

PENDING PETITION MEMO

Date: 9/25/2008

TO : OT
OGC

FROM: CENTRAL OPERATIONS

UTILITY: BERKSHIRE TELEPHONE CORPORATION

SUBJECT: 08-C-1142

Petition of Berkshire Telephone Corporation / Taconic Telephone Corporation d/b/a FairPoint Communications for Approval of a Mutual Traffic Exchange Agreement with Cornerstone Telephone Company.



6849 Peachtree Dunwoody Road
Building 8-3, Suite 200, Atlanta, Georgia 30328
phone: 770-569-2105, fax: 770-410-1608

2008 SEP 25 PM 1:59

September 19, 2008

VIA US MAIL

Hon. Jaclyn A. Brilling
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

*Re: Approval of the Mutual Traffic Exchange Agreement Negotiated by and between
Berkshire Telephone Company / Taconic Telephone Corporation d/b/a FairPoint
Communications and Cornerstone Telephone Company Pursuant to Sections
251(a) and 251(b)(5) of the Telecommunications Act of 1996*

Dear Ms. Brilling:

Enclosed for filing are the original and four (4) copies of the Petition for Approval and the Traffic Exchange Agreement negotiated by and between Berkshire Telephone Company / Taconic Telephone Corporation d/b/a FairPoint Communications ("FairPoint") and Cornerstone Telephone Company ("Cornerstone"). John Staurulakis, Inc. is filing the enclosed petition and agreement on behalf of FairPoint and would appreciate that you file the same and return the extra copy stamped "filed" in the enclosed self-addressed, stamped envelope provided.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Mark A. Ozanick'.

Mark A. Ozanick, Staff Consultant – Regulatory & Policy
John Staurulakis, Inc.

cc: Donald P. Walsh, Cornerstone Telephone Company

HEADQUARTERS:

7852 Walker Drive, Suite 200, Greenbelt, MD 20770
phone: 301-459-7590, fax: 301-577-5575
internet: www.jsitel.com, e-mail: jsi@jsitel.com

Echelon Building II, Suite 200
9430 Research Boulevard, Austin, TX 78759
phone: 512-338-0473, fax: 512-346-0822

Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve, Eagan, MN 55121
phone: 651-452-2660, fax: 651-452-1909

547 South Oakview Lane
Bountiful, UT 84010
phone: 801-294-4576, fax: 801-294-5124

BEFORE THE NEW YORK PUBLIC SERVICE COMMISSION
Albany, New York 12223-1350

In Re: *Approval of the Mutual Traffic Exchange Agreement Negotiated by and between Berkshire Telephone Company / Taconic Telephone Corporation d/b/a FairPoint Communications and Cornerstone Telephone Company Pursuant to Sections 251(a) and 251(b)(5) of the Telecommunications Act of 1996*

PETITION FOR APPROVAL OF THE MUTUAL TRAFFIC EXCHANGE AGREEMENT NEGOTIATED BY AND BETWEEN BERKSHIRE TELEPHONE COMPANY / TACONIC TELEPHONE CORPORATION d/b/a FAIRPOINT COMMUNICATIONS AND CORNERSTONE TELEPHONE COMPANY PURSUANT TO SECTIONS 251(a) AND 251(b)(5) OF THE TELECOMMUNICATIONS ACT OF 1996

Berkshire Telephone Company / Taconic Telephone Corporation d/b/a FairPoint Communications (“FairPoint”) respectfully files this request with the New York Public Service Commission for approval of the attached Mutual Traffic Exchange Agreement (the “Agreement”). The Agreement was negotiated by and between FairPoint and Cornerstone Telephone Company (“Cornerstone”) pursuant to Sections 251 (a) & (b)(5) of the Telecommunications Act of 1996 (“the Act”). The Agreement provides for the interconnection and mutual exchange of traffic between the companies’ networks. FairPoint, therefore, respectfully requests that the Commission act within the ninety (90) days specified by the Act and approve the Agreement.

In support of its request, FairPoint states the following:

THE PARTIES

1. FairPoint is an incumbent local exchange carrier authorized to provide local exchange service in the State of New York.

2. Cornerstone is a telecommunications carrier that has been granted authority by the New York Public Service Commission to provide competitive local exchange service in the State of New York.

THE AGREEMENT

3. FairPoint and Cornerstone have successfully negotiated the agreement for the interconnection and mutual exchange of traffic between the companies' networks. A copy of the Agreement is attached hereto and incorporated herein by reference.

