

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC D/B/A FAIRPOINT
COMMUNICATIONS – NNE

Docket No. DT 09-113

Petition for Waiver of Certain Requirements

MOTION TO DISMISS SUPPLEMENTAL PETITION

I. Introduction

On October 17, 2007, FairPoint Communications NNE (“FairPoint”) concluded weeks of negotiations with Freedom Ring Communications d/b/a BayRing Communications, segTEL and Otel Telekom, Inc., culminating in the presentation to the Commission of a “Settlement Stipulation” and specific terms of an agreement (“CLEC Settlement Agreement”). In the CLEC Settlement Agreement, the signatory CLECs agreed to withdraw their active opposition to the FairPoint/Verizon petition in DT-07-011.¹ In exchange for the CLECs support, FairPoint agreed to continue certain fundamental wholesale conditions, including, among other things, to “be subject to the Performance Assurance Plan (“PAP”) in effect as of the Merger closing date.”²

The parties further agreed in the CLEC Settlement that they would work in collaboration to develop a simplified PAP to reflect current market conditions in the three Northern New England states,³ but that in the meantime the PAP that was “in effect as of the Merger closing date” would be the document that would determine the quality of wholesale services to CLECs

¹ This “CLEC Settlement Agreement” was entered into between FairPoint, BayRing, segTEL and Otel. See DT 07-011 Order at 73. A copy of the CLEC Settlement Agreement was filed by FairPoint in correspondence dated October 29, 2007 as Exhibit 1 to a “complete Joint Stipulation.” The “Joint Stipulation” and the “CLEC Settlement Agreement” are provided herein as Attachment “A.”

² CLEC Settlement Agreement at ¶ 2(e). The CLEC Settlement Agreement further states that FairPoint “will adhere to the applicable PAP and C2C Guidelines as implemented in each of the three states and be subject to potential penalties and enforcement mechanisms set forth in those documents.” CLEC Settlement Agreement ¶ 6(a).

³ FairPoint agreed to work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to [FairPoint] in Maine, New Hampshire and Vermont.” CLEC Settlement Agreement at 6(c). The only modification to the PAP applicable to FairPoint on the Merger date is contained in the terms of the agreement at 6(d), where the parties agreed that reporting obligations and penalties under the PAP or C2C Guidelines will be “temporarily suspended” for one month, and only one month. CLEC Settlement Agreement at 6(d).

and, more importantly, the dollars “at risk” in the event of poor service quality as measured by the PAP.

FairPoint’s commitments in the CLEC Settlement Agreement was also incorporated into a settlement agreement between FairPoint and Staff in DT-07-011 and presented by FairPoint to the Commission for Commission approval. On February 25, 2008, after reviewing the settlement agreement and the stipulations incorporating the CLEC Settlement in detail, the Commission approved the FairPoint/Verizon petition in DT-07-011,⁴ but only after requiring as a condition to its approval that FairPoint abide by its contractual commitments reached in the CLEC Settlement Agreement, including FairPoint’s agreement to “be subject to the Performance Assurance Plan (“PAP”) in effect as of the Merger closing date.”⁵

After the Merger closing date, and after securing the signatory CLECs agreement to withdraw any opposition, FairPoint repeatedly attempted to breach of its agreement to abide by the terms of the currently approved PAP until a new simplified PAP is presented as part of a collaborative effort.⁶ FairPoint’s “Supplemental Petition” in DT-09-113 is merely FairPoint’s latest attempt to unravel the commitments made in the CLEC Settlement Agreement and to disregard the Commission’s specific requirements. Now FairPoint seeks authority directly from the Commission to modify the NH PAP to reduce the total dollars at risk by 65% and to allow FairPoint to retroactively receive back PAP credits made and processed to CLECs since January 1, 2009. For the reasons described below the Commission should dismiss this latest effort by

⁴ Order No. 24,823 (“Approval Order”).

⁵ The Merger closing date occurred on April 1, 2008. The PAP that was “in effect” on that date is the PAP approved by the Commission in Docket DT 05-096 in Order No. 24,504 (dated Aug 19, 2005). *See also* the Staff notation on the Commission’s web page, at <http://www.puc.state.nh.us/Telecom/clecs.htm>, (last visited on September 21, 2009) When asked by the CLECs if FairPoint agrees that the Commission relied upon, in part, the terms of the CLEC Settlement Agreement in the Approval Order, FairPoint in essence pleads the fifth. *See* FairPoint response to CLEC Data Request 1-32 (the question seeks a “speculative response” according to FairPoint).

⁶ The steps taken by FairPoint in direct breach of its contract with the CLECs are reflected in several actions. First, on March 26, 2009 in Docket DT-09-059, FairPoint seeks authority to waive certain PAP metrics temporarily and other PAP metrics permanently from a PAP document never approved by the Commission and contrary to what FairPoint agreed to in the CLEC Settlement Agreement (still pending). Second, FairPoint also illegally, and without any permission from the Commission, ceased making any PAP payments, ceased reporting on required metrics and ceased making required payments or bill credits to CLECs, forcing the CLECs to file complaints with the Commission and requesting sanctions. Third, FairPoint then filed another petition in DT-09-113 on June 10, 2009, this time seeking further temporary and permanent waivers of required PAP payments the same effort filed, and dismissed in Vermont (*Petition of Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications for waiver of certain requirements under the Performance Assurance Plan and Carrier to Carrier Guidelines*, Docket No. 7506, Order dated August 6, 2009) and Maine (*Northern New England Telephone Operations Inc. d/b/a FairPoint Communications Request for Temporary Waiver of Performance Assurance Plan Payments*, Docket No. 2009-185 Order dated August 11, 2009).

FairPoint to ignore its commitment to abide by the PAP "in effect" in New Hampshire, as agreed upon and as further required in the Commission's Order granting approval in DT-07-011.

There are several reasons why the Commission should immediately dismiss FairPoint's Supplemental Petition. First, the actions pursued by FairPoint in the Supplemental Petition are not the actions that FairPoint agreed it would take as part of a contractual commitment reached with the signatory CLECs in the CLEC Settlement. This is a straight question of contract law interpretation, derived from clear and unambiguous terms in the CLEC Settlement Agreement. FairPoint's actions, reflected in this latest Supplemental Petition, are a direct breach of the express terms of FairPoint's contractual commitments with these CLECs and these attempts to avoid the commitments voluntarily agreed to in exchange for the CLECs removal of their opposition to the FairPoint/Verizon deal. Similarly, by leap-frogging over the collaborative process that the Commission required of FairPoint (by the clear conditions attached to its approval order in DT-07-011) FairPoint has also acted in violation of the Commission's Order in DT-07-011. These two reasons alone are sufficient to require the Commission to dismiss this Supplemental Petition outright and as a matter of law, without the need for any further facts, testimony or hearings.⁷

In addition, FairPoint's Supplemental Petition should be dismissed because the Petition fails to meet the Commission's minimum requirements for implementing changes to the PAP because it contains no New Hampshire specific testimony, data or market conditions that would justify a reduction of PAP payments in the amount of 65%. Previous Orders of the Commission make clear that the Commission, like several other Commissions, will not merely rubber stamp the market data and findings from another jurisdiction as a "proxy" for use in setting the dollars at risk in the NH PAP (assuming that the NH PAP is even still subject to unilateral Commission alteration, a position that the CLECs reject as a consequence of the CLEC Settlement Agreement and the Order in DT-07-011). FairPoint's effort to simply import the analysis of the New York

⁷ Under well established law the Commission has the authority to rule on summary judgment on matters that present strictly legal questions. See *Global Naps, Inc. & New England Voice and Data – Reciprocal Compensation Order On Scope and Discovery Matters*, DT 99-081; DT 99-085; Order No. 23,444 (April 21, 2000) at pg 26 (Summary disposition is an excellent "device to make possible the prompt disposition of controversy on the merits without a ... [hearing] ...", if, in essence, there is no real dispute as to the salient facts or if only a question of law is involved," (citing *New Hampshire York Company v. Titus Construction Company*, 107 N.H. 223, 224 (1996)). The Commission has also interpreted its authority to rule on contractual disputes under RSA 365:1 which provides: "Any person may make a complaint to the commission by petition setting forth in writing any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law, or the terms and conditions of its franchises or charter, or any order of the commission."

PSC, while ignoring and neglecting to offer any data regarding current market conditions in New Hampshire in support of its request compels the Commission to dismiss the Supplemental Petition.⁸

FairPoint's Supplemental Petition should also be dismissed because there is no legal authority in either the PAP or otherwise that would allow FairPoint to recover back bill credits processed months ago to compensate for poor quality of service. These credits were duly made to CLECs as a penalty for poor service quality under the PAP approved by the Commission in DT 05-096. There is no legal authority in the PAP or in statute (and FairPoint cites to none) to allow FairPoint to force CLECs to return credits applied and attributed to poor service quality under the standards set forth in the PAP. FairPoint's equitable claim to recover these amounts lawfully applied and processed amounts to a form of retroactive rate-making as well as an illegal "taking" of private property, contrary to settled public utility law and the guarantees set forth in both the New Hampshire and U.S. Constitutions.

The Supplemental Petition should also be dismissed because FairPoint's filing misrepresents the actual financial impact occurring under the PAP. FairPoint complains that special assistance is required due to its financial condition, yet upon closer examination the actual bill credits made by FairPoint to CLECs in New Hampshire are hardly significant, and in any event are substantially less than the penalty amounts FairPoint alleges in its Supplemental Petition, thereby greatly minimizing the alleged financial impact that FairPoint complains is occurring by continued credits.

