

December 12, 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; Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

FairPoint Communications, Inc. (“FairPoint”) has developed a comprehensive and detailed plan for expanding broadband availability in Maine, New Hampshire and Vermont, and it will begin implementing its plan upon the closing of the merger of Verizon’s local exchange and related businesses in those three states with FairPoint.¹ For this reason, as explained in more detail below, approval of the transaction is in the public interest and is also consistent with the Commission’s goals of increasing broadband deployment and accessibility in rural areas such as northern New England.

FairPoint has expertise in serving rural and small urban areas, and it is committed to and focused on deploying and expanding advanced broadband technologies to rural areas in these northern New England states, particularly to many areas that do not currently have

¹ In this filing, we summarize and supplement information already filed in the docket through letters dated June 20, 2007, July 20, 2007, July 30, 2007, August 31, 2007, October 12, 2007 and October 29, 2007, in which FairPoint announced and updated its broadband deployment plans for Maine, New Hampshire and Vermont. We also explain that conditions proposed by CWA should not be adopted.

broadband access from Verizon. FairPoint's broadband plan will provide service to customers who currently cannot obtain Verizon's broadband service.

FairPoint initially plans to spend \$52,550,000 on broadband expansion in the northern New England region² and expects that over 128,000 customers in the three-state region who lack access to broadband from Verizon today will benefit from this investment. This expansion means that broadband will be available to more than one million of the combined company's customers in the areas currently served by Verizon.

FairPoint has made significant financial commitments to increase broadband development in rural regions and has created a detailed plan to deploy state-of-the-art broadband systems in northern New England.

Verizon's broadband facilities currently reach approximately 62 percent of its access lines in the three northern New England states. FairPoint expects to increase broadband addressability to 83 percent of lines in Maine and 83 percent of lines in New Hampshire within 24 months of closing, and FairPoint expects to increase broadband addressability to 88 percent of lines in Vermont within 34 months of closing.³ Over time, FairPoint expects to further increase broadband addressability to levels that are at or above the 92 percent levels it has achieved in its existing service territory in these three states.⁴

² Letter from Karen Brinkmann, Counsel for FairPoint Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22 (filed October 29, 2007) ("*October 29 Ex Parte*").

³ Letter from Brian Murray, Counsel for FairPoint Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22 (filed October 12, 2007) ("*October 12 Ex Parte*").

⁴ 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, 19 (filed May 7, 2007) ("*Verizon/FairPoint Opp.*"). As described in this letter, FairPoint's broadband plans continue to evolve and expand; however, the press releases previously filed with the Commission are attached because they provide additional details regarding the communities to which FairPoint will bring new broadband service and expanded broadband service. These press releases also provide details regarding the technologies that FairPoint intends to use in deploying its broadband network.

In Maine, FairPoint has announced that it initially plans to invest \$17,550,000 to expand broadband service.⁵ This investment will allow FairPoint to offer broadband DSL service in seven communities that currently have no broadband access. In 79 additional communities that have some broadband service, FairPoint will expand broadband to reach customers in 105 neighborhoods where Verizon currently does not offer broadband.⁶ This \$17.5 million investment will follow \$12 million in new investment by Verizon that it will make prior to the closing of the transaction.

In Vermont, FairPoint has announced that it plans to spend \$18,550,000 to expand broadband service.⁷ FairPoint expects that this effort will bring broadband DSL for the first time to 10 Vermont communities. In 54 additional communities, FairPoint will also expand broadband into approximately 200 neighborhoods⁸ where Verizon currently does not offer broadband.⁹ FairPoint has committed to meet Verizon's obligation to achieve 80 percent

⁵ *October 29 Ex Parte.*

⁶ In an August 31, 2007 *ex parte* letter, FairPoint reported that it would expand broadband service to 135 Maine communities where Verizon does not offer broadband service, and would bring broadband service for the first time to 30 of those communities. See Letter from Karen Brinkmann, Counsel for FairPoint Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22 (filed August 31, 2007) for initial announcements on broadband deployment in Maine. A "community" is the geographic area served by a central office. A "neighborhood" is the geographic area served by a Digital Loop Carrier. The number of communities in which FairPoint will expand broadband addressability has changed because Verizon subsequently agreed to spend \$12 million on broadband expansion in Maine by February 2008, pursuant to a Stipulation approved by the Maine Public Utilities Commission. While the specific details regarding FairPoint's broadband plan continue to evolve, the plan to reach 83 percent addressability in Maine remains firm.

