

## **WHOLESALE PERFORMANCE PLAN SECOND STIPULATION AND SETTLEMENT AGREEMENT**

This Wholesale Performance Plan Second Stipulation and Settlement Agreement (“Second Stipulation”) is effective as of June 6, 2014 (“Effective Date”) by and among Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC d/b/a FairPoint Communications-NNE (collectively, “FairPoint”) and the following Competitive Local Exchange Carriers (each a “CLEC” and, collectively, the “CLECs”): CTC Communications Corp., Choice One Communications, Lightship Telecom, LLC and Conversent Communications, 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 and Mid-Maine TelPlus 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 are the “Parties.”)

WHEREAS, FairPoint and the CLECs filed a Stipulation and Settlement Agreement with the New Hampshire Public Utilities Commission (the “Commission”) on October 11, 2013 in which the Parties requested the approval of a new Wholesale Performance Plan (“WPP”) and the establishment of a procedural schedule for deciding three unresolved issues pertaining to the WPP; and

WHEREAS, the Commission issued on January 24, 2014 an Order,<sup>1</sup> and on May 6, 2014 an Order on Reconsideration and Clarification,<sup>2</sup> in which it approved the WPP and resolved the three aforementioned issues, except that it established further proceedings “with respect to an appropriate level of penalty for FairPoint’s failure to revise any monthly performance report to correct a material error, due to an issue within its control such as maintaining accurate source data.”<sup>3</sup>

NOW THEREFORE, the Parties stipulate and agree as follows:

### **1. Amendment to WPP Plan**

- a. FairPoint shall amend and implement Section D. and Section G.1.c of the WPP, in accordance with Attachment A (“WPP Amendment”) to this Second Stipulation. The WPP Amendment conforms with the terms as approved and clarified in Commission Orders 25,623 and 25,662, and as agreed to among the Parties, with respect to the subject matter of those sections.

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<sup>1</sup> Order No. 25,623 Approving Wholesale Performance Plan and Resolving Outstanding Issues (Jan. 24, 2014).

<sup>2</sup> Order No. 25,662 Granting in Part and Denying in Part Reconsideration and Clarification of Order No. 25,623 (May 6, 2014).

<sup>3</sup> Order No. 25,662 at 20.

## **2. Terms Agreed Upon**

- a. The Parties have resolved their differences regarding the appropriate level of penalty for failure to revise monthly performance reports to correct a material error due to issues within FairPoint NNE's control and have devised a system of "surrogate credits" as follows:
  - i. If FairPoint cannot revise a monthly report to correct a material error that would increase bill credits for one or more CLECs due to an issue within FairPoint's control, FairPoint will pay a surrogate bill credit in the impacted month(s).
  - ii. The surrogate credit will be equal to the greater of:
    1. the monthly average bill credits paid in aggregate on that metric over the most recent six month period of accurate reporting less the amount of any bill credits previously issued in aggregate for that metric in the impacted month(s); or,
    2. a per metric credit of \$500 or \$1,000, depending on the type of metric, less any bill credits issued in aggregate for that metric in the impacted month(s).
  - iii. Surrogate bill credits shall be subject to the escalation provisions set forth in Section 1.B.4 of the WPP.
  - iv. Surrogate bill credits will be allocated among eligible CLECs based on the allocation of the most recent six month period of accurate reporting less the amount of any bill credits previously issued in aggregate for that metric in the impacted month(s). If no bill credits exist in that six month period, the volume of transactions (denominator values) in the previous six month period will be used to allocate credits to individual CLECs less the amount of any bill credits previously issued for that metric in the impacted month(s).
  - v. Section G.1.c of the WPP now permits FairPoint to petition the PUC for a waiver from monthly performance reporting requirements if a Force Majeure event impedes its ability to report performance results.

## **3. Mutual Obligation to Support the Settlement Agreement and to Urge the Commission to Approve It**

- a. The Parties agree that these terms are part of a settlement and agree to cooperate in advocating that the Second Stipulation be adopted in their entirety and without modification by the Commission.

- b. Each of the Parties agrees to support the settlement terms set forth in this Second Stipulation, and to request that the Commission incorporate this WPP Amendment into any final order approving the WPP. Without limiting the foregoing, each Party agrees to join in the filing of a joint request for approval of the WPP Amendment with the Commission, indicating the Party's support for approval of a WPP subject to the WPP Amendment. In response to any inquiry into such Party's position in Docket DT 11-061, each Party will express its support for approval of the WPP subject to the WPP Amendment.
- c. Notwithstanding anything in this Section 3 to the contrary, in the event that the Commission declines to approve the Second Stipulation and the WPP Amendment, then for purposes of the proceeding in any respective state (*i.e.*, Maine Docket 2009-334, New Hampshire Docket DT 11-061, or in Vermont Docket 7506), none of the Parties is required to seek or support reconsideration or review of any such decision by the Commission and the Parties are free to pursue their respective litigation positions. Furthermore, Parties are not prohibited from filing briefs and memoranda in support of their respective positions.
- d. In the event that the Commission approves the Second Stipulation and the WPP Amendment, but with modifications or conditions that are materially adverse to a Party, such Party may reject this Second Stipulation and WPP Amendment in their entirety. None of the Parties is required to seek or support reconsideration or review of any such decision by the Commission. Furthermore, if this Second Stipulation and the WPP Amendment are so rejected by any Party, each Party shall have the same rights as each would have had absent this Second Stipulation.

