**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| Application of<br><br>Verizon New England Inc., NYNEX Long Distance Company, Bell Atlantic Communications, Inc., Verizon Select Services Inc., Verizon Communications Inc., and Northern New England Spinco Inc.,<br><br>Transferors,<br><br>and<br><br>FairPoint Communications, Inc.,<br><br>Transferee,<br><br>For Consent to Transfer Certain Assets and Long-Distance Customer Relationships in the States of Maine, New Hampshire, and Vermont | WC Docket No. 07-22 |

# OPPOSITION TO PETITIONS TO DENY


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**SUMMARY**

This transaction will allow FairPoint Communications, Inc. ("FairPoint"), an established telecommunications carrier with a strong history of successful operations, to use its expertise in providing broadband and serving rural and small urban communities to benefit consumers in Maine, New Hampshire, and Vermont. FairPoint plans to expand significantly the availability of broadband services, with a goal ultimately to increase broadband access in these exchanges to the levels FairPoint has achieved in its existing exchanges. FairPoint also plans to establish local service centers for network operations, sales, and customer service, and other functions, which Verizon previously performed outside the region. These identifiable benefits will be realized without any risk of competitive harms. Accordingly, the transaction is in the public interest and should be approved.

Only one competing carrier—One Communications Corp. ("One Communications")—and two unions—the Communications Workers of America and International Brotherhood of Electrical Workers (collectively, "CWA")—requested denial of the Application. Their objections are misplaced. One Communications and CWA argue that FairPoint's existing operations are not as expansive as Verizon's. However, this comparison is irrelevant, and also misleading given the breadth of FairPoint's experience. As the Commission recently affirmed, the proper analysis is whether the acquisition of the exchanges in question by FairPoint is in the public interest, not whether Verizon (or some other hypothetical buyer) would be preferable.

The Commission also should reject the petitioners' generally speculative attacks on specific aspects of FairPoint's capabilities. Contrary to CWA's assertions, FairPoint intends to spend *more* capital expenditures per line than Verizon historically has spent. FairPoint is capable of making this investment. In fact, FairPoint has already targeted a significant investment to expand its broadband infrastructure in the region in the first twelve months after

closing. Already, FairPoint has deployed broadband facilities to approximately *92 percent* of its customers in Maine, New Hampshire, and Vermont. FairPoint will have adequate access to capital, and its discretionary dividend policy, reasonable ratio of debt to cash flow, and post-transaction cost savings will not impair this strong financial position. FairPoint will also be able to honor its public pledge to (1) retain *all* current employees in the region, (2) preserve all existing benefits, (3) assume the existing collective bargaining agreements, and (4) create 600 new jobs in the region.

Moreover, Verizon and FairPoint are dedicating significant resources to a smooth transition for all customers, both retail and wholesale. FairPoint has adopted a sensible transition plan and already has committed substantial resources to its implementation. FairPoint and Verizon have entered into a Transition Services Agreement ("TSA") under which Verizon will provide support services as long as necessary. FairPoint also has retained Capgemini, one of the most qualified consultants in the industry, to assist in the development of systems and processes before and during the post-closing transition.

The Commission should reject the petitioners' references to isolated incidents that have no bearing on FairPoint's ability to complete this transaction successfully. For example, the sale of Verizon Hawaii involved an inexperienced purchaser and a different outside consultant enlisted to facilitate the transition; in addition, the petitioners overstate the impact on wholesale customers of any issues that arose during that transition. Similarly, the issues FairPoint experienced during a one-time effort to centralize its billing systems in Maine, which FairPoint has since resolved, resulted from the abrupt departure of FairPoint's vendor, a scenario that will not repeat itself in this transition.

One Communications' speculative claims regarding FairPoint's future provision of wholesale services in the region—and its corresponding proposal to saddle FairPoint with unnecessary wholesale obligations—are misplaced. Following the transaction, FairPoint will be subject to Section 251 just as Verizon is today, and has pledged not to seek state commission authorization for a rural exemption to those Section 251 obligations. FairPoint also intends to honor all of Verizon's existing interconnection agreements for their duration, including the agreements to provide commercially-negotiated replacements to various unbundled network elements ("UNEs") the Commission has delisted. One Communications also argues that FairPoint should be subject after the transaction to the regulations that apply uniquely to Bell Operating Companies ("BOCs"). But there is no basis to regulate FairPoint as a BOC. Congress determined that BOCs should be singled out due to their large and concentrated regions, which FairPoint will not have. In any event, the question whether FairPoint qualifies as a BOC under the Act is not properly addressed in a transfer proceeding such as this one.

Finally, the Commission should reject the vague and unnecessary conditions proposed by CWA. Limitations on FairPoint's dividend payments or debt would be inappropriate because neither FairPoint's reasonable ratio of debt to cash flow nor its discretionary dividend policy threatens to impair its financial condition. To the contrary, imposing such conditions could hinder FairPoint's ability to raise capital when needed. There is likewise no need to micromanage the company's capital expenditures or broadband build-out, given FairPoint's promises to increase per-line spending and expand broadband access above current levels in the region. And CWA fails to provide any justification for the imposition of new performance metrics during the transition or thereafter. Indeed, FairPoint has been commended for its high service quality.

The Commission should not impose unwarranted conditions that could inhibit FairPoint's ability to invest in advanced technology and expand services to consumers in these markets. It should reject the petitions to deny and approve the proposed transaction.

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**OPPOSITION TO PETITIONS TO DENY**

Verizon New England Inc. ("Verizon New England"), NYNEX Long Distance Company ("NYNEX Long Distance"), Bell Atlantic Communications, Inc. ("BACI"), Verizon Select Services Inc. ("VSSI"), Verizon Communications Inc. ("Verizon Communications"), and Northern New England Spinco Inc. ("Spinco") (collectively, "Verizon"), and FairPoint Communications, Inc. ("FairPoint," and together with Verizon, "the Applicants"), hereby oppose the petitions to deny filed by One Communications Corp. ("One Communications") and the Communications Workers of America and International Brotherhood of Electrical Workers (collectively, "CWA").[1] In the proposed transaction, FairPoint seeks to acquire local exchange

1 *See* Petition to Deny of One Communications Corp., WC Docket No. 07-22 (filed Apr. 27, 2007) ("One Communications Pet."); Petition to Deny of Communications Workers of America and International Brotherhood of Electrical Workers, WC Docket No. 07-22

assets and certain customer relationships in Maine, New Hampshire, and Vermont that are being divested by several Verizon entities. As explained below, this transaction will allow FairPoint, an established incumbent telecommunications carrier with particular expertise in providing broadband and serving rural and small urban communities, to offer consumers many benefits without any adverse effects on competition. Accordingly, the Commission should reject the petitions to deny and grant the Application.

## INTRODUCTION AND BACKGROUND

On January 15, 2007, FairPoint entered into an Agreement and Plan of Merger ("Merger Agreement") with Spinco and Verizon Communications. As explained in greater detail in the Application,[2] the transaction consists of two distinct but immediately sequential parts.

*First*, through a series of *pro forma* transactions, Verizon New England will transfer certain assets, liabilities, and customer relationships relating to its local exchange and long-

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(filed Apr. 27, 2007) ("CWA Pet."); *see also Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Order, WC Docket No. 07-22 (WCB rel. Apr. 11, 2007). FairPoint and Verizon also reply to one informal comment. *See* Comment of David Rivard, WC Docket No. 07-22 (filed Apr. 12, 2007).

[2] *See generally* Application of Verizon New England Inc., NYNEX Long Distance Company, Bell Atlantic Communications, Inc., Verizon Select Services Inc., Verizon Communications Inc., and Northern New England Spinco Inc., Transferor, and FairPoint Communications, Inc., Transferee, For Consent to Transfer Certain Assets and Long-Distance Customer Relationships in the States of Maine, New Hampshire, and Vermont, WC Docket No. 07-22, at 9-11 (filed Jan. 30, 2007) ("App."); *see also id.* Attach. A (organizational chart of the transaction). FairPoint and Verizon separately sought Commission consent to the assignment of one international section 214 authorization currently held by Verizon New England; the partial assignment of certain authorizations in connection with the transfer of international customer relationships currently held by NYNEX Long Distance, BACI, and VSSI; and the assignment of various wireless licenses. In addition, Verizon Internet Services Inc., d/b/a Verizon On-Line, will transfer certain non-regulated customer relationships, *see* App. at 9 n.5, as will GTE.Net LLC, *see* Amendment No. 1 to Distribution Agreement, attached to Form 8-K, FairPoint Communications, Inc. (filed Apr. 20, 2007).

distance operations to a newly formed subsidiary, Northern New England Telephone Operations Inc. ("Telco"); similarly, NYNEX Long Distance, BACI, and VSSI will transfer certain accounts receivable, liabilities, and customer relationships relating to their long-distance operations to another newly formed subsidiary, Enhanced Communications of Northern New England Inc. ("Newco"). The transaction does not involve any assets held by other Verizon affiliates such as Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") or Verizon Business Global LLC f/k/a MCI, LLC ("Verizon Business"). Both Telco and Newco will become direct, wholly-owned subsidiaries of Spinco, which will be spun off through a stock distribution to Verizon Communications shareholders.

*Second*, Spinco will be merged with and into FairPoint, such that Telco and Newco will become wholly-owned subsidiaries of FairPoint. FairPoint will continue to operate under its own name, and current FairPoint management will continue to manage and control FairPoint's day-to-day operations. Both the spin-off and the merger qualify as tax-free transactions, helping to ensure a reasonable transaction price. FairPoint will finance the transaction with $1 billion in additional equity to current Verizon shareholders and $1.7 billion in debt (predominantly bank financing).