⁷ *October 29 Ex Parte.*

⁸ Since previous filings with the Commission, FairPoint has revised its broadband deployment plans in Vermont. While there has been a small decrease in the number of communities (central offices) to which FairPoint will expand broadband DSL (in part as a result of Verizon's recent broadband deployments), FairPoint has increased the overall number of sites to which it will expand broadband and has dramatically increased the number of neighborhoods into which it will expand broadband DSL, consequently reaching further into rural areas.

⁹ See Letter from Karen Brinkmann, Counsel for FairPoint Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22 (filed July 10, 2007) for initial announcements on broadband deployment in Vermont. While FairPoint previously reported that it would expand broadband DSL to 15 Vermont communities for the first time, FairPoint's broadband plan has evolved to account for Verizon's broadband expansion into five of those 15 communities.

addressability in Vermont by 2010, in addition to FairPoint's commitment to increase broadband addressability to 88 percent of lines in Vermont within 34 months of closing.

In New Hampshire, FairPoint has announced that it plans to spend \$16,450,000 on its expansion of broadband service.¹⁰ FairPoint expects to bring broadband DSL for the first time to 22 New Hampshire communities. In 47 other New Hampshire communities, FairPoint will expand broadband DSL into 105 additional neighborhoods where Verizon does not currently offer broadband.¹¹

As FairPoint has previously explained,¹² its approach to broadband deployment is to build a state-of-the-art IP network that will bring broadband service to many rural areas that do not currently receive Verizon broadband. FairPoint's network is being designed to accommodate and be upgraded for advances in technology. This broadband deployment plan will proceed in three distinct phases:

- Phase 1. FairPoint will build its "core network" of routers for broadband capability in the region within eight months following closing. The core network will permit FairPoint to use various advanced technologies as FairPoint deems appropriate, such as ADSL2+, VDSL2, bonded ADSL2+ and fiber to the home, to deliver high-quality broadband services to consumers in northern New England.
- Phase 2. FairPoint will build an aggregation network connected to the core network. This phase will expand broadband availability to central offices that currently do not have broadband DSL service. The second phase will commence prior to the completion of Phase 1 and will be completed about one year after closing. By the conclusion of Phase 2, FairPoint will make broadband capability available to more than 17,500 households not served by Verizon's current broadband facilities.
- Phase 3. Within two years after closing, FairPoint will place multi-service access node ("MSAN") equipment at existing Digital Loop Carrier locations fed by existing fiber

¹⁰ *October 29 Ex Parte.*

¹¹ See Letter from Karen Brinkmann, Counsel for FairPoint Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22 (filed July 30, 2007) for initial announcements on broadband deployment in New Hampshire. In the July 30 *ex parte* letter, FairPoint reported that it would bring broadband DSL for the first time to 19 New Hampshire communities and expand broadband DSL into 55 other New Hampshire communities. This number has been revised on new information FairPoint has obtained from Verizon about its broadband plant.

¹² Letter from Karen Brinkmann, Counsel for FairPoint Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22 (filed June 20, 2007).

cable. Phase 3 will make broadband available to more than 111,000 additional customers. All of these customers will be able to access broadband services that operate at least at the same speeds that Verizon offers today.

FairPoint's commitments will ensure tremendous increases to broadband coverage in northern New England. Further conditions would be burdensome and unprecedented.