**4. Jurisdiction**

- a. The WPP Amendment shall be enforceable by the New Hampshire Public Utilities Commission as part of the WPP in which it is incorporated.

**5. No Admission**

- a. Nothing herein constitutes an admission by any Party of any factual or legal issue or matter, and the settlement discussions that led to the WPP Amendment shall not be used as evidence in DT 11-061 or any proceeding within or without the state of New Hampshire.

**6. Headings, Definitions**

- a. Capitalized terms used herein without definition shall have the meaning ascribed to them in the WPP or the WPP Amendment. Terms not defined herein shall have the meaning ascribed to them in the WPP. Section headings used herein are for convenience only and shall have no legal effect.

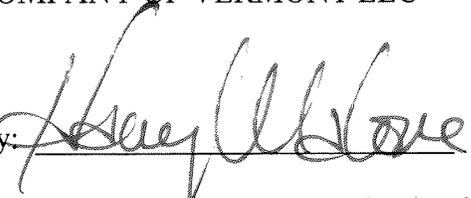
**7. Other Agreements**

- a. This Second Stipulation and its Attachment A represent only a partial understanding and agreement of the Parties regarding the replacement of the existing Carrier to Carrier (“C2C”) and Performance Assurance Plan (“PAP”) plans, and supplements all other agreements related to the replacement of the C2C and PAP in New Hampshire Docket DT 11-061. All other agreements related to the replacement of the C2C and PAP in New Hampshire Docket DT 11-061 remain in force to the extent that they have not been modified by subsequent agreements.
- b. It is understood that the Parties shall file a revised version of the complete WPP, modified based on the conditions of Order No. 25,623, as further modified by Order No. 25,662 Order and this Second Stipulation, assuming that the WPP Amendment is approved by the Commission, on or before the earlier of (1) 30 days following the entry of final orders by both the Maine Public Utilities Commission and the Vermont Public Service Board approving the WPP, or (2) such date as the Commission shall prescribe in its Order deciding the Parties request to accept this Second Stipulation and the WPP Amendment.

Executed this 27 day of June, 2014 by personnel or counsel thereunto duly authorized.

NORTHERN NEW ENGLAND TELEPHONE  
OPERATIONS LLC and TELEPHONE OPERATING  
COMPANY OF VERMONT LLC

By:

A handwritten signature in cursive script, appearing to read "Henry A. Love". The signature is written in black ink and is positioned over a horizontal line.

Counsel to Northern New England Telephone Operations LLC and  
Telephone Operating Company of Vermont

Executed this 26 day of June, 2014 by personnel or counsel thereto duly authorized.

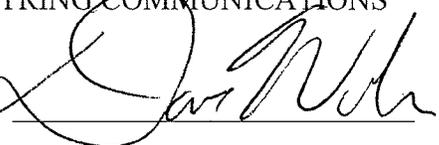
CTC COMMUNICATIONS CORP., CHOICE ONE  
COMMUNICATIONS CORP., CHOICE ONE  
COMMUNICATIONS, LIGHTSHIP TELECOM, LLC and  
CONVERSENT COMMUNICATIONS, all d/b/a  
EARTHLINK BUSINESS.

By Jerry Watts

Executed this 17<sup>n</sup> day of June, 2014 by personnel or counsel thereunto duly authorized.

FREEDOM RING COMMUNICATIONS LLC d/b/a  
BAYRING COMMUNICATIONS

By:

 CFO

Executed this 25<sup>TH</sup> day of June, 2014 by personnel or counsel thereunto duly authorized.

COMCAST PHONE OF NEW HAMPSHIRE, LLC

By: M. J. Conway

Executed this 16<sup>th</sup> day of June, 2014 by personnel or counsel thereunto duly authorized.

BIDDEFORD INTERNET CORPORATION, d/b/a  
GREAT WORKS INTERNET

By: Frederick Semp

Executed this 17<sup>th</sup> day of June, 2014 by personnel or counsel thereunto duly authorized.

CRC COMMUNICATIONS LLC d/b/a OTT  
COMMUNICATIONS

By: June M. Brag

Executed this 17<sup>th</sup> day of June, 2014 by personnel or counsel thereunto duly authorized.

NATIONAL MOBILE COMMUNICATIONS CORP.,  
d/b/a SOVERNET COMMUNICATIONS

By: Laurence Lankey  
Director, Regulatory