IBEW Exhibit 3.0

BEFORE THE ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS

Frontier Communications Corporation, Verizon Communications, Inc., Verizon North Inc., Verizon South Inc., New Communications of the Carolinas, Inc. Joint Application for the approval of a Reorganization pursuant to Section 7-204 of the Public Utilities Act the Issuance of Certificates of Exchange Service Authority Pursuant to Sections 13-405 to New Communications of the Carolinas, Inc.; the Discontinuance of Service for Verizon South Inc. pursuant to Section 13-406; the Issuance of an Order Approving Designation of New Communications of the Carolinas, Inc. as an Eligible Telecommunications Carrier Covering the Service Area Consisting of the Exchanges to be Acquired from Verizon South Inc. Upon the Closing of the Proposed Transaction and the Granting of All Other Necessary and Appropriate Relief.	)))))))))))))))	Docket No. 09-0268

PREFILED REBUTTAL TESTIMONY OF RANDY BARBER

ON BEHALF OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 21, 51, AND 702

Filed: December 14, 2009

PUBLIC (REDACTED) VERSION

Q: Please state your name, occupation, and business address.

A: My name is Randy Barber. I previously filed direct testimony on October 20, 2009 (IBEW Exhibit 1.0).

Q: On whose behalf is this rebuttal testimony submitted?

A: This rebuttal testimony is submitted on behalf of the International Brotherhood of Electrical Workers, Locals 21, 51, and 702 ("IBEW").

Q: What is the purpose of your testimony at this time?

A: IBEW asked me to review and to respond to the rebuttal testimony submitted on behalf of Frontier Communications Inc. ("Frontier") by Daniel McCarthy, particularly as his rebuttal testimony relates to my direct testimony.[1] I have also reviewed other rebuttal testimony filed by the Joint Applicants and I have reviewed the rebuttal testimony of Susan M. Baldwin. I fully embrace and support Ms. Baldwin's testimony and have relied upon it as important background for my rebuttal testimony.

I also provide an update from my direct testimony on the status of FairPoint Communications.

Q: Based on your review of the rebuttal testimony you allude to above, have you modified the conclusions and recommendations set forth in your direct testimony?

A: No. My review of Mr. McCarthy's rebuttal testimony alters neither my analysis nor the recommendations that I set forth in my direct testimony.

Q: Please summarize your testimony.

[1] Rebuttal Testimony of Daniel McCarthy, on Behalf of Frontier Communications Corporation, November 13, 2009.

A: Mr. McCarthy's rebuttal testimony is unconvincing. Mr. McCarthy mischaracterizes or distorts my testimony, mischaracterizes or distorts Frontier's own confidential data, and exaggerates the differences between this transaction and earlier Verizon dispositions of landline operations. More broadly, Mr. McCarthy's testimony suggests that only the financial standards and considerations of lenders and investors are worthy of consideration by this Commission. He also continues what I would characterize as an unmistakable pattern of misdirection, where Frontier repeatedly asserts that this proposed transaction will be beneficial to Frontier but avoids discussing the potential impact on the Verizon Separate Telephone Operations (VSTO).

Q: Could you be more specific about what you mean by "misdirection?"

A: Yes. Frontier emphasizes the purported positive benefit that this transaction portends for *Frontier*, but it conspicuously does not make the same arguments for the VSTO properties. Whatever their arguments, though, I remain convinced that this transaction is not in the interests of VSTO customers, communities and employees. It is undisputed that the risks for these constituents (who significantly outnumber Frontier stakeholders) are far higher than they face under Verizon's ownership, whatever the purported impact on Frontier as a corporation that might emanate from this deal.

I would urge the Commission to note Frontier's voluminous representations about the positive impact of this transaction *on Frontier*, while also noting that the company's witnesses do not argue that this deal will have a positive financial impact on the VSTO territories. For example, Frontier and its witnesses make much of positive statements by

Wall Street analysts and ratings agencies, but they are silent on the ratings agencies' analysis of the transaction's impact on VSTO debt. For example, on the day the transaction was announced, Fitch placed a "negative" watch on $625 million in debt for three VSTO operating subsidiaries (Verizon North, Verizon Northwest and Verizon West Virginia).[2] Moody's took a similar action. While announcing a ratings review of Frontier debt with an eye on a possible upgrade, the ratings agency announced:

> Moody's has also placed the A3 senior unsecured debt ratings of Verizon - Northwest, North, and West Virginia on review for a possible downgrade, as it is unlikely that the post-merger entity will be rated at that level.[3]

Q: Mr. McCarthy quotes Morgan Stanley's senior telecommunications equity analyst writing that "[T]he resulting entity should have investment grade-like credit metrics."[4] Is this analyst incorrect?

