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June 18, 2007

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Applications 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., WC Docket No. 07-22, DA 07-1314; File Nos. ITC-214-20020705-00324, ITC-214-22200402-00167, ITC-214-20020213-00084, ITC-214-20020705-00325, ITC-214-20020402-00169, ITC-214-20020213-00083, ITC-214-20020213-00082, ITC-214-20020402-00170, ITC-214-20020705-00327, ITC-214-20020705-00326, ITC-214-20020402-00168, ITC-214-20020213-00081, ITC-20020516-00243, 0002921065, 0002921107, and 50005CFTC07; Ex Parte Presentation

Dear Ms. Dortch:

In this letter, FairPoint Communications, Inc. (“FairPoint”) addresses the assertion that, by virtue of the transaction proposed in this proceeding, FairPoint should be deemed a Bell operating company (“BOC”) subject to the requirements of section 271 of the Communications Act of 1934, as amended (“the Act”).¹ FairPoint already has explained why that conclusion is neither compelled by law nor justified by policy.² One Communications Corp.

¹ 47 U.S.C. § 271; *see also id.* § 153(4) (defining a “Bell operating company”).

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,

and Great Works Internet (collectively, “One Communications”) continue to press the matter, however, so FairPoint responds herein to these additional arguments on BOC classification.³

One Communications’s core contention that FairPoint will become a “successor or assign” of a BOC is based on an incomplete and erroneous application of the relevant Commission precedent. Further, in arguing for the application of section 271 to FairPoint, One Communications ignores the statute’s purpose, which targeted concerns that are irrelevant to the proposed transaction.

The classification of FairPoint as a “successor or assign” of a BOC would set a new and unnecessary precedent. One Communications recognizes that, following the transaction, FairPoint will be subject to section 251 as an incumbent local exchange carrier (“ILEC”) and will assume Verizon’s existing obligations to other carriers in the region.⁴ As explained below, this undisputed obligation encompasses most of the requirements that might otherwise be imposed on a BOC’s successor or assign through section 271, and One Communications does not identify any additional requirements that should apply.⁵ Moreover, FairPoint has committed to continue providing network facilities that have been delisted by the

Opposition to Petitions to Deny, WC Docket No. 07-22, at 34-39 (filed May 7, 2007) (“FairPoint/Verizon Opp.”).

³ See generally *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.*, Reply of One Communications Corp. and Great Works Internet to the Applicants’ Opposition to Petitions to Deny, filed in WC Docket No. 07-22, at 9-15 (filed May 14, 2007) (“One Communications Reply Comments”). One Communications Corp. alone originally raised this issue in a petition to deny, and was joined by Great Works Internet in its reply comments in support of that petition. Accordingly, for ease of reference, FairPoint refers to these two parties together as “One Communications.”

⁴ See One Communications Reply Comments at 11-12 (“The entire thrust of the Applicants’ public interest statement and subsequent filings is that the Merged Firm plans to continue, ‘without interruption or substantial change,’ Verizon’s operations in these three states. For example, FairPoint has stated that it ‘will retain the obligations applicable to all ILECs to provide wholesale services under Sections 251 and 252, as well as . . . current interconnection agreements, tariffs, SGATS, and other existing arrangements in the acquired exchanges for the duration of the respective terms.’”) (quoting FairPoint/Verizon Opp. at 33; 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 20 (filed Jan. 30, 2007)).

⁵ See *infra* section I.

Commission that Verizon currently provides under contract, by assuming those contracts for the remainder of their current terms. Further, FairPoint has offered to negotiate a reasonable extension of those agreements. Thus, subjecting FairPoint to section 271 obligations is unnecessary to fulfill the essential purpose of the Telecommunications Act of 1996 (“the Act”), which is to promote competition. Finally, FairPoint and Verizon have established that FairPoint’s purchase of the subject properties will serve the public interest. Therefore, One Communications’s petition to deny should be rejected.

