

Hearing Date: November 18, 2009 10:00 a.m.
Objection Deadline: November 11, 2009 4:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: :
: **Chapter 11**
: **FAIRPOINT COMMUNICATIONS,** :
INC., et al., : **Case No. 09-16335 (BRL)**
: **(Jointly Administered)**
: **Debtors.** :
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**OBJECTION AND JOINDER OF MAINE PUBLIC SERVICE COMPANY TO
DEBTORS' AMENDED MOTION FOR ENTRY OF AN ORDER DETERMINING
ADEQUATE ASSURANCE OF PAYMENT**

1. Maine Public Service Company (“MPS”) respectfully files this Objection (the “Objection”) to Debtor’s Amended Motion for Entry of An Order Determining Adequate Assurance of Payment for Future Utility Services (Docket No. 27) (the “ Utility Motion”) filed by FairPoint Communications, Inc., and those other entities that are debtors and debtors-in-possession in the above-entitled bankruptcy proceedings (collectively, the “Debtors”). MPS hereby joins the Objection filed on behalf of Bangor Hydro Electric Company and incorporates by reference the legal argument and analysis set forth in the memorandum filed by Bangor

Hydro Electric Company. (ECF 110). In addition to the assertions set forth in Bangor Hydro Electric Company's memorandum, MPS asserts the following.

I
JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II
BACKGROUND

3. On the Petition Date each of the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"). The Debtors' bankruptcy cases are being jointly administered.

4. The Debtors are purportedly a leading telecommunications firm providing telecommunications services to rural and small urban communities in 18 States. The Debtors have made numerous public statements that this proceeding will not impact its customers in Maine and that it remains committed to providing reliable, uninterrupted service to those customers.

5. MPS is the transmission and distribution electric utility located in the northern part of the State of Maine serving approximately 36,000 customers over an area of 3,600 square miles. MPS is a utility regulated by the Maine Public Utilities Commission. Many of MPS's customers obtain wireline telephone and high-speed internet services from the Debtors, but not all of MPS's ratepayers are also ratepayers of the Debtors.

6. The Debtors maintain a significant number of locations in the areas served by MPS which serve as central offices to house Debtors' plant equipment, telephone switches and

switching equipment. The locations are necessary and essential to operate Debtors' business as an ILEC and to provide high-speed internet to Debtors' customers in the State of Maine. The Debtors purchase electricity from MPS for their business operations in the areas served by both the Debtors and MPS; of the 140 locations of Debtor to which MPS provides utility services, the overwhelming majority of those are central offices as described above. The locations to which MPS provides these utility services to the Debtors along with the corresponding account numbers for such services, are reflected on Schedule A, attached hereto and incorporated herein by reference.

7. As of the Petition Date, the Debtors were indebted to MPS on such accounts for their prepetition consumption of electricity in the estimated, aggregate amount of \$35,374.35.¹ The Debtors' estimated prepetition indebtedness owed to MPS for each of its accounts is reflected on the annexed Schedule A.

8. During the twelve (12) months immediately preceding the Petition Date, the Debtors' highest monthly consumption of utility services from MPS totaled, in the aggregate, \$51,714.07.

9. During the twelve (12) months immediately preceding the Petition Date, the Debtors' average monthly consumption of utility services from MPS totaled, in the aggregate, \$37,831.41.

10. The monthly consumption figures noted above understate the credit exposure faced by MPS arising from the Debtors' postpetition consumption of electricity. First, as figures based on historical usage by the Debtors, the average consumption figures do not properly account for seasonal or other unanticipated fluctuations in consumption by the Debtors. Further,

¹ This amount is an estimate based on all information currently available. MPS reserves the right to adjust this amount should additional charges become known.

these historical consumption figures do not account for future changes in the market price of electricity.

III
AUTHORITIES REGARDING ADEQUATE ASSURANCE OF PAYMENT

11. The legal basis and authority regarding the legal inadequacy of Debtor's motion are fully set forth in the Objection of Bangor Hydro Electric Company and are incorporated herein by reference.

IV
THE PROPOSED ADEQUATE ASSURANCE IS INADEQUATE

12. The Proposed Utility Deposit Account Does Not Assure Payment.

A. As noted in the Bangor Hydro opposition memorandum, the Debtors propose to satisfy their obligations under the Code by placing cash into the Utility Deposit Account in an amount purportedly equal to the cost to the Debtors of fifty percent (50%) of their estimated average monthly cost for all utility services. *See* Debtors' Utility Motion at p. 6 ¶ 15. This proposal is patently unreasonable and the Debtors offer no justification for their unilateral determination of the adequacy of this proposed nominal assurance of payment.