A: Yes. While this analyst, Simon Flannery, publishes detailed projections for Frontier on a standalone basis, I do not believe that he has released any analysis of the combined entity. Not surprisingly, Frontier does not seem to have shared its actual projections with Mr. Flannery. The purported "investment grade-like credit metrics" (elsewhere referred to as "near investment grade") is based on a sleight-of-hand analysis by Frontier: Frontier projects its leverage ratio (Net Debt / EBITDA) before and after $500 million in synergies

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[2] Fitch Ratings, May 13, 2009, "Fitch Affirms Verizon's IDR at 'A'; Places Certain Operating Subsidiaries on Watch Negative"
[3] Moodys Investor's Services, May 13, 2009, "Moody's: Frontier's ratings on review for possible upgrade; Verizon - NW, North and WV on review for possible downgrade"
[4] McCarthy Rebuttal, p. 24

on a *2008 pro forma basis*.[5] Using this methodology, Frontier projects a combined entity leverage ratio of 2.6x before synergies and 2.2x after synergies, as if such synergies were achieved in 2008. Frontier makes much of this purported 2.2x pro forma leverage ratio.[6] Depending on a number of factors that ratings agencies take into consideration, a 2.2x leverage ratio could indeed support a "near investment grade" assessment, but that's not what Frontier's own projections reveal. Frontier has disclosed (and its confidential pro forma model confirms) that it doesn't expect to fully realize its projected synergies until 2013 assuming that the transaction proceeds on schedule. Frontier's own model (Base Case, $500 million in synergies) reveals a combined entity that never gets close to a leverage ratio of 2.2x. In fact, the Frontier pro forma model projects leverage ratios of **[BEGIN CONFIDENTIAL & PROPRIETARY** [redacted] **END CONFIDENTIAL & PROPRIETARY]** for the second half of 2010, 2011, 2012, 2013 and 2014, respectively. These projections are using the quite optimistic Base Case in combination with the projected $500 million in synergies. Using Frontier's so-called "Wall Street Case," which is slightly less optimistic, the leverage ratio never gets below **[BEGIN CONFIDENTIAL & PROPRIETARY** [redacted] **END CONFIDENTIAL & PROPRIETARY]**.

While Frontier is leading analysts, regulators, elected officials and the public to believe that this transaction will result in a "near investment grade" combined entity, the

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[5] McCarthy Rebuttal, p. 26, Table 2

[6] See McCarthy Rebuttal, pp. 27 and 27; also see Don Shassian at the USB Global Media and Communications Conference, December 8, 2009, reported in Frontier SEC Form 425, filed December 11, 2009, p.3.

company's own projections refute that claim. Note that for both the Base Case and Wall Street Case projections, the leverage ratio actually increases in 2014 over 2013. This is not a trajectory of a company heading for investment grade status.

Q: While we're on the subject of Wall Street Analysts, Mr. McCarthy cites several to the effect that the Frontier transaction bears little if any resemblance to the ill-fated FairPoint transaction. How do you respond?

A: As Ms. Baldwin and I have testified at length, there are differences between the FairPoint and Frontier transactions. However these differences are exaggerated by Frontier. For example, Frontier has repeatedly asserted that its transaction is "delevering" while the FairPoint deal increased that company's leverage. This is simply untrue, even though this argument has been repeated by experienced financial analysts who should know better and who, in some cases, actually covered the FairPoint transaction and were favorably disposed to it (see below). Despite Frontier's assertions to the contrary, FairPoint also presented the transaction as *delevering*. On a pro forma basis when the FairPoint deal was announced, FairPoint projected that its leverage ratio would decline from 4.5x to 4.1x at closing.[7]