The Communications Workers of America ("CWA") suggested in a November 9, 2007 *ex parte* letter to the Commission¹³ that an array of broadband conditions be imposed. None of these conditions is necessary or appropriate.

First, CWA proposed that broadband access be expanded in the northern New England service area to 80 percent of access lines within two years, 90 percent of access lines within three years and 100 percent of access lines within four years.¹⁴ These are not conditions that the Commission should impose. FairPoint has already committed to increase addressability of broadband service to over 80 percent of access lines in Maine and New Hampshire within two years of closing and to 88 percent of access lines in Vermont less than three years after closing. These plans will produce dramatic increases in broadband addressability in the region, as a direct result of FairPoint's acquisition of these exchanges from Verizon. Furthermore, each of the states is considering whether to impose broadband build-out requirements in their merger approval orders. FairPoint's interests in fulfilling its business plan as described above and the states' interests in achieving broadband availability for their citizens are aligned and will ensure that the public interest is met.

Moreover, it would be significantly more expensive to build out the broadband network beyond the levels FairPoint proposes. Broadband providers operate under significant cost and technical constraints that make CWA's proposed condition unrealistic. For example, to increase addressability from 80 percent to 90 percent addressability in Maine alone, FairPoint has estimated that it would cost at least 25 to 30 million dollars. FairPoint's addressability commitments will vastly increase the provision of broadband services in rural areas. FairPoint expects that it will continue to invest and develop its broadband network, ideally with a goal of reaching 100 percent addressability, but to do so will require tremendous long-term financial commitments.¹⁵

¹³ Letter from Kenneth R. Peres, PhD, Research Economist, Communications Workers of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-22, 2-3 (filed November 9, 2007) ("*CWA November 9 Ex Parte*").

¹⁴ *Id.* at 2.

¹⁵ The Joint Board recently reported to the Commission that a certain percentage of customers probably cannot be reached without some form of support. *High-Cost Universal Service Support*, Federal-State Joint Board on Universal Service, Recommended Decision, WC Docket No. 05-337, ¶12 (Nov. 20, 2007) (in describing the purposes of the proposed Broadband Fund, the Board notes that it may be necessary to provide "continuing operating subsidies to broadband

CWA also proposed that DSL should be at speeds no less and at prices no more than what Verizon offered when the merger was announced.¹⁶ Such a requirement is both unnecessary and inappropriate. FairPoint's equipment will be able to offer the same speeds Verizon offered when the merger was announced and will also have the capability to exceed those speeds depending on loop length. In any event, the Maine Hearing Examiner rejected a similar pricing condition that was proposed in the Maine state proceeding, stating that "the competitive marketplace is better positioned to govern prices."¹⁷ The Hearing Examiner recommended that the Commission "place a single condition on FairPoint related to broadband pricing generally: FairPoint must price its broadband-related services at statewide rates, without differences between urban, suburban or rural wire centers."¹⁸ The Hearing Examiner hoped that with that condition in place, broadband would be competitive enough to offer "plentiful alternatives" and would also provide "FairPoint the pricing flexibility it needs to compete effectively."¹⁹ The Commission has acknowledged that the broadband market is highly competitive;²⁰ consequently, the market will regulate pricing, and there is no need for the Commission to impose such an unprecedented condition. In sum, the Commission's current policy, permitting the competitive broadband services market to develop according to customer demand and technological innovation, will serve the public interest in northern New England as it does throughout the country. There is no basis in the record for dictating either pricing or speeds of service in the properties to be acquired by FairPoint.

Next, CWA recommends that FairPoint maintain fiber to the home for all those who currently have access to Verizon's FiOS service.²¹ This, too, is an unnecessary condition. In Maine, New Hampshire and Vermont, FairPoint has already stated that it will continue to provide the same fiber-based facilities and offer the same transmission capability at the same price after closing as Verizon provides today. During the transition period to cutover from

Internet providers serving areas where low customer density would suggest that a plausible economic case cannot be made to operate broadband facilities, even after receiving a substantial construction subsidy").