I. THE TRANSACTION WILL NOT DISRUPT EXISTING WHOLESALE ARRANGEMENTS.

One Communications argues that possible BOC classification could have a “substantial bearing” on FairPoint’s post-transaction responsibilities.⁶ This could only be true if FairPoint’s provision of wholesale services were to turn on its classification as BOC. It will not.

FairPoint has provided repeated assurances that it will assume all existing agreements with other carriers, including those negotiated by Verizon for network elements no longer required to be unbundled under section 251 of the Act, which will remain in place following the proposed transaction. In addition, FairPoint is contractually bound to fulfill commitments to provide delisted network elements provided by Verizon on a commercial basis, such as replacements for line sharing (under Verizon’s “VISTA” contracts) and UNE-P (under its Wholesale Advantage contracts). In demonstration of its *bona fides*, FairPoint publicly commits to extend those arrangements for a reasonable period, and to negotiate a possible further extension of them with interested CLECs. The Commission should give substantial weight to FairPoint’s public commitments because of the absence of anti-competitive effects arising from the transaction.⁷

FairPoint has specifically stated that it will honor all of Verizon’s existing interconnection agreements for their duration, including the agreements to provide commercially-negotiated replacements to the delisted unbundled network elements (“UNEs”), and to extend those agreements for a reasonable period. FairPoint also has committed to negotiate new agreements for so-called section 271 elements, provided that reasonable terms can be reached. Further, FairPoint has agreed to comply with relevant performance assurance standards adopted by the states when they audited Verizon’s readiness to enter the long-distance market in the section 271 process. Thus, even carriers that have not incorporated the Performance Assurance Plan (“PAP”) by reference into their interconnection agreements will

⁶ One Communications Reply Comments at 15.

⁷ See FairPoint/Verizon Opp. at 5-6 (noting that whether FairPoint is subject to binding commitments is irrelevant due to “the absence of any evidence that the proposed merger may inhibit or delay the development of competition”) (quoting *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 Opinion and Order, 13 FCC Rcd 8891 ¶ 3 (1997)).

enjoy the benefits of the PAP with FairPoint, even though it was developed for Verizon in a long-distance entry process not applicable to FairPoint.

Because FairPoint will continue these practices, One Communications can identify *no* harm to competition or consumers that would result from not classifying FairPoint as a successor or assign of a BOC. FairPoint will be subject to section 251, and it has disavowed any intent either to evade its obligations by petitioning state commissions to qualify for the rural carrier exemption under section 251(f)(1) or to seek suspension or modification of sections 251(b) or (c) under section 251(f)(2).⁸ One Communications has identified no service, network element, performance standard, or other consequence of BOC classification that would justify declaring FairPoint a BOC subject to section 271.

II. LEGAL PRECEDENT DOES NOT SUPPORT TREATMENT OF FAIRPOINT AS A “SUCCESSOR OR ASSIGN” OF A BOC.

In arguing that FairPoint should be classified as a “successor or assign” of a BOC under the Act,⁹ One Communications ignores both the Commission precedent analyzing the statutory term and the purposes behind BOC-specific regulations.

A. Classifying FairPoint As a BOC Would Be a Departure from Legal Precedent on the “Successor or Assign” Language.

One Communications ignores the principles that the Commission has set forth to guide determinations of a BOC successor or assign. As the Commission has observed, neither the Act nor its legislative history defines the terms “successor or assign,”¹⁰ and the

⁸ FairPoint/Verizon Opp. at 36. For reasons that are unclear, One Communications persists in urging the Commission to rule that FairPoint is prohibited from invoking section 251(f). *See* One Communications Reply Comments at 15-17. This is a non-issue given FairPoint’s undisputed statements on the subject. In any event, as FairPoint has explained, section 251(f) grants to the states the responsibility for determining whether FairPoint is entitled to those protections, and there is no basis for the Commission to preempt that authority. *See* FairPoint/Verizon Opp. at 36.

⁹ 47 U.S.C. § 153(4).

¹⁰ *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712 ¶ 451 (1999) (“SBC/Ameritech Order”), *vacated on other grounds, ASCENT v. FCC*, 235 F.3d 662 (D.C. Cir. 2001); *ALLTEL Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 8112 ¶ 5 (2005) (“ALLTEL Order”).

