

**VIA ECFS**

***EX PARTE***

December 21, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 Dkt. No. 07-22**

Dear Ms. Dortch:

One Communications Corp. (“One Communications”) and Great Works Internet (“GWI”), through their undersigned counsel, hereby submit this *ex parte* letter in the above-referenced docket concerning the proposed transaction between FairPoint Communications, Inc. (“FairPoint”) and Verizon Communications Inc. (“Verizon”).

As One Communications has explained at length throughout this proceeding,<sup>1</sup> the ILECs that Verizon seeks to transfer to FairPoint in the proposed transaction must be classified as Bell Operating Company (“BOC”) ILECs subject to the requirements of Sections 251, 271, and 272 of the Communications Act (the “Act”) post-transaction. But it is not enough for the Commission simply to clarify at a high level the legal status post-transaction of the ILECs in question. As part of a BOC,

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<sup>1</sup> See, e.g., Reply of One Communications Corp. and Great Works Internet To The Applicants’ Opposition to Petitions to Deny, WC Docket No. 07-22, at 10-15 (filed May 14, 2007) (“Reply”); Letter from T. Jones, Counsel for One Communications Corp., Willkie Farr & Gallagher LLP to Marlene H. Dortch, Secretary, FCC in WC Docket No. 07-22 (filed July 27, 2007), at 2-7; Letter from T. Jones, Counsel for One Communications Corp., Willkie Farr & Gallagher LLP to Marlene H. Dortch, Secretary, FCC in WC Docket No. 07-22 (filed December 17, 2007), at 8-10 (“*December 17th Ex Parte*”).

those ILEC operations will continue to be subject to the ongoing obligation to comply with the market-opening requirements of the Section 271(c) competitive checklist. The FCC originally deemed Verizon in compliance with those requirements in Vermont, New Hampshire and Maine only *after* (1) Verizon demonstrated, following intense testing and monitoring of the regional operations support systems (OSS) that serve the three states at issue, that it could meet the rigorous nondiscrimination and reasonableness standards in the competitive checklist;<sup>2</sup> and (2) Verizon was able to show that its OSS and the applicable post-approval Performance Assurance Plans (including penalties for backsliding) were robust enough that the local market in the three states would remain open to efficient competitive entry.<sup>3</sup>

Now, FairPoint proposes to scrap all of that work, to discontinue reliance on the Verizon OSS whose performance the FCC relied upon to grant Section 271 approval, and to create new OSS. It would like to do so without any FCC oversight of the development or testing of the new OSS, without any requirement that the FCC deem the new OSS compliant with the Section 271 competitive checklist standard prior to cutover and without any legal obligation (as things stand now) to comply with Performance Assurance Plans and other similar mechanisms designed to prevent backsliding. This is so, even though FairPoint has essentially no experience in providing wholesale inputs, is putting together an untested management team “on the fly” that will be responsible for providing these services, and has powerful incentives to cutover to its newly deployed OSS before they are ready.

In light of these facts, One Communications respectfully urges the Commission to establish conditions on its approval of the proposed transaction that require that the Merged Firm meet the requirements of Section 271(c) *before* the cutover to its new OSS and that diminish the likelihood of backsliding post-cutover. Accordingly, the Commission must impose at least two conditions (in addition to the other conditions proposed by One Communications) associated with the classification of the post-transaction entity as a BOC.

*First*, the FCC must require the Merged Firm to retain an independent third party to test and review its newly developed OSS and to monitor the cutover process from Verizon’s existing OSS, as described in One Communications’ *December 17th Ex Parte*.<sup>4</sup> It would be sensible, as was the case in the Section 271 proceedings, for state regulators to take the lead in this process. But the FCC must, as was also the case in the Section 271 proceedings, determine that the new OSS meet the checklist requirements at some point before cutover.

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<sup>2</sup> See *In re Application by Verizon New England Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Maine*, 17 FCC Rcd. 11659, ¶¶ 25-42 (2002) (“Maine 271 Order”); *In re Application by Verizon New England Inc. et al. for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, 17 FCC Rcd. 18660, ¶¶ 95-103 (2002) (“New Hampshire 271 Order”); *In re Application by Verizon New England Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Vermont*, 17 FCC Rcd. 7625, ¶¶ 39-44 (2002) (“Vermont 271 Order”).

<sup>3</sup> See *Maine 271 Order* ¶¶ 61-63; *New Hampshire 271 Order* ¶¶ 191-171; *Vermont 271 Order* ¶¶ 74-78.

<sup>4</sup> See *id.* Appendix A at 4 (listing proposed OSS conditions).

*Second*, the Merged Firm must be subject to Performance Assurance Plans, with adequate remedies, created by the state commissions in Maine, New Hampshire, and Vermont. Adherence to such performance metrics and remedies will diminish the threat of backsliding.<sup>5</sup> As the FCC has held, “these mechanisms can serve as critical complements to the Commission’s authority to preserve checklist compliance pursuant to [S]ection 271(d)(6).”<sup>6</sup>

Please contact me if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

*Attorneys for One Communications Corp. and  
Great Works Internet*

cc: William Dever (FCC)  
Adam Kirschenbaum (FCC)

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<sup>5</sup> As the Commission has held, it “has a responsibility to not only ensure that Verizon is in compliance with [S]ection 271 today, but also that it remains in compliance in the future.” *Maine 271 Order* ¶ 64. The Commission’s responsibility vis-à-vis the Merged Firm is no different.

<sup>6</sup> *In re Application of Verizon New England Inc. et al. For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd. 8988, n.757 (2001).