

October 11, 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 50005CF7C07; Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

In this letter, FairPoint Communications, Inc. (“FairPoint”) and Verizon (together with FairPoint, the “Applicants”) address several issues raised in recent *ex parte* submissions by the Communications Workers of America and International Brotherhood of Electrical Workers (“CWA/IBEW”),¹ and One Communications Corp. (“One Communications”).² CWA/IBEW and One Communications largely repeat arguments they have previously made and to which the Applicants already have responded. The Applicants here address the few new points raised by CWA/IBEW and One Communications to ensure that the Commission has a complete record in this proceeding.

¹ See Letter from Kenneth R. Peres, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22 (filed Sept. 7, 2007) (“CWA/IBEW *Ex Parte*”).

² See “One Communications *Ex Parte* Presentation Regarding the Proposed Acquisition of Verizon ILEC Assets by FairPoint,” attached to Letter from Thomas Jones to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22 (filed Sept. 13, 2007) (“One Communications *Ex Parte*”).

I. FairPoint Will Be Able to Rely on a Well-Trained, Highly Skilled Workforce Following the Transaction.

CWA/IBEW's filing includes a summary of responses to a CWA/IBEW survey that asked union-represented employees whether they would "seriously consider" leaving their current jobs if FairPoint became their employer.³ CWA/IBEW use this in an attempt to bolster their prior speculation that some current Verizon employees may leave the company if the transaction is approved, which CWA/IBEW allege would impair FairPoint's ability to operate the exchanges that it will acquire from Verizon.⁴

As an initial matter, the survey results described by CWA/IBEW merely indicate a "possibility" that some workers could leave their current jobs.⁵ Of course, this is always the case, but there certainly is no particular cause for alarm here. Indeed, the facts on the ground contradict CWA/IBEW's claims.

First, very little turnover among current Verizon employees has occurred since the transaction was announced last January. As of August 31, 2007, only 61 employees (27 union-represented and 34 management) in the region who were eligible to retire have done so. This is less than 10 percent of the 659 employees who are projected to be eligible for retirement (with full or reduced pension benefits) through January 31, 2008 and who could leave regardless of the transaction.⁶ In addition, as of August 31, 2007, 113 union-represented employees (not including the retirees noted above) left the employment of Verizon in the Northern New England territory of Maine, New Hampshire, and Vermont. Of these, 54 took jobs with Verizon outside of Northern New England, 33 left Verizon for other opportunities, and the remaining 26 were separated for other reasons including death, long term disability, or performance reasons. During this same period, 59 union-represented employees were hired into or transferred into the Northern New England territory.

³ CWA/IBEW *Ex Parte* at 2.

⁴ *Id.* at 1; *see also* Petition to Deny of Communications Workers of America and International Brotherhood of Electrical Workers, WC Docket No. 07-22, at 28 (filed Apr. 27, 2007) ("CWA/IBEW Pet. to Deny").

⁵ Rebuttal Testimony of Kenneth R. Peres, Ph. D., On Behalf of the Communications Workers of America and International Brotherhood of Electrical Workers, at 13-14 (filed Aug. 10, 2007), attached to CWA/IBEW *Ex Parte* ("CWA/IBEW *Ex Parte* Attach.").

⁶ More specifically, data that was current as of September 1, 2007 shows that, through January 31, 2008, 379 union-represented employees are projected to be eligible for retirement with full pension benefits, and 178 union-represented employees are projected to be eligible for retirement with reduced pension benefits. The data also show that 50 management employees are projected to be eligible for retirement with full pension benefits, and 52 management employees are projected to be eligible for retirement with reduced pension benefits.

It is noteworthy that Verizon workers are electing to join the Northern New England team, knowing of the pending merger. Through July 2007, the employees new to Verizon's Northern New England territory included 23 existing Verizon union-represented employees who successfully bid for jobs there, compared to only 15 such transfers into the three states in 2006. This directly refutes CWA/IBEW's claim that "workers in other states no longer bid on jobs in Maine, New Hampshire, and Vermont[,] which previously obtained many such bids."⁷ Not only are workers—including current Verizon employees—asking to work in this territory, they are doing so in greater numbers than before the transaction was announced.