Commission's rules provide little guidance on the subject.¹¹ Accordingly, consistent with traditional principles of statutory construction, the Commission "look[s] to the purposes of the Act"—in particular, its goals "to promote innovation and investment in the telecommunications marketplace by all participants, both incumbents and new entrants, and to stimulate competition for all services"—in order to "determine a reasonable meaning of the terms in their context."¹² Thus, the Commission has found that it "must interpret the terms 'successor or assign' in a manner that furthers increased competition among various service providers, while encouraging investment in new services and deployment of innovative technologies."¹³

In addition, the Commission has emphasized that "a successor or assign analysis is ultimately fact-based,"¹⁴ and that "the terms take their meaning from the particular legal context in which they are used."¹⁵ Because determinations about successorship must be based on "the facts of each case and the particular legal obligation which is at issue," the Supreme Court has explained that "there is and can be no single definition of 'successor' which is applicable in every legal context."¹⁶

In conducting this analysis, the Commission has employed the so-called "substantial continuity" standard.¹⁷ For example, in a decision that illustrates the fact-based nature of the analysis, the Commission determined that ALLTEL was not a successor or assign of Cingular for purposes of consent decrees that Cingular had entered into with the Commission addressing certain E911 obligations.¹⁸ The Commission explained that "Cingular and ALLTEL will both continue to operate as competing, independent, going concerns in all of the subject

¹¹ *ALLTEL Order* ¶ 5 (stating that "neither the Communications Act nor the Commission's rules define 'successor' or 'assign'").

¹² *SBC/Ameritech Order* ¶ 452.

¹³ *Id.*

¹⁴ *ALLTEL Order* ¶ 5; *see also SBC/Ameritech Order* ¶ 454.

¹⁵ *SBC/Ameritech Order* ¶ 454.

¹⁶ *Howard Johnson Co. v. Detroit Local Joint Exec. Bd.*, 417 U.S. 249, 264 n.9 (1974); *see also ASCENT v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001) (suggesting that the Commission is "entitled to some running room in defining the terms successor and assign").

¹⁷ *ALLTEL Order* ¶ 5; *SBC/Ameritech Order* ¶ 453; *see also One Communications Reply Comments* at 11 ("The Commission has applied this test for the purpose of determining whether an entity is a successor or assign of an incumbent LEC and it has stated that it is appropriate for determining whether a firm is a successor or assign of a BOC.").

¹⁸ *ALLTEL Order* ¶ 5.

markets, each with their own assets and customers,” and that ALLTEL was not “‘substantially continuing’ Cingular’s business operations.”¹⁹

Similarly, although FairPoint is acquiring Verizon’s ILEC business in Maine, New Hampshire, and Vermont, it is not “continu[ing], without interruption or substantial change,” all of Verizon’s operations.²⁰ Indeed, after the closing, Verizon affiliates will compete against FairPoint to provide large business and long-distance services in Maine, New Hampshire, and Vermont, and Verizon has not signed any non-compete agreement. Furthermore, Verizon New England will remain in business and will continue to operate as a BOC in the rest of its BOC territory. And FairPoint management will take over the Verizon exchanges and operate them pursuant to a new business plan and whole new systems.²¹ In short, Verizon has not “create[d] another entity to replace it.”²²

Finally, FairPoint is a separate entity whose operations have not been established to relieve Verizon of regulatory obligations.²³ That there will be continuity of service for existing customers following the transaction does not change the analysis under the Commission’s precedent. As in *ALLTEL*, FairPoint and Verizon will continue to operate independently in the subject markets, each with its own assets and customers.²⁴ Thus, this transaction is in all material respects like other sales of BOC exchanges, *none* of which resulted in the acquirer being classified as a BOC or a successor or assign of a BOC.