Finally, FairPoint's Supplemental Petition should be dismissed, or at the very least stayed, because it is a waste of all the parties, Staff's and the Commission's effort, expense and time to pursue temporary changes to the NH PAP in an adversarial process while at the same time working on a new PAP through the collaborative process preferred by the Commission, and agreed to by FairPoint and the CLECs. The Commission should put an end to FairPoint's wasteful, duplicative and disruptive efforts to force its preferred changes to the PAP on CLECs through these successive petitions. The CLECs should be allowed an opportunity to narrow the

⁸ Similarly, FairPoint's Supplemental Petition should be dismissed because there is no FairPoint-specific financial data associated with the request. FairPoint offers no support for grafting Verizon financial data to FairPoint's operations. Verizon, as the Commission is well aware, no longer operates in New Hampshire as a wholesale provider of services to CLECs.

disputes and the issues for presentation jointly to the Commission. This was the process FairPoint agreed to in the CLEC Settlement Agreement, and it was the process ordered by the Commission in its approval order in DT-07-011. For all these reasons the Commission should dismiss FairPoint's Supplemental Petition.

II. FairPoint's Supplemental Petition Should be Dismissed Because It Represents a Breach of Their Contractual Obligations Reached in the CLEC Settlement and Settlement Stipulation in DT-07-011.

As pointed out above, FairPoint agreed with several CLECs to abide by the terms, reporting obligations and penalty provisions of the PAP "in *effect* as of the Merger closing date."⁹ Incredibly, FairPoint's Supplemental Petition does not even refer to the terms of the agreement that FairPoint reached with the CLECs in the CLEC Settlement and the Joint Stipulation, yet the legal enforceability of the CLEC Settlement as incorporated into the Joint Stipulation cannot be questioned. The Commission should not reward FairPoint's attempt to ignore its contractual commitments and the conditions imposed by the Commission on FairPoint. FairPoint argues that there are "strong public policy reasons, related to FairPoint's earnings" to support its request; there are countervailing and more important public policy reasons that support enforcement of the CLEC Settlement Agreement, particularly during this period of deteriorating service to these wholesale customers, which is harming the signatory CLECs that were induced to enter into these agreements in part by FairPoint's promise to abide by the terms of the PAP already in place.

If the Commission agrees with the CLECs that FairPoint's promise to abide by the terms of the PAP "in effect" is binding on FairPoint then this necessarily forecloses FairPoint's request (as a matter of contract interpretation) to allow FairPoint's petition to proceed without the CLECs authorization. The Supplemental Petition must be dismissed as a matter of law.¹⁰ The Commission plainly has authority to rule on the terms of the contract, where there is "no dispute

⁹ The PAP "in effect" on the Merger date is the PAP approved by the Commission in Docket DT 05-096 in Order No. 24,504 (dated Aug 19, 2005). See <http://www.puc.state.nh.us/Telecom/clecs.htm>.

¹⁰ The interpretation of the terms of a contract is a pure question of law that this Commission has authority to interpret. See Order No. 23,444 (April 21, 2000) in *Global Naps, Inc. & New England Voice and Data – Reciprocal Compensation Order On Scope and Discovery Matters*, DT 99-081; DT 99-085 at 26, citing *Catamount Construction v. Town of Milford*, 121 N.H. 781, 783 (1981); *Murphy v. Doll-Mar, Inc.*, 120 N.H. 610, 611 (1980)); See also *New England Fiber Communications, LLC, Consolidated Proceedings Relating to Payment of Reciprocal Compensation for Calls Terminated to Internet Service Providers*, Order on Motions for Summary Judgment in DT 99-081; DT 99-085; Order No. 24,238 November 12, 2003 at 23-26.

that the question here involves the meaning of an . . . agreement” where the Commission has “jurisdiction to decide the case.”¹¹

Applying basic principles of contract law the Commission must “give the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole.”¹² As the Commission pointed out when reviewing contracts between CLECs and Verizon, “unless the tribunal determines that an ambiguity is present, ‘the parties’ intent will be determined from the plain meaning of the language used in the contract.”¹³

The Commission will discern no ambiguity in the language used in the contract. Sections 2 and 6 of the CLEC Settlement Agreement sets forth the parties’ specific obligations with respect to the PAP that would govern wholesale matters at the Merger closing date. FairPoint agreed to abide by the terms, metrics, and penalty provisions in the PAP “*in effect*” at the time of the Merger closing date, until such time as the parties jointly collaborated on the terms of a revised and market specific PAP for New Hampshire.¹⁴ Moreover, in the “Joint Stipulation” that provided the Commission the CLEC Settlement Agreement, the parties further agreed that the terms of the CLEC Settlement Agreement “are part of a comprehensive settlement agreement between the Parties” and that “[t]he Parties further agree not to take any actions in any forum that would reasonably appear to contradict or diverge from the terms set forth in these CLEC Settlement Conditions . . .”¹⁵ There is also no question that FairPoint understood that the PAP in effect as of the Merger Closing date would be essentially “frozen” until a successor PAP is negotiated and presented to the Commission, and the Vermont PSB stated as much:

¹¹ Id. In addition, the parties to the CLEC Settlement also agreed that disputes regarding the interpretation and enforcement of the terms of the CLEC Settlement Agreement would be presented to this Commission. See Section 9 of the CLEC Settlement Agreement.

¹² *New England Fiber Communications, LLC, Consolidated Proceedings Relating to Payment of Reciprocal Compensation for Calls Terminated to Internet Service Providers*, Order on Motions for Summary Judgment in DT 99-081; DT 99-085; Order No. 24,238 November 12, 2003 at 23-24, citing *Lawyers Title Ins. Corp v. Groff*, 148 N.H. 333, 336, 808 A.2d 44, 48 (2002).

¹³ Id. See also *Broadview Networks, Inc. at al, Petition for Declaratory Ruling re Provisioning of Unbundled Network Elements* Order No. 24,564 (December 15, 2005) at pp 20-21 (finding that the “change-of-law” provisions in the applicable interconnection agreements apply and bind the parties to a process negotiated and agreed upon in a contract once UNEs are no longer required).

¹⁴ CLEC Settlement Agreement at 2(e) and 6(a).

¹⁵ Joint Stipulation at 9

Our analysis starts with Docket No. 7270, in which we considered FairPoint's request to acquire Verizon's assets. In that proceeding, FairPoint committed to comply with the PAP in Vermont. This commitment was not equivocal; at no point did FairPoint stat that its commitment was subject to the condition that it designed systems that could provide the requisite data. **Rather, FairPoint's commitment was to comply – period. In fact the Department specifically recommended that we adopt the PAP and freeze it in place until we adopt a successor PAP. FairPoint agreed to this condition.**¹⁶

This latest effort by FairPoint to unravel the terms of the currently applicable PAP is directly contrary to these commitments and requires the CLECs to seek enforcement of the terms of the CLEC Settlement in the form of this Motion to Dismiss.¹⁷

Finding no ambiguity in the contract's terms, FairPoint's argues instead that other state PAPs (in the absence of specific agreements between Verizon and CLECs and prior to the merger with FairPoint) have been amended, so New Hampshire should now do likewise. However, this "custom and usage" argument cannot be used to vary the express terms of a contract that were established to reflect unique developments in New Hampshire (e.g., the transfer of wholesale operations from Verizon to FairPoint, a company with no history in the wholesale telecommunications business). The legal basis for dismissing FairPoint's Supplemental Petition could not be more straightforward.

Finally, the Commission typically gives the terms of contracts their "reasonable" meaning.¹⁸ The meaning of what document was "in effect" at a specific point in time could not be more precise as a term of significance in a contract, and a simple review of the Commission's Orders with regard to the PAP establishes which PAP was "in effect" at the time.¹⁹

¹⁶ *Petition of Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications for waiver of certain requirements under the Performance Assurance Plan and Carrier to Carrier Guidelines*, Docket No. 7506, Order dated August 6, 2009 at 9 (emphasis added; internal citations omitted)(also noting that "FairPoint's commitment and our condition created a binding obligation on FairPoint to meet both the C2C standards and the PAP" at pg. 10).

¹⁷ Both the CLEC Settlement Agreement and the Joint Stipulation provide the Commission with jurisdiction to enforce the provisions of the contract. CLEC Settlement Agreement at 9; Joint Stipulation at 12.

¹⁸ *New England Fiber Communications, LLC, Consolidated Proceedings Relating to Payment of Reciprocal Compensation for Calls Terminated to Internet Service Providers*, Order on Motions for Summary Judgment in DT 99-081; DT 99-085; ORDER NO. 24,238 November 12, 2003 at 23-24, citing *Lawyers Title Ins. Corp v. Groff*, 148 N.H. 333, 336, 808 A.2d 44, 48 (2002).

¹⁹ See Order No. 24,504 (dated Aug 19, 2005). To the extent that FairPoint argues that its lack of due diligence should be excused if it believed, mistakenly, that another version of the PAP was in effect, the Commission should nonetheless refuse to unravel FairPoint's contractual commitments. The CLECs removed their objections to the FairPoint/Verizon deal precisely in exchange for the commitment of FairPoint to abide by the PAP "in effect" until they worked in good faith to present a revised PAP. Allowing FairPoint to re-write its agreement unfairly punishes CLECs and leaves CLECs at risk of weakening the conditions guaranteed by CLEC Settlement Agreement.

Developments in New York are totally irrelevant to the enforcement of the unequivocal contractual commitments contained in FairPoint's agreement with these CLECs in New Hampshire. For these reasons, and as a matter of application of contract law, the Commission should determine that FairPoint's actions amount to a breach of the contract reached with these CLECs in the CLEC Settlement Agreement, requiring dismissal of the Supplemental Petition.

III. FairPoint's Supplemental Petition Should be Dismissed Because It Represents a Direct Disregard of Specific Conditions in the Commission's Order approving the Merger.

In its Order approving the transactions between Verizon and FairPoint, the Commission approved the transactions "subject to the terms of the petitioners' settlement with the Staff of the New Hampshire Public Utilities Commission." Approval Order in DT-07-011 at 89. This Order had the effect of incorporating the terms reached between these CLECs and FairPoint, since the CLEC Settlement Agreement was "incorporated into the Staff/FairPoint settlement agreement as "Exhibit 2". Approval Order in DT-07-011 at 29.

