staff's recommendation regarding bill credits. The Commission, however, noted that there may be merit in FairPoint's request to expand broadband. Therefore, the Commission concluded that if FairPoint submitted a broadband expansion plan by March 1, 2012, the Commission would hold a hearing on the plan to determine whether the plan was acceptable. FairPoint submitted a plan on March 1, 2012 in which it noted that, for calendar year 2011, there are additional penalties of \$233,333, bringing the total amount to \$2,823,751. On April 6, 2012, Staff filed a memorandum confirming the 2011 amount and the total of \$2,823,751.

At the March hearing on FairPoint's proposed plan, numerous record requests were made of FairPoint. One record request resulted from a concern that, should service quality penalties be used in the broadband expansion, FairPoint should contribute additional funds to ensure that any benefit to FairPoint from the use of these funds be offset and the "penalty" nature of the funds be maintained. In response to record request 3, FairPoint stated it would be willing to provide an additional \$500,000, for a total of \$3,323,751 should the plan be approved.

Because the requested information about the broadband expansion plan would not be submitted until after the April 1, 2012 deadline originally set for paying bill credits, the Commission amended Order No. 25,331 by extending the bill credit date to June 1, 2012. *Verizon New England, et al.*, Order No. 25,336 (March 22, 2012) at 3. Further, the Commission concluded that credits should be paid in a single month at the amount per line necessary to refund the total amount due and that FairPoint was to file an accounting of the refund confirming that the credited amount fully refunded the total penalty. *Id.*

Despite the above, the Commission also stated that if, upon review of the information responsive to the outstanding record requests, the broadband expansion plan was acceptable, credits would not be paid and the broadband expansion plan could continue to be developed.

On May 8, 2012, after receiving and reviewing the requested information, the Commission issued Order No. 25,360 (Commissioner Harrington dissenting). In that order, the Commission concluded that it still found merit in FairPoint's request to extend the reach of broadband in New Hampshire. *Verizon New England, et al.*, Order No. 25,360 (May 8, 2012) at 4. That conclusion, however, was tempered by the Commission's additional conclusion that FairPoint had, as of that date, provided insufficient information to assure the successful completion of a broadband expansion plan. *Id.* at 5. In particular, the Commission concluded that FairPoint had undertaken insufficient planning and analysis to determine what benefits would be achieved, and could not say with certainty that it would be able to produce a plan that provides any greater benefit than would be obtained through the payment of bill credits. *Id.* at 7. Given the lack of relevant and reliable information on a broadband expansion plan, as well as FairPoint's continuing admission that bill credits might ultimately be the preferred avenue for dealing with the penalty money, the Commission concluded that it could not approve the plan FairPoint had provided. *Id.*

Nevertheless, the Commission provided FairPoint another opportunity to demonstrate its commitment to meaningful broadband expansion in New Hampshire with the penalty money and was given two options. *Id.* at 8. As a first option, FairPoint could provide a proposal for an escrow arrangement that, at a minimum, included:

(1) a binding escrow agreement or other financial instrument, covering the \$2,823,751 in penalties and the additional \$500,000 FairPoint stated it would provide for broadband expansion in response to record request 3, funds being held by an entity unrelated to FairPoint; (2) a binding agreement with the Commission and the State of New Hampshire guaranteeing the enforceability of a broadband deployment plan by a state agency, notwithstanding legislative developments; (3) a commitment to expand broadband in areas of New Hampshire within FairPoint's franchise and unserved by another terrestrial broadband provider, not merely within one county or discrete area; (4) a specific minimum number of broadband connections that will be made above the 95 percent already required and a meaningful penalty for failure to meet that number by December 31, 2013; and (5) a binding commitment that, should FairPoint undertake broadband expansion but subsequently abandon the effort, for whatever reason, the balance then held in escrow be credited to customers.

Id. If FairPoint submitted a proposal in conformance with the first option, it would then be permitted until November 1, 2012 to produce an actual build-out plan using the penalty money.

Id. Alternatively, FairPoint could elect to repay bill credits to customers in June, 2012. *Id.*

On May 25, 2012, FairPoint filed an assented to motion to permit it more time to produce a plan in line with the Commission's directives and on May 30, 2012, the Commission issued a secretarial letter granting the extension. By that letter the Commission also moved the date for the initiation of bill credit payments from June to July, 2012. On June 6, 2012, FairPoint submitted a proposal in response to Order No. 25,360 and on June 12, 2012, Staff submitted a response to that proposal.