Furthermore, for several reasons, the concerns that CWA/IBEW attribute to current employees—regarding FairPoint's financial resources and level of experience—have no basis. First, the Applicants already have demonstrated that FairPoint has the resources and ability to operate the Verizon exchanges.⁸ Thus, FairPoint will be able to fulfill its commitment to retain all of the Verizon employees who support the exchanges today, preserve current compensation and benefits (including having all pension fund obligations fully funded when transferred by Verizon), and assume the existing collective bargaining agreements.⁹ FairPoint also will create over 675 jobs in the region,¹⁰ about 30 to 40 percent of which are projected to be union positions.

Second, FairPoint's management team has substantial experience working with organized labor. Today, approximately 14 percent of FairPoint's existing workforce is unionized, including employees who are represented by CWA/IBEW. Peter Nixon, President for FairPoint, has personally been involved with labor relations and contract negotiations since 1978 in both the private and public sectors. Mr. Nixon's direct reports responsible for the functions in which there are predominantly union-represented employees, including Human Resources, also are experienced in large-company labor relations. FairPoint has hired a Vice President of Labor Relations who will be located in Northern New England.

⁷ CWA/IBEW Pet. to Deny at 28.

⁸ See Letter from Shirley J. Linn & Robin E. Tuttle, FairPoint Communications, Inc., and Michael E. Glover, Karen Zacharia, & Leslie V. Owsley, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22 (filed Aug. 20, 2007); 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, Opposition to Petitions to Deny, WC Docket No. 07-22, at 10-18 (filed May 7, 2007) ("FairPoint/Verizon Opp.").

⁹ FairPoint/Verizon Opp. at 17.

¹⁰ FairPoint previously stated that it would create 600 jobs in the region, *see id.*, and it has since increased that projection to 675.

Third, FairPoint has worked continually to understand and address possible employee and union concerns. Indeed, on the morning that the transaction was announced, the first calls made by Mr. Nixon were to the governors of Maine, New Hampshire, and Vermont and to the employees' union representatives. The day after the announcement, FairPoint's CEO, Gene Johnson, led a webcast addressed to affected Verizon employees. FairPoint also has met with union officials and offered to discuss an extension of the current contract.

Finally, FairPoint is taking appropriate steps to ensure a smooth transition for Verizon employees from Verizon's procedures to FairPoint's operational processes. For example, FairPoint is planning the necessary training for current Verizon employees who will be joining FairPoint following the transaction. In order to have a successful conversion from Verizon's back-office systems to FairPoint's own systems, FairPoint will complete system training prior to cutover, and provide additional follow-up training after cutover. FairPoint also will have a strong local management presence, as the Applicants have described.¹¹

All of these factors indicate that, far from experiencing an "exodus" of workers as CWA/IBEW claim,¹² Verizon will transfer to FairPoint a skilled workforce able to continue normal operations after closing. Indeed, as the Applicants have noted, FairPoint expects to attract and retain experienced employees, given the appeal to employees of working in a region that is the most important in the company and of having opportunities for advancement resulting from FairPoint's commitment to local management.¹³

II. The Transaction Will Not Disrupt Existing Wholesale Arrangements or Otherwise Harm Wholesale Customers.

One Communications's *ex parte* also generally reasserts its prior allegations relating to the provision of wholesale services following the transaction but makes several new points in the course of doing so. The Applicants address those points below.

Section 271 Obligations. One Communications's assertion that FairPoint "apparently has no intention of complying with the requirements of Section[s] 271 and 272" is incorrect.¹⁴ One Communications quotes language from a filing made by FairPoint nearly four months ago. Following that filing, FairPoint committed in each of the three states to provide all the same checklist items that Verizon is providing under section 271(c)(2)(B) of the Act,¹⁵ pursuant to the "just and reasonable" pricing standard adopted by the Commission. More

¹¹ See, e.g., FairPoint/Verizon Opp. at 9-10.

¹² CWA/IBEW *Ex Parte* Attach. at 5.

¹³ FairPoint/Verizon Opp. at 17-18.

