

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 11-061

**FairPoint Communications, Inc. Petition for
Approval of Simplified Metrics Plan and Wholesale Performance Plan**

**JOINT MOTION FOR APPROVAL OF
WHOLESALE PERFORMANCE PLAN STIPULATION AND
SETTLEMENT AGREEMENT**

1. Pursuant to Rule Puc 203.20, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”) and the following competitive local exchange carriers (“CLECs”): CTC Communications Corp., Lightship Telecom LLC, Choice One of New Hampshire Inc. and Conversent Communications of New Hampshire LLC, all d/b/a EarthLink Business; Freedom Ring Communications LLC d/b/a BayRing Communications; Comcast Phone of New Hampshire, LLC; Biddeford Internet Corporation, d/b/a/ Great Works Internet; CRC Communications LLC d/b/a/ OTT Communications, and National Mobile Communications Corporation d/b/a Sovernet Communications (each being a “CLEC” and a “Party”, and collectively FairPoint and the CLECs being the “Parties”), respectfully request approval of the attached Wholesale Performance Plan Stipulation and Settlement Agreement (“WPP Agreement”) for the resolution of certain issues in the subject proceeding and companion proceedings in Maine and Vermont.

2. As part of its settlement of various issues related to the purchase of certain telecommunications based assets in Northern New England, FairPoint agreed to adopt the terms of the existing Performance Assurance Plan (“PAP”) and its underlying Carrier to Carrier

(“C2C”) wholesale service quality assurance plans.¹ Furthermore, FairPoint agreed that it would work cooperatively with the Commission Staff and interested CLECs to develop and implement a simplified, uniform PAP applicable in Maine, New Hampshire and Vermont.

3. Over the period September 2011 through February 2012, Staffs of the three state regulatory commissions, FairPoint and interested CLECs participated in a series of workshops, which were held at various locations throughout Northern New England. The workshops were facilitated by the New Hampshire, Maine and Vermont regulatory staffs. The goal of these workshops was to reach tentative agreement on the structure of a new simplified PAP plan and on the specific metrics that would be included in the new plan.

4. The workshops and a series of settlement negotiations culminated in a partial settlement (“2012 Agreement”) between FairPoint and the CLECs on a simplified PAP plan which was filed with the Commission on October 23, 2012, and approved by the Commission on December 12, 2012.² However, this 2012 Agreement did not represent a full agreement on the complete list of metrics to be reported. Consequently, FairPoint and the CLECs conducted further negotiations for the purpose of reaching further agreement on a simplified PAP. Such negotiations were considered confidential and conducted without regulatory staff involvement.

5. As a result of these negotiations, FairPoint and the CLECs have reached agreement on a majority of issues. Exhibit 1 attached hereto contains the WPP Agreement memorializing these agreements, which WPP Agreement also incorporates an Attachment A setting forth the terms and conditions of the Wholesale Performance Plan (the “WPP”) agreed to by the parties.

¹ Maine Docket 2007-67, Order (February 8, 2008), New Hampshire Docket DT 07-011, Order No. 24,823 (Feb. 25, 2008), Vermont Docket 7270, Order of December 21, 2007 and Order of February 15, 2008.

6. FairPoint and the CLECs acknowledge that no final agreement has been reached on the following outstanding issues:

- a. Terms and penalties for late or inaccurate monthly reports (WPP, Section 1, D.);
- b. Change of law provisions (WPP, Section 1, K.); and
- c. Commercial contract provisions that waive WPP bill credits.

The Parties respectfully propose to brief these issues before the respective state regulators in accordance with the following schedule:

Initial Briefs due: November 8, 2013
Reply Briefs due: November 26, 2013

7. Commission Rule 203.20(b) provides that “[t]he commission shall approve a disposition of any contested case by stipulation, settlement, consent order or default, if it determines that the result is just and reasonable and serves the public interest.” The WPP Agreement represents many months of concerted, good-faith effort by FairPoint and a strongly represented CLEC community, facilitated at times by Staff of the Maine and New Hampshire Commissions, Vermont Public Service Board and Department of Public Service. The WPP Agreement resolves, without litigation, most of the key structural components of the new simplified PAP. FairPoint and the CLEC Parties submit that the WPP Agreement produces a result that is just and reasonable and serves the public interest, as required by the Commission’s rules.

8. FairPoint and the CLEC Parties request that the Commission approve the WPP Agreement and resolve the outstanding issues referenced in Section 6, above, through the briefing process proposed therein. As with the prior approved 2012 Agreement, the Parties

² Also on October 23, 2012, FairPoint and the Maine and Vermont CLEC Parties filed the same Settlement Stipulation in partial settlement of the issues in Maine and Vermont, which state regulatory bodies also approved.

specifically request that discovery be waived, or strictly limited, and that no hearing be conducted before the Commission. The Commission's rules provide that the Commission may waive its rules if such waiver "serves the public interest" and "will not disrupt the orderly and efficient resolution of matters before the commission." Rule Puc 201.05(a). All of the parties to this case have been aware of the workshops, discussions and proceedings leading to the WPP Agreement and all affected carriers, including those not party to the WPP Agreement, have had the opportunity to participate. Therefore, the proposed method of handling this settlement will not unduly prejudice any party and will be consistent with the public interest. Furthermore, the existence of an approved WPP Agreement will provide a level of certainty that is conducive to final resolution of the remaining issues, and thus will contribute to the orderly and efficient resolution of this matter.

WHEREFORE, FairPoint and the CLEC Parties respectfully request that the Commission:

- a. Order the briefing schedule and resolve the outstanding issues referenced in Section 6, above, and
- b. Approve and incorporate the terms and conditions of the WPP Agreement into a final order that resolves the remaining issues in this proceeding.

Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC, d/b/a
FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,
DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: October 10, 2013

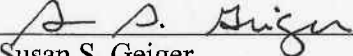
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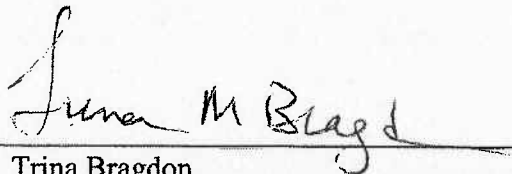
CTC COMMUNICATIONS CORP.,
LIGHTSHIP TELECOM LLC, CHOICE ONE
OF NEW HAMPSHIRE INC. and
CONVERSENT COMMUNICATIONS OF NEW
HAMPSHIRE LLC, all d/b/a EARTHLINK
BUSINESS

BIDDEFORD INTERNET CORPORATION
d/b/a GREAT WORKS INTERNET

CRC COMMUNICATIONS LLC d/b/a OTT
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