¹⁹ *Id.* In a more policy-driven inquiry, the Commission determined that Genuity, a spin-off advanced services affiliate of GTE and Bell Atlantic, should not be considered a successor or assign of the incumbent LEC. *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing Lease*, Memorandum Opinion and Order, 15 FCC Rcd 14032 ¶¶ 267-68 (2000) (citing *SBC/Ameritech Order* ¶¶ 444-76). As the Commission explained, because Genuity would not control any “bottleneck facilities,” it would not have “the potential to leverage existing market power from one market to another” and thus would not “occupy a market position comparable to that of the incumbent LEC in the provision of advanced services and, therefore, should not be considered a successor or assign of the incumbent LEC.” *Id.* ¶ 271.

²⁰ *SBC/Ameritech Order* ¶ 454.

²¹ Verizon will continue to operate in the markets in a number of lines of business and is free to expand into FairPoint’s core market in the future. In addition, FairPoint is acquiring the exchanges to grow its current business and to provide service as an ILEC to an expanded customer base. *See FairPoint/Verizon Opp.* at 3, 8-9.

²² *SBC/Ameritech Order* ¶ 453.

²³ *Id.* ¶ 457.

²⁴ *ALLTEL Order* ¶ 5.

B. There Is No Precedent for Classifying a Purchaser of BOC Lines As a Successor or Assign of a BOC.

The Commission has never imposed the obligations of a BOC on a non-BOC purchasing BOC exchanges.²⁵ For example, different carriers have acquired exchanges from Ameritech, BellSouth, Qwest, and U S West, without being deemed BOCs²⁶—these transactions are identified in Appendix A to this submission. One Communications does not point to a single case to the contrary. The one decision One Communications does cite does not support its argument: There, an entity—which had acquired 2,300 access lines from Qwest in order to serve a Navajo reservation—was found to be a successor of Qwest for other purposes but was not found to be a BOC.²⁷

That the Commission has never, despite numerous opportunities to do so, declared a non-BOC to be a successor or assign of a BOC can hardly be considered an oversight on the agency’s part. Indeed, such a ruling surely would not promote the twin goals of “promot[ing] innovation and investment” and “stimulat[ing] competition.”²⁸ To the contrary, applying a BOC designation to the independent LECs that purchase BOC exchanges would automatically trigger onerous obligations designed in another era to prevent the divested BOCs—the largest and most concentrated telecommunications service providers in the country—from discriminating in favor of AT&T, thereby *discouraging* innovation, investment, and market entry by independent LECs.

²⁵ See FairPoint/Verizon Opp. at 38.

²⁶ See *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.*, Reply Comments of the Independent Telephone & Telecommunications Alliance to the Petitions to Deny, WC Docket No. 07-22, at 2, 4 (filed May 14, 2007).

²⁷ One Communications Reply Comments at 14 (citing *Sacred Wind Communications, Inc. and Qwest Corp.*, Order, 21 FCC Rcd 9227 (2006)); 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.*, Petition to Deny of One Communications Corp., WC Docket No. 07-22, at 6 n.7 (filed Apr. 27, 2007) (noting that this decision, which found an entity to be a successor of Qwest as an ILEC, “did not specifically address whether the successor entity can be classified as a BOC”). The “logical inference” of this finding is *not* that the entity in question was also a BOC, as One Communications has stated. See *id.* There is no basis to infer from the Commission’s order that this entity could be considered a BOC.

²⁸ *SBC/Ameritech Order* ¶ 452.

III. THERE IS NO POLICY JUSTIFICATION FOR CLASSIFYING FAIRPOINT AS A BOC AFTER THE TRANSACTION.

One Communications also ignores the purposes underlying the provisions that it seeks to impose on FairPoint. Congress enacted those provisions to address unique concerns that arose from the divestiture of the BOCs by AT&T and are not implicated at all by this transaction.