B. The contracts and course of dealing between the Debtors and MPS as well as industry custom evidence the inadequacy of the amount of the Utility Deposit Account. MPS bills the Debtors in arrears in the ordinary course of business for over 140 accounts. As is the custom in the industry, MPS delivers an invoice to the Debtors for utility consumption after the calculation of the usage for the immediately preceding month. Following the billing, the Debtors are then afforded between fifteen (15) and thirty (30) days within which to satisfy the invoice.² Assuming the Debtors do not pay an invoice for utility service by the applicable due date, the Debtors are afforded additional time from the due date within which to cure the default or face

² Currently the Debtors payments are running approximately one month in arrears.

termination. Finally, the Debtors may have rights to administratively appeal any disputes concerning the amount of any invoice to the Maine Public Utilities Commission as a pre-condition to termination. Accordingly, in the ordinary course of business, MPS will supply the Debtors service for more than two (2) months for which they may not be paid prior to the termination of service.

C. As noted in the companion Objection filed by Bangor Hydro, any losses suffered by MPS providing electrical service to the Debtors will, in turn, be passed on to, and absorbed by, their other ratepayers in the form of electrical rate increases. In other words, if the “assurance of payment” proves inadequate, the Debtors will have received a windfall at the expense of MPS’s ratepayers. This result is an inequitable shift in costs to MPS’s ratepayers. If the Debtors’ “assurance of payment” proves inadequate, MPS’s ratepayers will be doubly injured because, like other utilities in Maine, MPS will not be able to exercise, as a practical matter, the traditional means of self-help available to a utility to disconnect the services it provides to the Debtors. The utility services MPS provides to Debtors’ nearly 140 locations are essential to the Debtors continued operation of their business as a local exchange carrier and provider of high speed internet services in MPS’s service territory and beyond. If MPS were to disconnect electric utility service to those locations, it would effectively shut down telephone service and high speed internet to many people in MPS’s service territory and beyond. It is highly unlikely that the Maine Public Utilities Commission would allow MPS to disconnect electric utility service to the Debtors locations listed in Schedule A, since doing so would imperil vital communications services for hundreds of thousands of Maine households. Therefore, any “assurance of payment” which the Debtors provide to MPS must account for the effective elimination of MPS’s standard remedy to terminate service. It is inequitable to require MPS’s ratepayers – not all of whom are

ratepayers of the Debtors – to shoulder such loss when the Debtors can provide MPS with adequate assurance of payment in an amount and manner satisfactory to it.

D. In order to assure, make certain or guarantee the payment to MPS for postpetition services and address the credit risks presented by: (i) the parties' billing practices, (ii) market conditions, (iii) the uncertainty associated with the Debtors' reorganization efforts, (iv) the fluctuations in the prices for electricity, and (v) the fact that MPS cannot disconnect electric service to the Debtors even for nonpayment, MPS requests that a cash deposit be placed directly with MPS in an amount *at least* equal to two (2) times the Debtors' highest monthly consumption during the twelve (12) month period preceding the Petition Date, such deposit totaling, in the aggregate, \$103,428.14.

OBJECTIONS TO ADEQUATE ASSURANCE PROCEDURES

13. The Debtors' Proposed Adequate Assurance Procedures Conflict with Section 366(c) of the Bankruptcy Code.

In addition to the fact that the procedures proposed in the Debtors' Utility Motion are contrary to Section 366(c) of the Bankruptcy Code, the motion fails to provide a reasonable system for payment of claims against the Utility Deposit Account. Even if the Court were to accept the conceptual framework proposed by the Debtors, the process, or lack of it, proposed by the Debtors is a recipe for chaos. In addition to the lack of protection noted above in the amount proposed and by virtue of the liens of the DIP Financing Agreements, the motion provides no procedure by which a utility may draw from the Utility Deposit Account, nor does it provide a mechanism to replenish the account in the event it is drawn down or otherwise dissipated. The failure to address these payment requirements alone throw into serious question whether the proposed Utility Deposit Account could ever comply with the provisions of Section 366.

VI
CONCLUSION

WHEREFORE, for the foregoing reasons, MPS respectfully requests that:

1. This Court deny the Debtors the relief requested in their Utility Motion; and
2. This Court require the Debtors to immediately deliver a cash deposit satisfactory to MPS in an amount not less than two (2) times the Debtors' highest historical monthly utility charge during the twelve (12) month period preceding the Petition Date, such deposit totaling, in the aggregate, \$103,428.14.

DATED: November 10, 2009

Respectfully submitted,

/s/Christian Chandler
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