II. POSITIONS OF THE PARTIES

A. FairPoint

FairPoint's June 6, 2012 filing consisted of: (1) FairPoint's cover letter; (2) a report on economic benefits of broadband expansion; (3) correspondence from Commissioner George Bald of the Department of Resources and Economic Development (DRED); (4) correspondence from

Executive Council member Raymond Burton; (5) the draft broadband expansion agreement (the proposal); and (6) the draft escrow agreement. In the cover letter to the filing, FairPoint provided certain information intended to address concerns raised by Commissioner Harrington in his dissent in Order No. 25,360. Thereafter, FairPoint stated that it has placed the \$3,323,751 at issue in a segregated account in anticipation of funding an escrow account with TD Bank, N.A., upon obtaining all relevant approvals. FairPoint then noted that there had been some discussion about possibly including representatives of DRED in the proposal, but that due to scheduling conflicts they were not included, and any participation from DRED may require allowing additional time.

As to the matter of a penalty as contemplated in the Commission's order, FairPoint stated that in submitting its proposal in March it had noted that the penalties contained in the original broadband build requirement would carry over to the extended deadline it had requested. FairPoint's cover letter stated that because it believed those penalties were "meaningful" it proposed no further penalties.

Finally, in its cover letter, FairPoint stated that in advancing the proposal it was guided by: (1) providing an economic benefit to New Hampshire; (2) presenting a broadband expansion plan that could be measured and quantified; (3) presenting a broadband expansion plan that does not adversely affect FairPoint's cash flow or create administrative burdens; and (4) transparency. FairPoint then requested that, subject to any non-material revisions, and any input from DRED, the Commission approve the proposal.

As for the proposal itself, it provides that FairPoint, with input from Staff and DRED, will develop a broadband build-out plan for submission to the Commission by November 1,

2012. That build-out plan will aim to serve 1,000 to 3,000 access lines beyond the 95 percent to which FairPoint is already committed. The build-out plan will be developed to meet the following requirements: (1) not less than 1.5 megabits per second of bandwidth for distances up to 22,000 feet from a DSL-equipped central office or wire center, designed and installed to be scalable for future improvement in speed; (2) not less than 768 kilobits per second of bandwidth beyond 22,000 feet, designed and installed to be scalable for future improvement in speed; and (3) fully constructed and provisioned on or before December 31, 2013, subject to force majeure events. Further, the build-out plan will include, for each project within it: (1) identification of the area(s) to be served by the project; (2) the number of access lines to be served when the project is complete; and (3) the total budgeted cost of the project. Under the terms of the proposal, upon approval of the build-out plan and completion of 92 percent broadband availability by December 31, 2012, the Commission will extend the deadlines set forth in Order Nos. 24,823 and 25,129 from March 31, 2013 to December 31, 2013, for FairPoint to achieve the last 3 percent of its pre-existing commitment. All other aspects of the pre-existing commitment, however, including the penalty provisions, remain as set forth in Order Nos. 24,823 and 25,129. Under the proposal, if the Commission rejects the build-out plan submitted by November, 2012, then FairPoint would issue bill credits for the \$2,823,751 of so-called "SQI Funds" and the other \$500,000 would be returned to FairPoint.

The proposal also provides that if FairPoint believes modifications to the build-out plan are needed, it will first discuss proposed modifications with Staff and DRED and if all are in agreement, the modifications can be made without Commission intervention. If, however,

FairPoint, Staff and DRED do not agree on the need for a modification, the matter will be submitted to the Commission for resolution.

For purposes of tracking the money, the proposal states that there is a presumption that the SQI Funds constitute 85 percent of the total and the \$500,000 of FairPoint's funds constitute 15 percent. As money is spent and drawn from escrow, these "pools" of money would be reduced on a basis proportionate to the above presumption. Under the proposal, if the build-out is cancelled for any reason, then customers would be credited the balance of the SQI Funds and FairPoint would receive the balance of the \$500,000.

For purposes of the build-out itself, under the proposal FairPoint will track spending on a project-by-project basis and report to Staff and DRED on the monthly amounts spent. Prior to advertised availability of broadband service in a project area, FairPoint will receive reimbursement of 50 percent of its monthly expended project costs as specified in the build-out plan. Upon advertising broadband service availability, or issuing a press release about broadband service availability, the remaining 50 percent of FairPoint's project costs would be reimbursed. Under the proposal, FairPoint, Staff and DRED will collaborate on a certification to be provided to the escrow agent for reimbursements, and on a project reporting form. Pursuant to the proposal, FairPoint is to provide Staff and DRED a copy of each certification within one day of submitting it to the escrow agent for reimbursement, however, FairPoint does not require any advance approval to withdraw funds, so long as the certification is provided.