4. FairPoint and Cornerstone have entered into this Agreement, pursuant to Sections 251(a) and 251(b)(5) of the Act.

5. Pursuant to Section 252(e) of the Act, FairPoint is submitting the Agreement to the New York Public Service Commission for its consideration and approval.

COMPLIANCE WITH THE ACT

6. First, as required by Section 252(e)(2)(a)(i) of the Act, the Agreement does not discriminate against any other telecommunications carrier.

7. Second, the Agreement is consistent with the public interest, convenience, and necessity, as required by Section 252(e)(2)(a)(ii) of the Act.

APPROVAL OF THE AGREEMENT

8. In accordance with Section 252(e) of the Act, the New York Public Service Commission is charged with approving or rejecting the Agreement between FairPoint and Cornerstone within ninety (90) days of its submission. The Act provides that the New York

Public Service Commission may reject such Agreement only if it finds that the Agreement or any portion thereof discriminates against a telecommunications carrier not a party to the Agreement, or if it finds that the implementation of the Agreement or any portion thereof is not consistent with the public interest, convenience and necessity.

9. FairPoint and Cornerstone aver that the Agreement is consistent with the standards for approval.

10. Pursuant to Section 252(i) of the Act, once the Agreement is approved, FairPoint will make the entire Agreement available to any similarly situated competitive local exchange carrier.

11. FairPoint respectfully requests that the New York Public Service Commission approve the Agreement negotiated between the parties without revision as expeditiously as possible consistent with the public interest.

This 19th day of September 2008.

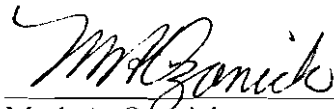
Respectfully submitted,

By: 
Mark A. Ozamick
John Staurulakis, Inc.
On Behalf Of:
Berkshire Telephone Company / Taconic
Telephone Corporation d/b/a FairPoint
Communications.

CERTIFICATE OF SERVICE

I, Mark A. Ozanick, hereby certify that I have served a copy of the foregoing Petition for Approval of the Mutual Traffic Exchange Agreement on the following *via* United States Mail:

Mr. Donald P. Walsh
Cornerstone Telephone Company
2 Third St., Suite 303
Troy, NY 12180

A handwritten signature in cursive script, reading "Mark A. Ozanick", written in black ink.

Mark A. Ozanick

MUTUAL TRAFFIC EXCHANGE AGREEMENT

By and Between

**BERKSHIRE TELEPHONE CORPORATION D/B/A FAIRPOINT
COMMUNICATIONS AND
TACONIC TELEPHONE CORPORATION D/B/A
FAIRPOINT COMMUNICATIONS**

And

CORNERSTONE TELEPHONE COMPANY

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MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective as of the 15th day of August, 2008 by and between Berkshire Telephone Corporation d/b/a FairPoint Communications and Taconic Telephone Corporation, (collectively "FairPoint") with offices at 521 East Morehead Street, Suite 250, Charlotte, NC 28202 and Cornerstone Telephone Company ("Cornerstone"), a New York Limited Liability Company with offices at 2 Third Street Suite 303 Troy, NY 12180. FairPoint and Cornerstone may also be referred to herein singularly as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Berkshire and Taconic are an incumbent local exchange carriers ("ILECs") and Cornerstone is a competitive local exchange carrier ("CLEC") and both Parties are authorized by the New York State Public Service Commission ("Commission") to provide telecommunications services in the State of New York; and

WHEREAS, the Parties are entering into this Agreement to exchange Extended Area Service ("EAS") Traffic pursuant to the NY Order; and

WHEREAS, the Parties recognize that certain end users have mutual calling demands and interests between certain separate communities as defined by the applicable EAS regulations of the Commission for which the provision of non-toll rated calling services is in the public interest; and

WHEREAS, the Parties recognize that the ability to provide two-way EAS calling between separate communities to their respective customers under a specific rate plan is dependent on the terms under which the Parties exchange EAS Traffic; and

WHEREAS, the specific exchange areas between which customers of the Parties exchange EAS calls are each separate and mutually exclusive geographic areas; and

WHEREAS, FairPoint's ILEC service responsibilities and network do not and cannot extend beyond the boundaries of its physical service area; and

WHEREAS, if Cornerstone desires to provide Local Exchange Service within FairPoint's ILEC serving territory pursuant to Sections 251 or 252 of the Act, an additional agreement will be required.