¹⁴ One Communications *Ex Parte* at 1.

¹⁵ 47 U.S.C. § 271(c)(2)(B).

generally, FairPoint has reaffirmed in this docket its intention to ensure that no wholesale customers experience a diminution in the services they receive from Verizon.¹⁶

One Communications’s statement that “the Section 271 obligations would disappear entirely in the three states at issue”¹⁷ is misleading. FairPoint will assume the same types of wholesale obligations to which Verizon would have been subject, and has offered to extend existing commercial agreements for section 271-type services for one year beyond their current expiration dates.¹⁸

A number of competitive local exchange carriers (“CLECs”) have noted FairPoint’s commitments in this regard and have expressed their support for this transaction without conditions. In addition to those CLECs that the Applicants previously have identified to the Commission—Level 3 Communications, LLC, PAETEC Communications Inc., and US LEC Communications Inc.¹⁹—DSCI Corporation (“DSCI”) recently moved to withdraw its petition to intervene in the New Hampshire proceeding. DSCI confirms in its motion that FairPoint and Verizon have “cooperated with DSCI to address its concerns.” DSCI “is satisfied that FairPoint will continue to provide it with wholesale services in New Hampshire after the merger transaction on terms at least as favorable as the terms on which Verizon has been providing wholesale services before the merger transaction,” and accordingly it “supports approval of this merger transaction.” DSCI’s motion to withdraw is attached.

Similarly, a group of eight independent local exchange carriers in Vermont—which includes all such carriers in the state—filed a letter with the Vermont Public Service Board noting that they have reached agreement with FairPoint “regarding the continuation of existing arrangements” with Verizon, and that they are satisfied that FairPoint will provide “the same services” as Verizon in a manner that will allow these companies “to continue to provide the same high quality of service to their customers.” Twenty-two independent local exchange carriers in Maine filed a similar letter with the Maine Public Utilities Commission noting that they too had entered into settlements with FairPoint ensuring that the transaction “will not result

¹⁶ See Letter from Karen Brinkmann to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22, at 2 (filed Sept. 5, 2007).

¹⁷ One Communications *Ex Parte* at 2.

¹⁸ See Letter from Karen Brinkmann to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22, at 3-4 (filed June 18, 2007) (“FairPoint Section 271 *Ex Parte*”).

¹⁹ *Id.* at 1 (Level 3 Communications, LLC); Letter from Karen Brinkmann to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22, at 1-2 (filed Sept. 10, 2007) (PAETEC Communications Inc. and US LEC Communications Inc.); see also Letter from Samuel J. Kline, Vice President – Strategic Initiatives, Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-22, at 1 (filed Sept. 9, 2007) (noting the support of Granite Telecommunications—which was not a party to any of the state proceedings—for the transaction).

in any material change to any rate, term or condition of the services currently in place” between them and Verizon. Both of these letters are attached.

Section 251(f) Relief. One Communications’s concern that FairPoint has “left itself the flexibility” to seek relief under the rural exemption in section 251(f)(1), or to seek suspension or modification of sections 251(b) or (c) under section 251(f)(2), is overstated.²⁰ FairPoint has represented to this Commission that it has no intention of asserting the rural exemption.²¹ FairPoint also has no present intention to seek suspension or modification of sections 251(b) or (c) under section 251(f)(2).²² However, FairPoint will be a midsize carrier and thus should have access to this mechanism, to be used at some point in the future if necessary. If FairPoint ever did seek modification or suspension of a section 251(b) or (c) obligation, it could not do so without first obtaining the approval of the relevant state public service commission²³—which would require FairPoint to satisfy the standard set forth in the statute.²⁴ State commissions may prefer to have the flexibility to use that mechanism to refine the regulatory landscape as circumstances warrant.

Independent Third-Party Testing of OSS. One Communications argues that FairPoint should “retain an independent third party” to review “all aspects” of its operations support systems (“OSS”).²⁵ FairPoint, however, already has implemented internal processes and procedures that will ensure that its wholesale systems will be ready upon transition, and the imposition of additional conditions of this nature would be both unnecessary and inefficient for several reasons.