Moreover, while they may be different in potential severity, both transactions contain significant cutover and integration risks, as is well documented in the SEC disclosures for both deals. Also, just as FairPoint watched helplessly as cable competitors

[7] FairPoint Communications SEC Form 8-K, January 16, 2007, page 12 of the attached investment analyst presentation. In fact, because of actions by regulators which effectively reduced the price FairPoint paid, and thus the debt it was required to incur, its leverage ratio, on the same pro forma basis, was actually 3.8x at closing. Of course, after FairPoint emerges from bankruptcy, its leverage ratio is likely to be quite low, possibly lower than Frontier's.

in particular eroded the Verizon Northern New England landline business, Frontier is apparently witnessing the same types of erosion in the VSTO markets.[8]

Q: Nonetheless, Wall Street analysts are positive on Frontier and this transaction, aren't they?

A: I think it's fair to say that Frontier has done a good job of convincing most analysts to adopt a wait-and-see attitude, and than many are positively disposed. Virtually all of the analysts I've read, however, do recognize that there are transition, integration and financing risks that Frontier will need to overcome. I also believe that it is telling that none of these analysts and none of the ratings agencies – to my knowledge – have actually raised Frontier's stock or bond rating, although many have indicated a review with positive implications. And one firm, D.A. Davidson & Company, recently downgraded Frontier from Neutral to Underperform.[9]

Q: You mentioned that a number of analysts who are broadly favorable to the Frontier transaction, and who argue that it is different from the FairPoint in many important ways, were once more positive on the FairPoint deal. Please elaborate.

A: A number of analysts who are now arguing that the Verizon/FairPoint transaction was doomed from its inception, had quite different views at the time. For example, Mr. McCarthy approvingly cites Raymond James' Frank Louthan, who in turn repeats a number of Frontier's talking points distinguishing this deal from the FairPoint transaction,

[8] See Don Shassian at the Bank of America-Merrill Lynch Credit Conference on December 2, 2009, as reported in Frontier SEC Form 425, filed December 11, 2009, pp. 6 and 7.

[9] Barron's (Online and Print), by D.A. Davidson & Co., "We are downgrading shares of the rural telecom provider to Underperform from Neutral," December 8, 2009.

including that Frontier is "de-levering (not re-levering)," incorrectly implying that FairPoint purposefully increased its leverage ratio.[10]

However, less than two weeks after the FairPoint transaction was announced, Mr. Louthan published an Industry Brief setting forth the FairPoint deal as a virtual template for future Verizon land line dispositions:

> We believe the deal has implications for further proceedings, including: a) Verizon's implicit signal that it favors a tax-free structure, and b) the company has been able to find a way of presenting the proper revenue and cash flow characteristics of individual state properties as well as developing ways to satisfy regulators and other parties affected when such a separation occurs. . .
>
> The FairPoint deal offered a few advantages for both parties. By diversifying into a larger base of customers and lowering its FCF payout ratio, while divesting its wireless minority partnership, we believe FairPoint shed some risk it had previously borne, while expanding its presence in one of its largest states (Maine). For Verizon, however, it would appear to us to be the best possible offer it could have structured. . .
>
> We believe the apparent tax adverse nature of Verizon will lend itself to doing (or at least attempting to re-produce) a FairPoint-type deal in order to unload additional former GTE lines. The reason, as explained further in the following text, is that the value maximizing equation for Verizon is to structure the deal as a Reverse Morris Trust then sell the spin-co to an existing company, with extant management, back office, and other required infrastructure to run the combined company so that value is not destroyed in creating such corporate infrastructure. This leads us directly to smaller ILECs as the key players due to the equity limitations placed on the spin-co parent, whose shareholders (Verizon in this example) must end up owning over 50% of the equity in the surviving entity.[11]

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[10] McCarthy Rebuttal, p. 11 citing a June 12, 2009 Raymond James & Associates report authored by Louthan.

[11] *VZ: Analyzing Future Line Sales Under Reverse Morris Trust Scenarios*, January 30, 2007, p. 1; Raymond James Telecommunications Services Wireline Brief, Frank G. Louthan IV and Jason Fraser.

To my knowledge, at the time of the FairPoint deal, Mr. Louthan did not express any of the qualms about the FairPoint transaction that he now highlights in hindsight.