The Commission made absolutely clear that the terms of the settlement agreement, including the CLEC Settlement Agreement, were essential to its Order approving the transaction. See pg 59: ("In our judgment, the proposed transaction, as conditioned by the settlement agreement . . ." was supportable).²⁰ Following the hearings, the Commission specifically explained its understanding of the terms of the CLEC Settlement Agreement that it adopted in its Order. The Commission pointed out that the express terms of the CLEC Settlement Agreement bound FairPoint to the terms of the PAP "in effect as of the closing date."²¹ As the Commission also pointed out,

²⁰ FairPoint confirmed through direct testimony that the terms of the CLEC Settlement were intended to be part of the settlement agreement with Staff ("The signatories agreed also to adopt the terms in the CLEC Settlement Agreement, which are attached to – as "Exhibit 2" to this Agreement." Transcript of Feb. 4, 2008 in Docket 07-011 at 42. *See also* Transcript at pg 110 (acknowledging that the parties to the settlement agreement "have agreed to the adoption of the 3-CLEC Settlement for purposes of their settlement in this proceeding . . ."). At the hearings on the settlement agreement, FairPoint provided a detailed explanation of the terms of the settlement agreement, and its plans going forward, noting that "the idea is that they're going to simplify this plan with the three states sometime hopefully before June 2010." Transcript of Feb. 4, 2008 at 43. At no point during the hearings on the Settlement Agreement did FairPoint indicate that it would also seek to change the terms of the existing PAP independently of its negotiations with the CLECs.

²¹ *See* DT-07-011 Order at 30 ("FairPoint also agreed that its regulated subsidiary will be subject to the Performance Assurance Plan *in effect as of the closing date.*"). The Commission also pointed out in the agreement signed by FairPoint, Verizon and Staff, FairPoint agreed to pay for an independent audit of its performance assurance plan or the new simplified plan, if adopted by June 1, 2010. Order at 32. There is no language discussing any further modifications to the PAP to reflect market conditions in New York.

FairPoint agreed to comply with the applicable performance assurance plan and carrier-to-carrier (C2C) guidelines, explicitly authorizing CLECs to seek enforcement of them. FairPoint agreed to work cooperatively with the CLECs and state regulatory authorities on a new performance assurance plan.

FairPoint's attempts to change the PAP are directly adverse to its agreement to abide by the terms of the PAP "in effect" and its agreement to keep the existing PAP unchanged until a new PAP is arranged through a collaborative process. These attempts to capitalize on one side of the benefit of the bargain, while denying the CLECs its benefit of the bargain is in complete disregard to the Order of the Commission implementing the CLEC Settlement Agreement as a necessary condition to its approvals in DT-07-011. Again, FairPoint is required to comply with every order made by the Commission so long as that order remains in force. RSA 365:40. FairPoint's pattern of disregarding the orders of the Commission, again, requires a consideration of the consequences that attend to a utility that continually disregards this Commission's orders: Pursuant to RSA 365:41, a utility that

fails, omits or neglects to obey, observe or comply with any order, direction or requirement of the commission, shall be subject to a civil penalty, as determined by the commission, not to exceed \$250,000 or 2.5 percent of the annual gross revenue that the utility received from sales in the state, whichever is lower.

Instead of following the requirements imposed on FairPoint by the approval order in DT-07-011, FairPoint attempts to ignore its obligation to apply the PAP currently in effect, and through this Supplemental Petition FairPoint seeks to unilaterally change the terms over the objections (and without the collaboration required by the Commission's Order) of the CLECs. This represents a disregard of a valid Commission Order, requiring that the Commission also dismiss the petition as a matter of law.

IV. FairPoint's Supplemental Petition Should Be Dismissed Because It Contains No New Hampshire Specific Data or Testimony.

Even if there were no intervening contract and Order of the Commission concerning the process to implement future changes to the PAP the Commission should dismiss this Supplemental Petition because it is devoid of any analysis or evidence to establish that conditions in New Hampshire warranting the changes proposed by FairPoint. Even under the historic process for amending the PAP that existed before the CLEC Settlement Agreement and

the Approval Order in DT-07-011, the Commission never rubber-stamped the PAP modifications adopted in New York (as FairPoint suggests); rather, the Commission has always used specific conditions in New Hampshire to apply its “authority to order reparations in the form of bill refunds for substandard wholesale service, up to the full value of bill payments made by the affected CLECs to [the incumbent LEC] over the preceding two years.” See Order No. 23,940 at 71.²²

As the Commission pointed out in Order No. 23,940, RSA 370:2 authorizes the Commission to “ascertain, determine and fix adequate and serviceable authorizes the Commission to set the standards for the measurement of quality or other conditions pertaining to the performing of its service . . . and for the measurement thereof.” Order No. 23,940 at 64.²³ Accordingly, when examining the terms of an appropriate PAP, the Commission considers relevant New Hampshire - specific data and does not merely implement the analysis and requirements set by the New York PSC. For example, in the original PAP Order No. 23,940 the Commission increased the at risk dollars to reflect market conditions in New Hampshire (increasing the at risk dollars to 39% of revenue as compared to Verizon – NY’s 36%).²⁴

These references establish that any changes to the PAP that are proposed (in the absence of intervening contracts and orders) cannot proceed without data, analysis and/or testimony

²² Similarly, most of the states in the Verizon region also *independently* examined the conditions in their states *before* making changes to the PAP. See, e.g., Massachusetts (*Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, D.T.E. 01-31-Phase I, Order dated May 8, 2002 (only after finding that Verizon had established a period of excellent service quality to wholesale customers, as represented by Verizon's performance at or above the metrics of “90%” coupled with its “small payments” in bill credits and an audit of the accuracy of the metric data did the DTE approve the recent PAP changes proposed here). West Virginia (*Verizon West Virginia, Inc., Petition in the matter of Verizon's submission of New York Performance Assurance Plan revisions*, Case No. 06-1834-T-P, Order dated May 23, 2007 (only after collaborative settlement agreements changed the dollars at risk and re-allocated dollars to UNE-L CLECs to reflect specific market conditions was the PAP was amended). Virginia (*Ex Parte: Establishment of a Performance Assurance Plan for Verizon Virginia, Inc.*, Case No PUC 2001-00226, Order dated April 20, 2007 at pg. 2-3rejecting Verizon's 65% reduction in dollars at risk as inappropriately based on an analysis in NY with “no comparable analysis done for Virginia” and adjusting based on specific market conditions of CLECs in Virginia established by Staff report). Evidently, New Jersey has never used the New York PAP analysis.

²³ As the FCC pointed out, while the NH PAP “uses the same general standards set forth in the New York Carrier to Carrier guidelines” the FCC also pointed out that New Hampshire exercised its independent jurisdiction and authority “to increase the total amount at risk to bring it into alignment with the 39-percent-of-net-return liability exposure in neighboring states.” *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, Memorandum Opinion and Order, 17 FCC Rcd 18660 (Order Rel. Sept. 25, 2002) at 169, n. 580.

²⁴ In addition, the Commission directed Staff to undertake a state specific analysis of the metrics to be applied to Verizon's service quality to CLECs in New Hampshire. Order No. 23,976 at 14.

describing the specific market conditions (and level of service quality) in New Hampshire. Even when the Commission has been guided by an analysis conducted by the New York PSC it has always been used this as a starting point (not the ending point) to the Commission's independent analysis. By failing to show that the circumstances in New York parallel the market conditions in New Hampshire the FairPoint Supplemental Petition fails to get past the starting line.²⁵

FairPoint's Supplemental Petition is devoid of any New Hampshire information and almost all efforts by the CLECs to obtain New Hampshire specific information in data requests were not answered by FairPoint on the remarkable claim that the information "is not reasonably calculated to lead to the discovery of admissible evidence."²⁶ Instead, FairPoint asserts that the amendments are compelled because they were adopted in New York under conditions that are, by FairPoint's admission, specific to New York CLECs.²⁷ Beyond the fact that there is no New Hampshire data or analysis provided, the conditions in New Hampshire do not even come close to replicating the situation reviewed in New York.

For example, before implementing any changes, the New York Commission established that Verizon's service levels of wholesale quality showed dramatic improvements and that the elimination and reduction of lines of business and reduction in wholesale revenues were sufficient to establish that and that "[t]he overall at risk dollars represents the amount necessary to reasonably ensure that [the ILEC] continues to offer nondiscriminatory wholesale service to competitors." NY Order at 13. The wholesale service quality situation in New Hampshire is, on

²⁵ Even the states that have adopted the Verizon 65% reduction in dollars at risk did so only after an opportunity for collaboration and analysis by the Staff and CLECs. See, e.g., Rhode Island (*Verizon-Rhode Island's Performance Assurance Plan*, Docket No. 3256, Order dated January 11, 2007 at 3 (approved the changes only by noting that "no CLEC has objected to the implementation of the NYPSC's modifications in the Rhode Island PAP" so that the Commission could "presume that the implementation of the NYPSC's modifications in the Rhode Island PAP will not adversely affect CLECs doing business in Rhode Island."); Pennsylvania (*Performance Metrics and Remedies November 2006 Changes*, Docket No. M-00011468F0012, Order dated January 26, 2007, at pg. 3 (changes to the PAP not because they were set by the NY PSC, but due to the fact that the parties together, after negotiations and collaboration, did not oppose Verizon's proposal, stating that it will not change the plan until "the opportunity for collaborative analysis . . . that may related to Pennsylvania operations" is conducted for before any changes to PAP dollars at risk will be considered.