The proposed transaction illustrates—and facilitates—FairPoint's and Verizon's respective (and somewhat divergent) business strategies. FairPoint's core business is in serving rural and small urban markets; the exchanges in Maine, New Hampshire, and Vermont that are the subject of this transaction fit readily within that model. In contrast, Verizon's various strategic opportunities have required it to prioritize the demands on its capital, and it has chosen to divest these exchanges in order to accommodate those competing needs.

The Commission has explained that, as a general rule, "sale[s] of rural exchanges from larger incumbent LECs to smaller incumbent LECs that specialize in providing service in rural areas" do "not raise public interest issues" and "are unlikely to raise the potential of competitive harm."[3] The proposed transaction is no exception. As described in the Application, the transaction will not affect competition, because there is no overlap between FairPoint's current exchanges and those it seeks to acquire from Verizon. If anything, it will decrease market concentration, because the exchanges will no longer be served by a carrier that is affiliated with other competitors in these markets, such as Verizon Business and Verizon Wireless. Further, the transaction will allow FairPoint to serve consumers in the rural and small urban markets that are its specialty. And the transaction will yield another public interest benefit that is not as common: the accelerated deployment of broadband, a cornerstone of FairPoint's business and reputation that it already has pledged to pursue in the Verizon exchanges. All of this can be achieved without any competitive harms. In particular, FairPoint has stated that it will preserve existing wholesale arrangements and has already started building the systems necessary to do so.

Under applicable precedent, FairPoint is qualified to acquire and operate the exchanges that Verizon is divesting in Maine, New Hampshire, and Vermont. By approving this transaction, the Commission will enable consumers in the region to be served by a carrier that is uniquely suited to meet their needs, bringing them increased broadband availability and maintaining high service quality without posing any countervailing harms to consumers, competition, or the economy of the region. The petitions to deny therefore should be denied.

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3 *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517 ¶ 33 (2002).

## STANDARD OF REVIEW

Pursuant to Sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control of certain of Verizon's licenses and authorizations to FairPoint will serve the public interest, convenience, and necessity.[4] In making this determination, the Commission "employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits" to determine whether the "proposed transaction, on balance, serves the public interest."[5] Where, however, "potential harms appear to be less likely or less substantial, . . . [the Commission] will accept a lesser showing to approve the transaction."[6] In particular, "[t]ransactions that do not significantly increase concentration or result in a concentrated market ordinarily require no further competitive analysis."[7] Moreover,

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4 47 U.S.C. §§ 214(a), 310(d).

5 *Verizon Communications Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 ¶ 16 (2005) ("*Verizon/MCI Order*").

6 *Verizon Communications Inc., Transferor, & América Móvil, S.A. de C.V., Transferee*, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, WT Docket 06-113, ¶ 35 (rel. Mar. 26, 2007) ("*Verizon/América Móvil Order*"). *See also Global Crossing Ltd. and Frontier Corporation Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as Amended*, Memorandum Opinion and Order, 14 FCC Rcd 15911 ¶ 26 (1999) ("We need not ascertain the exact magnitude of the public interest benefits of the proposed merger because 'where, as here, potential harms are unlikely, Applicants' demonstration of potential benefits need not be as certain.'"); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292 ¶ 45 (1998) (same); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025 ¶ 197 (1998) ("This sliding scale approach makes clear that, where, as here, potential harms are unlikely, Applicants' demonstration of potential benefits need not be as certain.").

7 *Applications of Nextel Communications, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd

even though FairPoint has stated that it plans to increase the availability of broadband and make other upgrades in the relevant areas, it is irrelevant whether FairPoint has a binding commitment to do so. Under settled precedent, the public interest standard is met in "the absence of any evidence that the proposed merger may inhibit or delay the development of competition."[8] Thus, precedent makes clear that this transaction would still be in the public interest even if the substantial benefits FairPoint brings are not considered in the first instance.

## DISCUSSION

## I. THE TRANSACTION WILL PRODUCE TRANSACTION-SPECIFIC PUBLIC INTEREST BENEFITS.

### A. FairPoint's Experience and Strategic Focus Are Ideally Suited to Northern New England Consumers.

FairPoint is an established and well-regarded telecommunications carrier, and the Commission has reviewed and endorsed its qualifications as a transferee on numerous occasions.[9] It should do so again here. The Commission's review of a proposed transferee's

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13967 ¶ 31 ("*Sprint/Nextel Order*"). *See also Applications of AT&T Wireless Services, Inc. & Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 21522 ¶ 69 (2004) ("*Cingular/AT&T Wireless Order*").

[8] *See, e.g., Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc. a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Op. & Order, 13 FCC Rcd 8891 ¶ 3 (1997) (holding that the public interest standard was met even though "Applicants have not established the existence of substantial pro-competitive efficiency benefits to consumers," and even though "limited weight" was given to evidence "that the merger may produce additional public interest benefits for some consumers, especially those in rural communities through plant upgrades and investment in enhanced telecommunications services" when PacifiCorp and Century "made no commitment to make those upgrades"). *See also Application of Contel Corporation and GTE Corporation for Consent to the Transfer of Control of Authorizations Held by Contel Subsidiaries*, Memorandum Opinion and Order, 6 FCC Rcd 1003 (1991).

[9] *See, e.g., Notice of Domestic Section 214 Authorization Granted*, Public Notice, DA 06-2267, WC Docket No. 06-177 (rel. Nov. 2, 2006) (granting Domestic Section 214 Application Filed for Transfer of Control of The Germantown Independent Telephone Company to MJD Ventures, Inc.); *Cass County Telephone Company, Limited*

qualifications encompasses a variety of issues, including "citizenship, character, financial, technical, and other qualifications,"[10] and experience as a telecommunications provider.[11] FairPoint's combination of experience, strategic focus, and human and financial resources—most of which is undisputed[12]—qualify it as a transferee and uniquely equip it to meet the needs of consumers in Maine, New Hampshire, and Vermont.

*Extensive Telecommunications Experience.* Incorporated in 1991, FairPoint now is one of the largest telecommunications carriers in the United States that specializes in serving rural and small urban markets.[13] Through its thirty-one operating companies, FairPoint serves over 300,000 access line equivalents in eighteen states across the country—including approximately

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*Partnership, and LEC Long Distance, Inc. d/b/a CassTel Long Distance, Transferors, and FairPoint Communications, Inc., FairPoint Communications Missouri, Inc., and ST Long Distance Inc., d/b/a FairPoint Communications Long Distance, Transferees, Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Transfer of Control of Blanket Domestic Section 214 Authority and Certain Telecommunications Assets*, Order, WC Docket No. 06-64 (rel. July 20, 2006); *Wireline Competition Bureau Grants Consent for Transfer of Control of BE Mobile Communications, Incorporated, and Bentleyville Communications Corporation, to FairPoint Communications, Inc., and MJD Ventures, Inc.*, Public Notice, DA 05-2231, WC Docket No. 05-215 (rel. Aug. 1, 2005); *Wireline Competition Bureau Grants Consent for Transfer of Control of Berkshire Telephone Company to FairPoint Communications, Inc.*, Public Notice, DA 05-1095, WC Docket No. 03-184 (rel. Apr. 15, 2005).

10 *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74 ¶ 190 (rel. Mar. 26, 2007) ("*AT&T/BellSouth Order*") (citing omitted); *see also, e.g.*, *Verizon/América Móvil Order* at ¶ 21; 47 U.S.C. § 308(b).

11 *See, e.g.*, *Verizon/América Móvil Order* at ¶ 21 (finding América Móvil to be a qualified transferee in part because it "has extensive telecommunications experience, including with wireline carriers").

12 One Communications and CWA challenge FairPoint's financial qualifications and its record with respect to quality of service. These arguments are refuted below in sections I.B and I.D, respectively.

13 App. at 11, 17.

64,000 access line equivalents in Maine, New Hampshire, and Vermont.[14] FairPoint utilizes state-of-the-art technology to provide an array of integrated, high-quality services to consumers in rural and small urban markets, including local and long-distance voice and data services, and broadband Internet access. FairPoint believes it is second-to-none in the industry in making broadband available in rural markets, with average broadband access around 92 percent in FairPoint's current study areas in Maine, New Hampshire, and Vermont.[15]

*History of Successful Acquisitions.* FairPoint reached its current size through a series of successful acquisitions. To date, FairPoint has acquired more than thirty companies—many of which have been in operation for more than seventy-five years—giving the Commission and the states many opportunities to review and affirm FairPoint's qualifications as a transferee.[16] Through this process of acquisitions, FairPoint has developed significant in-house expertise in managing dispersed operations.[17]

*Strategic Focus on Rural and Small Urban Markets.* FairPoint's strategic focus is on the provision of wireline telecommunications service to exchanges in rural and small urban areas, which are precisely the types of exchanges FairPoint will acquire in this transaction.

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[14] App. at 17, 18. As noted below, none of the exchanges in these three states in which FairPoint currently operates overlaps with any of the exchanges being acquired from Verizon. *See infra* section II.A. In addition to these three states, FairPoint currently owns and operates companies that provide telecommunications services in Alabama, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Massachusetts, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Virginia, and Washington.

[15] *See* Declaration of Walter E. Leach, Jr. ("Leach Decl.") at ¶ 15, attached hereto as Exhibit B.

[16] *See* App. at 17-18 & n.24 (citing illustrative decisions by the Commission).

[17] FairPoint employs a corporate development group dedicated to acquisition work, and relies on subject matter experts from other operational groups as necessary to further this process. Leach Decl. at ¶ 4. As discussed below, for purposes of this transaction, FairPoint has retained additional resources to further ensure a smooth transition. *See infra* section I.E.