There are other analysts that Mr. McCarthy cites for support in his argument that the FairPoint deal shouldn't even be mentioned in the same context as the Frontier transaction. In the past however, some of these analysts seem to have had quite different views of the FairPoint deal.

For example, Goldman Sachs' Jason Armstrong publishes a periodically updated "U.S. Wireline Industry Model" a detailed spreadsheet covering wireline operators of any appreciable size in the US. His June 12, 2008 update was the first iteration of this model that incorporated both the Frontier (then Citizens) acquisition of Commonwealth and FairPoint's Northern New England deal with Verizon. In this model, Armstrong projected that FairPoint's leverage ratio, while initially higher than Frontier's (4.5x vs. 3.8x), would trend downwards while Frontier's would rise. By 2011, he projected, Frontier's leverage ratio would be higher than FairPoint's (4.2x vs. 4.1x) and that by 2018 Frontier's would be significantly higher than FairPoint's (5.1x vs. 4.2x).[12]

Indeed, Armstrong also maintained a very positive price target for FairPoint during all of 2007; $20 to $17, slightly above the then-prevailing market price and obviously dramatically higher than FairPoint's current equity value.[13]

[12] Goldman Sachs, U.S. Wireline Industry Model, June 12, 2009, Financial & Operational Stats tab, lines 337 and 339.
[13] Goldman Sachs, FairPoint Company Update, "Revenue declines surpass 10%, tougher to maintain dividend," November 9, 2008, p.7.

Louthan and Armstrong are simply two examples of Wall Street analysts who at one point were at least as positive about the FairPoint-Verizon transaction as they are now about the Frontier-Verizon deal.

Q: You mentioned that there were other examples of Mr. McCarthy's misleading, incomplete or "sleight-of-hand" arguments. Please explain.

A: There are a number of points in his rebuttal testimony where Mr. McCarthy presents incomplete data, filtered in a way to support his argument.

For example, Mr. McCarthy asserts, through Table 3 and his accompanying narrative, that Frontier "will generate meaningfully greater annual free cash flow after dividends—$681 million without synergies, and $991 million with synergies based on the 2008 pro forma figures."[14] Note that these projections are logically impossible; Frontier says that it won't fully achieve its $500 million in synergies until 2013 and it is meaningless to apply this projection to last year's results, particularly in the context of arguing how much financially stronger Frontier will be. In fact, Frontier's highly confidential pro forma model projects that 2013 post-dividend free cash flow including $500 million in synergies will be [**BEGIN CONFIDENTIAL & PROPRIETARY** [redacted] **END CONFIDENTIAL & PROPRIETARY]** less than Mr. McCarthy would lead us to believe, based on his use of 2008 pro forma projections.[15]

This is not the only misleading data contained in Table 3, however. In both this table, and its near-twin, Table 4, Mr. McCarthy presents free cash flow, dividend and

[14] McCarthy Rebuttal, p. 63; see also Table 3

[15] Pro forma model (highly confidential), PF tab, cell K49.

payout ratio data for 2005 through 2008. He uses this data in support of his argument that Frontier's dividend policy is not excessive, citing Frontier's purported $794 million in free cash flow after dividends over this four-year period. However, this is not the entire picture, since Mr. McCarthy ignores $835 million in stock repurchases for the same period, in addition to the $1.3 billion in dividend payments (see the Adjusted McCarthy Table 4, below).

Adjusted McCarthy Table 4: Frontier Free Cash Flow Summary

($ in Millions)	2005	2006	2007	2008	4-yr. Total
FCF Generation					
Free Cash Flow	$528	$561	$528	$493	$2,110
Dividends Paid	$338	$324	$336	$318	$1,316
Share Repurchases	$250	$135	$250	$200	$835
Total Paid Out to Shareholders	$588	$459	$586	$518	$2,151
Payout Ratio	**111%**	**82%**	**111%**	**105%**	**102%**
Free Cash Flow After Dividends and Share Repurchases	**-$60**	**$102**	**-$58**	**-$25**	**-$41**

Sources: Frontier 10-Ks 2006-2008; McCarthy Rebuttal, Table 4, p. 76; See also Tab le 3, p. 63

These data clearly demonstrate that, when all payments to shareholders are included, Frontier has had a payout ratio of 102%, not a "sustainable and conservative" 62%.[16]

Q: Are there other assertions that Mr. McCarthy made about your direct testimony to

[16] McCarthy Rebuttal, pp. 75-76. I would also note that McCarthy's Tables 3 and 4 begin in 2005, when Frontier's dividends were in the $325 million annual range. If he had started a year earlier, in 2004, he would have needed to include Frontier's extraordinary dividend of $833 million.

which you would like to respond?