²⁶ See FairPoint's replies to CLEC Data Requests 1-2, 1-3, 1-5, 1-6, 1-8, 1-9, 1-11, 1-12, 1-13, 1-16, 1-17, 1-18, 1-20, 1-21, 1-22, 1-23, 1-24, 1-25, 1-26, 1-27, 1-33, 1-34, 1-35, 137, 1-38, 140, 1-41, 1-42.

²⁷ The New York Commission used the reduction of 65% of at risk dollars after an analysis revealed that Verizon's wholesale revenues decreased by 65% with the elimination of UNE-P and other lines of business that were popular with CLECs in New York. See *Petition filed by Bell Atlantic New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, Case No. 99-C-0949 (Order dated Sept. 20, 2006).. The Commission specifically found that Verizon's UNE revenue in New York had dropped approximately 65% as of June 2006 so that "[a]djusting the PAP's total at risk dollars by approximately 65% is consistent with the drop in UNE revenue." Id at 14. We have no idea what FairPoint's wholesale revenues look like because they refused to answer the question when asked. As for the number of access lines that FairPoint provides to CLECs, FairPoint refused to answer that question also. See FairPoint response to CLEC data request 1-8.

the contrary, deplorable by any measure and even FairPoint recognizes that its request comes at a time of “unsatisfactory” wholesale performance. Supplemental Petition at 8. Yet, at a time of deteriorating service quality in New Hampshire FairPoint incredibly believes that *lowering* that risk dollars will provide *greater* incentive to improve service delivery, an argument that just makes no sense whatsoever. Similarly, FairPoint ignores the undisputed fact that in the NY PAP Order Verizon was obviously the company that was continuing to provide wholesale services under existing arrangements and OSS operations. Here, FairPoint has discarded Verizon’s wholesale operations and seeks (so far with tremendous difficulty) to develop entirely new wholesale operations.

The Commission’s practice of looking closely at the circumstances affecting CLECs in New Hampshire, as well as its preference for allowing companies to first work through changes in a collaborative, as opposed to an adversarial, process is the preferred way of working towards a PAP that is reflective of conditions specific to the Northern New England states, in addition to being the process agreed to by the parties in the CLEC Settlement Agreement. The Commission should reject FairPoint’s attempt to foist the analysis of New York market conditions, and Verizon’s much improved quality of service and financial data, into a fictitious FairPoint organization that reflects poor service quality and a new financial structure.²⁸

V. FairPoint's Supplemental Petition Should Be Dismissed Because There is No Legal Authority to Retroactively Recover Credits Lawfully Applied to CLECs as a Consequence of Poor Service.

FairPoint’s Supplemental Petition also seeks to impose its preferred plan retroactively to January 1, 2009. Incredibly, FairPoint cites to no provision in the PAP nor points to any other authority that would authorize it to force the CLECs to pay back FairPoint credits received for sub-par performance. This attempt seeks to punish CLECs twice, once with the provision of poor service quality that adversely impacts the CLEC business and its customers, and again with a claim to recover CLEC payments already lawfully processed so as to cause even greater financial harm to the CLECs. With no legal basis for its retroactive request the Commission

²⁸ FairPoint’s reference to Verizon’s “unseparated ARMIS net return for the NNE region, based on ARMIS 43-01 reports” is irrelevant to any consideration of FairPoint’s financial conditions today for future PAP discussions. Obviously, FairPoint is the wholesale provider, utilizing its own systems for service quality reporting and with a completely different financial profile than Verizon. CLECs also have no idea what FairPoint’s comparable financial data would show with regard to the items in Verizon’s “ARMIS” filings because FairPoint refuses to tell us.

should rule as a matter of law that FairPoint's Supplemental Petition is flawed and should be dismissed.²⁹

FairPoint's request to go back in time to recover penalty bill credits applied to CLECs is also foreclosed by the doctrine forbidding retroactive rate setting, to the extent that the PAP payments are reflective of an alternative form of adjustments to regulatory rates between FairPoint and its wholesale CLEC customers. Furthermore, given the CLEC Settlement Agreement and the commitment to implement the PAP until changes are further negotiated, FairPoint's request amounts to a request for authority to retroactively alter the terms of the parties Joint Stipulation and the CLEC Settlement Agreement, which is prohibited by both Part 1, Article 23 of the New Hampshire Constitution and the Contract Clause of the U.S. Constitution (precluding laws that have the effect of "impairing the obligation of contracts").³⁰

VI. FairPoint's Supplemental Petition Should Be Dismissed Because the Financial Impacts Alleged in the Petition are Misrepresented and Not Consistent with the Actual Payments.

FairPoint's Supplemental Petition also asserts that the immediate relief is required given that the recent PAP payments are causing substantial financial harm to FairPoint's earnings. After going through a series of hypothetical financial contortions regarding Verizon's net return figures for NNE that have nothing to do with FairPoint, FairPoint then claims that relief is required because it is paying out to CLECs "in excess of \$3 million per month for NNE." Supplemental Petition at 7. FairPoint provided no back up data to support this claim, and certainly no such relief could be imagined without definitive proof. Indeed, it is highly unlikely that FairPoint has actually paid out anything close to this in penalty payments.

For example, in response to the CLECs data request 1-29 (one of the few actually answered) FairPoint's suggests that for the sixth months following cutover to its new systems FairPoint has actually credited a monthly average of less than \$650,0000 per month, distributed

²⁹ To the extent FairPoint seeks authority from the Commission to "set-off" previous penalty payments from future invoices the Commission should also reject this argument. The Commission has determined that it has no authority to order an equitable right of set-off that has not been agreed to by the companies. See *Global NAPs, Inc. - Petition for an Order Directing Verizon-NH to Comply With its Interconnection Agreement Obligation to Pay Reciprocal Compensation Order Granting Petition in Part* DT 01-127; Order No. 24,217 October 2, at pg. 22-23.

³⁰ See *Freedom Ring Communications, LLC d/b/a BayRing Communications, Complaint Against Verizon New Hampshire Re: Access Charges Order on Motions for Rehearing and Motion to Intervene*, DT 06-067; Order No. 24,886 at 15 (August 8, 2008)(citing *Appeal of Pennichuck Water Works*, 120 N.H. at 566.)

among all forty two (42) New Hampshire CLECs.³¹ However, the total monthly payments FairPoint reports to the Commission does not reflect the actual monthly credits that FairPoint issues to CLECs. This is because FairPoint calculates PAP penalties based on wholesale services provided to CLECs in the aggregate, but does not provide any credits for any product to CLECs that have entered into a “Wholesale Advantage” agreement.³²

For example, in July 2009, FairPoint’s total “market adjustment” or penalty was \$1,308,414. However, FairPoint only provided a “credit” of \$637,441 (distributed among 42 CLECs). This means that FairPoint actually paid out to certain CLECs only 48 % of what FairPoint asserts as the actual “market adjustment” or penalty, with the remaining 52% that was allocated to CLECs with Wholesale Agreements remaining in FairPoint’s hands. Hence, the actual dollars being distributed to the remaining 42 CLECs, while reflective of poor service, is quite small, representing a substantial reduction in what is reported as “at risk” dollars, is of little financial significance to FairPoint’s financial condition in New Hampshire, and would not come close to compensating CLECs and its customers for the adverse service quality being provided by FairPoint.

VII. CONCLUSION

FairPoint’s Supplemental Petition ignores several prominent developments in New Hampshire and proceeds on the assumptions that, where convenient it is not the same company as Verizon, yet when it is convenient to mask FairPoint’s agreements and obligations FairPoint suddenly asserts that it is Verizon. The Commission should refuse this schizophrenic approach that appears to be deployed in an attempt to ignore the responsibilities that are FairPoint’s alone: namely, the commitments made in CLEC Settlement Agreement, as supported in the Joint Stipulation, as incorporated into the Staff/FairPoint settlement agreement, and as ultimately made specific conditions to the Commission’s Approval Order. All these steps established as a matter of law that the “New York” process for amending the PAP are no longer binding or relevant to New Hampshire. The PAP will be changed in a collaborative process that focuses on market conditions in New Hampshire, not New York.

³¹ FairPoint response to CLEC 1-29 for the months of January – July 2009 (average monthly payments made, excluding February 2009 where a waiver was granted).

³² This is confirmed in FairPoint’s responses to CLEC Data Request 1-29; *see also* response to One Communications Data Request 1-8.

FairPoint's Supplemental Petition ignores that it is contractually bound to continue the PAP that is "in effect" in New Hampshire until such time as a new PAP is prepared as part of a collaborative process agreed to with CLECs and established by the Approval Order. FairPoint's Supplemental Petition ignores that the Commission ordered these conditions as part of its approval order in DT-07-011. FairPoint's Supplemental Petition ignores that changes adopted in other states to amend the PAP all involved a continuation of wholesale operations by the same company, Verizon, utilizing the same systems that evolved over many years, and that are providing satisfactory service to CLECs under circumstances that are completely different in New Hampshire where, in FairPoint's own words, wholesale service is "unsatisfactory." And, previous decisions by the Commission confirm that the Commission will not even consider changes to any applicable PAP without careful examination of the market-specific circumstances (and quality of services) that affect the CLECs in New Hampshire. Finally, FairPoint's request to recover back bill credits made to CLECs due to poor service insults the integrity of the PAP, the Commission's orders and its contractual commitments in the CLEC Settlement Agreement and Joint Stipulation.