WHEREAS, the Parties desire to enter into an agreement regarding the termination of EAS Traffic between the Parties' networks.

NOW THEREFORE, in consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

1. Scope of Agreement

- 1.1 Cornerstone and FairPoint agree to exchange all EAS Traffic, for the EAS exchanges as specified in FairPoint's General Subscriber Services Tariff and listed in Schedule 1 and Schedule 2 of this Agreement (including any future EAS exchanges), originating on either Party's network and terminating on the other Party's network by transiting such traffic through a third party LEC tandem, in accordance with Section 3.3, or, by virtue of a direct trunking methodology as specified in Section 3.4.
- 1.2 All EAS Traffic exchanged between the Parties shall be compensated on a Bill and Keep basis, in accordance with Section 4 below.
- 1.3 Neither Party shall terminate intra-LATA or inter-LATA toll switched access traffic or originate untranslated toll-free traffic, including but not limited to 550/55X/555/800/888/877/866 traffic, over EAS Traffic trunks. However, to the extent any toll switched traffic is exchanged and terminated over EAS Traffic trunks, it shall be billed in accordance with Section 5 below.
- 1.4 Each Party agrees that it will not knowingly provision any of its services in a manner that permits the arbitrage and/or circumvention of the application of applicable switched access charges by the other Party. If any arbitrage is identified, each Party also agrees to take all reasonable steps to terminate and/or reroute any service to one of its end users that permits that user to arbitrage and/or circumvent the application of applicable switched access charges by the other Party.

2. Definitions

Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement. Additional definitions that are specific to the matters covered in a particular section may appear in that section.

- 2.1 Act, as used in this Agreement, means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the Federal Communications Commission ("FCC") or the Commission.
- 2.2 Commission means the New York State Public Service Commission.
- 2.3 Customer, End User or End User Customer means the residence or business subscriber that is the ultimate user of telecommunications services provided by either of the Parties, and, for purposes of this Agreement, that may place or receive EAS Traffic calls.
- 2.4 DS1 is a digital signal rate of 1.544 Megabits per second ("Mbps").
- 2.5 DS3 is a digital signal rate of 44.736 Mbps.

- 2.6 Extended Area Service ("EAS") is a service arrangement whereby End Users that obtain Local Exchange Service in a specific local service exchange area are provided the ability to place and receive interexchange calls to End Users that obtain Local Exchange Service in another mutually exclusive specific local service exchange area on the basis of terms, conditions and charges that are distinct from the terms applicable to message toll service and exchange service and where compliance with all applicable Commission-prescribed EAS regulations has been demonstrated.
- 2.7 EAS Traffic means two-way traffic that falls within the definition of "EAS" that is exchanged between the Parties.
- 2.8 Interconnection in this Agreement is as defined in the Act.
- 2.9 Intra-LATA Toll Traffic in this Agreement is as defined in the Act.
- 2.10 Local Access and Transport Area ("LATA") has the same meaning as that contained in the Act.
- 2.11 Local Exchange Service means the provision of telephone exchange traffic or exchange access that originates and terminates within the local calling area boundary as established and defined by the Commission.
- 2.12 NY Orders means the New York Commission's Order Establishing Requirements for the Exchange of Local Traffic (December 22, 2000) and Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates (September 7, 2001) in Case 00-C-0789, *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies*.
- 2.13 Point of Interconnection (POI) means the physical location(s) at which the Parties' networks meet for the purpose of exchanging EAS Traffic.

3. Connection Arrangements

- 3.1 Each Party shall be responsible for the cost and any requirements associated with the establishment, including but not limited to, if applicable, ordering processes and access service request processes of providing trunks from its network to the POI for EAS Traffic which that Party originates. The POI must be at FairPoint's exchange boundary. Each Party will be responsible for its portion of facilities to the POI.
- 3.2 The Parties acknowledge that Cornerstone may lease facilities from FairPoint or an alternate third party provider, or, construct its own facilities in order to achieve connection at the POI. The Parties also acknowledge that at the time of execution of this Agreement, traffic exchanged between the Parties for termination on the other Party's network is at a level that is de minimis and therefore may not justify direct trunking between the Parties.