The proposal also contains terms referencing the possibility of an event of default under FairPoint's credit agreements. In such an event, FairPoint would notify Staff and DRED of the event, and transfers out of the escrow will be halted. If a default event occurs and is continuing,

then, at the written election of DRED and the Commission, the agreement will be terminated. If that election is made, then FairPoint will be reimbursed for the total of its incurred costs and the remainder in the escrow would be distributed according to the 85 percent and 15 percent distributions described above.

In its general terms section, the proposal includes language noting that any interpretation of Senate Bill 48 (SB 48), which, among other things, substantially reduces the Commission's regulatory authority over FairPoint, will not be used to prevent the implementation of the agreement or deprive any party, or their successors or assigns, of their benefits or obligations under the agreement. Lastly, the proposal states that it will be effective upon the later of Commission approval and the approval of the New Hampshire Governor and Executive Council.

B. Staff

In its June 12, 2012 response to FairPoint's filing, Staff noted that although it consulted with FairPoint in the development of the proposal, the actual proposal was from FairPoint. Staff urged the Commission to review the proposal through the five-point framework established in Order No. 25,360 and evaluated the proposal along those lines.

First, Staff stated that FairPoint had taken steps to create the escrow arrangement sought by the Commission. Although there was not yet a binding agreement, one would be created upon obtaining the relevant approvals and, thus, in Staff's view the first requirement appeared to be met.

Next, Staff addressed the Commission's condition that any agreement for broadband deployment be binding and include provisions guaranteeing enforceability. Staff noted that the agreement provided for its continuation notwithstanding the enactment of SB 48. Nonetheless,

Staff stated that it was not clear what enforcement actions the Commission could take after the effective date of SB 48, or whether it would be required to rely upon the Office of the Attorney General for enforcement. Staff also stated that the provisions relating to termination in the event of a default were unclear. Neither was it certain how disagreements over the need to terminate the agreement would be addressed.

With respect to the third requirement, that the broadband build-out commitment cover more than Northern New Hampshire, Staff stated that the proposal provided for building out to any unserved area in FairPoint's franchise territory in New Hampshire. Staff also noted that although the proposal did not limit the territory for building, the ultimate build-out plan could do so, subject to Commission approval.

With regard to the Commission's fourth condition that there be a commitment to serve a certain number of new lines above the 95 percent to which FairPoint was already committed, and for a "meaningful penalty" for failing to meet that number, Staff stated that the proposal addressed only one part of that condition. According to Staff, the proposal contains a commitment to serve an additional 1,000 to 3,000 access lines, but provides no penalty. Staff stated that the pre-existing penalties had no relation to this new commitment, but only to FairPoint's existing commitments. Staff stated that without a penalty, it was not clear what incentive there was in the proposal for FairPoint to reach new customers. Further, Staff stated that because of SB 48, without a penalty in the agreement itself, it was not clear what actions the Commission could take should the new commitment not be fulfilled.

As to the Commission's final condition that if FairPoint abandons the build-out the balance of the funds would be returned to customers, Staff stated that under the proposal, if the

build-out is ended, then the balance of the SQI Funds would be distributed to customers and the balance of the FairPoint funds would be returned to FairPoint. Staff also noted that under the provisions regarding default, if the Commission and DRED elect to terminate the build-out, then all of FairPoint's incurred costs would be credited to it before any distribution is made to customers. Staff also stated that based upon information from the Office of the Attorney General, it was not clear whether the amount of control FairPoint retained over the money was sufficient to protect the funds from creditors in the event of default.

Lastly, Staff provided an explanation of its understanding about how disbursements will be made pursuant to the proposal. In so doing, Staff noted that the disbursements do not require the advance approval of any state entity, but are driven by FairPoint's provision of documentation to the escrow agent.

III. COMMISSION ANALYSIS

In order to truly recognize the benefits of a broadband expansion, we must be as confident as reasonably possible that the proposal can and will be seen through to its end. Otherwise, the proposal will serve little purpose other than further delaying ratepayer relief for previous lapses in service quality. Having been given a final opportunity to formulate a plan to meaningfully expand broadband in New Hampshire, we appreciate FairPoint's efforts to develop a proposal for our review. The proposal, if completed, would provide a scalable broadband solution to 1,000 to 3,000 customers who might not otherwise have broadband service. Moreover, FairPoint would track its projects and their costs and, unless the build-out plan is terminated following an event of default under FairPoint's credit agreements, it would not be fully reimbursed for costs until it, in fact, provides services to customers.