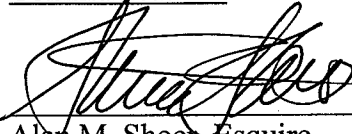
The Commission has now been faced with a series of disruptive efforts by FairPoint to avoid its obligations with regards to the PAP, its agreements and the orders establishing wholesale conditions by the Commission. The Commission should recognize that this effort is just one more attempt by FairPoint to evade its obligations and commitments, to the detriment of the CLECs. The Commission should use this opportunity to once again reiterate that the process agreed to for changing the PAP going forward is not the process that applies to Verizon's continuing services in other states but rather is now tied to FairPoint's OSS and wholesale operations. This collaborative effort to develop a new and simplified PAP focuses on the market conditions facing CLECs in this region (and certainly not in New York). Indeed, the very same changes proposed by FairPoint in this Supplemental Petition are before the CLECs for negotiations in the collaborative, so the Commission can rest assured that FairPoint's proposal will be fully examined in good faith by the applicable CLECs.³³

³³ See FairPoint Industry Notification – Accessible Letter PRC -0029-09142009 and attached red-line PAP proposal, dated September 19, 2009 (proposing the exact same changes proposed by FairPoint in its Supplemental Petition for a reduction of 65% at risk dollars).

Finally, FairPoint's Supplemental Petition should be dismissed because it is contrary to established legal requirements, and represents an unnecessary waste of effort, expense and time that should be devoted to the collaborative process to develop a simplified PAP with NNE specific metrics that can be presented to the Commission for approval, or resolution on whatever narrow issues remain. Until that process is completed the PAP "in effect" in New Hampshire must be enforced and implemented by FairPoint so as to provide what little protection is left to CLECs that are struggling to maintain normal business operations in the face of unprecedented poor wholesale service.

Respectfully submitted,

Freedom Ring Communications d/b/a BayRing
Communications



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Dated: September 22, 2009

509054_1.doc

ATTACHMENT "A"

Settlement Stipulation Among FairPoint Communications, Inc., Freedom Ring Communications, LLC d/b/a BayRing Communications, LLC, segTel, Inc. and Otel Telekom, Inc.

(including the terms of the CLEC Settlement Agreement)

DEVINE
MILLIMET

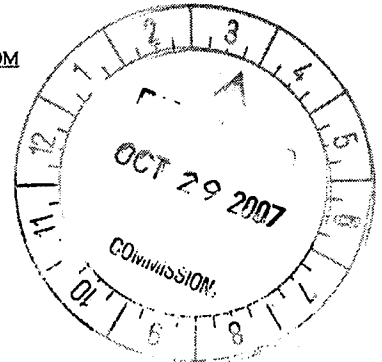
ATTORNEYS AT LAW

October 29, 2007

PATRICK C. MCHUGH
603.695.8572
PMCHUGH@DEVINEMILLIMET.COM

By Hand Delivery

Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit St., Ste. 10
Concord, NH 03301



Re: DT 07-011 Verizon New England Inc., Bell Atlantic Communications Inc.,
NYNEX Long Distance Co. Verizon Select Services Inc., and Fairpoint
Communications, Inc.

Dear Ms. Howland:

Enclosed for filing are eight (8) copies of the complete Joint Settlement Stipulation (the "Stipulation"), among FairPoint Communications, Inc., Freedom Ring Communications, LLC d/b/a Bayring Communications, LLC, segTEL, Inc., and Otel Telekom, Inc. Please note that the Stipulation now includes Exhibit 2. This exhibit was not available at the time the parties filed the original Stipulation with the Commission on October 18, 2007.

A compact disk containing same is also enclosed.

Please feel free to contact Attorney Frederick Coolbroth or me with any questions or concerns.
Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Patrick C. McHugh". The signature is fluid and cursive, with the first name "Patrick" and last name "McHugh" clearly distinguishable.

Patrick C. McHugh

PCM:rad

cc: Office of Consumer Advocate (via hand delivery)
Electronic Service List

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-011

VERIZON NEW ENGLAND INC., BELL ATLANTIC COMMUNICATIONS INC.,
NYNEX LONG DISTANCE CO., VERIZON SELECT SERVICES INC.,
AND FAIRPOINT COMMUNICATIONS, INC.

Transfer of Assets to FairPoint Communications, Inc.

**SETTLEMENT STIPULATION AMONG
FAIRPOINT COMMUNICATIONS, INC., FREEDOM RING
COMMUNICATIONS, LLC D/B/A
BAYRING COMMUNICATIONS, LLC, SEGTEL, INC., AND
OTEL TELEKOM, INC.**

FairPoint Communications, Inc. ("FairPoint") and Freedom Ring Communications, LLC d/b/a/BayRing Communications, LLC ("BayRing"), segTEL, Inc. ("segTEL") and Otel Telekom, Inc. ("Otel") (FairPoint, BayRing, segTEL and Otel each being a "Party" and collectively the "Parties") hereby submit this Settlement Stipulation reflecting their agreed resolution of the issues among them in this Docket and, in support thereof, state as follows:

1. FairPoint has agreed to acquire the incumbent local exchange operations of Verizon Communications Inc. (individually or with its affiliates, "Verizon") in the States of Maine, New Hampshire and Vermont (the "Acquired Properties"), which will be accomplished by Verizon's transfer of such Acquired Properties to affiliates of Verizon ("Telco" and "Newco") directly or indirectly held by another Verizon affiliate ("Spinco") and the merger of Spinco with and into FairPoint (which transfer, merger, and

all related transactions are collectively referred to herein as the "Merger"). References to "FairPoint" following the Merger are to the surviving corporation, including its affiliates and subsidiaries, that will result from the Merger.

2. Pursuant to a Transition Services Agreement between affiliates of Verizon NE and FairPoint (the "TSA"), FairPoint will use certain services and systems provided by Verizon during a period beginning on or about the effective date of the Merger (the "Closing Date") and, with certain exceptions, ending on the date of cutover from Verizon's to FairPoint's systems as contemplated by the TSA (the "Cutover").

3. FairPoint and Verizon are seeking all necessary approvals of the Merger from the Federal Communications Commission (the "FCC") (WC Docket 07-22 *et al.*), the Maine Public Utilities Commission ("MPUC") (Docket 2007-67), the Vermont Public Service Board ("PSB") (Docket 7270), the New Hampshire Public Utilities Commission ("NHPUC") (Docket DT 07-011, and collectively with the cited Maine and Vermont dockets, the "Dockets"), and such other governmental authorities as may be required by law (collectively, the "Merger Review Proceedings").

4. Each of BayRing, segTEL and Otel (collectively, the "CLEC Coalition") are in the business of providing telecommunications services as a competitive local exchange carrier ("CLEC") and an interexchange carrier ("IXC") in New Hampshire, and has intervened in Docket DT 07-011 before the NHPUC.

5. Under the terms of the Merger, Telco or its affiliate will either enter into a separate agreement with each member of the CLEC Coalition effective as of the Closing Date, adopting the same terms of the inter-carrier agreements between Verizon and said members of the CLEC Coalition effective in the Acquired Properties' service areas, or

Telco or its affiliate will be assigned and will assume such agreements and be a party to them as of the Merger closing, and Telco will adopt or concur in Verizon's federal and state access tariffs and wholesale tariffs effective in the Acquired Properties' service areas, and such agreements and tariffs as collectively govern the telecommunications services currently being provided by Verizon to the CLEC Coalition, each as a CLEC or IXC in New Hampshire (the "Services"). FairPoint will also assume the Verizon agreements governing conduit use and pole attachments in New Hampshire.

6. The Parties want to provide for continuity in the provision of the Services following the Merger, to minimize the expense and uncertainty of litigation in the Merger Review Proceedings, to amicably resolve any differences between them, and to allow FairPoint and Verizon the opportunity to promptly secure approval in the Merger Review Proceedings and consummate the Merger.

7. The CLEC Coalition has set forth in Exhibit 2 attached hereto and made a part hereof a list of all the agreements and tariffs in effect as of the date of this Settlement Stipulation pursuant to which each member of the CLEC Coalition purchases any of the Services (the "Inter-Carrier Agreements" or the "ICAs"). Each member of the CLEC Coalition consents to each such assignment and acknowledges that FairPoint only has the rights to assume or adopt certain classes of agreements of certain Verizon affiliates, and only to the extent that such agreements are operative in New Hampshire. Therefore, the Parties agree that Exhibit 2 identifies the definitive set of the New Hampshire ICAs being assumed or adopted by FairPoint as part of the Merger (including any amendments, modifications and extensions currently in effect) (the "Adopted Agreements"), and that the Adopted Agreements (to the extent they are operative in New Hampshire) will be

governed by this Settlement Stipulation effective as of the Closing Date. If, following the execution of this Settlement Stipulation, either Party discovers an additional ICA that was omitted from Exhibit 2, that Party shall notify the other Party and, upon confirmation that the ICA is properly included, the Parties shall amend Exhibit 2 accordingly.

8. FairPoint and the CLEC Coalition agree that, as of the closing date of the Merger, Telco (or the appropriate FairPoint affiliate) will provide the Services to the CLEC Coalition, and the Parties will exchange traffic with each other and compensate each other, in New Hampshire by virtue of the wholesale tariffs and the Adopted Agreements identified on Exhibit 2, and in all other respects comply with the terms and conditions of such agreements, except as expressly modified in the CLEC Settlement Conditions attached as Exhibit 1.

9. The Parties agree that the terms of this Settlement Stipulation are part of a comprehensive settlement agreement between the Parties and agree to cooperate in the implementation thereof and to seek approval of the CLEC Settlement Conditions in New Hampshire. The agreements made herein and in the attached CLEC Settlement Conditions are subject to the condition that this Settlement Stipulation shall not be enforceable unless approved in their entirety by the NHPUC as a condition of the Commission's approval of the merger. The Parties further agree not to take any actions in any forum that would reasonably appear to contradict or diverge from the terms set forth in these CLEC Settlement Conditions, except to the extent that the Parties are required to file pleadings in jurisdictions outside of New Hampshire in the event the Parties hereto can not reach a multi-state settlement.