¹⁶ *Id.*

¹⁷ *See Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations to Company to be Merged with and into FairPoint Communications, Inc.*, Docket No. 2007-67, Examiner's Report, Public Version, 211-212 (ME Public Utilities Comm'n, Nov. 26, 2007).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (ruling that ILECs should be permitted to provide DSL-based wireline broadband Internet access services on an unregulated basis due to the extensive competition that exists in that market).

²¹ *CWA November 9 Ex Parte* at 3.

Verizon's back office systems to FairPoint's back office systems, FairPoint will offer those services under the Verizon brand name "FiOS." After the transition period, FairPoint will offer those services under its own brand name.

CWA also proposes that FairPoint be required to build fiber to the home or fiber to the node to an additional 80,000 households in the region each year, and claims that this is what Verizon did in New Hampshire before it decided to exit the northern New England region. CWA's claim is unsupported in the record here or in the states, and the Commission should not entertain such a condition. First, the Commission does not and should not mandate the types of technology that companies should use to bring broadband to their customers.²² Second, a requirement to deploy fiber to the home in the more rural areas of northern New England would be an unreasonable and onerous financial burden and would severely impair FairPoint's ability to design an optimal network for local conditions. Instead, it is in the public interest for FairPoint to have flexibility to implement the appropriate technology, whether that is fiber, copper, wireless or another technology, to provide broadband service most efficiently to the greatest number of customers. FairPoint must optimize its design for ubiquity of coverage, bit rate, speed of deployment and retail price. FairPoint is designing a network that will lead to broad coverage of an affordable product that can be deployed in a reasonable period of time, at bit rates more than adequate for current demands. FairPoint's systems also will provide a platform for future upgrades as consumer demands increase.

CWA then requests that FairPoint offer competitive video services to all DSL and fiber broadband customers within two years.²³ FairPoint has stated that it is designing its network to have video capability and hopes to offer video services as soon as economically feasible. However, mandating video over telephony facilities would be unprecedented and unworkable. Providing this nascent service will require significant investment by FairPoint as well as the often difficult negotiation of programming and franchise agreements.²⁴ The Commission should not consider unreasonable conditions that augment these challenges. The market is driving the offering of video and other "vertical services" and will continue to do so.

Finally, CWA proposes that FairPoint create a special "Broadband Infrastructure Fund" to be funded by \$600 million from Verizon—a number that CWA conjured up and is

²² See generally, *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, FCC 04-208, 15 (Sept. 9, 2004) (lauding the "increasingly lengthy list of wired and wireless methods of accessing the Internet, such as cable modem, WiMax, DSL, broadband over power lines and fiber-to-the-home").

²³ *CWA November 9 Ex Parte* at 3.

²⁴ See generally, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, 20 FCC Rcd 18581, 18584-85 (2005) (describing some local franchising processes as "an unreasonable barrier to entry" for multichannel video programming distributors, including those providing video over broadband).

claiming as the amount of tax savings for Verizon that would result from utilizing a transaction structure referred to as a “Reverse Morris Trust.”²⁵ CWA provides no evidence or information that in any way supports the need for creation of such a fund or any details as to why this amount is needed to form a Broadband Infrastructure Fund. As explained above, FairPoint has announced substantial investments in broadband in each of the three northern New England states, which will result in significantly increased availability of broadband to customers in Maine, New Hampshire, and Vermont. FairPoint will have the financial capacity to meet its broadband commitments. There is no basis for requiring Verizon to fund operations by FairPoint after the merger.