A: Yes, there are a number. I will take them in the order they appear in his Rebuttal Testimony:

- Challenging my characterization of this transaction as "unprecedented in scope and size," Mr. McCarthy asserts that for some reason I appear to have "ignored the CenturyTel acquisition of Embarq." (p. 52)
- Arguing that I presented an "incomplete picture" of VSTO's leverage ratio prior to the addition of the $3 billion plus in transaction related debt. (pp. 60-61)
- Questioning my use of Frontier's confidential pro forma model to generate a limited sensitivity analysis. (pp. 70-73).
- Objecting to the alternative conditions that I proposed. (pp. 78-80)

Q: Have you ignored the parallels between the present transaction and the CenturyTel-Embarq deal?

A: No. Mr. McCarthy argues that "CenturyTel was similar in size to Frontier, Embarq's operations were larger than the VSTO operations, and the scale of the two integrations is similar." On this basis, he argues that it is incorrect to view the Frontier-VSTO transaction as unprecedented in size and scope. However, the CenturyTel-Embarq deal was a merger of two intact operations. CenturyTel acquired the entire Embarq operation, including all personnel and operating systems. On the other hand, VSTO is part of a much larger organization and it will need to be separated from not one, but two entities: the old Bell Atlantic and what remains of the former GTE properties. While Verizon has sold Frontier much smaller pieces of GTE in the past, it is now faced with the task of extracting it from significant former GTE operations that will remain with Verizon. At least as importantly, this transaction represents the first time that any of the former Bell Atlantic properties is being extracted from its operations, and only the second time that Verizon has attempted to extract and sell a former Bell property (the first was the FairPoint – Northern New England transaction). This deal's size, the flash cut that will be required in West Virginia, and the complex separation of 13 states from the former GTE network and operating systems led me to conclude that that this deal is indeed unprecedented in both its size and its scope.

Q: What about Mr. McCarthy's argument that you have presented an incomplete picture regarding VSTO's leverage?

A: First, the 0.34x leverage ratio to which I referred in my testimony and on Schedule 10 was provided by Verizon in response to an interrogatory.[17] Also, while it is obviously not a simple exercise to determine VSTO's leverage ratio (as Verizon indicated in its reply), Mr. McCarthy's suggestion that all $64.9 billion of Verizon's June 30, 2009 debt be used to determine VSTO's real leverage ratio is not accurate. As he acknowledges, $21.9 billion of Verizon's debt is actually Verizon Wireless debt, which certainly can't be attributed to VSTO. Further, of the $13.4 billion in Verizon operating company direct debt, we know that only $624 million of that was attributable to VSTO. Thus, even following Mr. McCarthy's logic, the relevant debt is the parent company's $29.6 billion plus the VSTO $624 million, resulting in $30.2 billion in combined Verizon parent and VSTO debt. Using this figure would not be correct either because Verizon's net debt increased by

[17] Verizon reply to IBEW 1.32, July 27, 2009.

more than $30 billion at the parent level quite recently, mostly as a consequence of Verizon Wireless' acquisition of Alltel. Thus, while Verizon's leverage ratio was indeed about 1.8x at June 30, 2009, it stood at 0.9x prior to the Alltel transaction. It would not be reasonable to assign the debt Verizon used to acquire Alltel wireless operations to VSTO. Thus, even using Mr. McCarthy's logic, there is no question that VSTO's leverage ratio is at or below the level Verizon's was before it acquired an enormous wireless asset and expanded its debt significantly. It would be reasonable to estimate VSTO's leverage ratio (including parent-level debt) in the 0.9x range, but that still means that the proposed transaction would raise VSTO's leverage ratio by a factor of three (to at least 2.6x).