Despite these apparent benefits, however, the proposal fails to meet one of our most important requirements, clearly set forth in Order No. 25,360, and as a consequence does not provide adequate assurance of its completion. In Order No. 25,360 we set out specific minimum conditions for a proposal to be accepted. FairPoint chose not to include an important condition, the requirement for a meaningful penalty in the event it fails to meet these additional broadband build-out commitments. Further, though some of the provisions of the proposal nominally comply with our directives, in their implementation they create potential risks that the Commission finds unacceptable.

As to the specific penalty requirement, Order No. 25,360 provided that FairPoint was to commit to serve a specific minimum number of customers and to meaningful penalties for failing to meet that number. FairPoint has proposed reaching an additional 1,000 to 3,000 new access lines at a cost of approximately \$3.3 million. FairPoint has provided no penalty for any failure to meet that goal. Instead, it contends that the penalties from its pre-existing commitments to reach 95 percent are sufficient and meaningful. We disagree.

First, the 95 percent penalties have no bearing on this commitment and would exist regardless of any new broadband expansion plan. Thus, we do not find that they create any new incentive to complete this project. Further, under the proposal, FairPoint actually benefits, in that it is authorized to use ratepayer funds to expand broadband to its customers and if it meets a 92 percent build-out goal by the end of 2012, FairPoint will have the deadline for its existing 95 percent commitment extended from April 1, 2013 to December 31, 2013. That is, FairPoint will have an additional nine months to complete work it has already committed to do, thus making it less likely it will incur any penalty for failing to achieve that commitment. Thus, under the

proposal, in exchange for keeping money that was originally committed to be returned to ratepayers, FairPoint accepts no new risk and obtains a reduction in existing risk. In light of these concerns, we have made the following changes to the proposal, which are contained in Attachment A to this order. We have removed the distinction between the SQI Funds (\$2,823,751) and the additional FairPoint contribution (\$500,000) to create a single pool of \$3,323,751 in escrow. Because the funds are pooled, we reject the 85/15 percent allocations proposed by FairPoint. Therefore, any withdrawals from that account will not be on a *pro rata* basis as proposed, but will reduce the total amount without differentiation. Further, we have removed the provision stating that if the build-out is abandoned a proportional amount of the funds would be credited to FairPoint. Following these revisions, if the build-out is abandoned all remaining funds in the escrow will be credited to customers. By these revisions, FairPoint is placed at risk for the loss of some money should it fail to complete the build-out. If, however, FairPoint completes the build-out, it will receive the benefit of those capital projects while having invested only \$500,000. We believe these revisions create both an incentive and a meaningful penalty as envisioned in Order No. 25,360.

As to the other matters that raise concerns, we note, as did Staff, that withdrawals from the escrow are based upon FairPoint's provision of documentation to the escrow agent and do not require advance approval of Staff, or any other state entity. It is not clear whether the degree of FairPoint's control over the funds provides adequate protection from creditors in the event of a default. Because we find that risk to be both unacceptable and easily avoidable, we have amended the proposal to provide that any certification provided to the escrow agent shall bear a signature from Staff. Thus, prior to any reimbursement, Staff must sign the certification to

confirm that FairPoint has submitted a complete certification that is consistent with the proposal, which gives Staff some degree of oversight concerning disbursements. Recognizing that requiring a signature from Staff could create some delay, we direct Staff to act in a timely manner and urge FairPoint to share on-going progress with Staff to facilitate timely certifications.

As to issues of enforcement of the agreement we have made two changes to the proposal. First, in the provisions dealing with termination in the event of default, the proposal requires the election of both the Commission and DRED. We find this unworkable. Although we welcome input from DRED, we believe the Commission should retain ultimate authority over this term. Accordingly, we have struck the reference to DRED in the termination provision. We have, however, retained other references to DRED's involvement because DRED can provide useful and meaningful information for developing and implementing a build-out plan. Second, we have included the term "enforceability" with reference to the continuation of obligations following the passage of SB 48 to be clear that the commitments contained in the broadband expansion agreement are fully enforceable, notwithstanding SB 48.

With the above-described changes as delineated on the attached document, we present a final decision. FairPoint may sign and obtain the signature of DRED, on the broadband expansion agreement as amended by the Commission, without further change, and deliver the executed agreement to the Commission by close of business July 2, 2012, or FairPoint may choose not to pursue the broadband expansion option further in which case it shall fully refund \$2,823,751 through bill credits in July, 2012 as contemplated in Order No. 25,360 and the Commission's May 30, 2012 secretarial letter. Finally, if the proposal is signed, but is not

approved by the Governor and Executive Council at its July 11, 2012 meeting, FairPoint shall fully refund \$2,823,751 through bill credits on and after July 12, 2012. We have conditioned these agreements on action by Governor and Executive Council by the July 11, 2012 meeting in order to eliminate any timing issues relating to the effective date of SB 48 on August 10, 2012, and the Commission's authority to order FairPoint to refund SQI penalties to customers.

