

March 4, 2011

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**VIA HAND DELIVERY**

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

Re: DT 09-059 and DT 09-113; Audit of FairPoint Communications' Performance Assurance Plan

Dear Ms. Howland:

On behalf of Northern New England Telephone Operations LLC ("FairPoint"), this letter serves as the response to the Commission's Secretarial Letter of February 25, 2010 (the "Secretarial Letter"), in which it 1) announced commencement of an audit of FairPoint's wholesale performance plan ("PAP"), 2) solicited FairPoint's recommendations for independent auditors, and 3) stayed the proceedings in Dockets DT 09-059 and DT 09-113. Each of these issues is discussed below.

In particular, FairPoint hereby moves the Commission to reconsider, pursuant to New Hampshire RSA 541:3 and Rule Puc 203.33, the decisions issued in the Secretarial Letter. The Commission made such decisions in violation of FairPoint's due process rights to be heard with advance notice of a hearing thereon. FairPoint moves the Commission to (i) rescind the Secretarial Letter and (ii) schedule a hearing during which interested parties may present their positions regarding the issues raised by the Secretarial Letter.

**SCOPE OF PAP AUDIT**

As explained in its letter to the Commission of November 22, 2010 in Docket DT 07-011, FairPoint respectfully disagrees that an audit of the existing PAP is a productive use of time and resources. Rather, it is a backward looking endeavor that will review issues that have already come to light and/or are expected to be eliminated in the prospective Wholesale Performance Plan ("WPP"). It is as though parties seeking such an audit believe that FairPoint possesses an infinite amount of money and other resources to expend on something meant to be eliminated. FairPoint reiterates that rather than devoting resources to investigating problems with an existing PAP that has proven difficult for many parties to understand and monitor, it would be best for all involved

to focus instead on developing a WPP and auditing that plan once it has been in place for some reasonable period of time.

Not later than thirty (30) calendar days from the date hereof, FairPoint expects to present the Commission with a draft of a proposed Simplified Metrics Plan and a WPP that incorporates simplified metrics. This proposal differs from the current PAP in that it no longer tracks the New York Carrier to Carrier Guidelines, but instead relies on its own metrics definitions specific to Northern New England. The proposed WPP will eliminate the complications of the existing plan such as service segmentation (i.e. MOE, Critical Measures, Special Provisions) as well as process segmentation (e.g. Change Control, Domain Clustering). It will focus directly on transactions most important to CLEC success and will streamline the performance scoring with simplified calculations and a “miss/met” system rather than a three-tiered performance score. Finally, it will eliminate metrics related to offerings that are no longer provided and OSS interfaces that no longer exist.

As the Commission is aware, FairPoint has devoted extensive resources over the last 18 months to its Customer Delivery Improvement Program (“CDIP”), which was designed to identify and correct issues with its retail and wholesale performance. This effort was largely concluded by October 2010. Consequently, we believe that there is little to gain by auditing the PAP prior to that month.

However, to the extent that the Commission decides it must move forward on an audit of the existing PAP, FairPoint suggests that, to conserve resources and to best lay the groundwork for the future, the scope of any audit should be confined only to those metrics that can reasonably be expected to be in the WPP, and only within a specific window of time. The current PAP contains 358 metrics. Taking into account metrics that cover services that are no longer provided or show little activity, processes and systems that no longer exist, redundant metrics, metrics that FairPoint’s systems cannot track, and metrics that implicate complicated and error-prone rules, FairPoint believes that there are now only 69 metrics that are of significance and which should be carried over into a proposed WPP. The PAP audit should be restricted to those metrics, and the overall audit structured to support the further refinement of the WPP proposal rather than perform a post-mortem on the existing PAP. In this manner, FairPoint’s money and resources might be expended in a productive and useful manner.

Furthermore, in the interest of efficiency, FairPoint suggests that the scope of work be confined to traditional auditing tasks such as:

- evaluating the methodology used by FairPoint to gather, track, calculate, and report current metrics;
- assessing the accuracy of reported metrics for the period in question, an assessment which may use a statistically valid sampling of data rather than a comprehensive review of all data;
- preparing a draft report for review and comment by FairPoint;
- providing a final report summarizing the material findings.

FairPoint objects to the broadening of any “audit” beyond that which meets the strict definition of an audit. For example, FairPoint believes that questions regarding metric definitions, the appropriateness and/or limitations of current metrics, PAP methodology and procedures, and reporting scope and format are best reserved for the WPP approval proceeding.