Accordingly, FairPoint is well acquainted with the challenges of maintaining and investing in facilities in rural areas and skilled in overcoming them—including, in particular, the deployment of broadband in low-density areas.[18] It likewise is quite familiar with the needs of the consumers who reside in such areas.

*Reputation for Customer Service.* FairPoint has developed a reputation for high-quality customer service and has been recognized for its performance in this regard. The New York Public Service Commission recently awarded its annual service commendation awards to all three of FairPoint's operating companies in that state—the sixteenth in a row for one company, the eleventh out of twelve for another, and the third consecutive award for the third company.[19]

*Locally-Based Management.* Finally, consistent with its focus on rural areas, FairPoint historically has relied on locally-based management to operate its various companies. Northern New England is no exception. Indeed, FairPoint already maintains a regional headquarters in Portland, Maine that provides services and support for the rest of its current New England properties, and the South China, Maine call center supports current operations throughout the eastern United States.[20] Following the transaction, FairPoint will continue to rely on former Verizon personnel based in the region to operate the exchanges it will acquire from Verizon. In addition, as part of the proposed transaction, FairPoint intends to establish regional centers for

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18 FairPoint's success in broadband deployment, and its related plan to invest in the Verizon exchanges following the proposed transaction, are discussed *infra* section I.C.

19 Press Release, State of New York Public Service Commission, *Commission Issues Commendations to Telephone Companies for Excellent Service*, Mar. 21, 2007, *available at* http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/7EF69CD7825DFDEB852572A5005D3267/$File/pr07021.pdf?OpenElement (last visited May 3, 2007).

20 Declaration of Peter G. Nixon ("Nixon Decl.") at ¶ 3, attached hereto as Exhibit C; Leach Decl. at ¶ 25.

accounting, certain customer service functions, network operations, legal, and other back-office functions that previously were performed outside the region.[21]

### B. FairPoint Is Financially Stable and Poised to Operate and Invest in the Northern New England Exchanges.

Following the transaction, FairPoint will have the financial and operational strength to operate the additional exchanges it will acquire from Verizon and to further invest in those service territories. The transaction price of $2.715 billion is funded by a reasonable combination of equity (37 percent) and debt (63 percent).[22] As an indication of its future access to capital, FairPoint readily obtained commitments for $2.1 billion in bank financing to support the transaction.[23] And FairPoint expects that it will be able to generate solid cash flows that support its investment plans, debt servicing, and dividends as appropriate.

#### 1. It Is Appropriate to Analyze FairPoint As a Buyer Compared to the Standalone Operation of the Exchanges.

One Communications and CWA argue that FairPoint will lack the resources to operate the exchanges effectively. The primary underpinning of this position is the petitioners' statement that FairPoint's operations are not as expansive as Verizon's.[24] Indeed, CWA conducts an extensive comparison of various aspects of FairPoint's and Verizon's respective financial

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21 App. at 19; Leach Decl. at ¶ 25. These centers will use existing facilities to the extent possible. *Id.*

22 Leach Decl. at ¶ 8.

23 *Id.*

24 *See, e.g.*, One Communications Pet. at 14 (stating that FairPoint will have "far fewer [financial and managerial resources] than Verizon has").

conditions.[25] According to CWA, this is important "because Verizon would be the parent on which the [northern New England] operations would rely if the sale is not approved."[26]

The Commission recently confirmed, however, that this type of analysis is irrelevant in transfer proceedings. In approving Verizon's recent sale of Puerto Rico Telephone Company ("PRTC") to America Movil, the Commission "reject[ed] . . . assertions that, because America Movil's scope and scale are not as great as Verizon's, we must find that the transfer of PRTC to America Movil would not be in the public interest."[27] Rather, the Commission stated that, because Verizon "has made the corporate decision to divest itself" of the assets at issue, the proper question was whether the transaction "would result in efficiencies and other public interest benefits that are greater than [PRTC's direct parent] would enjoy on its own."[28]

The same reasoning applies here. Verizon has made the decision to divest its exchanges in Maine, New Hampshire, and Vermont, consistent with the evolution of its own business plan.[29] Thus, whether FairPoint's resources are equivalent to Verizon's is not the appropriate question.[30] Ironically, some of the benefits of the proposed transaction are directly tied to the disparity in the companies' sizes and market positions. The difference in size permitted the companies to utilize a Reverse Morris Trust to effect their proposed transaction, by which the

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25 *See generally* CWA Pet. at 12-23.

26 *Id.* at 13.

27 *Verizon/América Móvil Order* at ¶ 37.

28 *Id.*

29 *See* News Release, *Verizon and FairPoint Agree to Merge Verizon's Wireline Businesses in Maine, New Hampshire and Vermont*, Jan. 16, 2007, *at* http://newscenter.verizon.com/press-releases/verizon/2007/verizon-and-fairpoint-agree.html (last visited May 1, 2007) (stating that the transaction "allows Verizon to focus more intently on operations in other markets").

30 Moreover, because the *pro forma* transactions, including the spin-off to Verizon's shareholders, do not require Commission approval, the only issue presented is whether FairPoint should be permitted to acquire the exchanges.

transaction is expected to qualify as a tax-free transaction.[31] These tax savings allowed the two parties to agree to a reasonable transaction price, which resulted in a capital structure that will facilitate the investments FairPoint intends to make in the exchanges.[32]

### 2. FairPoint Is Financially Qualified To Operate the Exchanges.

When the petitioners address specific aspects of FairPoint's financial condition and capabilities, they still get it wrong. CWA in particular strives to show that FairPoint's resources will be inadequate, although these arguments are either misleading or inaccurate.

*FairPoint does not intend to reduce per-line expenditures in the acquired exchanges.* CWA baldly asserts that "FairPoint plans to expend less capital on network infrastructure than was previously spent by Verizon."[33] Addressing FairPoint's public statement that it expects its capital expenditures to be "approximately $160 million to $180 million in the first full year following the closing,"[34] CWA sets forth an elaborate analysis in an attempt to show that FairPoint's per-line expenditures would be less than Verizon's.[35]

Again, this comparison is not relevant—since Verizon has decided to divest these exchanges, the proper comparison is between FairPoint and the exchanges post-divestiture. In any event, CWA is wrong. In order to maintain and improve the assets it is acquiring, FairPoint

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31 This structure recently was used in other Commission-approved transactions. *See, e.g., Wireline Competition Bureau Grants Consent for Transfer of Control of Valor Communications Group, Inc. and Its Subsidiaries from Valor Communications Group, Inc. to New Valor, and the Transfer of Control of Alltel Holding Corp. and Its Subsidiaries from Alltel Corporation to New Valor*, Public Notice, WC Docket No. 05-354, DA 06-154 (rel. Jan. 25, 2006) (approving spin-off of properties under the new name Windstream).

32 Leach Decl. at ¶ 9.

33 CWA Pet. at 17.

34 *Id.* at 19 (quoting Form S-4, FairPoint Communications, Inc., at 132 (filed Apr. 3, 2007)).

35 *Id.* at 17-22.

intends to spend *more* per line than Verizon has in recent years.[36] As evidence of this pledge, FairPoint has targeted a significant investment in broadband build-out in the first twelve months after closing. As explained above, given the lack of competitive harms that will result from the proposed transaction, this public statement of intent—backed up by FairPoint's track record in this area—is sufficient to satisfy the Commission's public interest standard.

CWA's attempted comparison of FairPoint's projected per-line spending and Verizon's historic per-line spending is replete with errors. First, CWA *overstates* Verizon's per-line spending by using a three-year average of Verizon's capital expenditures for 2002-2004, encompassing the years in which Verizon's expenditures in the exchanges were at their highest (2002 and 2003).[37] To illustrate how this method overstates Verizon's per-line expenditures, if the calculation were performed using Verizon's total 2004 capital expenditures of $182 million (rather than CWA's 2002-2004 three-year average of $209 million) and the average 2004 access line count of 1,738,666 (rather than the average for 2002-2004, which CWA appears to use to calculate Verizon's per-line expenditures), the spending per line would be about $104.94, rather than $117.58 as CWA states (and even lower if one were to exclude the FiOS-related expenses included in Verizon's 2004 capital expenditures).

Second, CWA *understates* FairPoint's per-line spending by using (1) CWA's estimate of FairPoint's total maintenance expenses in the Verizon exchanges for 2008, and (2) the access line count for 2006. The total number of access lines used by CWA was higher than it is likely to be in 2008, when the transaction closes, so using CWA's estimated total spending would yield a higher per-line amount for 2008. To illustrate, if the total number of access lines were to

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36 Leach Decl. at ¶ 14.

37 The figures in the following calculations are, like CWA's, taken from FairPoint's recent Form S-4 filing. *See* Form S-4, FairPoint Communications, Inc., at 11 (filed Apr. 3, 2007).

decrease at a rate of 6.3 percent per year (which was the amount of the decrease from 2005 to 2006), then the projected access line count for 2008 would be 1,322,787. This projection, considered with CWA's high-end estimate of FairPoint's 2008 capital expenditures ($148 million), yields per-line expenditures of $111.88, which is *higher* than the correct calculation for Verizon's 2004 per-line expenditure of $104.94 as shown above. Moreover, CWA's estimate of FairPoint's 2008 expenditures, which incorporates various assumptions, is speculative.[38] In short, CWA's analysis is misleading at best, and its assessment of FairPoint's post-transaction spending should be given no weight.