Based upon the foregoing, it is hereby

ORDERED, that FairPoint may pursue the broadband expansion agreement as delineated herein, in the form found at Attachment A, returned to the Commission by the close of business July 2, 2012, or, or it shall fully refund \$2,823,751 through bill credits for bills rendered on and after July 3, 2012; and it is

FURTHER ORDERED, that if FairPoint and DRED sign the proposal, but it is not approved at the July 11, 2012 meeting of the Governor and Executive Council, FairPoint shall fully refund \$2,823,751 through bill credits on and after July 12, 2012.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 2012.



Amy L. Ignatius
Chairman



Robert R. Scott (RUS)
Commissioner

Attested by:



Debra A. Howland
Executive Director

DISSENTING OPINION OF COMMISSIONER HARRINGTON

I continue to believe that money left in the hands of thousands of ratepayers to spend as they see fit will produce more benefits for New Hampshire than the Public Utilities Commission deciding how best to spend it. Decisions made by people on how to spend their money in free markets will always prove more beneficial to society than government officials making those decisions for them.


Michael D. Harrington (KAS)
Commissioner

Attachment A**BROADBAND EXPANSION AGREEMENT**

Northern New England Telephone Operations LLC d/b/a FairPoint Communications –NNE ("NNETO"), the New Hampshire Public Utilities Commission ("Commission") represented by the Office of the New Hampshire Attorney General (the "Attorney General") and the New Hampshire Department of Resources and Economic Development ("DRED" and, collectively, NNETO, the Commission and DRED are the "Parties") enter into this Agreement as of the last date signed below.

WHEREAS, NNETO is a Delaware Limited Liability Company registered with the New Hampshire Secretary of State to conduct business in the State of New Hampshire, and which business is, among other things, the provision of telecommunications and data services, including (but not limited to) local exchange telephone service.

WHEREAS, the Commission is an administrative agency of the State of New Hampshire with the responsibility for regulating the operations of public utilities in the state, including telecommunications carriers.

WHEREAS, DRED is an administrative agency of the State of New Hampshire with the responsibility for, among other things, economic development for and within the State of New Hampshire.

WHEREAS, the Parties desire to expand Internet access services to communities in the State of New Hampshire that, as of the Effective Date (hereinafter defined), have little or no access to such services (the "Broadband Expansion").

WHEREAS, NNETO filed with the Commission, on or about January 31, 2012, a preliminary plan related to the Broadband Expansion wherein NNETO proposed to design, construct and pay for the Broadband Expansion utilizing \$500,000 of NNETO's funds (the "FairPoint Investment") and \$2,823,751 of retail service quality penalty funds (the "SQI Funds") that, pursuant to Commission Order No. 25,129, otherwise would be returned to NNETO's existing retail customers.

WHEREAS, the Commission issued Order No. 25,360, dated May 8, 2012 (the "Order") in response to NNETO's preliminary plan for Broadband Expansion, and the Parties now desire to present this Agreement and a related Escrow Agreement to the Commission for its review and approval.

NOW, THEREFORE, for good and valuable consideration, the legal sufficiency of which is hereby acknowledged and accepted, the Parties covenant and agree as follows:

A. **Broadband Expansion**

1. **Escrow Arrangement:** Within three (3) business days of the Effective Date, FairPoint shall establish with TD Bank, N.A. (the "Escrow Agent") an escrow account subject to, in all material respects, the terms and conditions set forth in the form escrow agreement attached hereto as Exhibit A (the "Escrow"). FairPoint shall fund the Escrow in the total amount of \$3,323,751. The Escrow shall remain in place pending FairPoint's completion of the Broadband Expansion pursuant to this Agreement or the funds within the Escrow are disbursed pursuant to this Agreement. FairPoint agrees to provide to the Commission's Staff and DRED a copy of the monthly escrow statement provided by the Escrow Agent within three (3) business days of receipt of the statement.