Q: Please discuss Mr. McCarthy's challenge to your use of Frontier's pro forma model to generate a limited sensitivity analysis.

A: As I acknowledged in my direct testimony, I am very much aware that complex models such as the Frontier pro forma model should be approached with a healthy dose of caution. And that is what I did. I changed one row of numbers, substituting an assumption of no synergies for Frontier's alternative synergies projection. All other calculations that I performed simply accumulated the results of the model, including two that invoked the $0 synergies scenario.

To be absolutely clear, the purpose of this exercise was not to demonstrate what happens when there are no synergies. Rather, since Frontier seems not to have performed even a modest "stress test" of its modeling of this transaction, my purpose was to test the impact of a variation from Frontier's plan of a $500 million change in revenues, expenses, or most likely a combination of the two in 2013 (and lesser amounts prior to then since synergies in the model do not come on-line at once). I believe that a $500 million variance from Frontier's optimistic projections, in combined revenues and expenses, is plausible, particularly if Frontier encounters difficulties in moving onto a single operating platform, faces increased competitive pressures, or finds that the condition of VSTO's facilities is worse than anticipated – to name just three factors that could greatly impact Frontier's rosy projections.

I fail to see how Mr. McCarthy can postulate that a 50% reduction in cumulative free cash flow after dividends over the projection period (second half 2010 through 2014) should not be a matter of concern to the Commission as it examines the potential actions that Frontier might initiate in the face of significant underperformance relative to its plan.

Mr. McCarthy correctly notes that the 2014 dividend payout ratio is 68.9% under the $0 synergies scenario, and improving, assuming no share repurchases. However, he fails to note that, under the Wall Street Scenario (which is Frontier's modest reduction in Frontier standalone results), the combined companies' payout ratios in 2011 and 2012 are a projected **[BEGIN CONFIDENTIAL & PROPRIETARY** [redacted] **END CONFIDENTIAL & PROPRIETARY]**. Except for the extraordinary dividend payment in 2004, Frontier has never approached this level of payout ratios. I would expect that its Board of Directors would be paying very close attention to its cash flows under this scenario and, as I noted in my direct testimony, when a company is stressed in this way it basically has three choices: reduce dividends, reduce capital expenditures, or reduce operating expenses.

Q: Do you have any comments on Mr. McCarthy's opposition to the various alternative conditions you have proposed?

A: It is not at all surprising that Frontier objects to the conditions I set forth, first in the alternative (either a required renegotiation to produce a joint venture or a Verizon warranty) or in the alternative to that alternative (ring fencing and so forth). I would simply reiterate that I believe that this transaction should be rejected, but set forth these alternative conditions in case the Commission rejects my advice.

Q: Finally, in response to your criticism of Frontier's slow "broadband" service compared to FiOS, Mr. McCarthy replied that consumers "cannot buy a service that is not available in their service area."[18] Subsequently, he distinguishes Verizon's "core capital expenditures" from its FiOS-related investments, arguing that, properly understood, Frontier will invest more in VSTO than did Verizon.[19] Do you have a response?

A: Yes. In my experience, first with FairPoint and now with this deal, there seems to be an underlying concern that, if this transaction is turned down, Verizon will simply ignore the VSTO properties and allow them to stagnate. Put another way, there is a palpable worry that Verizon would leave states like Illinois on a side-road of the information super-highway. From this perspective, Frontier's copper-based "broadband" is set forth as the

[18] McCarthy Rebuttal, p. 58.
[19] McCarthy Rebuttal, pp. 67-70.

best practical alternative.

While I obviously cannot know what Verizon would do in the face of a rejection, I would point out two things: (1) Verizon executives will still have a fiduciary responsibility to maximize the financial benefits of the assets under their control and (2) regulators still have tools to enforce their policies. Moreover, Verizon today is offering much faster internet service than is Frontier over its copper network in Illinois.