10. Each of the Parties agrees to fully support, through its filings, testimony, and other proceedings in Commission Docket DT 07-011, the approval of this Settlement Stipulation by the Commission, as representing the good faith negotiated resolution of the issues and concerns raised in said docket by the CLEC Coalition with respect to FairPoint and the intent of FairPoint to fully and adequately address those issues and concerns upon FairPoint's completion of the Merger. As a result, and subject to the Commission's approval of the terms hereof, the CLEC Coalition hereby stipulates that it supports the Merger with the conditions set forth in Exhibit 1 attached hereto and made a part hereof (the "CLEC Settlement Conditions"). From and after the date hereof, each member of the CLEC Coalition shall refrain from presenting or cross-examining FairPoint and Verizon witnesses in Docket DT 07-011 other than (i) to set forth the Parties' respective pre-settlement legal positions and (ii) in support of this Settlement Stipulation and approval of the Merger with the CLEC Settlement Conditions. Existing testimony filed to date by or on behalf of the CLEC Coalition would not need to be withdrawn and, instead, would offered for the purposes set forth in this Section 10. Notwithstanding anything in this Section 10 to the contrary, the CLEC Coalition acknowledges that FairPoint (i) has not settled with each and every Intervenor in Docket DT 07-011 which may be considered a CLEC, (ii) must present evidence and testimony before the NHPUC as may be necessary to counter any claims or legal positions asserted by other Intervenor or the NHPUC Staff inconsistent with the terms of this Settlement Stipulation, the CLEC Settlement Conditions or the Merger, and (iii) must present evidence and testimony before the NHPUC in order to meet its burden of proof in seeking the NHPUC's approval of the Merger and the transactions contemplated thereby.

11. In the event that the NHPUC rejects the CLEC Settlement Conditions, or adopts the CLEC Settlement Conditions with modifications that any Party, in its reasonable discretion, determines to be materially adverse to such Party, such Party may seek reconsideration of such NHPUC decision, and the other Party reserves its right to object to any such motion for reconsideration. Neither of the Parties is required to seek or support reconsideration or review of any such decision by the NHPUC. If the CLEC Settlement Conditions or this Settlement Stipulation is rejected in whole or in part by the Commission, except as otherwise set forth within Section 8(c) of the CLEC Settlement Conditions, each Party shall have the same rights as each would have had absent this Settlement Stipulation.

12. This Settlement Stipulation and the CLEC Settlement Conditions (i) shall be enforceable by the NHPUC upon approval in their entirety by the NHPUC, except as otherwise set forth within Section 8(c) of the CLEC Settlement Conditions (provided that if the Merger does not close, this Settlement Stipulation and the CLEC Settlement Conditions shall be null and void); (ii) are entered into for settlement purposes; (iii) do not contain or constitute an admission by any Party of any factual or legal issue or matter; and (iv) shall not be used as evidence in any proceeding unrelated to the Merger or the enforcement of the terms of this Settlement Stipulation or the CLEC Settlement Conditions.

13. The Parties hereto acknowledge and understand that PUC 203.20(e) requires settlements and stipulations to be filed with the Commission "no less than 5 days prior to the hearing..." Nonetheless, the Parties hereby request a waiver of said rule pursuant to the exceptions provided within PUC 203.20(f). The Parties hereby advise the

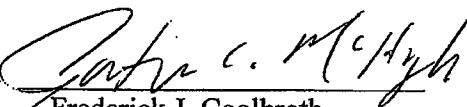
Commission that (i) the Parties endeavored in good faith to attempt to resolve their differences in a time frame which would have allowed for the timely filing of this Settlement Stipulation prior to the start of the hearings on October 22, 2007, (ii) certain of the issues addressed herein involve complex, multi-state issues, and (iii) the negotiation and settlement of the issues herein consumed an extensive amount of time. The Commission's acceptance of this filing promotes the orderly and efficient conduct of the proceedings in that the Parties have resolved issues in dispute that otherwise would be litigated during the hearings. Upon information and belief, accepting this Settlement Stipulation would not impair the rights of any party to this proceeding.

Executed as of this 17th day of October, 2007 by counsel thereunto duly authorized.

FAIRPOINT COMMUNICATIONS, INC.

By Its Attorneys:

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

By: 
Frederick J. Coolbroth
Patrick C. McHugh

FREEDOM RING COMMUNICATIONS,
LLC D/B/A BAYRING
COMMUNICATIONS, LLC

By Its Attorneys:

SCOTT SAWYER, ESQ.

By: 

Scott Sawyer

SEGTEL, INC.

By Its Attorneys:

SCOTT SAWYER, ESQ.

By: 

Scott Sawyer

OTEL TELKOM, INC.

By Its Attorneys:

SCOTT SAWYER, ESQ.

By: 

Scott Sawyer

CLERK SECTION

EXHIBIT 1

**STIPULATED SETTLEMENT TERMS BY AND AMONG
FAIRPOINT COMMUNICATIONS, INC. ("FAIRPOINT") AND
FREEDOM RING COMMUNICATIONS, LLC D/B/A/BAYRING COMMUNICATIONS, LLC
("BAYRING"), SEGTEL, INC. ("SEGTEL"), OTEL TELEKOM, INC. ("OTEL") AND NATIONAL
MOBILE COMMUNICATION CORPORATION D/B/A SOVERNET COMMUNICATIONS
(EACH A "CLEC" AND COLLECTIVELY THE "CLECS") (EACH OF FAIRPOINT AND EACH CLEC
BEING A "PARTY" AND ALL OF THEM COLLECTIVELY THE "PARTIES")**

1. 251 Obligations

- a. FairPoint will not dispute that the affiliate that will own and operate the former Verizon properties in Maine, New Hampshire and Vermont (hereinafter "Telco") will be an incumbent local exchange carrier (ILEC) subject to all of the obligations of Section 251 of the Communications Act of 1934, as amended (the "Communications Act" or the "Act"), including but not limited to the obligation to provide access to unbundled network elements (UNEs) wherever "impairment" exists pursuant to Sections 251(c)(3) and 251(d)(2)(B) of the Communications Act, and the requirement to abide by the negotiation/arbitration process prescribed in section 252 of the Communications Act.
- b. FairPoint will not now or in the future seek or assert "rural telephone company" classification for Telco for purposes of the Section 251(f)(1) rural exemption from Section 251(c) of the Act. This condition does not prevent FairPoint from seeking or accepting designation of Telco as "rural" solely for purposes of qualifying for universal service funding or similar support from federal or state programs.
- c. 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. For avoidance of any doubt, this includes Telco's local number portability obligations under Section 251(b)(2).
- d. For three years following the closing date of the Merger, FairPoint will not reclassify as non-impaired any of Telco's wire centers in Maine, New Hampshire or Vermont not currently classified as non-impaired. Furthermore, during such three-year period, Telco will not withdraw any DS1 transport unbundled network elements between the Nashua and Manchester wire centers. Thereafter, Telco will give separate notice if and when it decides to withdraw unbundled access to such transport in accordance with applicable tariff, contractual and regulatory notice requirements.

2. Additional Items to be Provided by FairPoint.

- a. Notwithstanding any determination by the Federal Communications Commission ("FCC") in WC Docket 07-22 as to whether or not Telco is a Bell Operating Company ("BOC"), FairPoint will cause Telco to provide as "Settlement Items" all Section 271(c)(2)(B) "competitive checklist" network elements and services to the extent that the FCC rules or has ruled that BOCs in general are required to provide such elements and services, now

or in the future, at rates, terms and conditions that are just and reasonable, and not unreasonably discriminatory, as if governed by Sections 201(b) and 202(a) of the Communications Act as interpreted by the FCC, subject to the rights of negotiation and of review set forth in section 2(c) below. If the U.S. Supreme Court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007), then Telco will provide as "Settlement Items" such Section 271(c)(2)(B) elements and services as BOCs generally may be required to provide under applicable law. In the event the FCC through a final order delegates to the State of Vermont or the State of New Hampshire the authority to determine what elements and services must be provided by BOCs under Section 271(c)(2)(B), then this agreement shall be modified accordingly. Nothing herein shall limit the right of Telco or any of the Parties hereto to seek reconsideration or review of any such FCC order.

- b. Telco may cease providing any Settlement Item in the event that the FCC, a state utility regulatory commission or a court (in each case having competent jurisdiction and authority) (each a "Governmental Authority") determines that such item is not required to be provided pursuant to applicable law.
- c. In the event a CLEC requests in writing that Telco provide a Settlement Item required to be provided under section 2(a), and not the subject of a determination described in section 2(b), Telco and the CLEC will engage in good faith negotiations to reach agreement on the rates, terms and conditions pursuant to which Telco will provide such Settlement Item. In the event that the Parties are unable to reach agreement within nine months from the date FairPoint receives such written request, the CLEC shall have the right to seek resolution of any disputed rates, terms or conditions from the state utility regulatory commission in the state in which the Settlement Item is sought. The Parties agree that the FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Communications Act and the rates, terms and conditions at which such item must be provided by BOCs shall govern the state's determinations in any such dispute resolution proceeding. Each Party to such dispute shall have the right to seek review in a court of competent jurisdiction of any state utility regulatory commission action relative to any Settlement Item, including any state utility regulatory commission order asserting that Telco is required to provide an element or service pursuant to subsection (a) above, or setting rates, terms or conditions or asserting a pricing standard for any Settlement Item. None of the Parties will challenge the jurisdiction of the court of competent jurisdiction in which the dispute arises to apply FCC precedent to decide any such review proceeding that may be initiated hereunder. In addition, in any such review proceeding, none of the Parties will challenge the jurisdiction of the state utility regulatory commission to resolve disputes over Settlement Items as provided in this section 2(c) provided that the Parties have first engaged in good faith negotiations as required herein, and provided further that in

any such dispute resolution process the state applies the FCC's rules, regulations, orders and policies applicable to the definition of the corresponding item under Section 271(c)(2)(B) of the Communications Act and the rates, terms and conditions at which such item must be provided by BOCs as agreed herein (or such alternative body of law, if any, as may be identified by the U.S. Supreme Court if that court should reverse the decision of the U.S. Court of Appeals for the First Circuit in *Verizon New England, Inc. v. Maine Public Utilities Commission*, Case Nos. 06-2151, 06-2429 (slip op. Sept. 6, 2007)).