*FairPoint will achieve significant cost savings.* CWA's skepticism concerning FairPoint's projected cost savings of between $60 and $75 million also is unfounded.[39] That cost savings will result largely from reduced overhead, once FairPoint internalizes certain functions that are currently provided by Verizon. Specifically, CWA states that Verizon has allocated certain overhead expenses to these exchanges—$270 million in 2006, and $240 million in 2005.[40] These overheads include centralized expenses such as shared information systems and information technology, corporate headquarters, and supplemental customer sales and service operations.[41] Following the transition, FairPoint will supply these services itself, using its own state-of-the-art systems infrastructure and lower overhead per line, reducing these costs from the

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[38] CWA Pet. at 19 (stating that FairPoint's "expect[ation]" for its post-transaction annual maintenance capital expenditures, less CWA's "assum[ption]" of FairPoint's expenditures for its 31 other operating companies, "would imply" annual maintenance capital expenditures for the Verizon exchanges of between $128 million and $148 million following the closing).

[39] *Id.* at 15-16.

[40] *Id.* at 15-16.

[41] Form S-4, FairPoint Communications Inc., at 14 (filed Apr. 3, 2007).

levels that FairPoint projects Verizon would have incurred.[42] Once all of FairPoint's other projected costs are considered—even including those associated with the addition of new jobs to the region—FairPoint anticipates a net savings of about $60 to $75 million per year.[43] CWA's observation that Verizon's overhead allocation increased by $30 million in 2006 misses the mark.[44] That fact is only relevant to the extent it suggests that FairPoint's projected overhead costs for 2007 were too low. In that case, assuming no corresponding changes in any other projected costs, FairPoint's total cost savings after closing would be *greater* than $60-$75 million, and the basis of CWA's complaint is not at all clear.

*FairPoint's dividend policy will not drain capital.* CWA's and One Communications' criticism of FairPoint's post-transaction dividend payments is misleading.[45] Dividends are discretionary, and FairPoint can choose not to pay them under its current dividend policy—although it certainly intends to continue paying them.[46] As a general matter, businesses typically will decline to make dividend payments when warranted—for example, if the company incurs significant, one-time expenses. Moreover, the terms of FairPoint's financing agreements with its lending banks, through which it is partly financing the transaction, require FairPoint to stop paying dividends under certain circumstances, such as if debt levels exceed prescribed thresholds. Thus, FairPoint's future dividend payments will not divert valuable resources; to the contrary, they could be reduced if additional funding were necessary.

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42 Leach Decl. at ¶ 13.

43 *Id.*

44 CWA Pet. at 16.

45 *Id.* at 14-15; One Communications Pet. at 15.

46 Form S-4, FairPoint Communications Inc., at 28 (filed Apr. 3, 2007) ("The combined company's board of directors may decrease the level of dividends provided for in the dividend policy or entirely discontinue the payment of dividends.").

*FairPoint's post-transaction debt will be reasonable.* CWA's observation that FairPoint's post-transaction debt will increase is, by itself, meaningless.[47] Any company's total debt can only be properly understood in relation to its overall capitalization and its cash flow, since cash flow services the debt. This ratio of debt to cash flow is an industry-standard measure of a company's financial condition. And FairPoint projects that its cash flows after the transaction, after paying for network enhancements necessary to achieve the service improvements FairPoint has planned, will be more than adequate to maintain the company's financial health.[48] The total amount of debt, therefore, is irrelevant.

*FairPoint will not be undercapitalized.* CWA suggests that FairPoint will have difficulty obtaining access to capital. This is not true, although imposing the conditions CWA advocates could make raising capital more challenging.[49] FairPoint signed commitments for $2.1 billion in bank financing to support the transaction.[50] There is no reason to suspect that FairPoint would not have similar access to capital in the future. In fact, one credit rating agency has reported that FairPoint's credit rating could improve following the transaction.[51]

*FairPoint's post-transaction leverage ratio is reasonable.* CWA's effort to illustrate FairPoint's "deteriorated financial condition" based on its projected post-transaction ratio of long-term liabilities-to-EBITDA (the "leverage ratio") is a largely theoretical exercise with misleading results. In particular, CWA's calculation of the pre-transaction ratio of long-term liabilities-to-EBITDA for the Verizon exchanges is artificially low, because it does not include

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[47] CWA Pet. at 13.

[48] Leach Decl. at ¶¶ 6, 12.

[49] *See infra* section III.B.

[50] Leach Decl. at ¶ 8.

[51] *Id.* at ¶ 11.

any debt (which currently is held by Verizon at the parent level). Moreover, any attempt to impute some amount of debt to the exchanges would be merely theoretical, because the northern New England exchanges, standing alone, would have an undetermined capital structure. However, it is reasonable to assume that, regardless of the method by which Verizon divests itself of these assets, the resulting entity will include some level of debt. In any event, whatever method might be chosen to impute debt to the pre-transaction exchanges necessarily would result in a higher ratio than the 1.6 that CWA states, reducing the difference between that figure and CWA's calculated post-transaction ratio for FairPoint.

*FairPoint will not lose employees.* CWA speculates that the transaction "could lead to a loss of experienced workers," which CWA suggests would impair FairPoint's ability to operate.[52] This CWA alleges despite FairPoint's public assurances that it will (1) retain the 3,000 Verizon employees who support the exchanges today—some 2,500 of whom are members of the union, (2) preserve current compensation and benefits, including having all pension fund obligations fully funded when transferred by Verizon, (3) assume the existing collective bargaining agreements, and (4) create 600 new jobs in the region.[53] FairPoint will fund the pension plan for these employees who, after the closing, will be better off regarding the stability of the pension plan because that plan will not be used to support retired Verizon employees, whose benefits will continue to be provided by Verizon.[54] According to CWA, in its view some employees are concerned about their role in the company following the transaction.[55] CWA provides no support whatsoever for this statement. In any event, FairPoint believes that working

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[52] CWA Pet. at 28.

[53] Leach Decl. at ¶¶ 21-22.

[54] *Id.* at ¶ 22; *see also* App. at 19.

[55] CWA Pet. at 28.

in exchanges that are the most important in the company will appeal to current and prospective employees. Indeed, FairPoint's commitment to local management will provide employees greater opportunities for internal advancement and professional development in these three states and will provide greater localized decisionmaking authority, for the benefit of both employees and consumers.[56] For all of these reasons, FairPoint believes it will be able to attract and retain an experienced workforce.

### C. The Transaction Will Promote Broadband Deployment.

As Chairman Martin recently reiterated, "promoting broadband deployment and increasing penetration" are among the Commission's "highest priorities."[57] And Commissioner Copps recently stated that "[b]ringing high-speed broadband to every corner of the country is the central infrastructure challenge we face."[58] Facing and overcoming that challenge is one of FairPoint's specialties, and the proposed transaction will allow FairPoint to fulfill this goal for consumers in Maine, New Hampshire, and Vermont.

FairPoint's established blueprint for success includes a dedication to deploying broadband in rural markets. FairPoint uses a sophisticated mix of technologies for this purpose, including DSL, coaxial cable, fiber to the premises, and even wireless broadband where

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56 Leach Decl. at ¶ 23.

57 *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 06-150 (rel. Apr. 27, 2007), Statement of Chairman Kevin J. Martin at 1; *see also, e.g.*, Remarks of Kevin J. Martin, Commissioner, Federal Communications Commission, at the National Summit on Broadband Deployment, "Framework for Broadband Deployment," Oct. 26, 2001, *at* http://www.fcc.gov/Speeches/Martin/2001/ spkjm101.html ("Encouraging broadband deployment should be a fundamental priority of the Commission and government in general.").

58 *Commissioner Copps Reiterates Call for a National Broadband Strategy to Address America's Drop in Broadband Rankings* (rel. Apr. 23, 2007), *at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-272519A1.pdf.

appropriate, and its success is undeniable.[59] To date, FairPoint has been able to provide broadband access to approximately *92 percent* of its customers in Maine, New Hampshire, and Vermont, and 88 percent of its customers nationwide.[60] To put these figures into perspective, in the exchanges that FairPoint would acquire from Verizon, Verizon provides wireline broadband access to 62 percent of its customers.[61]

FairPoint's success in broadband deployment has been recognized by policymakers in the region. Recently, the Vermont House of Representatives issued a resolution commending FairPoint and certain other telephone companies for their success in deploying broadband.[62] The resolution explained that "while the larger regional and national telecommunications providers have been criticized for not providing their entire geographic territories with broadband access, especially in rural areas, the independent telephone companies"—including FairPoint—"have extended broadband access to nearly all of their customers."[63]

Contrary to CWA's assertion,[64] FairPoint plans to increase broadband in the acquired exchanges, with a goal ultimately to increase broadband availability in these exchanges to the levels FairPoint has achieved in its existing exchanges. Toward this end, FairPoint has targeted a significant investment for broadband deployment just in the first twelve months after the closing.

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59 Nixon Decl. at ¶ 4.

60 Leach Decl. at ¶ 15.

61 *Id.*

62 Vermont House of Representatives, No. R-128 (H.C.R.95), *House Concurrent Resolution Congratulating the Independent Telephone Companies in Vermont for Their Extensive Installation of Broadband Access in Their Respective Market Areas* (Apr. 2007), *available at* http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACTR128.HTM (last visited May 3, 2007).

63 *Id.*

64 CWA Pet. at 2 ("FairPoint has made few if any appreciably positive commitments in terms of broadband build-out or improvements in service to consumers.").

In addition, and without limiting the broader plan, FairPoint has pledged specifically to honor Verizon's current obligation in Vermont to deploy broadband to 80 percent of its exchanges by year end 2010, at the latest.[65] In fact, FairPoint has pledged to reach that threshold before year end 2010, or exceed it by that time.