- 3.3 Therefore, in consideration of the above, Cornerstone shall, as required by the NY Order, make all necessary arrangements with Verizon New York, Inc. (“Verizon”) to purchase the per minute transport service described in the NY Order from the Verizon tandem to the POI in order to exchange such de minimis EAS Traffic. Such de minimis EAS Traffic shall be exchanged through the existing transit traffic arrangements, utilizing the network of Verizon, in accordance with the relevant transit traffic terms and conditions as agreed to individually between each Party and Verizon.
- 3.4 Should the total EAS Traffic volume between the Parties exceed (one hundred and eighty thousand) 180,000 minutes in any month to either Berkshire or Taconic (“Threshold Level”) Cornerstone shall direct trunk to FairPoint ILEC service area boundary where the Threshold Level has been met for the exchange of EAS Traffic. Parties agree to negotiate for such direct interconnection subject to Section 8 of this Agreement.
- 3.5 Should traffic levels exceed one hundred thousand (“100,000”) minutes per month, upon request, but no more than quarterly, the Parties shall provide to each other an ad hoc study of the available switch data relevant to this Agreement. Such data may be aggregated at the NPA/NXX level, and, shall include message count and minutes of use. Such aggregated data may be requested either on a monthly or daily summary basis. It is also agreed that if there is a reasonable follow-up request to the ad hoc study or a material change to either traffic patterns and/or volumes, the Parties will not unreasonably deny additional requests for studies.

4. Compensation for EAS Traffic

FairPoint and Cornerstone agree to terminate each other’s EAS Traffic on a Bill and Keep basis of compensation. “Bill and Keep” shall mean that the originating Party has no obligation to pay terminating charges to the terminating Party for terminating the EAS Traffic subject to this Agreement.

5. Compensation for Intra-LATA Toll Traffic

If any toll switched access traffic is exchanged or terminated over EAS Traffic trunks, compensation paid by the Originating Party to the Terminating Party for termination of toll traffic shall be calculated by applying the Terminating Party’s Intra-LATA access rates as set forth in that Party’s applicable Intra-LATA access tariff or price list as filed with the Commission. As rates change, the latest effective rates will be used.

6. Compensation for Facilities

Should Cornerstone lease facilities from FairPoint in order to achieve connection at the POI, as specified in Section 3.2 above, Cornerstone agrees to pay FairPoint the applicable published or price listed tariff rates for the lease of such facilities.

7. Traffic Identifiers and Audits

- 7.1 To ensure proper implementation of this Agreement, the Party delivering traffic to the POI shall provide the Automatic Number Identification (“ANI”) or Calling Party Number (“CPN”) (or similar industry standard traffic elements) for all traffic (the “Traffic Identifiers”) in order that the terminating Party can properly identify the telephone number associated with the End User placing the call. Where the Traffic Identifiers are not provided in the direct trunking arrangement described in Section 3.4, the terminating Party shall assess, and the originating Party shall pay, access charges pursuant to the terminating Party’s applicable tariff or like mechanism. Where the Traffic Identifiers are not provided but the originating Party’s OCN is provided utilizing the Verizon tandem arrangement described in Section 3.3, the terminating Party shall assess, and the originating Party shall pay, access charges pursuant to the terminating Party’s applicable tariff or like mechanism. Upon request, Cornerstone will work jointly with FairPoint, including participating in meetings and / or calls with Verizon, in order to investigate the cause of missing Traffic Identifiers.
- 7.2 Each Party shall keep six (6) months of usage records for the traffic delivered by it to the POI. Either Party may request an audit of usage data on not less than thirty (30) business days’ written notice. Any such audit shall be accomplished during normal business hours at the office of the Party being audited. Audits may be performed by a qualified independent auditor or consultant paid for by the Party requesting the audit. Audits conducted pursuant to this Section 7.2 by Cornerstone shall be requested within six (6) months of having received billing from FairPoint.

8. Physical Arrangements In A Direct Trunking Scenario

Pursuant to Section 3.4 or as otherwise agreed to by the Parties, Parties will negotiate terms and conditions for the establishment of direct interconnection with the meet-point POI at or within the specific ILEC service area boundary (Berkshire and Taconic).

9. Trunk Forecasting

The Parties will work towards the development of joint forecasting responsibilities for traffic utilization over EAS Traffic trunk groups covered in this Agreement. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment becomes available. Parties will make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Inter-company forecast information must be provided by the Parties to each other upon reasonable request.

10. Network Management

10.1 Protective Controls

Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward each other's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. Cornerstone and FairPoint will immediately notify each other of any protective control action planned or executed.