- d. Without limiting FairPoint's obligations under subsection (a), FairPoint additionally will provide wholesale DSL and line sharing where available (provided that the purchaser employs non-interfering technology) for a three-year period, under the terms set forth herein.
 - i. Wholesale DSL will be provided solely for the purpose of a CLEC's provision of end-user DSL service, for three years following the Merger closing date, at a rate not to exceed 82% of FairPoint's lowest-priced retail rate advertised for standalone residential DSL service in the service area of the acquired properties (or in the state, if rates differ by state).
 - ii. At the CLEC's option, line sharing will be provided either (A) at rates set in existing agreements, for the duration of the respective agreements and for an extended term expiring on the date which is three years following their stated expiration date (or three years following the Merger closing date in the case of agreements that remain in effect on a month-to-month basis as of the Merger closing date) at the price specified in the applicable agreement, or (B) for a period of three years following the Merger closing date (pursuant to a tariff provision providing that the offering shall expire by its own terms upon the expiration of such three-year period, unless FairPoint voluntarily extends the term) at a tarified rate of \$30.00 per line (non-recurring charge), plus a recurring charge of \$6.00 per line per month (non-recurring charges will apply only to lines for which line sharing is not being provided by Verizon as of the Merger closing date).
 - iii. The Parties agree that this offering is the product of settlement negotiations and does not constitute an admission by FairPoint or Telco that either wholesale DSL or line sharing is required to be offered by BOCs under Section 271(c)(2)(B) of the Communications Act or as a Settlement Item; if it should be determined that either offering is so required, the Parties agree that the rates provided herein shall constitute rates that are just and reasonable, and not unreasonably discriminatory, within the meaning of Section 201(b) and 202(a) of the Communications Act and Section 2(a) above, for the three-year term described herein.
 - iv. Telco's obligations under this subsection 2(d) are independent of any obligation Telco has to provide network elements or services under applicable law and will survive any successful challenge to any obligations to provide network elements.

- v. At the end of the three-year period referenced herein, Telco may, at its sole discretion, withdraw any offering of line sharing or wholesale DSL pursuant to this section that may then be in effect, including in any state tariff or SGAT. Telco will provide at least six months' advance notice of any withdrawal of line sharing or wholesale DSL, and the CLECs agree that such notice will constitute adequate and reasonable notice under applicable law.
- e. Telco will be subject to the Performance Assurance Plan (PAP) in effect as of the Merger closing date (see section 6 below) and will not challenge the jurisdiction of the state utility regulatory commission to enforce the PAP.
- f. Nothing herein constitutes an admission by FairPoint that Telco is a BOC within the meaning of the Communications Act or applicable regulations or should be treated as a BOC for any purpose other than as FairPoint expressly agrees in this Settlement Agreement.

3. OSS

- a. FairPoint has prepared a timeline for CLEC education and training, testing and cutover, a copy of which is attached hereto as Attachment 1 and incorporated herein by reference. Attachment 1 shall govern FairPoint's WOSS (hereinafter defined) testing, except as may otherwise be determined by the three state regulatory commissions in their approval of the Merger. As set forth in Attachment 1, FairPoint:
 - i. has provided wholesale customers with a Webex demonstration of the WISOR system;
 - ii. will provide wholesale customers with a preliminary wholesale operations support systems ("WOSS") interface test plan;
 - iii. will provide an opportunity for CLECs and a single regulatory staff consulting firm expected to be chosen by agreement of the three state utility regulatory commissions from among their respective consulting firms participating in the docket to provide input into the WOSS acceptance criteria (the "Readiness Criteria"), which will consist of objective test defect severity level classification criteria that the regulatory staff consulting firm and FairPoint agree will establish objective measures for testing whether FairPoint's systems are ready for Cutover and whether FairPoint's new WOSS architecture functions as proposed, and thus will indicate whether FairPoint is ready to provide Verizon with a "Notice of Readiness to Cutover" under the terms of the TSA;
 - iv. will provide a final CLEC testing schedule;
 - v. will develop contingency plans for specified workaround situations and
 - vi. will provide a final Cutover schedule.

- b. It is the Parties' intention that a single set of Readiness Criteria will be developed for all three states. The CLECs hereby agree to (i) abide by and accept the Readiness Criteria as may be agreed to by the Governmental Authorities of the three states and (ii) refrain from advocating for Readiness Criteria testing other than as set forth herein. In the event the Governmental Authorities of the three states can not agree on a common Readiness Criteria, then the Readiness Criteria established by the applicable state utility commission shall control.
- c. FairPoint will identify the account team or single point of contact assigned to each CLEC.
- d. FairPoint will be responsible for the performance of all of Telco's WOSS post-Cutover, in accordance with the terms of the PAP. All CLECs, regardless of provisions in their interconnection agreements, will have the right to seek enforcement of the PAP by the applicable state commission (see section 6 below).
- e. Telco will not pass through to CLECs any acquisition expenses, fees and expenses under the Transition Services Agreement ("TSA") or training expenses incurred by FairPoint in connection with the Merger or the transition to new operating systems. FairPoint reserves the right to seek inclusion in future Telco rate cases and cost studies (including but not limited to a future UNE rate proceeding) those capitalized costs arising out of development of new systems which replace systems used as of the Merger closing date by Verizon or its affiliates (including those replacing systems Verizon obtains from third parties), subject to normal review and regulation by the applicable state utility regulatory commission. Nothing herein constitutes an admission by any of the CLECs that Telco is entitled to any inclusion of such costs in its future rates or costs.
- f. FairPoint will provide, without charge, training in accordance with the training plan referenced in Attachment 1. FairPoint will continue to make available to CLECs the types of information that Verizon currently maintains and disseminates to CLECs regarding Verizon's systems and business rules and practices, including the CLEC Manual, industry letters and the change management process. Any CLEC that currently does not receive such materials (for example, because it takes service from the wholesale tariff without an interconnection agreement) may receive such materials upon request. FairPoint will maintain the CLEC user forum process currently employed by Verizon.
- g. FairPoint will arrange a meeting with wholesale customers approximately six months following cutover to discuss customer concerns and questions. Meeting participants will be expected to inform FairPoint of concerns and questions in advance of the meeting so as to enable FairPoint to respond at or before the meeting.

4. Existing Agreements, SGATs and Wholesale Tariffs

- a. 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. Such extension shall not affect the right of a CLEC to terminate an agreement pursuant to the agreement's provisions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of such extended term.

- b. 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. Nothing herein shall affect the right of either party to extend such agreements further on a month-to-month basis following the expiration of such three-year term, if the terms of the agreement permit such unilateral month-to-month extensions. Either party may commence negotiation of a new agreement within nine months prior to the expiration of the three-year extension term.
- c. FairPoint will cause all volume pricing provided for in either type of agreement described above, or in tariff-based volume discount programs, to be pro-rated so such volume pricing terms will be deemed to exclude volume requirements from states outside of the three-state area served by Telco following the Merger closing date. FairPoint will work with CLECs and Verizon to provide them the same benefits in the aggregate as those provided by the existing Verizon volume discount arrangement; however, in the event that a CLEC chooses to reduce its spending in the Telco service territory post-closing, the Parties acknowledge and agree that FairPoint and its affiliates will not be required to hold such CLEC "harmless" in the amount of credit it receives under such volume discount arrangement.
- d. FairPoint will offer three-year agreements for tandem transit service, with rates capped at the current tandem transit rates for wholesale customers that agree to a three-year minimum term commitment.
- e. FairPoint will adopt and will cap existing rates under wholesale tariffs (e.g., Tariff 84 in New Hampshire) in effect as of the Merger closing date at then-current levels for a period of three years following the Merger closing date, and FairPoint will also freeze the wholesale discount offered under total service resale ("TSR") tariffs (e.g., Tariff 86 in New Hampshire) in effect as of the Merger closing date at then-current levels for three years following the Merger closing date, in each case unless FairPoint is required by law to modify such rates (for example, due to a mandated revenue-neutral rate rebalancing). FairPoint may make filings to initiate a proceeding to increase wholesale rates or to decrease a wholesale discount prior to the expiration of such three-year period provided that the effective date of such rate increase or discount decrease will be on or after the expiration of such three-year period. Services available pursuant to said tariffs, as may be amended from time to time in accordance with applicable law (but subject to the terms of this agreement), shall be made available to the CLECs in accordance with the terms thereof.
- f. FairPoint shall adopt the Vermont SGAT in effect as of the Merger closing

date and the Vermont SGAT shall remain in place with rates capped at then-current levels for three years following the Merger closing date. Services available pursuant to said SGAT, as may be amended from time to time in accordance with applicable law (but subject to the terms of this agreement), shall be made available to the CLECs in accordance with the terms thereof.

- g. Following the closing date of the Merger, FairPoint will seek to make Telco a party in Maine PUC Docket No. 2002-682 and, if permitted by the Maine Public Utilities Commission ("PUC"), Telco will be bound by the record in that proceeding created by Verizon for the establishment of tariffed rates in Maine for unbundled network elements required under Section 251(c) of the Communications Act.
- h. No CLEC will advocate any of the following to be effective within the three years following the Merger closing date: (i) any decrease in any of Telco's rates for tandem transit service, (ii) any decrease in Telco's rates for wholesale services under wholesale tariffs, (iii) any decrease in Telco's rates under the Vermont SGAT, or (iv) any increase in the wholesale discount offered under TSR tariffs. This agreement shall not preclude a Party from advocating any position in a rulemaking of general applicability to the ILEC sector, such as the FCC's Docket 05-25. Further, nothing herein shall preclude a Party from challenging a new service offering in any state or federal tariff proceeding. Notwithstanding anything herein to the contrary, FairPoint shall have the same rights and obligations as Verizon in connection with and arising out of any final order which may be issued within NHPUC Docket 06-067.

