UNITED STATES TELECOM ASSOCIATION

July 27, 2007

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

Re: Application of Verizon New England, Inc., *et al.*, WC Docket No. 07-22

Dear Ms. Dortch:

On behalf of US Telecom, I write to urge the Commission to act on the license transfers associated with the FairPoint-Verizon transaction in a timely manner and to avoid protracted proceedings or imposition of conditions that are sought to achieve social or political objectives that are unrelated competitive harms. There are powerful, positive, pro-consumer forces of change occurring in the telecommunications industry as a result of rapid techonological innovation, and the Commission should allow those seeking to restructure their businesses in ways that will better serve consumers the opportunity to do so without unreasonable delay.

The communications industry continues to experience profound change. The fact of this transformation was nowhere clearer than at the recent NXTComm show and conference where executives from companies of all sizes providing services, equipment, and content emphasized the importance of broadband deployment to the future of telecommunications. The Members of this Commission have uniformly acknowledged the challenges these ongoing revolutionary changes create for our industry. Chairman Martin and Commissioner Tate have recently stressed that the current market is "dynamic" and that "[n]ew technologies and services are continuing to transform every aspect of our lives."[1] Commissioner Copps has likewise emphasized the changes occurring during "this hugely transformative Digital Age."[2] And Commissioner Adelstein has noted that "these are rapidly changing times in the telecommunications industry and the broader communications marketplace in general."[3] Finally, Commissioner McDowell has hailed the

[1] Joint Statement of Chairman Kevin J. Martin and Commissioner Deborah Taylor Tate, *Re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74 (FCC rel. Mar. 26, 2007).

[2] Testimony of FCC Commissioner Michael J. Copps, Testimony Prepared for the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives (FCC rel. Mar. 14, 2007).

[3] Concurring Statement of Commissioner Jonathan S. Adelstein, *Re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74 (FCC rel. Mar. 26, 2007).

"[r]evolutionary technological developments" that are "yielding untold opportunities for newly empowered consumers to improve the quality of their lives." [4]

One natural, healthy consequence of the seismic changes occurring in communications markets is the series of recent transactions designed to implement new competitive strategies and to restructure operations to make companies more effective competitors in this rapidly evolving marketplace. Some telecom companies have divested wireline assets in order to focus on wireless services for which they believe they can compete most effectively. Other telecom companies have engaged in transactions designed to combine wireless, wireline, broadband, and video in order to offer consumers new choices. And cable companies such as Time Warner and Comcast have engaged in transactions to bring together clusters of assets in particular geographic areas so as to compete most efficiently and effectively.

The purchase of Verizon local exchange assets in New Hampshire, Maine and Vermont by FairPoint Communications, Inc. exemplifies another important competitive strategy: focusing on the needs of wireline consumers who live in rural areas and small urban markets.[5] Like Embarq and Windstream, which have adopted this strategy and appear to be meeting substantial success, FairPoint has a strategic focus on lower density markets. FairPoint has developed significant expertise in serving customers in rural and small urban areas in the 18 states where it currently does business. FairPoint reports that it currently makes broadband access available to an impressive 92% of its customers in its existing service territories in Maine, New Hampshire, and Vermont, and to 88% of its customers nationwide.[6] And FairPoint believes that it can serve these Verizon exchanges in Northern New England more efficiently than Verizon, using its own state-of-the-art systems infrastructure and lower overhead per line, so that it can save approximately $60 to $75 million compare to the expenses that Verizon incurs in serving these areas.[7] Additionally, FairPoint already has a regional headquarters in Maine and says that it will rely on new regional centers to provide many functions previously performed outside the region,[8] so it will have personnel on the ground that are familiar with the particular needs of consumers in Northern New England, as well as the challenges of serving them.

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[4] Statement of FCC Commissioner Robert M. McDowell, Testimony Prepared for the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives (FCC rel. Mar. 14, 2007).

[5] Other recent tranactions, such as Verizon's 2002 sale of former GTE assets in Alabama, Kentucky, and Missouri to CenturyTel and Alltel (later spun-off as Windstream) involved a similar dynamic.

[6] *See* FairPoint/Verizon Opposition to Petitions to Deny, WC Docket 07-22, at 8 (filed May 7, 2007).

[7] *See id.* at 14.

[8] *See id.* at 9.

FairPoint would appear to have the strategic focus, expertise, and physical and human assets to provide high-quality services, including broadband services, to consumers in Northern New England in an effective and efficient manner. Fairpoint's interest in these properties is evidence that the market for these assets is working in a way that is pro-consumer, with facilities moving to companies that, given their strategic focus, value them most highly and that are best positioned to employ them to compete in the marketplace.

The Commission should make every effort to minimize regulatory obstacles to the realigning of assets necessary for our industry to meet the pressures for change that all the Commissioners have recognized. However, the multiple layers of license transfer review, which include the Department of Justice and state commissions in addition to this Commission, can delay and potentially reduce the consumer benefits that flow from attempts to meet these pressures and create disincentives to similar transactions aimed at implementing or strengthening innovative business strategies.

In this particular instance, moreover, there is every reason for the Commission to move quickly to approve this transaction. As the Commission has concluded, it will "not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."[9] The Department of Justice's analysis of this proposed transaction did not reveal potential competitive harms that would justify issuing a second request for additional information from the parties. Similarly, the FCC record contains no evidence of any likely competitive harms – indeed, the transaction does not involve any loss of actual or potential competition, but is simply a horizontal transfer of assets.

Thank you for your consideration of US Telecom's views on this important matter. As our members are deeply interested in a prompt and focused merger review process that allows our industry to meet the changing demands of consumers and technology, they are following the Commission's review closely. In our industry, technology and innovation threaten old business strategies, but create new opportunities for companies to rethink their strategies and restructure their operations to better serve their customers. I am confident that the Commission's leadership will speed our industry's efforts to meet these challenges. In particular, approving this transaction promptly, and within the Commission's established time period for reviews, should help expedite the additional state reviews involved in completing this transaction and, most

[9] Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfers of Control*, FCC 05-183, WC Docket No. 05-65, ¶ 19 (Nov. 17, 2005). The Department of Justice has similarly concluded that merger conditions should only be imposed where there is a rigorous, logical nexus between the merger, the demonstrated harms to consumers from the merger, and the remedies being proposed. *See* United States Dep't of Justice, Antitrust Division, *Policy Guide to Merger Remedies* at 2 (Oct. 2004).

importantly, will quickly bring the benefits of innovation and change to the consumers that FairPoint hopes to serve.

Respectfully submitted,

Jonathan Banks

cc: Ian Dillner
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