10.2. Mass Calling

Cornerstone and FairPoint will cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes. The promotion of mass calling services is not in the best interest of either Party. If one Party's network is burdened repeatedly more than the other Party's network, the Parties will meet and discuss the cause and impact of such calling and will agree on how to equitably share the costs and revenues associated with the calls and on methods for managing the call volume.

10.3 Network Harm

Neither Party will use any service related to or using any of the services provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's Customers; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm will occur or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required; provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

- (a) Promptly notify the other Party of such temporary discontinuance or refusal;
- (b) Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and
- (c) Inform the other Party of its right to bring a complaint to the Commission or Federal Communications Commission ("FCC").

11. Office Code Translations

- 11.1 It shall be the responsibility of each Party to program and update its own switches and network systems in accordance with the Local Exchange Routing Guide ("LERG") in order to recognize and route traffic to the other Party's assigned NXX codes at all times.
- 11.2 Local Number Portability ("LNP") provides an End User of local exchange telecommunications service the ability to retain its existing telephone number when changing from one local exchange telecommunications carrier to another. The Parties recognize that some of the traffic to be exchanged under this Agreement may be destined for telephone numbers that have been ported.
- 11.3 In such cases, when more than one carrier is involved in completing the call, the N-1 carrier has the responsibility to determine if a query is required, to launch the query, and to route the call to the appropriate switch or network in which the telephone number resides.
- 11.4 The Parties shall provide LNP query, routing, and transport services in accordance with rules and regulations as prescribed by the FCC and the guidelines set forth by the North American Numbering Council ("NANC").
- 11.5 For the purposes of information, Taconic's Chatham tandem switch (CHHMNYXA2GT) is the designated tandem from which the following Berkshire subtending rate centers home: Berlin, Canaan, Chatham, Copake, Hillsdale, Millerton, Nassau, Pine Plains, Stephentown, West Lebanon and Hancock, MA. Berkshire's Kinderhook tandem switch (KNDRNYXA2GT) is the designated tandem from which the following Berkshire subtending rate centers home: Niverville and Kinderhook.

12. SS7 Signaling

FairPoint and Cornerstone shall interconnect their SS7 networks either directly or through third parties. FairPoint and Cornerstone further agree to exchange, either directly or through third-parties, TCAP messages that are necessary to provide call management features. The Parties agree to set message screening parameters so as to accept messages from any switching systems destined to any signaling point in the SS7 network with which the Parties have a legitimate signaling relation. The Parties further agree to exchange and load point code information in a reasonable and timely manner in accordance with standard industry practices. Neither Party shall bill the other Party for exchange of these TCAP messages.

13. Term of Agreement

This Agreement shall commence when fully executed and have an initial term of one (1) year. This Agreement shall automatically renew for successive one (1) year periods, unless either Party gives written notice at least sixty (60) days prior to the expiration of the initial, or any renewal term, of its desire not to renew. If such notice is given, this Agreement shall not renew.

14. Limitation of Liability

- 14.1 Except for the willful or intentional misconduct or gross negligence of one or both Parties, the Parties agree to limit liability in accordance with this Section. The liability of either Party to the other Party for damages arising out of (i) failure to comply with a direction to install, restore or terminate facilities, or (ii) failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors, or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section may be zero. Neither Party shall be liable to the other in connection with the provision or use of services offered under this Agreement for any indirect, incidental, special or consequential damages including but not limited to damages for lost profits or revenues, regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided that the foregoing shall not limit a Party's liability with respect to its indemnification obligations under Section 15 of this Agreement.
- 14.2 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct, the Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third Party beneficiary relationship between the Party providing the service and the customers of the Party purchasing the service. In the event of a dispute involving both Parties with a customer of one Party, both Parties shall assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable tariff(s).

15. Indemnification

- 15.1 Each Party (the "Indemnifying Party") shall release, indemnify, defend and hold harmless the other Party ("Indemnified Party") from and against all losses, claims, demands, damages, expenses (including reasonable attorney's fees), suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, (i) whether suffered, made instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the act(s) or omission(s) of the Indemnifying Party, regardless of the form of action, or (ii) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provisioning of services to the Indemnifying Party under this Agreement, except to the extent caused by the gross negligence or willful misconduct of the

Indemnified Party, or (iii) arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness. Notwithstanding the foregoing, nothing contained herein shall affect or limit any claims, remedies, or other actions the Indemnifying Party may have against the Indemnified Party under this Agreement, any other contract, or any applicable tariff(s), regulation or laws for the Indemnified Party's provisioning of said services.