There is no basis for CWA's speculative concern about FairPoint's ability to achieve these goals.[66] First, FairPoint's track record on this score should dispel any skepticism about FairPoint's plans at the outset. Having built is reputation and financial success largely on its ability to deploy broadband in rural and small urban areas, it would make little sense for FairPoint to abandon that business strategy in the exchanges that will comprise its largest region. Moreover, as discussed above, FairPoint is financially capable of standing by its public statements concerning broadband deployment, and CWA's suggestion that FairPoint will reduce capital expenditures per line is inaccurate and unsupported.[67] In addition, the existing infrastructure in the region, with which FairPoint already is familiar, provides FairPoint with a strong starting point for its anticipated investments. All of these circumstances ensure that FairPoint will be able to bring broadband to parts of these exchanges that currently lack such access.

### D. The Transaction Will Lead to Improvements in Service Quality.

Verizon has a strong record of service, but has chosen to exit these markets. FairPoint will be an excellent steward of these properties, preserving and enhancing high-quality service there. In addition to making broadband available to a greater number of consumers, FairPoint's

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65 *Verizon New England, Inc. d/b/a Verizon Vermont*, Order, Docket Nos. 6959, 7142 (Vt. Pub. Serv. Bd. Apr. 27, 2006).

66 CWA Pet. at 17.

67 *See supra* section I.B.

acquisition of these exchanges is expected to lead to improvements in quality of service for local customers as FairPoint continues to invest in local facilities.

### 1. FairPoint Will Provide High-Quality Service in the Acquired Exchanges.

As discussed above, FairPoint is well known for its dedication to high-quality service and was recently commended for its success in this area.[68] FairPoint will maintain its commitment to service quality following the transaction, and any suggestion to the contrary is unfounded. After the transaction is complete, FairPoint will have every incentive to maintain this commitment to customer service given the increasingly competitive environment that it will be entering—and the need to assert its own brand in markets in which it has not previously participated. CWA concedes this point, noting that FairPoint could face diminished revenue if it does not effectively compete in these markets.[69] Further, as discussed below, FairPoint's transition plan will protect against any disruptions in service.[70]

One Communications' and CWA's attempts to argue that service quality would decline following the transaction are wholly unpersuasive. The petitioners base these arguments primarily on misleading descriptions of past performance and inaccurate descriptions of FairPoint's financial resources. Of course, as explained above, the contention that FairPoint will lack such resources is incorrect.[71]

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68 *See supra* section I.A.

69 CWA Pet. at 16-17.

70 *See infra* section I.E.

71 *See supra* section I.B.

Moreover, One Communications' and CWA's references to FairPoint's "poor" history on service quality are wrong.[72] Together, the petitioners offer only a single incident in which FairPoint's quality of service has ever been called into question.[73] That incident arose in 2005 in connection with FairPoint's one-time roll-up of its legacy billing and customer care systems for all of its operating companies in Maine, when FairPoint was required to change vendors and restart the process midstream.[74] Although that development temporarily caused some billing and customer service issues, FairPoint since has successfully completed the centralization process.[75] And while CWA notes that the Maine Public Service Commission established certain performance benchmarks in the wake of that one-time issue,[76] CWA fails to note that FairPoint has satisfied all of them.[77] Indeed, FairPoint is not aware of any investigation of the company's retail service quality by any state,[78] nor do the petitioners cite any other examples in support of their alleged concerns.

### 2. The Petitioners Mischaracterize Current Service Quality in the Region.

The claim that Verizon "has delivered poor quality service," aside from being irrelevant to the question whether FairPoint should be permitted to acquire these exchanges, is inaccurate and misleading.[79] CWA's claim in this regard is based on Verizon's performance under a single

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72 One Communications Pet. at 15-16; CWA Pet. at 29.

73 One Communications Pet. at 15-16; CWA Pet. at 29.

74 CWA Pet. at 24-25.

75 Nixon Decl. at ¶ 5.

76 CWA Pet. at 25.

77 Nixon Decl. at ¶ 5.

78 *Id.* at ¶ 6.

79 CWA Pet. at 29. One Communications claims that a penalty that Verizon paid in 2005, relating to 2003 performance, is evidence of Verizon's service quality problems. One

metric—Out of Service Repair Interval for residential customers—which the Commission has found in other contexts to be inappropriate in assessing service performance.[80]

Furthermore, even as to this single metric, CWA mischaracterizes Verizon's performance in clearing out-of-service troubles, which routinely is better than the industry average. For example, according to the Commission's ARMIS reports, the average out-of-service repair interval for residential customers for all reporting incumbent local exchange carriers ("ILECs") was 31.7 hours in 2005 and 27.9 hours in 2006.[81] In 2005, Verizon's out-of-service repair interval for residential customers in Maine, New Hampshire, and Vermont was better than the

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Communications Pet. at 17 n.38. But during the relevant period, Verizon's performance met or exceeded the established benchmark for 7 of 12 performance areas. Its failure to meet the benchmark for the other metrics was due to one-time events such as exceptionally high call volumes and abnormal absenteeism associated with a prospective labor action. Moreover, Verizon has subsequently improved its systems and has achieved consistently strong performance since that time. *See* Vermont Public Service Order approving the Memorandum of Understanding between the Vermont Department of Public Service and Verizon New England Inc., d/b/a Verizon Vermont, in Docket No. 6957 dated June 1, 2005; Annual Retail Service Quality Filing, March 31, 2004.

80 *Application by Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia, Inc., Virginia Global Networks, Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, Interlata Services in Virginia*, Memorandum Opinion and Order, 17 FCC Rcd 21880 (2002) (in reviewing performance data to determine Section 271 compliance, the Commission "looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive"); *Application by Qwest Communications International Inc. for Authorization to Provide In-Region InterLata Services in Arizona*, Memorandum Opinion and Order, 18 FCC Rcd 25504 (2003) (same).

81 ARMIS Report, Out of Service Repair Interval in Hours (Includes Initial Out-of-Service and Repeat Out-of-Service Internals) – All Reporting ILECs (Residence), *available at* http://svartifoss2.fcc.gov/eafs7/preset/servicequality/SQReport_Result.cfm.

industry average, while Verizon's out-of-service repair interval in both Maine and Vermont was better than the industry average in 2006.[82]

According to the Commission, performance is best evaluated "by looking at data trends in more than one measurement" because "performance within any single data category may fluctuate over time."[83] Such an evaluation of ARMIS data reveals that Verizon's service quality in Maine, New Hampshire, and Vermont is comparable to and in many cases better than the service quality of other ILECs.[84]

In contrast to ARMIS data, which includes no baseline standards and reflects performance based on a limited number of installation and maintenance measures, Verizon's state performance data offer a comprehensive view of service quality in Maine, New Hampshire, and Vermont and demonstrate that Verizon provides its customers with high quality service, notwithstanding CWA's suggestions to the contrary. For example, from July 2005 through June

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[82] *Id.* (reporting out-of-service repair intervals in Maine, New Hampshire, and Vermont as 22.9 hours, 27.8 hours, and 27 hours, respectively, in 2005, and 25.5 hours, 35.4 hours, and 26.7 hours, respectively, in 2006).

[83] *FCC Releases Report on Quality of Service of Local Phone Companies*, 2003 FCC LEXIS 41 (rel. Jan. 30, 2003).

[84] ARMIS Report, Total Trouble Reports per Month per 100 Lines (Includes Initial and Repeat Trouble Reports) – All Reporting ILECs (Business & Residence) (trouble report rate for Verizon in 2006 was 1.18 in Maine, 1.61 in New Hampshire, and 1.40 in Vermont, which was better than the industry average of 1.71); ARMIS Report, Average Installation Intervals in Days – All Reporting ILECS (Business and Residence) (average installation interval for Verizon in 2006 was 1.4 to 1.5 days in Maine, New Hampshire, and Vermont, as compared to industry average of 1.3 days); Repeat Out-of-Service Trouble Reports As a Percentage of Initial Out-of-Service Trouble Reports – All Reporting ILECs (Business & Residence) (average repeat trouble report rate in 2006 was 13.6 percent in Maine, 16.5 in New Hampshire, and 16.7 in Vermont, as compared to industry average of 16.3 percent). ARMIS reports are available at http://www.fcc.gov/wcb/armis/ (select "Upload and Download ARMIS Data." Under the Data Retrieval Module select "Download ARMIS Data." Select "Preset Reports"; then "FCC Report 43-06, the Customer Satisfaction Report." Select "2006" and then select each state individually under "COSA" – NEME, NENH, and NEVT.).

2006, for those metrics with performance objectives, Verizon met the applicable objective for 12 of 15 metrics in Maine, 11 of 12 metrics in New Hampshire, and 17 of 18 metrics in Vermont. More recently, in the first quarter of 2007, despite major weather events across all three states, Verizon met the applicable objective for 12 of 15 metrics in Maine, 9 of 12 metrics in New Hampshire, and 17 of 18 metrics in Vermont (and made a 7 percent improvement in performance in the same quarter in 2006 for the one metric that was missed in Vermont).[85]

To ensure that Verizon is meeting its customers' service expectations, Verizon conducts Customer Care Index (CCI) satisfaction surveys of its customers. The CCI surveys are conducted by an independent third party and are designed to determine the level of satisfaction with Verizon products and services for customers who have interacted with the company during the prior 30 days (or during the previous 6-12 months for large business customers). The chart below provides the percentage of customers that judged their interaction with Verizon in Maine, New Hampshire, and Vermont as *"satisfactory or better"* in 2006.[86]

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85 The Maine data are for July 2005 through 2006, which is the regulatory reporting year in that state; the data for New Hampshire and Vermont are for calendar year 2006. *See* Vermont: Docket No. 6959 - Annual Retail Service Quality Filing, filed with the Vermont Public Service Board, March 30, 2007; Maine: Docket No. 99-851 - Annual Retail Service Results, filed with Maine Department of Public Service, September 1, 2006; NH: Proprietary Quality of Service report for December 2006 filed with New Hampshire Public Utilities Commission, dated January 30, 2007; CWA Pet. at 31.