I also believe that it may be instructive to examine another case where Verizon tried -- and failed -- to divest itself of "non-core" wireline assets. In 2004, Verizon confirmed to the New York Times that it was considering selling off its wireline assets in upstate New York, from Orange County to Buffalo.[20] It is not clear why Verizon abandoned this effort -- there were vocal opponents and reports that the company failed to obtain the price it was seeking. However, Verizon began installing FTTH cable throughout the region and in 2006 it began offering high-speed FiOS internet in the Buffalo area. Soon thereafter, it began offering FiOS TV and, during 2007 and 2008 alone, it invested $886 million in its upstate New York telecommunications infrastructure.[21]

I firmly believe that it would be a fundamental mistake for the Commission to approve this proposed transaction simply because of the belief that, in the face of a rejection, Verizon would permit its Illinois assets to atrophy. Verizon has many incentives

[20]"Verizon Considers Selling its Upstate Telephone Lines, "New York Times, April 15, 2004

[21]"Upstate New York Areas Benefit Through Verizon's Network Investments for Region;" Verizon press release, June 8, 2009.

to maximize its profits, even in the face of circumstances that are not completely of its choosing. And the Commission has to tools to encourage the company to do so.

Q: Could you provide an update on FairPoint?

A: While over the course of time, new facts always emerge, for the purpose of my testimony the most important of which is that FairPoint filed for bankruptcy on October 26, 2006. FairPoint also filed a "Plan Term Sheet" for a reorganization plan that it had agreed upon with a "steering committee" of its secured creditors. This plan provides for, among many other things, the conversion of more than half of the company's secured loans into a 98% equity ownership stake in a reorganized FairPoint (assuming, of course, such a plan is ultimately approved by the Bankruptcy Court). Beyond turning the company's secured lenders into its new owners, the Term Sheet contains a provision that appears to challenge the enforceability of public utility commission penalties or fines:

> "The allowance of unsecured claims and the treatment of unsecured claims . . . including any claims held by state public utility commissions relating to the NNE [FairPoint Northern New England] Operating Companies' alleged failure to satisfy certain service quality indicators, shall be determined at a later date ***on terms reasonably satisfactory to the Steering Committee Lenders and the Company***."[22] [emphasis added]

It also appears that FairPoint may call into question the various broadband expansion commitments it made to regulators in the three Northern New England states in order to obtain approvals for the acquisition of Verizon's landline assets. In a Telephony Online article entitled "Fairpoint aims to renegotiate broadband rollout requirements,"

[22] Declaration of Alfred C. Giammarino Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First-Day Motions; Exhibit B, "Plan Term Sheet," Section 6(d).

reporter Ed Gubbins writes that "Fairpoint's lawyers are currently examining whether or not its Chapter 11 protection from creditors might also allow the company to renegotiate regulatory requirements in Vermont, New Hampshire and Maine, where it acquired 1.7 million access lines from Verizon." As Gubbons reports,

> "As part of the regulatory approval process for its Verizon deal, Fairpoint had to commit to spending set amounts on broadband expansion in all three of the states involved. In Maine, it was required to spend an average of $47 million on broadband expansion during the first three years following the deal. In Vermont, it was required to spend an average of $40 million per year in the first three years. And in New Hampshire, it was required to spend at least $52 million in each of the first three years and $49 million in each of the two years after that; Verizon contributed $49.2 million to that effort, but this year the state allowed Fairpoint to use Verizon's contribution for general purposes."[23]

In the first overt post-bankruptcy clash between FairPoint and state regulators, the Maine Public Utilities Commission ordered the company begin rebating $1.72 per line per month immediately as a penalty for missing specific quality performance standards for 2008 and 2009. FairPoint objected and filed an emergency motion with the bankruptcy court to stay the Maine PUC order. A hearing was scheduled on FairPoint's emergency motion, but this was postponed until the beginning of 2010.[24]

[23] Telephony Online, October 26, 2009, http://www.telephonyonline.com/independent/news/fairpoint-renegotiate-broadband-102609/index.html (accessed October 27, 2009)

[24] http://www.mainebiz.biz/news45543.html; http://www.google.com/hostednews/ap/article/ALeqM5jy-M2K9M2qwQyWWqSSC33sDisPgAD9CFSQDO0; For all of the documents associated with the FairPoint bankruptcy case, see: http://www.bmcgroup.com/restructuring/Docket.aspx?ClientID=225

Q: In summary, what do you recommend?

A: As I describe in my direct testimony, I recommend that the Commission deny the application because the proposed transaction is not in the public interest.

Q: Does this conclude your rebuttal testimony?

A: Yes.