- 15.2 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party, (iii) assert any and all provisions in its tariff that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, delayed or conditioned. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense, except that if the Indemnifying Party does not promptly assume or diligently pursue the tendered action, then the Indemnified Party may proceed to defend or settle said action at the expense of the Indemnifying Party.
- 15.3 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance, and such approval by the Indemnifying Party shall not be unreasonably withheld, or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

16. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation, acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power failure or blackouts, or adverse weather conditions, labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations.

17. Agency

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

18. Nondisclosure of Proprietary Information

18.1 The Parties agree that it may be necessary to exchange with each other certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data, call detail records, and Customer Proprietary Network Information ("CPNI") as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the FCC and similar information (collectively, "Confidential Information"). Confidential Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; (ii) oral information, if identified as confidential or proprietary at the time of disclosure and confirmed by written notification within ten (10) days of disclosure; and (iii) information derived by the Recipient (as hereinafter defined) from a Disclosing Party's (as hereinafter defined) usage of the Recipient's network. The Confidential Information shall remain the property of the Disclosing Party and is deemed proprietary to the Disclosing Party. Confidential Information shall be protected by the Recipient as the Recipient would protect its own proprietary information, including but not limited to protecting the Confidential Information from distribution, disclosure, or dissemination to anyone except employees or duly authorized agents of the Parties with a need to know such information and which the affected employees and agents agree to be bound by the terms of this Section. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement, or upon such other terms as may be agreed to by the Parties in writing. For purposes of this Section, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the party to whom Confidential Information is disclosed.

18.2 Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions on the Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all reasonable lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

- 18.3 Each Party agrees that Disclosing Party would be irreparably injured by a breach of this Agreement by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

19. Notices

Notices given by one Party to the other under this Agreement shall be in writing and delivered by hand, overnight courier or pre-paid first class mail certified U.S mail, return receipt requested, and shall be effective when received and properly addressed to:

For Cornerstone:

Donald P Walsh
2 Third Street Suite 303
Troy, NY 12180

fax: 518-273-2750

With a copy to:

For FairPoint :

FairPoint Communications, Inc.
908 West Frontview Street
P.O. Box 199
Dodge City, KS 67801-0199
Attn: Pat Morse, Senior VP – Government Affairs
Phone: 620-227-4400

With a copy to:

FairPoint Communications, Inc.
521 East Morehead Street
Suite 250
Charlotte, NC 28202
Attn: Shirley Linn, Executive VP, General Counsel
Phone: 704-344-8150

or to such other location as the receiving Party may direct in writing.

All compensation payable pursuant to this Agreement shall be payable within thirty (30) days of the bill date. Any amounts not paid when due shall accrue interest from the date such amounts were due at the highest rate of interest that may be charged under applicable law.

20. Severability

If any part of this Agreement is held to be unenforceable or invalid in any respect under law or regulation, such unenforceability or invalidity shall affect only the portion of the Agreement which is unenforceable or invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect, unless removal of that provision results in a material change to this Agreement. In such a case, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may request dispute resolution pursuant to Section 24.

21. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment or transfer (whether by operation of law or otherwise) by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void ab initio, provided however that such consent shall not be unreasonably withheld, conditioned or delayed. Either Party may assign this Agreement to a corporate affiliate or an entity under common control or an entity acquiring all or substantially all of its assets or equity, whether by sale, merger, consolidation or otherwise or in connection with a financing transaction by providing prior written notice to the other Party of such assignment or transfer.

22. Entire Agreement

This Agreement, including all attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

23. Multiple Counterparts

This Agreement may be executed in counterparts and each of which shall be an original and all of which shall constitute one and the same instrument and such counterparts shall together constitute one and the same instrument.

24. Dispute Resolution

- 24.1 No claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence that gives rise to the dispute.
- 24.2 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedure set forth in this Section with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 24.3 At the written request of a Party, each Party will appoint a good faith representative having the authority to resolve such dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted as evidence in the arbitration or lawsuit.
- 24.4 If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, either Party may submit the dispute to either the Commission, or upon mutual agreement to the American Arbitration Association (“AAA”) for binding arbitration pursuant to their respective rules and practices of the entity to which the dispute is submitted for handling such disputes.
- 24.5 The prevailing Party will have all costs expended under this Section reimbursed by the losing Party, or, in such circumstances where there is no clear and obvious prevailing Party, the costs and expenses will be paid as allocated by the arbitration decision.

25. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of New York, without regard to its conflicts of laws principles.

26. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

27. Taxes

Each Party shall be responsible for any and all taxes and surcharges arising from its conduct under this Agreement and shall, consistent with Section 15, indemnify and hold harmless the other Party for its failure to pay and/or report any applicable taxes and surcharges.

28. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

29. Publicity

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

30. Miscellaneous

30.1 By entering into this Agreement, the Parties agree that this Agreement is not an Interconnection agreement pursuant to 47 U.S.C. Section 251 or 252, and the Parties shall not be estopped from asserting, at any time, that this Agreement is not an Interconnection agreement in any legislative, regulatory, or other public forum addressing any related matters. Moreover, FairPoint does not waive, nor shall it be estopped from asserting, any rural exemption that it may have pursuant to 47 U.S.C. Section 251(f).

30.2 This Agreement does not apply to traffic that originates and terminates within the same local exchange; traffic that originates, terminates, or is carried on third-party networks not expressly contemplated by this Agreement; or any traffic originated or terminated by users of commercial mobile radio services or paging services.

30.3 Amendments. This Agreement may not be amended, modified, or supplemented, except by written instrument signed by both Parties.

30.4 No License.
Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name,

trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

- 30.5 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party will have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement will not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.
- 30.6 No Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.
- 30.7 Default. If either Party believes the other is in breach of this Agreement or otherwise in violation of law, it will first give thirty (30) days notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties will employ the dispute resolution and arbitration procedures set forth in this Agreement.
- 30.8 Waiver. Any failure on the part of a Party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by written documentation by the other Party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver.
- 30.9 Regulatory Changes. If a federal or state regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order (collectively, "Regulatory Requirement") which has the effect of canceling, changing, or superseding any material term or provision of this Agreement then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent and purpose of this Agreement and as necessary to comply with such Regulatory Requirement.
- 30.10 No Third Party Beneficiaries. This Agreement shall not be deemed to provide any third party with any benefit, remedy, claim, right of action or other right.
- 30.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties agree that the effective date of this Agreement is the date first written above, and each Party warrants that it has caused this Agreement to be signed and delivered by its duly authorized representative.

**Berkshire Telephone Corporation d/b/a FairPoint
Communications and
Taconic Telephone Corporation d/b/a
FairPoint Communications**

By: 

Name: Pat Morse

Title: Senior VP – Government Affairs

Date: 9-11-08

Cornerstone Telephone Company

By: 

Name: Donald J. Walsh

Title: CEO

Date: 9/2/08

Schedule 1¹

Berkshire Exchanges	EAS Exchanges
Kinderhook / Valati	Niverville Stuyvesant Hudson Castleton Albany
Niverville	Kinderhook / Valati Stuyvesant Hudson Castleton Albany
Stuyvesant	Kinderhook / Valati Niverville Hudson Castleton Albany

¹ Parties agree that this Schedule will be modified upon no less than 30 days' notice by FairPoint to reflect changes in EAS routes without modifying any other terms of this Agreement.

Schedule 2²

Taconic Exchanges	EAS Exchanges
Berlin	Albany, Stephentown, Troy
Canaan	Chatham, Hancock-MA, Stephentown, West Lebanon
Chatham	Albany, Canaan, Hudson, Kinderhook, Philmont, West Lebanon
Copake	Claverack*, Elizaville*, Germantown*, Hillsdale, Millerton, Pine Plains
Hancock-MA	Canaan, Stephentown, West Lebanon
Hillsdale	Copake, Millerton, Pine Plains
Millerton	Amenia, Copake, Hillsdale, Pine Plains
Nassau	Albany, Averill Park, Castleton, Colony, Kinderhook, Schenectady, Troy, West Lebanon, Colonie
Pine Plains	Claverack*, Copake, Elizaville*, Germantown*, Hillsdale, Millerton, Pine Plains, Stanfordville.
Stephentown	Albany, Berlin, Canaan, Hancock-MA, Troy, West Lebanon
West Lebanon	Albany, Canaan, Chatham, Hancock-MA, Nassau, Stephentown

* Local Measured Service

² Parties agree that this Schedule will be modified upon no less than 30 days' notice by FairPoint to reflect changes in EAS routes without modifying any other terms of this Agreement.