#### **CONSULTANT RECOMMENDATIONS**

FairPoint recommends that the Commission invite KPMG, LLP and PriceWaterhouseCoopers, LLP, to bid on this audit. Both of these companies are certified public accounting firms that will draw upon industry-standard auditing methods promulgated by the American Institute of Certified Public Accountants (AICPA) to review the company’s performance as reported under the PAP. Furthermore, both firms have been engaged to review ILEC performance under such plans in other states and have filed professional opinions concerning operations support systems and operational performance in state and federal regulatory proceedings.

FairPoint hereby emphasizes that any audit must be conducted by an independent firm, especially considering the conflicting interests at stake and the contentiousness among FairPoint, the CLECs and the Commission Staff. To that end, transparency and objectivity must be paramount in this process. For example, all RFP responses should be made public and the focus strictly on the PAP and FairPoint’s performance under it. Furthermore, communications between the awardee and parties outside of FairPoint, *i.e.* Staff, CLECs and other third parties, should only occur if absolutely necessary and, in such case(s), must be publicly reported subject to confidentiality issues/concerns addressed by a protective agreement approved by the Commission.

Additionally, FairPoint hereby objects to Liberty Consulting Group either participating in the bid process or being awarded any contract related to an audit of the PAP. FairPoint is concerned that Liberty may find itself overextended if it simultaneously conducts both an SQI and a PAP audit, which could delay the completion of one or both of them. FairPoint further is concerned that the simultaneous review by Liberty of the same FairPoint organization also will create confusion and may compromise the independence, transparency and objectivity that the company believes is important to this effort.

## **STAY OF PROCEEDINGS**

In its Notice, the Commission stated in respect to Dockets DT 09-059 and DT 09-113 that “the resolution of both dockets depends upon an understanding of the current PAP and its implementation” and, as such, those dockets should be stayed pending completion of the PAP audit. FairPoint objects to this decision, and respectfully request that the Commission reconsider it. As a first matter, FairPoint notes that the Commission’s decision contains no support or legal reasoning in support of the decision. The Secretarial Letter contains no facts to support a determination that the above referenced dockets depend upon an understanding of the current PAP. The current PAP evolved from extensively litigated proceedings in Docket DT 01-006, as well as the amended Stipulation dated July 17, 2003, approved by this Commission in Docket DT 03-063. The parties to Dockets DT 09-059 and DT 09-113 do already have an “understanding” of the PAP, which was litigated for years, amended by voluntary stipulation and has been in existence for nearly 8 years.

Moreover, the issues involved in Docket DT 09-113 are separate and distinct from the issues that the PAP audit is purported to address, which is PAP performance and reporting. Docket DT 09-113 only involves the dollars at risk – a static figure that is unaffected by FairPoint’s wholesale performance, its data collection and reporting, its processing of the data or its issuance of billing credits. It is simply a number to which the calculated factor is applied. There is nothing that can be revealed by the proposed audit that will have any bearing on the reasonableness of the dollars at risk.

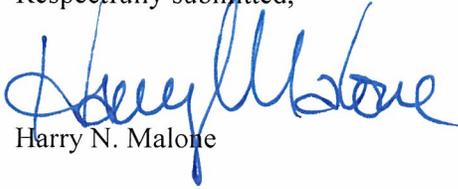
As FairPoint has explained in its pleadings, the current PAP dollars at risk are out of proportion to FairPoint’s net return and whatever harm that its CLEC customers allegedly are or may be incurring. As a result, the PAP has morphed from a reasonable incentive as determined by the FCC into a punitive transfer of money that is distorting competitor incentives and is incompatible with the development of a stable, nondiscriminatory competitive market. By postponing the resolution of this issue without a valid cause, the Commission simply perpetuates this injustice. This request has now been on hold for over four years, since Verizon filed it in Docket DT 06-067. FairPoint is entitled to be heard.

The issues concerning Docket DT 09-059 are no less pressing. In that docket, FairPoint has sought a waiver of certain metrics, some of which are particular to Verizon’s old systems and which FairPoint does not track. FairPoint’s exposure regarding these metrics is continuing and must be addressed. Because these metrics would naturally be eliminated in the WPP, FairPoint is amenable to folding the issues in Docket DT 09-059 into the impending WPP approval proceeding and terminating Docket DT 09-059. However, if the Commission does not agree to this plan or the WPP proceeding is unusually delayed, Docket DT 09-059 should remain active so that these issues can be resolved in a timely manner.

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A compact disk containing this filing is also enclosed. Please feel free to contact me with any questions.

Respectfully submitted,



Harry N. Malone

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cc: Electronic Service Lists