A. The Purpose of Section 271 Is Specific to the Former Bell System Companies.

The most significant consequence of classification as a BOC is the application of section 271 of the Act. Congress adopted section 271 to address concerns that the BOCs might harm competition in the *interexchange* market by virtue of the BOCs' ability to leverage their historic dominant position in the local exchange market.²⁹ These concerns stemmed from the BOCs' historical connection to AT&T's dominant position in the interexchange market prior to the U.S. Department of Justice ("DOJ") consent decree with AT&T to divest its local exchange monopolies.³⁰ While the BOCs originally were prohibited under the Modification of Final Judgment between AT&T and the DOJ ("MFJ") from providing interexchange services, section 271 relaxed these prohibitions and allowed the BOCs to provide interexchange service upon the satisfaction of certain market-opening criteria to promote competition for the provision of local exchange services. These obligations, embodied in sections 271 through 274 of the Act, were imposed uniquely on the BOCs, in addition to the *local* competition provisions of sections 251 and 252. Independent ILECs such as FairPoint never were subject to either the prohibition on providing long-distance service or the requirements of section 271.

Thus, when BOCs have acquired non-BOC properties, the Commission has not imposed section 271 on the non-BOC properties.³¹ Likewise, in the related situation described

²⁹ *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 412-13 (1998).

³⁰ *Id.* at 412.

³¹ When GTE merged with a BOC, even then GTE was not deemed a BOC, or a successor or assign of a BOC. *See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032 ¶¶ 27, 68 (2000) (finding no violation of section 271 where GTE agreed to exit certain interLATA businesses only in states where Bell Atlantic was subject to section 271 obligations, and recognizing that even though some spun-off interLATA assets were "located outside of Bell Atlantic's region and could potentially be owned and operated by the merged firm lawfully"). Similarly, in 1998, SBC Communications, Inc. ("SBC"), a BOC, merged with Southern New England Telecommunications Corporation ("SNET"). *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp. to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292 ¶ 36 (1998). Under the merger, SNET became a wholly-owned first tier subsidiary of SBC. *Id.* ¶ 6. However, the

above in which independent ILECs such as FairPoint have acquired BOC exchanges, including all of the transactions identified in Appendix A, the LECs were never classified as BOCs.³² Furthermore, courts have recognized that section 271 requirements are not warranted merely by virtue of an ILEC serving a large number of lines or a vast territory. For example, the D.C. Circuit acknowledged that GTE, which was never part of the Bell system, at one time supplied about 18.4 million local access lines in 27 states, but was not subject to section 271.³³

Because FairPoint is not and never was a BOC or a BOC affiliate, successor, or assign, FairPoint does not pose any threat to long-distance competition which the section 271 obligations were intended to prevent. As One Communications itself has recognized, FairPoint does not have the scale and scope economies of a BOC,³⁴ and it has no ability to unreasonably withhold access services. In this regard, One Communications's assertion that FairPoint's smaller size relative to Verizon "is irrelevant to the analysis" misses the mark.³⁵

Significantly, the proposed transaction involves the transfer to FairPoint of only a portion of Verizon's long-distance business in the region. While FairPoint will acquire some of Verizon's long-distance operations, the proposed transaction excludes Verizon's enterprise long-distance customers, to which it will continue to provide service through its affiliate Verizon Business Global LLC f/k/a MCI, LLC ("Verizon Business"). After the proposed transaction, FairPoint will compete directly with Verizon Business to provide long-distance services. Further, almost all of Verizon's international long-distance operations are excluded from the proposed transaction.

Commission did not impose section 271 obligations on SBC for interexchange service offered in SNET's territory. *Id.* ¶ 36. Likewise, in granting Verizon section 271 authority in Pennsylvania, the Commission held that Verizon was not required to demonstrate checklist compliance for GTE North (a former GTE LEC serving part of Pennsylvania), because GTE North—despite having been acquired by Verizon several years earlier—was not a successor or assign of Verizon. *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419 ¶¶ 8, 134 (2001).

³² See *supra* section II.B.

³³ *BellSouth Corporation v. FCC*, 144 F.3d 58, 67 (1998) (citing 1996 FCC Statistics of Communications Common Carriers 21 (1997)). The court distinguished BOCs from other ILECs, such as GTE, holding that the more stringent requirements for BOCs were justified "[b]ecause the BOCs' facilities are generally less dispersed than GTE's, [and] they can exercise bottleneck control over both ends of a telephone call in a higher fraction of cases than can GTE." *Id.*

³⁴ One Communications Pet. to Deny at 27 (citing to FairPoint's "diminished scale and scope economies as compared to Verizon").