86 http://www.fcc.gov/wcb/armis/. Select "Upload and Download ARMIS Data." Under the Data Retrieval Module select "Download ARMIS Data." Select "Preset Reports"; then "FCC Report 43-06, the Customer Satisfaction Report." Select "2006" and then select each state individually under "COSA" – NEME, NENH, and NEVT.

| (2006) | Maine | New Hampshire | Vermont |
|---|---|---|---|
| Consumer Provisioning | 96.02% | 96.31% | 95.51% |
| Consumer Repair | 88.51% | 79.73% | 81.23% |
| Consumer Inquiry | 94.69% | 94.29% | 93.47% |
| Business Provisioning | 92.14% | 96.18% | 91.42% |
| Business Repair | 91.79% | 88.87% | 92.00% |
| Business Inquiry | 93.89% | 92.35% | 96.64% |

These results demonstrate that a significant majority of Verizon customers believe that Verizon provides high quality service and that Verizon customers in Maine, New Hampshire, and Vermont are hardly "victims of poor service," as CWA claims.

### E. FairPoint Has Adopted a Sensible Transition Plan to Allow Consumers to Obtain the Benefits of the Transaction Expeditiously and Seamlessly.

To supplement its existing expertise and resources, FairPoint has adopted and begun to implement a plan to facilitate the transition. That plan will ensure that the transaction is completed without disruptions in service or operations and that the public interest benefits of the transaction will be achieved. FairPoint's plan includes substantial work being done now—even before the transaction is approved—as well as during the post-closing transition period, and finally, after the transition from Verizon is complete. FairPoint has committed significant resources to each of these stages, and Verizon also has committed significant resources to ensuring a smooth transition for both wholesale and retail customers.

#### 1. FairPoint's Transition Plan Is Reasonable.

Concurrently with the Merger Agreement, FairPoint and Verizon entered into a Transition Services Agreement ("TSA") under which Verizon will continue to offer support services to FairPoint after the transaction closes.[87] The TSA does not terminate by its terms, as One Communications asserts.[88] Rather, FairPoint may continue to operate under the TSA until it is confident that the cutover can be achieved effectively and without disruption to existing customers or ongoing operations.[89]

In addition to the TSA, FairPoint has retained Capgemini for technical expertise before and during the transition. Capgemini is one of the most qualified consultants in the telecommunications industry, with thirty years of telecommunications experience in areas including systems development and conversion work for large telecommunications companies of all types.[90] For example, Capgemini has provided program management and a new network inventory system to assist a BOC develop its broadband business; it also streamlined and automated order entry and provisioning processes for a national cable television provider, and assisted in the restructuring of financial and human resources systems for a national wireless carrier.[91] FairPoint and Capgemini jointly are designing the processes, implementing the systems, and staffing the organization to operate the exchanges following the transaction's closing.

FairPoint and Verizon are already working on the transition, even though the regulatory review process is ongoing. Both companies are investing in this transition, believing it to be essential to the success of the transaction. FairPoint will spend $200 million during the transition period (from signing through up to six months after closing) on back-office systems, $100

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87 Nixon Decl. at ¶ 7.

88 One Communications Pet. at 20 (quoting the relevant portion of the TSA).

89 Nixon Decl. at ¶ 8.

90 *See* Declaration of Michael Haga ("Haga Decl.") at ¶ 4, attached hereto as Exhibit A; Nixon Decl. at ¶ 9.

91 Haga Decl. at ¶ 4.

million of which is expected to be spent prior to closing. Verizon will pay up to $40 million of that amount by way of reimbursement for qualified expenses.[92] FairPoint began working with Capgemini in the fourth quarter of 2006.[93] FairPoint employees with key subject-matter expertise have been assigned to a transition team, which is now being supplemented with new hires for the combined company.[94] In addition, FairPoint and Verizon have a "Joint Cutover Planning Committee," and FairPoint and Capgemini are in daily contact on integration and transition issues.[95] FairPoint's Chief Operating Officer is dedicating 100 percent of his time to integration issues.[96]

Neither One Communications nor CWA points to any specific aspect of the TSA, the retention of Capgemini, or FairPoint's and Verizon's efforts thus far that they deem inadequate for purposes of facilitating the transition. One Communications merely speculates that FairPoint will terminate the TSA "prematurely" in order to "enhance[e] [its] competitive position" by allowing it to degrade its wholesale services and saving transition costs.[97] However, this would actually *undermine* FairPoint's competitive position, since terminating the TSA before the transition is complete would prevent FairPoint from providing quality service to retail consumers. All One Communications and CWA can do is fall back on their constant—and

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92 Leach Decl. at ¶ 16.

93 *Id.* at ¶ 17.

94 *Id.*

95 Nixon Decl. at ¶ 10

96 Leach Decl. at ¶ 4.

97 One Communications Pet. at 20.

inaccurate—refrain that FairPoint lacks the resources necessary to manage the exchanges, a contention that lacks merit, as discussed above.[98]

### 2. FairPoint's Past Acquisition History Supports the Finding That FairPoint Will Responsibly Manage This Acquisition.

CWA's criticism of FairPoint's "track record" with acquisitions and systems integration is grossly misleading and wrong. None of FairPoint's ILEC acquisitions has been anything other than a success. The only allegedly "failed" transaction that CWA identifies relates to its 1998 start-up of a CLEC, FairPoint Solutions, which FairPoint later sold in 2002.[99] FairPoint Solutions was an experiment in a new market for FairPoint that proved to be ill-timed. FairPoint decided to discontinue those CLEC operations as a proactive response to the general economic downturn and the slower-than-expected growth of the CLEC business at the time. This was hardly exceptional. As the Commission is well aware, many CLECs failed during that time period for these same reasons, and CWA's suggestion that this incident exposes some unique inability on FairPoint's part to acquire and operate companies—particularly in light of FairPoint's otherwise unblemished record for doing so—is ludicrous. The only "failed" transition CWA identifies relates to FairPoint's efforts to centralize its billing systems in Maine.[100] That situation, which FairPoint has resolved, was an aberration arising from unique circumstances that cannot be expected to occur here; as discussed above, FairPoint has retained Capgemini as a consultant early in this process and has taken various other steps to ensure a smooth transition.[101]

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98 *See supra* section I.B.

99 CWA Pet. at 24.

100 *Id.* at 24-25.

101 *See supra* section I.D.

### 3. The Hawaiian Telcom Experience Is Not Indicative of How FairPoint Will Manage the Northern New England Transition.

The transition experience of Hawaiian Telcom is not indicative of how the transition will proceed in northern New England, despite petitioners' reference to Verizon's 2005 sale of Hawaiian Telcom to the Carlyle Group and a small group of local investors as a "cautionary tale" for the Commission in reviewing the instant transaction.[102] The petitioners' description of alleged problems with the Hawaii property in the wake of the Verizon sale have no bearing on the transaction at hand and are overstated in any event.

As an initial matter, the Hawaii experience involved an entirely different local exchange property and, most significantly, an entirely different purchaser. In contrast to the Carlyle Group that purchased Hawaiian Telcom, FairPoint is an established and experienced incumbent telecommunications carrier with particular expertise serving rural markets, including experience in the very three states where the exchanges are being acquired. FairPoint began working with Capgemini prior to the public announcement of the deal to reduce any transition issues and to speed the transition. Moreover, many of the issues in Hawaii apparently resulted from difficulties encountered by Bearing Point,[103] so that Hawaiian Telcom brought in Accenture almost two years after the deal closed.

In addition, the petitioners overstate the issues experienced by Hawaiian Telcom since its acquisition by the Carlyle Group and other investors. None of the alleged issues relates to the

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102 CWA Pet. at 26-28; One Communications Pet. at 21-23.

103 Sean Hao, *Hawaiian Telcom Steps Up its Plans*, THE HONOLULU ADVERTISER, May 1, 2007; *Hawaiian Telcom Gets $52 Million*, THE HONOLULU ADVERTISER, Mar. 29, 2007, at 1C; Nina Wu, *Hawaiian Telcom Hires New Help*, STAR BULLETIN, Feb. 9, 2007.

operation of the network, which has continued to perform reliably.[104] Rather, these challenges pertained to the creation and cut-over to new billing and other back-office systems, which generated a greater number of calls to the business office, thereby adversely affecting the company's customer service metrics due to longer than normal wait times.[105] Nevertheless, Hawaiian Telcom is addressing these issues, and recent press reports have recognized that Hawaiian Telcom's customer service has significantly improved, most systems issues have been resolved, and others should be fixed by September 2007.[106] Moreover, even with these challenges, Hawaiian Telcom has taken a number of actions to benefit Hawaiian consumers, including increased capital spending to update and improve the company's network; expanded availability of high-speed Internet in Kaua'i, the Big Island, O'ahu, Maui and Moloka'i; launched a new wireless service; and launched a bundle of local, unlimited long-distance, high-speed Internet and wireless service for less than $100 a month, excluding taxes.[107] In sum, the experience of Verizon's sale of Hawaiian Telcom does not undermine the public interest benefits of the proposed transaction.