Further, it is not correct to say that there are “tax savings” from the transaction. Verizon is undertaking a tax-free transaction and has no plans to consider a taxable transaction if this transaction does not close. Nor is it possible to calculate “tax savings” for this transaction structure because even if Verizon were to be interested in a taxable transaction, there is no way to know what price Verizon and another party might have agreed to if the transaction had been structured as a taxable sale in which the buyer paid cash consideration to Verizon. The proposed transaction is not a taxable sale, but instead a tax-free spin-off of Verizon’s northern New England operations to Verizon shareholders, followed by a tax-free merger of those operations with FairPoint. Accordingly, Verizon will not receive any payment from FairPoint, as it would in a taxable sale, but instead will spin-off its northern New England business to its shareholders for no consideration. Verizon shareholders will then receive FairPoint common stock as a result of the merger.

The tax law provisions that govern spin-off and merger transactions do not constitute a “tax loophole.” They are well-known and have been relied on by many other companies.²⁶ Verizon has received a favorable private letter ruling from the Internal Revenue Service confirming the tax-free treatment of this spin/merge transaction. The tax-free structure benefits Verizon’s shareholders, who own these assets indirectly now and will continue to have an ownership interest in them indirectly through their ownership of capital stock of FairPoint after the merger. The structure also benefits Verizon’s northern New England customers, as reflected in FairPoint’s post-transaction investment plans.

CWA is in effect asking the Commission to impose a “tax” on a transaction that is not taxable, as confirmed by the above-referenced IRS ruling. As explained above, there is no justification for imposing such a “tax,” no basis for computing the amount of such a tax, and no need for the Broadband Infrastructure Fund which CWA has concocted as the rationale for its proposal.

²⁵ *See id.*

²⁶ For example, Verizon recently spun-off its directory publishing business in a tax-free transaction, and Viacom spun-off CBS in a tax-free transaction. Alltel did the same with its wireline business, followed by a tax-free merger of that business with Valor to form Windstream.

In another *ex parte* letter to the Commission dated November 28, 2007, CWA suggests that the Commission require FairPoint to increase its planned broadband investment in Maine by \$10.45 million for a total of \$28 million.²⁷ However, this proposal ignores the significance of the planned near-term investments in Maine's broadband infrastructure, described above, and FairPoint's long-term commitment to increasing broadband addressability throughout the northern New England area. As noted above, FairPoint fully expects the states will closely monitor broadband deployment, making Commission conditions unnecessary.

The proposed transaction serves the public interest through significant increases in broadband deployment and expansion.

FairPoint has committed to make broadband deployment in northern New England, including its many rural areas, a substantial focus of its business. As Verizon and FairPoint stated in their Opposition to Petitions to Deny, in the exchanges that FairPoint would acquire from Verizon, Verizon currently provides wireline broadband access to approximately 62 percent of its customers.²⁸ FairPoint has a demonstrated track record of providing broadband access to customers in rural areas—FairPoint currently provides broadband addressability to 92 percent of its customers in Maine, New Hampshire and Vermont.²⁹ FairPoint intends to continue on this track in northern New England, increasing broadband addressability to 83 percent of lines in both Maine and New Hampshire within two years of closing, and to 88 percent of lines in Vermont within 34 months of closing, with an ultimate goal of 100 percent addressability for all three states.

In sum, approval of the pending applications will bring significant benefits to consumers and the economies in Maine, New Hampshire and Vermont through the broadband services FairPoint will deploy. FairPoint will develop and expand network infrastructure using advanced technologies, and will offer innovative services at competitive prices. FairPoint has earned a reputation for providing high-quality and advanced services to rural areas. Its detailed plans for providing state-of-the-art broadband services to northern New England are backed by substantial financial commitments and capacity. Failure to approve the transaction would leave in place a *status quo* in which northern New England citizens do not have broadband access. Approval of this transaction is an important step in expanding broadband service to consumers in Maine, New Hampshire and Vermont and thus will serve the public interest.

Please direct any question concerning this matter to the undersigned.

²⁷ Letter from Larry Cohen, President, Communications Workers of America, to Kevin Martin, Chairman, Federal Communications Commission, WC Docket No. 07-22, 3 (filed November 28, 2007).

²⁸ *Verizon/FairPoint Opp.* at 19.

²⁹ *Id.*

Respectfully submitted,

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