2. **Broadband Expansion:** Pursuant to the Order, NNETO hereby agrees to formulate and present to the Commission on or before November 1, 2012, a detailed proposal to utilize the Escrow for Broadband Expansion in NNETO's New Hampshire service territory within communities unserved by another terrestrial broadband provider, to the extent NNETO can determine such lack of coverage with then publically available data. NNETO, the Commission Staff and DRED shall (i) work in good faith and cooperatively in the development of the detailed Broadband Expansion plan and (ii) share information reasonably necessary for the development of said plan, pursuant to Section B.16 of this Agreement. Prior to the Commission's review and approval of the detailed Broadband Expansion plan, the Escrow shall remain with the Escrow Agent and no funds shall be removed from said Escrow other than the Escrow Agent's ordinary fee related to its duties as an escrow agent.

NNETO covenants and agrees to develop a detailed Broadband Expansion plan that provides broadband connectivity to a minimum of 1,000 to 3,000 access lines over and above those access lines that must be broadband enabled pursuant to Commission Order No. 24,823, as the same has been amended by Commission Order No. 25,129 (the "Broadband Merger Requirement"). The Broadband Expansion shall meet the following requirements: (i) not less than 1.5 megabits per second (Mbps) of bandwidth for distances up to 22,000 feet from a DSL-equipped central office or wire center, designed and installed to be scalable for future improvement in speed (ii) not less than 768 kilobits per second (kbps) of bandwidth beyond 22,000 feet, designed and installed to be scalable for future improvement in speed and (iii) fully constructed and provisioned on or before December 31, 2013 (subject to force majeure events such as acts of God, war, terrorist acts, flood, severe weather, riot, embargo, labor disputes or strikes). The detailed Broadband Expansion Plan shall be specific and include for each project: (1) identification of the area(s) to be served by the project; (2) the number of access lines to be served when the project is complete; and (3) the total budgeted cost of the project. Upon approval of the detailed Broadband Expansion plan and completion of ninety-two percent (92%) broadband availability pursuant to the Broadband Merger Requirement by December 31, 2012, the Commission shall extend the deadlines set forth in Order Nos. 24,823 and 25,129 from March 31, 2013 to

December 31, 2013, for NNETO to achieve the last three percent (3.0%) of the Broadband Merger Requirement. All other aspects of the Broadband Merger Requirement, including the penalty provisions thereof, shall remain as set forth in Order Nos. 24,823 and 25,129 and shall remain fully enforceable.

In the event the Commission rejects the detailed Broadband Expansion plan, then NNETO (subject to its right to seek reconsideration) within thirty (30) calendar days shall (i) rebate to NNETO's then existing New Hampshire retail customers in the form of bill credits issued in a single month the amount of \$2,823,751 and (ii) instruct the Escrow Agent to return the FairPoint Investment to NNETO. The Parties recognize that NNETO may issue the bill credits in a single month during the course of NNETO's standard billing cycles. Within five (5) days of accounting for the issuance of the above referenced bill credits after each billing cycle, NNETO shall be permitted to obtain a corresponding amount of the SQI Funds from the Escrow Agent. Once all bill credits are issued, NNETO shall terminate the Escrow Agreement.

3. Modification of Broadband Expansion: In the event that NNETO believes in good faith that a modification of the detailed Broadband Expansion plan is necessary after the date of the Commission's approval thereof, then NNETO shall present information to DRED and the Commission's Staff reasonably necessary to identify the need for the modification and the actual modification to be proposed. In the event the Commission's Staff and DRED agree in writing with NNETO's modification, then the Parties agree that the detailed Broadband Expansion plan shall be modified accordingly absent further requirements. In the event the Commission's Staff or DRED disagrees with NNETO's modification, then the Parties shall present the relevant information to the Commission for prompt review and consideration, and the Parties agree to request the Commission to make an expedited decision thereon.

4. Termination of Broadband Expansion: In the event the Broadband Expansion is terminated for any reason whatsoever, then the balance of the Escrow shall be distributed as follows. NNETO shall within thirty (30) calendar days of the termination of the Broadband Expansion rebate to NNETO's then existing New Hampshire retail customers in the form of bill credits issued in a single month the balance remaining in the Escrow. The Parties recognize that NNETO may issue the bill credits in a single month during the course of NNETO's standard billing cycles. Within five (5) days of accounting for the issuance of the above referenced bill credits after each billing cycle, NNETO shall be permitted to obtain a corresponding amount from the Escrow Agent. Once all bill credits are issued, NNETO shall terminate the Escrow Agreement.