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[104] Sean Hao, *Hawaiian Telcom Steps Up its Plans*, THE HONOLULU ADVERTISER, May 1, 2007; Sean Hao, *Hawaiian Telcom Callers Getting Through Quicker*, THE HONOLULU ADVERTISER, Jan. 15, 2007, at 1C; Sean Hao, *HawTel Still Keeps Many on Hold*, THE HONOLULU ADVERTISER, Sept. 6, 2006, at 1A.

[105] Sean Hao, *Hawaiian Telcom Steps Up its Plans*, THE HONOLULU ADVERTISER, May 1, 2007.

[106] *Id.*; Greg Wiley, *Hawaiian Telcom Drops 411*, THE HONOLULU ADVERTISER, Mar. 23, 2007, at 1C; Sean Hao, *Hawaiian Telcom Callers Getting Through Quicker*, THE HONOLULU ADVERTISER, Jan. 15, 2007, at 1C.

[107] Sean Hao, *Hawaiian Telcom Steps Up its Plans*, THE HONOLULU ADVERTISER, May 1, 2007.

## II. THE TRANSACTION WILL NOT HARM COMPETITION OR CONSUMERS.

### A. There Will Be No Increased Concentration as a Result of the Transaction.

As discussed above, the manner in which the Commission conducts its public interest analysis depends on the extent to which a transaction will harm competition. The transaction proposed here will not affect competition, a conclusion that finds support in the fact that the antitrust authorities, in their own review of the transaction, did not issue a second request.[108] Although FairPoint already has a presence in this region, none of its current exchanges overlap with the Verizon exchanges. Thus, there will be no increased concentration in the market.

If anything, the proposed transaction will increase competition. Following the transaction, FairPoint will be independent from and will compete with Verizon, including Verizon Business and Verizon Wireless. FairPoint also will compete with other wireline, wireless, and VoIP providers in the region, as CWA concedes.[109] This competition will ensure FairPoint has strong incentives to provide the best possible service for its customers. That overarching goal in turn requires that FairPoint work toward a smooth transition, invest in broadband, and ensure that service quality does not suffer.

### B. The Transaction Will Not Adversely Affect the Provision of Wholesale Services.

One Communications argues that the transaction will harm competition by disrupting the ability of competitive carriers to obtain wholesale services from FairPoint. This concern is

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108 *See Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules*, 72 Fed. Reg. 21014-02 (Apr. 27, 2007); *see also* Letter from Sandra M. Peay, Bureau of Competition, Federal Trade Commission, to David Wheeler, Vice President & Associate General Counsel, Verizon Communications Inc., Transaction Identification Number 20071026 (Apr. 11, 2007).

109 CWA Pet. at 16-17 (stating that FairPoint will face "heightened competition from Comcast and Time Warner and a city-owned telecommunications utility in critical urban areas").

unfounded.  First, as discussed in more detail below, FairPoint will retain the obligations applicable to all ILECs to provide wholesale services under Sections 251 and 252,[110] as well as under current interconnection agreements, tariffs, SGATs, and other existing arrangements in the acquired exchanges for the duration of the respective terms.[111]

Second, FairPoint will be capable of satisfying its legal obligations as a wholesale service provider.  Indeed, as a part of its transition plan described above,[112] FairPoint already is devoting significant resources to developing and improving the systems and mechanisms necessary to provide wholesale services.  FairPoint will have sales and customer services personnel in place to meet the needs of wholesale business customers.[113]  The systems FairPoint is developing for this purpose will improve on and update existing wholesale systems.[114]  These systems are being built specifically for the wholesale customers currently operating in the Verizon exchanges.[115] Further, FairPoint will not charge CLECs for training, and will provide job aids and reference materials for the new systems.[116]  In addition, although FairPoint currently is finalizing its system design and architecture, based on the current design CLECs will not be required to obtain new equipment or systems to access FairPoint's system.[117]  FairPoint already has reached out to all of the CLECs in the region by letter and offered to discuss any of their concerns.[118]

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[110] FairPoint has stated that it has no intention of asserting rural telephone company status in the acquired exchanges.  *See infra* section III.A.

[111] *See infra* section III.A.

[112] *See supra* section I.E.

[113] Haga Decl. at ¶ 5.

[114] Nixon Decl. at ¶¶ 11-12.

[115] *Id.* at ¶ 12.

[116] Haga Decl. at ¶ 7.

[117] *Id.*.

[118] *Id.* at ¶ 6.

In light of these actions, there simply is no basis to One Communications' concerns regarding the ability of it and other CLECs to continue to obtain wholesale services. Although One Communications points to factors such as FairPoint's lack of experience in large transactions and limited resources, none of these concerns is persuasive, since FairPoint's experience with acquisitions and extensive investment in the transition provide reasonable assurances of the company's ability to perform its wholesale obligations effectively.

## III. FAIRPOINT SHOULD NOT BE SUBJECT TO REGULATORY OBLIGATIONS THAT ARE BARRED BY LAW OR OTHERWISE INAPPROPRIATE.

### A. There Is No Basis for Conditions Related to FairPoint's Post-Transaction Obligations to Provide Wholesale Services.

Following the transaction, FairPoint will be an ILEC subject to Sections 251(b) and (c) of the Communications Act, and it has stated that it will not seek state authority to invoke the rural-carrier exemption for complying with the requirements of Sections 251(b) and (c). FairPoint also has confirmed that it will preserve Verizon's existing interconnection agreements with competitive providers, including those agreements that contain provisions that go beyond the requirements of Section 251. Although FairPoint does not believe it should be regulated as a Bell Operating Company ("BOC") —which Congress singled out due to the BOCs' uniquely large and concentrated operations—under settled precedent, this is not the appropriate the proceeding to address that issue. There is accordingly no basis for the Commission to issue clarifications or adopt conditions relating to FairPoint's obligations under Sections 251 and 271 of the Act.

#### 1. The Transaction Does Not Affect FairPoint's Obligations Under Section 251.

This transaction will not affect FairPoint's obligations to comply with Section 251 of the Act. Following the transaction, FairPoint's operating companies will be ILECs, and will therefore be required to comply with the requirements of Sections 251(b) and (c), as well as other ILEC obligations under the Act, in the same manner that Verizon complies with those requirements today. In addition, FairPoint has publicly stated that it will honor Verizon's existing interconnection agreements, for the duration of their terms, even where the obligations in those agreements go beyond the requirements of Section 251.[119] FairPoint also will honor Verizon's commercial agreements that provide replacements to the various unbundled network elements ("UNEs") that Verizon is no longer required by law to provide—such as the Wholesale Advantage service that replaces the UNE-platform—on commercially negotiated terms.[120]

In addition to the fact that FairPoint will have ongoing legal obligations under Section 251, it will also have strong business incentives to provide competitors with wholesale access to its network on commercially reasonable terms. Following the transaction, FairPoint will face the same level of competition that Verizon has faced in the relevant areas, and will therefore have the same incentives as Verizon to enter into commercial agreements to provide access to its network even in the absence of legal obligations requiring that it do so. The Commission has recognized that facilities-based competition gives an ILEC "the incentive to make attractive

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119 App. at 20; Leach Decl. at ¶¶ 18-19 (wholesale customers will continue to receive the same services—including exchange access, interconnection, resale and unbundled network elements—under the same rates, terms and conditions as provided by Verizon); Nixon Decl. at ¶¶ 12-13.

120 *See* Leach Decl. at ¶ 18 (FairPoint has committed to assume Verizon's inter-carrier contracts and concur in or adopt Verizon's tariffs, including its wholesale tariffs); Nixon Decl. at ¶¶ 13-14 (FairPoint intends to assume interconnection and traffic exchange agreements with other carriers).

wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC].”[121]

Although no party disputes that FairPoint will be subject to section 251 following the transaction, One Communications argues that FairPoint might seek to escape its obligations under Section 251(c) of the Act by petitioning state commissions to qualify for the rural carrier exemption under Section 251(f)(1), or seek suspension or modification of Sections 251(b) or (c) under Section 251(f)(2).[122] Such concerns are misplaced. FairPoint has already publicly stated that, following the transaction, it will not apply for the rural carrier exemption, or seek suspension or modification of any Section 251 requirement pursuant to Section 251(f).[123] In any event, Section 251(f) grants authority to the state commissions to determine whether the rural exemption from Section 251(c), or suspension or modification of Sections 251(b) or (c), is appropriate based on a wide range of factors,[124] and it would be inappropriate for this Commission to preempt that determination here.

### 2. There Is No Need To Address Whether FairPoint Will Be a Bell Operating Company Following the Transaction.

Whether FairPoint, which lacks the characteristics of a BOC, should be treated as one following the transaction is not an issue that is appropriately addressed within the Commission’s

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121 *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 ¶ 67 (2005).

122 *See* One Communications Pet. at 7-8.

123 Nixon Decl. at ¶¶ 13-14 (FairPoint intends to honor all existing Verizon obligations under Section 251 of the Act, and will not take the position that the company is a rural telephone company entitled to exemption under Section 251(f)). The proposed transaction should not impact any designation of FairPoint as exempt under Section 251(f) in any of its currently served markets or markets outside of the acquired exchanges that it may serve in the future).

