

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Acting Secretary

August 25, 2003

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 St., SW
Washington, D.C. 20554

RE: Comments of the New York State Department of Public Service in the Matter of Domestic Section 214 Application Filed for Transfer of Control of Berkshire Telephone Company to FairPoint Communications, Inc.; WC Docket No. 03-184; DA 03-2638

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Commission's Public Notice issued August 11, 2003 in the above-referenced proceeding. The Public Notice seeks comment on the application of FairPoint Communications, Inc. (FairPoint), et al. for consent to transfer control of Berkshire Telephone Corporation (BTC) and its subsidiaries from BTC's current stockholders to MJD Ventures, Inc. (MJD) and its parent company, FairPoint. MJD (and ultimately FairPoint) currently has a subsidiary, Taconic Telephone Corporation, whose local exchange service area borders BTC's service area.

According to the Public Notice, FairPoint has stated in its application that the proposed transfer of control is in the public interest. The reasons given are that: FairPoint's experience and access to capital will enhance competition; the merger will not impair competition in regulated markets because

the merging entities are both very small; and, the proposed transaction will not change the services, rates and practices of Berkshire.

The New York Public Service Commission (NYPSC) is currently reviewing FairPoint and BTC's July 8, 2003 joint application to the NYPSC for merger approval.¹ Since the proposed merger will bring two neighboring incumbent local exchange carriers under common ownership, we will carefully review the proposed transaction. We expect to review the impact of the proposed merger on, at minimum, system reliability, service quality, and the financial strength of the resulting entity. We will also ensure appropriate merger transaction accounting safeguards and ascertain that any merger savings are appropriately reflected in rates. Our initial estimate is that the Commission will act on the proposed merger by the end of this year.

Therefore, we respectfully request that if the Commission acts on this petition before we have completed our inquiry, that the Commission condition its approval upon FairPoint's agreement to abide by any conditions that may subsequently be ordered by the NYPSC. In the alternative, we would request that the Commission delay action on the instant petition until after the NYPSC issues its final decision on the matter.

Finally, we will keep the Commission fully apprised of our timeframe. Once an order is issued by the NYPSC, we will promptly forward it.

Respectfully submitted,

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of the State of New York
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¹ See New York Pub. Serv. Law §§ 99, 100, 108 and 222.