5. Distribution of Escrow for Broadband Expansion: NNETO shall track the Broadband Expansion on a project-by-project basis. NNETO shall report to the Commission's Staff and DRED on a monthly basis the amounts expended for each project. Such reporting is due by the twentieth day of the following month (i.e., if the Broadband Expansion begins in June 2013, then NNETO shall file the first report with the Commission's Staff and DRED no later

than July 20, 2013). Prior to advertised availability of broadband service in a project area, funds shall be transferred out of Escrow to NNETO for reimbursement of fifty percent (50%) of NNETO's monthly expended project costs specified in the detailed Broadband Expansion Plan by the twentieth day of the following month (i.e., if the Broadband Expansion begins in June 2013, then NNETO shall receive reimbursement of its expended project costs from the Escrow for the month ended June 30, 2013, no later than July 20, 2013). Upon advertisement of broadband service availability or issuance of a press release about broadband service availability, the remaining fifty (50%) of NNETO's project costs specified in the detailed Broadband Expansion Plan for a particular project shall be transferred out of Escrow to NNETO for reimbursement. The Parties agree to work in good faith to develop (i) a single page certification for NNETO, which includes a signature from Commission Staff, to provide to the Escrow Agent for release of the funds and (ii) a monthly project reporting form which tracks the Broadband Expansion on a project-by-project basis. A copy of the certification form and the form of NNETO's reporting requirement shall be provided to the Commission together with the detailed Broadband Expansion plans on or before November 1, 2012. Under no circumstances shall NNETO or FairPoint Parent (hereinafter defined) be required to pay for an independent or third party consultant's review of any aspect of the Broadband Expansion or any funds expended in connection therewith.

NNETO shall provide the Commission's Staff and DRED with a copy of said certification within one (1) business day of NNETO's submission to the Escrow Agent. Notwithstanding anything in this Section A.5 to the contrary, at any point in time prior to the Escrow Agreement being terminated, if an Event of Default occurs and is continuing pursuant to that certain Credit Agreement, _____ dated _____ as _____ of January 24, 2011, by and among FairPoint Communications, Inc. ("FairPoint Parent"), FairPoint Logistics, Inc., Bank of America, N.A., as administrative agent, and the other lenders party thereto (as amended, the "FairPoint Credit Agreement"), then no funds may be transferred out of Escrow to NNETO absent the prior written consent of the Commission's Staff and DRED. NNETO shall notify the Commission's Staff and DRED of an Event of Default under the Credit Agreement within three (3) business days of (i) the administrative agent's declaration of said Event of Default or (ii) FairPoint Parent's self reporting of an Event of Default. If an Event of Default occurs and is continuing under the Credit Agreement, then at the written election of the Commission, this Agreement may be terminated and the balance of the Escrow shall be distributed pursuant to Section A.4 of this Agreement; provided, however, NNETO first shall be reimbursed for all costs incurred in connection with each project of the Broadband Expansion.

B. General Terms

1. Binding Agreement and Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement does not confer authority or jurisdiction in the Commission to review any change of control or change of ownership with respect to NNETO. This Agreement also does not limit in any way the authority or jurisdiction of the Commission to review any change of control or change of

ownership with respect to NNETO, said authority and jurisdiction to be controlled by applicable New Hampshire law.

2. Project Revisions: The Parties acknowledge and accept that the Broadband Expansion has not been fully designed or engineered as of the Effective Date. It is understood by the Parties that, depending on various conditions and the status of construction related to the Broadband Merger Requirement, there may be revisions to the Broadband Expansion, which changes will be made in consultation with DRED, the Commission's Staff or the Commission, as provided in Section A.3 above.

3. Choice of Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of New Hampshire, without regard to any choice or conflict of law provision or rule (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire.

4. Authority: The Parties to this Agreement represent and warrant that they are authorized to enter into this Agreement in their individual or representative capacities. The Parties further represent that the execution and delivery of this Agreement and the performance of the Parties' obligations hereunder have been duly authorized by all necessary action, excluding only the approval of the New Hampshire Governor and Executive Council. In the event the Governor and Executive Council fail to approve of this Agreement in its entirety without material modification or revision, then NNETO shall within thirty (30) calendar days (i) rebate to NNETO's then existing New Hampshire retail customers in the form of bill credits issued in a single month the amount of \$2,823,751 and (ii) instruct the Escrow Agent to return the FairPoint Investment to NNETO. The Parties recognize that NNETO may issue the bill credits in a single month during the course of NNETO's standard billing cycles. Within five (5) days of accounting for the issuance of the above referenced bill credits after each billing cycle, NNETO shall be permitted to obtain a corresponding amount of the SQI Funds from the Escrow Agent. Once all bill credits are issued, NNETO shall terminate the Escrow Agreement.

5. Signatures: This Agreement may be signed in multiple identical counterparts, each of which shall be deemed an original, but all of which together shall constitute the Agreement. Signatures delivered by facsimile or other electronic means shall have the same effect as delivery of an original signature.