³⁵ One Communications Reply Comments at 3.

FairPoint will enter the acquired markets as an independent ILEC, and as a long-distance carrier with modest market share. Accordingly, the proposed transaction could increase competition in the already-competitive market for long-distance and local services and potentially for ancillary services, such as wireless. FairPoint will have no ability to hamper competition or prevent market entry. Section 271 requirements therefore are wholly unnecessary and contrary to the goals of the Act.

B. Other BOC-Specific Regulations Should Not Apply to FairPoint.

Classifying FairPoint as a BOC would trigger a host of other requirements to which FairPoint should not be subject. In addition to the section 271 requirements addressed above, which have been the focus of the debate thus far, BOC classification could also force FairPoint to comply with other obligations set forth in sections 272 through 274 of the Act, which by their terms apply only to BOCs.³⁶ These provisions require BOCs to provide long-distance and interLATA information services, and to manufacture and provide customer premises equipment, through separate affiliates that are subject to various structural and transactional requirements.³⁷ BOCs also must obtain and pay for independent, biennial audits to determine whether they are complying with those rules.³⁸ Although these requirements have sunset for existing BOCs,³⁹ classifying FairPoint as a BOC raises the wholly inappropriate prospect of FairPoint becoming subject to these provisions anew for the prescribed statutory periods.⁴⁰ Even absent that possibility, FairPoint would be subject to the regulatory uncertainty

³⁶ See generally 47 U.S.C. §§ 272-274.

³⁷ See 47 U.S.C. § 272(b); 47 C.F.R. § 64.702.

³⁸ 47 C.F.R. § 53.209.

³⁹ See, e.g., *Section 272 Sunsets for Verizon Communications Inc. in the States of New Hampshire and Delaware By Operation of Law on September 25, 2005 Pursuant to Section 272(f)(1)*, Public Notice, WC Docket No. 02-112 (rel. Sept. 26, 2005); *Section 272 Sunsets for Verizon Communications Inc. in the State of Maine By Operation of Law on June 19, 2005 Pursuant to Section 272(f)(1)*, Public Notice, WC Docket No. 02-112 (rel. June 20, 2005); *Section 272 Sunsets for Verizon Communications Inc. in the State of Vermont By Operation of Law on April 17, 2005 Pursuant to Section 272(f)(1)*, Public Notice, WC Docket No. 02-112 (rel. Apr. 20, 2005).

⁴⁰ See 47 U.S.C. § 272(f)(1) (providing that the separate affiliate requirements for BOC manufacturing and long-distance continue for three years after the BOC obtains section 271 approval, unless extended by the Commission). The separate affiliate requirements applicable to a BOC's provision of interLATA information services expired in 2000. See *id.* § 272(f)(2).

that currently hovers over the BOCs' post-sunset provision of long-distance services, which is the subject of a pending rulemaking as well as several forbearance proceedings.⁴¹

Other potential obligations do not include an automatic sunset. Classification as a BOC would subject FairPoint to the nondiscrimination provisions of section 272(e), which are carved out from the sunset otherwise applicable to section 272.⁴² In addition, BOCs generally remain subject to the Commission's comparably efficient interconnection ("CEI") and open network architecture ("ONA") obligations.⁴³

There is no policy rationale that would support subjecting FairPoint to these various requirements. Although One Communications theorizes that for the Commission to do otherwise would prompt BOCs "to split up their operating territories into smaller segments,"⁴⁴ the Commission need only look at history to debunk this notion. Despite the fact that no purchaser of BOC exchanges has ever been deemed a BOC, BOCs have not entered into a mass sell-off of their lines in an attempt to escape their regulatory obligations. There is no reason to expect otherwise here.

* * *

⁴¹ See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002). Last March, the Commission granted a forbearance petition allowing Qwest to provide in-region, interstate, interLATA telecommunications services on an integrated basis free of certain dominant carrier regulations but subject to various conditions. See *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, WC Docket No. 05-333 (rel. Mar. 9, 2007). Verizon recently withdrew a similar petition, although others remain pending. See, e.g., *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Order, WC Docket No. 06-120 (rel. May 30, 2007) (extending the end of the statutory forbearance timeframe to August 31, 2007).