First, FairPoint’s systems are far along in the development phase, so third-party review and revision of system development would not be meaningful. Second, FairPoint and Capgemini (the consultant/contractor FairPoint has engaged to assist in developing the new systems) have committed to an open and transparent policy with the Maine and New Hampshire Public Utilities Commissions and the Vermont Public Service Board. They plan to offer reports of status, plan development, and wholesale OSS testing criteria. Wholesale OSS test results will be available for state commission review. Finally, FairPoint will not initiate cutover until it has successfully completed its OSS testing. FairPoint has the strongest economic incentive to wait until its systems are ready for cutover—the potential customer dissatisfaction and loss of marketing opportunities caused by premature cutover could cause FairPoint great economic harm.

²⁰ One Communications *Ex Parte* at 3.

²¹ FairPoint/Verizon Opp. at 36; FairPoint Section 271 *Ex Parte* at 4.

²² FairPoint/Verizon Opp. at 36; FairPoint Section 271 *Ex Parte* at 4.

²³ FairPoint/Verizon Opp. at 36; FairPoint Section 271 *Ex Parte* at 4 n.8.

²⁴ 47 U.S.C. § 251(f)(2).

²⁵ One Communications *Ex Parte* at 4.

In addition, FairPoint has proposed to the state commissions that a single consultant selected by the three states review the entire FairPoint OSS “test strategy” document, which includes test strategy definitions and objectives, test defect classifications and guidelines, test case and expected results, testing metrics, and acceptance criteria. The exercise will include systems which support wholesale services. Many wholesale customers support this proposal. In light of this, One Communications’s proposal that the selection of the third-party expert and the plan for wholesale OSS testing be subject to review and comment by interested parties and FCC approval²⁶ is unnecessary and detrimental to a smooth transition process. Allowing multiple parties to review and comment could lead to conflicting opinions, confusion, and protracted processes, all of which could delay the cutover.

Finally, One Communications’s request that FairPoint be prohibited from having a transition period during cutover is unreasonable.²⁷ FairPoint anticipates a brief—and as a technical matter, unavoidable—five-day period during which orders will have to be taken manually. That transition period will affect all carriers (including FairPoint) equally. One Communications’s further demand that Verizon’s section 271 Performance Assurance Plan (“PAP”) remain in effect throughout this entire transition likewise is unreasonable.²⁸ Although FairPoint would not be bound by the PAP in the normal course, it has agreed to adhere to the PAP in each of the three states in order to avoid disrupting the provision of wholesale services in the region, and it has stated its willingness to discuss streamlining the PAP with interested CLECs. Allowing FairPoint to suspend the PAP for a couple of months will allow it to focus its efforts on completing the transition and putting into place the state-of-the-art systems that will benefit One Communications and other wholesale customers.

Costs Related to New Wholesale Systems. Finally, there is no basis for One Communications’s concern that FairPoint will force CLECs in the region to incur substantial additional costs as a result of the transfer to FairPoint’s systems.²⁹ FairPoint is implementing systems that are very similar to existing Verizon systems, which should result in little, if any, change for the wholesale customers. FairPoint has committed to providing training sessions and materials free of charge to wholesale customers. To ensure that wholesale customers are ready to operate the new systems, FairPoint will also provide a wholesale OSS certification process at no cost to wholesale customers. Although wholesale customers will be responsible for any changes that they make to their own systems, those costs should be minimal.³⁰ FairPoint will

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ To the extent FairPoint invests in systems that will replace the costs of systems currently provided by Verizon, however, FairPoint believes it should be able to include such costs in future rate proceedings just as Verizon would. Of course, in that event, the relevant state commission still would have the ability to oppose the inclusion of those costs.

utilize systems and interfaces that are industry standard—for those that utilize the electronic data interface, the interface can be easily modified. For the majority of wholesale customers that interact with FairPoint’s systems using the Web GUI, there will be no cost to modify systems, as the only change required is for the wholesale customer to visit a different website that might look slightly different from what the wholesale customer saw via the Verizon Web GUI but that will contain all the same information fields. FairPoint will replace the Verizon systems with better systems, and CLECs will benefit from better service for little cost.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

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