6. Severability: If any clause or provision of this Agreement or the application thereof shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

7. Interpretation: The Parties all agree that any interpretation of New Hampshire General Court Senate Bill 48, 2012 Session (relative to state regulation of telephone service providers), should it be enacted, shall not be used in any way to prevent the implementation and

enforcement of any elements of this Agreement or otherwise deprive any Party, their respective successors and assigns, of the benefits or obligations of the terms of this Agreement.

8. Notices: All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication

hereunder shall be deemed duly given or delivered (i) when delivered personally to the recipient, (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) one (1) Business Day after being sent to the recipient by facsimile transmission or electronic mail or (iv) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

9. No Third Party Beneficiaries: This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

10. Captions and Construction: The captions in this Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision hereof. The use in this Agreement of the singular shall include the plural, as the context may require. The word "including" shall mean including without limitation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

11. Entire Agreement: This Agreement, together with Exhibit A, contains the entire and integrated agreement among the Parties relating to the subject matter contained herein. Each Party acknowledges that no representations, inducements, promises, or agreements, oral or written, with reference to the subject matter herein have been made other than those expressly set forth herein. This Agreement cannot be modified, rescinded or terminated orally; any modification of this Agreement must be in writing signed by each of the Parties. Nothing in this Agreement shall be construed as limiting the Parties from executing a mutually-agreeable written modification of any of the terms of this Agreement.

12. Amendments and Waiver: The terms of this Agreement may not be amended orally, and only may be amended by an instrument in writing signed by the Parties. No waiver by any Party of any provision of this Agreement or any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way rights arising by virtue of any prior or subsequent such

occurrence. No waiver by any party of a breach hereof or a default hereunder shall be deemed a waiver by such party of any other breach or default.

13. No Joint Venture: Nothing in this Agreement is intended to create an association, trust, partnership or joint venture between the State of New Hampshire (including its administrative agencies and political subdivisions thereof) and NNETO, or impose a trust, partnership, fiduciary duty, on or with respect to any Party.

14. Dispute Resolution and Venue: In the event that any dispute arises over compliance with the terms and conditions of the Agreement, including a determination of material prejudice due to changes, conditions, or modifications in the Broadband Expansion, the parties agree to engage in good faith negotiations for a period of at least 60 days, if necessary, in an effort to resolve the dispute. If the Parties cannot arrive at a resolution to the dispute, any of the Parties may seek relief in a non-jury trial in the Merrimack County (New Hampshire) Superior Court (or its successor). The Parties hereby acknowledge and accept the jurisdiction and venue of the Merrimack County Superior Court and expressly waive any and all objections to venue and jurisdiction in this regard.

15. Sovereign Immunity: Nothing herein shall serve to waive the sovereign immunity of the State of New Hampshire, which immunity is hereby reserved.

16. Confidentiality: Except as required by applicable law, each Party promises that during the term of this Agreement and for two (2) years thereafter, it will use NNETO's Confidential Information (hereinafter defined) only for purposes of this Agreement, not disclose it to third parties except as provided below, and protect it from disclosure to the public. "Confidential Information" means information (in whatever form) designated as confidential by NNE TO by conspicuous markings (if tangible Confidential Information) or by announcement at the time of initial disclosure (if oral Confidential Information) or if not so marked or announced should reasonably have been understood as confidential to the receiving party, either because of legends or other markings, the circumstances of disclosure or the nature of the information itself and that (i) relates to this Agreement or changes to this Agreement; (ii) relates to NNETO's customers, products, services, developments, trade secrets, know-how or personnel; and (iii) is received by the receiving party from NNETO during the Broadband Expansion project. Confidential Information does not include information that: (a) is in the possession of the receiving party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; or (c) is received without restriction from NNETO.

17. Effective Date: Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the New Hampshire Governor and Executive Council, this Agreement, and all obligations of the parties hereunder, shall not become effective until the later of (i) the date the Commission approves this Agreement and (ii) the date the Governor and Executive Council approve this Agreement (the "Effective Date").

The parties named below, by the signatures of their representatives, enter into and accept this Broadband Expansion Agreement.

**Office of the New Hampshire Attorney
General on behalf of the New Hampshire
Public Utilities Commission**

By:

Name: _____
Title: _____
Date: _____

**New Hampshire Department of Resources
and Economic Development**

By:

Name: _____
Title: _____
Date: _____

**Northern New England Telephone
Operations LLC d/b/a FairPoint
Communications - NNE**

By:

Name: Patrick C. McHugh
Title: State President - New Hampshire
Date: _____