⁴² 47 U.S.C. §§ 272(e)(1)-(3) (describing requirements applicable to BOCs concerning the fulfillment of certain requests under section 251); see also *id.* §§ 272(f)(1)-(2) (providing that section 272's automatic sunset provisions do not apply to section 272(e)).

⁴³ See, e.g., *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 ¶ 30 (2005) (noting that "the Commission's structural separation, CEI and ONA rules apply only to the BOCs"). But see *id.* ¶ 41 (ruling that "BOCs are immediately relieved of the separate subsidiary, CEI, and ONA obligations with respect to wireline broadband Internet access services").

⁴⁴ One Communications Reply Comments at 12.

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In the end, One Communications asks the Commission to embark upon a purely academic exercise. The Commission should not—and need not—allow this issue to stand in the way of a conclusion that the proposed transaction would serve the public interest, convenience, and necessity.

Respectfully submitted,

/s/ Karen Brinkmann

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FairPoint/Verizon Ex Parte on BOC Classification
(WC Docket No. 07-22)

Appendix A:

Illustrative List of Purchases of BOC Exchanges by Non-BOCs

Nonstreamlined Domestic Section 214 Application Granted, Public Notice, 20 FCC Rcd 8042 (2005) (approving acquisition by Madison River Telephone Company of 2 exchanges from BellSouth in North Carolina)

Comments Invited on Qwest Section 214 Application to Discontinue Operation of Facilities Within 38 Arizona Exchanges, Public Notice, 16 FCC Rcd 6972 (2001) (transfer of 38 exchanges from Qwest to Citizens in Arizona)

Citizens Telecommunications Company of Montana and Qwest Corporation Seek a Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules, Public Notice, 16 FCC Rcd 262 (2001) (referencing Citizens's acquisition of 10 exchanges from Qwest in Montana)
Citizens Telecommunications Company of Nebraska and Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Order, 15 FCC Rcd 19368 (2000) (referencing Citizens's acquisition of 14 exchanges from Qwest in Nebraska)

Comments Invited on Qwest Section 214 Application to Discontinue Operation of Facilities Within Twelve Utah Exchanges, Public Notice, 16 FCC Rcd 1495 (2000) (transfer by Qwest of 12 exchanges in Utah to 12 different carriers: All West Communications, Inc., All West World Connect, Carbon/Emery Telcom, Inc., Central Telcom Services, Central Utah Telephone, Inc., Emery Telcom, Hanksville Telcom, Inc., Manti Long Distance, Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc., and Uintah Basin Long Distance)

Comments Invited on Qwest Corporation's Application to Discontinue Operation of Telecommunications Facilities Within 17 Colorado Exchanges, Public Notice, 15 FCC Rcd 18021 (2000) (transfer of 17 exchanges by Qwest to Citizens in Colorado)
Citizens Telecommunications Company of Iowa and Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Order, 15 FCC Rcd 19362 (2000) (referencing Citizens's acquisition of 32 exchanges from Qwest in Iowa)

Comments Invited on Qwest Corporation's Application to Discontinue Operation of Telecommunications Facilities Within 5 Wyoming Exchanges, Public Notice, 15 FCC Rcd 18024 (2000) (transfer of 5 exchanges from Qwest to Citizens in Wyoming)

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) (permitting Kendall Telephone Co. to acquire 19 local BOC exchanges in northern and central Wisconsin from Ameritech Wisconsin)

Petitions for Waivers Filed by Union Telephone Company, Inc. and U S West Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of “Study Area” Contained in Part 36 Appendix-Glossary of the Commission’s Rules, Memorandum Opinion and Order, 1997 WL 818521 (1997) (referencing transfer of 1 exchange from U S West to Union Telephone Co.)

U S 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) (permitting purchase by Eagle Telecommunications of 43 U S West exchanges in Colorado)