124 47 U.S.C. § 251(f).

review of the proposed transaction. The 1996 Act treats the Bell companies differently from other ILECs principally because of the large and geographically concentrated scope of the BOCs' operations. This basis for treating the BOCs differently dates back more than two decades. The U.S. district court administering the Bell System and GTE consent decrees determined that, although the BOCs should be prohibited from providing long-distance services, there was no need to subject GTE to similar requirements.[125] GTE at one time controlled roughly 18 million access lines, but they were geographically dispersed throughout the country. As the D.C. Circuit has recognized, this was also Congress's principal basis for singling out the BOCs for unique treatment in the Telecommunications Act of 1996.[126] Following the transaction, FairPoint will not resemble the BOCs, but instead will be like other independent ILECs. Moreover, FairPoint will be acquiring only a segment of Verizon's long-distance business in the relevant areas, and will continue to compete with Verizon in those areas.[127] FairPoint should therefore not be treated as a BOC for regulatory purposes.

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125 *See United States v. GTE Corp.*, 603 F. Supp. 730, 734 (D.D.C. 1984) ("[I]n terms of concentration, the GTE companies serve roughly half as many telephones per square mile as do the Bell Operating Companies. This dispersion has, of course, substantial consequences in terms of monopoly control.").

126 *See BellSouth Corp. v. FCC*, 144 F.3d 58, 67 (D.C. Cir. 1998) (holding that Congress's singling out the BOCs did not constitute an unlawful Bill of Attainder, and explaining that the BOCs were unique compared to other ILECs such as GTE: "Because the BOCs' facilities are generally less dispersed than GTE's, they can exercise bottleneck control over both ends of a telephone call in a higher fraction of cases than can GTE.").

127 Although FairPoint will acquire some residential long distance operations, the proposed transaction excludes Verizon's business customers. Verizon will continue to provide long-distance service through its affiliate to these customer in Maine, New Hampshire, and Vermont. Further, almost all of Verizon's international long-distance operations are excluded from the proposed transaction.

One Communications asks the Commission effectively to issue a declaratory ruling in this proceeding that, following the transaction, FairPoint will be a BOC.[128] This is not an appropriate issue to address in a transfer proceeding such as this one. In prior merger proceedings involving the transfer of BOC-owned lines to non-BOC ILECs—including the only case that One Communications cites[129]—the Commission has consistently declined to deem the non-BOC acquirer to be a BOC as a result of the acquisition of the lines.[130] The Commission should take the same approach here.

### 3. The Commission Should Not Adopt Conditions Relating to Section 251 or Section 271.

One Communications also argues that FairPoint should be subject to the condition in the *Verizon/MCI Order* that freezes certain special access and UNE rates for a two-year period, and

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128 One Communications Pet. at 4.

129 *Id.* at 6 n.7 (citing *Sacred Wind Communications, Inc. and Qwest Corp.*, Order, 21 FCC Rcd 9227 (2006), recognizing that the Wireline Telecommunications Bureau found Sacred Wind to be an ILEC, but did not classify it as a BOC).

130 *See, e.g., Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159 (2001); *Kendall Telephone Inc., Application for Authority to Acquire and Provide Service over 19 Local Exchanges in Northern and Central Wisconsin Pursuant to 47 U.S.C. § 214(a); Ameritech Wisconsin (Wisconsin Bell), Application for Authority to Discontinue Service in 19 Local Exchanges in Northern and Central Wisconsin Pursuant to 47 U.S.C. § 214(a); Kendall Telephone, Inc., Request to Associate with LATAs*, Order and Certificate, 13 FCC Rcd 21604 (1998) (granting approval of transfer of lines from Ameritech Wisconsin to Kendall, without declaring that Kendall would remain a BOC); *Petitions for Waivers Filed by Leaco Rural Telephone Cooperative, Inc., Roosevelt County Rural Telephone Cooperative, Inc., Tularosa Basin Telephone Company, Inc., and U S West Communications, Inc. Concerning Section 61.41(c)(2) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 11 FCC Rcd 8066 (1996); *US West Communications, Inc. and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771 (1995) (granting waivers relating to the acquisition of BOC lines by a non-BOC without declaring that the Eagle would be a BOC).

to extend such a requirement "to all Section 251 obligations."[131] There is no basis to impose any such conditions on the proposed transaction. Whereas the Verizon/MCI merger involved the vertical integration of an ILEC with one of its largest wholesale customers, this transaction severs that relationship. Thus, this transaction removes the competitive concerns that were the basis for the rate freeze, and the Commission should find that FairPoint is not subject to that condition. Further, this transaction does not raise any concerns that would justify expanding the rate freeze. As discussed above, FairPoint will be subject to ILEC regulation under the Act and the Commission's rules, including provisions governing UNE rates and other pricing terms.

Moreover, there is no need to impose conditions that would effectively subject FairPoint to Section 271 requirements. As discussed above, FairPoint does not resemble a BOC and should not be regulated as a BOC. One Communications has not raised any concerns that are not satisfied by the regulations applicable to ILECs generally under other provisions of the Act. To the extent that the checklist requirements under Section 271(c)(2) duplicate provisions in Verizon's existing interconnection arrangements and commercial agreements, FairPoint has stated that it will continue to honor all such arrangements. Thus, imposing any Section 271 requirements on FairPoint as a condition to the approval of the proposed transaction is unnecessary.

### B. The Conditions Proposed by CWA Are Vague or Otherwise Inappropriate.

Like One Communications, CWA argues that, if the transaction is approved, FairPoint should be subject to a variety of conditions.[132] As an initial matter, CWA's list of conditions is vague, and CWA provides little or no detail about the contours of the requirements it would have the Commission impose.

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131 One Communications Pet. at 27-28.

132 CWA Pet. at 32.

In any event, none of these conditions is appropriate. Limitations on FairPoint's dividend payments and debt, as CWA requests, are unnecessary: As discussed above, FairPoint's dividend payments are discretionary, and a limitation on FairPoint's debt could actually inhibit the company's access to capital. A mandated minimum amount of capital expenditures and timeframe for broadband build-out likewise are unnecessary, because FairPoint already plans to increase capital expenditures over what Verizon has spent in recent years on a per-line basis and over what Verizon would be likely to spend were it not to divest the exchanges. In addition, FairPoint already has targeted significant capital for the specific purpose of deploying broadband in the first year following the closing, ahead of even the timeframe that CWA sets forth.[133]

Further, there is no justification for requiring FairPoint to ensure a certain level of performance for new systems before completing the transition, or to provide a prescribed level of service quality. FairPoint already is diligently working on those systems. Artificially delaying the transition well beyond its anticipated timeframe would negate many of the efficiencies of the transaction. And, as discussed above, FairPoint's and Verizon's records on service quality do not warrant additional performance metrics. For all of these reasons, the Commission should not condition its approval of the transaction on the assorted requirements that the petitioners suggest.[134]

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[133] For the same reason, the Commission should not micromanage the network planning or technology decisions made by the buyer, as advocated by Mr. Rivard. *See* Comment of David Rivard, WC Docket No. 07-22 (filed Apr. 12, 2007) (stating that the Commission should require the deployment of FiOS in the exchanges). Commission precedent supports allowing FairPoint to deploy the technology it deems most efficacious for rapid availability of broadband in these markets.

[134] Moreover, the Commission likely lacks the authority to impose such conditions in any event. The Commission may only impose conditions in order "to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and Related statutes."

## IV. THE COMMISSION SHOULD NOT AND NEED NOT DEFER ITS DECISION TO ALLOW CONSIDERATION OF EVIDENCE DEVELOPED IN THE STATE PROCEEDINGS.

In an attempt to complicate and delay this proceeding, CWA requests that the Commission "obtain the record," including transcripts and exhibits, developed in state proceedings before the public service commissions examining this transaction in Maine, New Hampshire, and Vermont.[135] This request is inconsistent with the Commission's rules and precedent and serves no useful purpose.

First, the statutory provisions governing the Commission's review of the Application do not require or even contemplate that the Commission will obtain information from a state public service commission reviewing the same transaction.[136] The Commission's statutory analysis is guided by its public interest evaluation, which "necessarily encompasses the 'broad aims of the Communications Act,'" and "is informed by, but not limited to, traditional antitrust principles" in assessing the competitive effects of the transaction.[137] It is the Commission's standard practice—including in recent transactions considerably larger than this one and affecting tens of millions more customers—to review the applications and conduct the requisite inquiry without resorting to any information obtained in state commission proceedings.[138]

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*Verizon/MCI Order* at ¶ 19 (footnote omitted). It is not clear how conditions relating to FairPoint's capital structure and other financial qualifications would satisfy this standard.

135 CWA Pet. at 11.

136 *See* 47 U.S.C. §§ 214(a), 310(d).

137 *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion & Order, 20 FCC Rcd 18300 ¶¶ 17-18 (2005) ("*AT&T/SBC Order*") (quoting *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004)).

138 *See, e.g.*, *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order (rel. Mar. 26, 2007); *AT&T/SBC Order*; *Verizon/MCI Order*.

Second, information obtained in state commission proceedings is particularly unnecessary in connection with this transaction, which is eligible for presumptive streamlined treatment under Section 63.03(b)(1)(iii) of the Commission's rules. As explained in the Applications, this transaction "involves only the transfer of local exchange assets of an incumbent LEC by means other than an acquisition of corporate control," and no customers will experience any loss or interruption of service.[139] There are no competitive harms resulting from this transaction, and the transfer of assets presents no "novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines."[140] Under the circumstances, CWA's request to import the record from state public service commission proceedings would undermine the Commission's streamlined review procedures—an issue CWA does not even bother to address.

[139] App. at 12-13 (*quoting* Rule 63.03(b)(1)(iii)).

[140] *Id.* at 13-14 (*quoting Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517 ¶ 34 (2002)).

## CONCLUSION

For the foregoing reasons, the petitions to deny should be rejected, and the Applications should be granted without delay.

Respectfully submitted,

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