5. Access Services Provided Under Tariff

- a. Telco will not advocate any increase in any of its tariffed rates for interstate or intrastate tariffed special access circuits to be effective within the three years following the Merger closing date, unless required by law. Telco may commence a proceeding or proceedings seeking an increase in such rates prior to the expiration of such three-year period provided that the effective date of the new rates shall not be before the end of such three-year period.
- b. Telco will not withdraw any of its currently tariffed interstate or intrastate offering of special access circuits offering for three years after the Merger closing date, unless required by law. This agreement shall not prevent Telco from withdrawing other services offered under the special access tariffs, including high-speed, packetized broadband services previously tariffed by Verizon but authorized by the FCC to be withdrawn from the interstate special access tariff.
- c. No CLEC will advocate any decrease in any of Telco's interstate or intrastate tariffed special access rates to be effective within the three years following the Merger closing date. This agreement shall not preclude a Party from advocating any position in a rulemaking of general applicability to the ILEC sector, such as the FCC's Docket 05-25.

6. Service Quality & Performance Assurance Plan

- 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 those documents.
- b. Any CLEC may seek enforcement of the applicable PAP, even if such right is not expressly incorporated in the interconnection agreement, tariff or SGAT pursuant to which the CLEC purchases service.
- c. After the Merger closing date, FairPoint will work cooperatively with the CLECs and state utility regulatory staff in good faith to develop and implement a simplified, uniform PAP applicable to Telco in Maine, New Hampshire and Vermont. FairPoint agrees to begin this process by proposing for consideration by the CLECs a revised PAP that could be implemented in all three states.
- d. Reporting obligations and penalties under the PAP or C2C Guidelines will be temporarily suspended on the day of the cutover (the last business day of the month in which cutover occurs) and for the following one month (i.e., a total of one month plus one to three days). All Parties to this settlement agree not to oppose a request by FairPoint for a waiver of the PAP provisions as necessary to effectuate this temporary suspension. FairPoint shall take commercially reasonable steps to ensure that adequate personnel are available to process wholesale orders during the transition period and will structure the transition so as to be able to demonstrate that parity is maintained in the processing of retail and wholesale orders.
- e. FairPoint will comply with number porting intervals and trunk ordering rules and intervals as may be set forth within existing tariffs, interconnection agreements or other agreements, as the case may be. Otherwise, FairPoint will comply with industry standard number porting intervals and trunk ordering rules and intervals.

7. Forbearance

- a. FairPoint will not file any new forbearance petition seeking relief from any of Telco's Section 251 obligations or obligations to provide access to Settlement Items in any wire center in Maine, New Hampshire or Vermont for three years after the Merger closing date. FairPoint shall not be prohibited from pursuing rights of review or clarification or from enforcing any forbearance grant arising from a prior Verizon petition, with the exception that if the pending petition by Verizon seeking forbearance for the Boston MSA (which includes Strafford and Rockingham Counties in New Hampshire) is granted in whole or in part as to any wire centers in the acquired territory, FairPoint will not give effect to such forbearance for three years following the Merger closing date. In such event, the Parties agree that the three-year period following the Merger closing date shall be deemed to constitute a reasonable transition period, and no Party shall seek any additional transition beyond such three-year period before FairPoint may give effect to any such forbearance authority.

- b. FairPoint will not file any new forbearance petition seeking non-dominant treatment for Telco in the acquired territory for three years after the Merger closing date. Nothing herein will restrict FairPoint from enforcing any forbearance from dominant carrier regulation already granted to Verizon (by operation of law or otherwise) in the acquired territory.

8. Mutual Obligation to Support the Settlement Agreement and to Urge the Commission/Board to Approve It

- a. Each Party agrees to support the settlement terms set forth herein (the "CLEC Settlement Conditions"), to advocate approval of the Merger without additional wholesale conditions, and to urge the state utility regulatory commission to incorporate the CLEC Settlement Conditions into any final order approving the transaction. Without limiting the foregoing, each Party agrees to join in the filing of a joint Settlement Stipulation in New Hampshire Docket DT-07-011, and to file its own brief in Vermont Docket No. 7270, in each case indicating the Parties' support for approval of the Merger subject to the CLEC Settlement Conditions. In response to any inquiry into such Party's position in one or more of the Dockets, each Party will express its support for approval of the Merger subject to the CLEC Settlement Conditions, and its belief that no other wholesale conditions are necessary or in the public interest. Notwithstanding anything in this Section 8 to the contrary, in the event the New Hampshire Public Utilities Commission denies the waiver sought by the Parties in the Joint Stipulation to which this agreement is attached, then for purposes of the proceedings in Docket DT 07-011, the Parties are free to resort to their respective pre-settlement litigation position(s).
- b. The Parties agree that these terms are part of a partial settlement proposal and agree to cooperate in advocating that these terms be adopted in their entirety and without modification in each of Maine, New Hampshire and Vermont.
- c. In the event that the CLEC Settlement Conditions are not adopted in all material respects, and without material modification, by a state utility regulatory commission, they shall be null and void in that state, provided, however, that any material modification by one or more of the states of the role of the staff consulting firm in reviewing FairPoint's WOSS as described in Sections 3(a) and (b) above will have no effect on the enforceability of the other CLEC Settlement Conditions.
- d. In the event that the Merger does not close, the Settlement Stipulation and the CLEC Settlement Conditions shall be null and void.

9. Jurisdiction. The Settlement Stipulation and the CLEC Settlement Conditions shall be enforceable by the state utility regulatory commissions except as expressly provided herein.

- a. The Parties agree that disputes over a question whether Telco is required to provide a Settlement Item or on what terms, under section 2(a) above, will be resolved in accordance with section 2(c) above. Jurisdiction over all other disputes arising hereunder or under the Settlement Stipulation properly lie with the state utility regulatory commission in the state which the dispute arises.
 - b. It is the intent of the Parties that any state utility regulatory commission to which a dispute is brought will resolve only those disputes arising in its state.
10. **No Admission.** Nothing herein constitutes an admission by any Party of any factual or legal issue or matter; and neither this document nor the settlement discussions that led to it shall be used as evidence in any proceeding unrelated to the enforcement of these CLEC Settlement Conditions or the Settlement Stipulation.
11. **Headings, Definitions.** Capitalized terms used herein without definition shall have the meaning ascribed to them in the Settlement Stipulation. Section headings used herein are for convenience only and shall have no legal effect.

Attachment 1

	ACTION ITEM	Timetable for Completion
i.	WOSS Webex demonstration for Wisor	August 27, 2007
ii.	Preliminary WOSS Test Plan provided to CLEC	1 week after signing of Joint Stipulation
iii.	<p>Input Into WOSS Readiness Criteria</p> <p>A. Staff Consulting Firm expected to be chosen by agreement of the three state utility regulatory commissions from among their respective consulting firms participating in the Dockets to provide input into the Readiness Criteria</p> <p>B. Opportunity for wholesale customers and Staff Consulting Firm to submit input to FairPoint on Preliminary WOSS Test Plan</p> <p>C. FairPoint and CLEC discuss electronic data interface (EDI) parameters</p> <p>D. In response to feedback from Staff Consulting Firm and wholesale customers, FairPoint provides final Cutover Readiness Criteria</p>	<p>October 2007</p> <p>No later than Oct. 31, 2007</p> <p>No later than Oct. 31, 2007</p> <p>No later than Nov 19, 2007</p>
iv.	<p>WOSS Training and Testing</p> <p>A. FairPoint provides final schedule for CLEC training and WOSS testing</p> <p>B. CLECs conduct WOSS testing and report results to FairPoint and Staff Consulting Firm</p>	<p>No later than Nov. 19, 2007</p> <p>December 2007 through February 2008</p>
v.	<p>A. FairPoint develops escalation procedures</p> <p>B. FairPoint develops contingency plans for selected work-around scenarios</p>	<p>Nov. 30, 2007</p> <p>March 31, 2008</p>
vi.	Final Cutover Schedule distributed to CLECs	Following Notice of Readiness to Cutover, but at least 45 days prior to Cutover

EXHIBIT 2

Exhibit 2
Agreements and Tariffs

New Hampshire

Tariffs: NH PUC 84, 85, & 86

Vermont

Tariffs: VT 22, 23, 24, 26 & 29

Vermont SGAT

Agreements:

Verizon- Log On America, Inc. interconnection agreement, opted into by National Mobile Communications Corp.¹ (NMCC) on April 6, 2000 and the subsequent amendments to such opt in, including Amendment 1, between Verizon and NMMC (UNE Remand Amendment); Amendment 2, between Verizon and NMMC (EELs Amendment); Amendment 3, between Verizon and NMMC (Interconnection Points) Amendment 4, between Verizon and NMMC (Dark fiber).

Directory Assistance and IntraLATA Operator Services Agreement for Competitive Local Exchange Carriers agreement between Verizon and NMMC, dated July 12, 2000; Operator Services Agreement (CLEC UNE-P) between Verizon and NMMC, dated December 16, 2002; Amendment One to Operator Services Agreement between Verizon and NMCC, dated 3/24/04.

Maine

Tariffs: ME 17, 18, 19 & 20

Agreements:

Verizon-MCI interconnection agreement and amendments (opted into by BayRing on September 20, 1999)

Verizon-Biddeford Internet Corporation d/b/a/ Great Works Internet interconnection agreement and Amendments 1 (April 30, 2002) and 2 (June 17, 2003) to such interconnection agreements between Verizon and Biddeford Internet Corporation (opted into by segTEL on January 31, 2006)

Federal

Tariff FCC No. 11

Tariff FCC No. 14

¹ d/b/a/Sovernet