

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Joint Applications of OnePoint)	
Communications Corp. and Verizon)	CC Docket No. 00-170
Communications for Authority Pursuant to)	
Section 214 of the Communications Act of)	
1934, as Amended, To Transfer Control of)	
Authorizations to Provide Domestic Interstate)	
and International Telecommunications)	
Services as a Non-Dominant Carrier)	
)	
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MEMORANDUM OPINION AND ORDER

Adopted: December 8, 2000

Released: December 8, 2000

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we approve the domestic wireline portion of the transfer of control applications filed by Verizon Communications (Verizon) and OnePoint Communications Corp. (OnePoint) (collectively, the Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (the Act).¹ Based on the record, we conclude that approval of this portion of the applications to transfer the domestic blanket section 214 authorization from OnePoint to Verizon will serve the public interest.

II. BACKGROUND

¹ *Joint Applications of OnePoint Communications Corp. and Verizon Communications for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Authorizations to Provide Domestic Interstate and International Telecommunications Services as a Non-Dominant Carrier*, CC Docket No. 00-170, (filed Sept. 5, 2000) (Verizon/OnePoint Applications).

2. On September 5, 2000, Verizon and OnePoint filed applications seeking to transfer OnePoint's blanket section 214 authority to provide domestic interstate telecommunications services as a non-dominant carrier to Verizon. The applications also sought Commission approval for transfer of control of certain international section 214 authorizations.² Verizon is a holding company, with various subsidiaries that provide local exchange services, certain international services, wireless services, various information services, and domestic long distance services originating in New York and other states outside the former Bell Atlantic region. OnePoint provides local telephone service, long distance telephone service, video services, and high-speed Internet access to apartment and condominium (Multiple Dwelling Units or MDUs) residents. OnePoint is not a facilities-based carrier within the former Bell Atlantic states³ but rather has entered into the agreements necessary to resell incumbent local exchange carrier (LEC) services. OnePoint currently operates in 10 markets and holds authorizations to provide local exchange services in 12 states and the District of Columbia.⁴

3. On September 22, 2000 the Common Carrier Bureau (Bureau) placed the applications on public notice.⁵ An opposition to the applications was filed by AT&T Corp. (AT&T), and the Association for Local Telecommunications Services (ALTS) filed comments.⁶ On October 27, 2000, the Applicants filed their reply comments.⁷ The US Department of Justice terminated its inquiry under the Hart-Scott-Rodino Act in September.⁸ The International Bureau, by streamlined public notice, approved the transfer of the OnePoint international authorizations,

² Onepoint states that, during the pendency of this proceeding, it assigned all of its wireless licenses to 21st Century Cable TV of Chicago, Inc. *See* Letter from Richard P. Kolb, Vice President, Regulatory Affairs, Onepoint Communications Corp., to Magalie Roman Salas, Secretary Federal Communications Commission, dated Oct. 4, 2000 (citing File Nos. 0000218082, 0000225171, 0000180235). Therefore, the parties do not intend for Verizon to acquire any wireless licenses from Onepoint.

³ The phrase, "former Bell Atlantic states," includes the states served by Bell Atlantic at the time of the merger with GTE Corporation to form Verizon.

⁴ *Id.*

⁵ *See* Public Notice, *Joint Applications of OnePoint Communications Corp and Verizon Communications for Authority pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Authorizations to Provide Domestic Interstate and International Telecommunications Services as a Nondominant Carrier*, DA 00-2155 (rel. Sept. 22, 2000) (Public Notice).

⁶ *Petition of AT&T Corp. to Deny Joint Applications*, CC Docket No. 00-170 (filed Oct. 23, 2000) (AT&T Comments); *Comments of the Association for Local Telecommunications Services*, CC Docket No. 00-170 (filed Oct. 23, 2000) (ALTS Comments).

⁷ *Reply Comments of OnePoint and Verizon*, CC Docket No. 00-170 (filed Oct. 27, 2000) (Verizon/OnePoint Reply).

⁸ Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1996, the Applicants were required to file a pre-merger notification with the Department of Justice Antitrust Division and the Federal Trade Commission. The Department of Justice acted on this matter under its early termination procedures. *See* <http://www.ftc.gov:80/bc/earlyterm/2000/09/et000915.html> (providing notice of early termination).

with consummation conditioned on the approval authorized by this Order.⁹

III. ANALYTICAL FRAMEWORK

4. Before the transfer of control of authorizations and licenses can be approved in connection with a merger, section 214(a) requires that we determine that the proposed transfers serve the public interest.¹⁰ We weigh the potential public interest harms against the potential public interest benefits, considering both the possible competitive effects of the proposed transfers and the broader aims of the Communications Act and federal communications policy.¹¹ In particular, we consider: (1) whether the merger would violate the Communications Act; (2) whether the merger would violate Commission rules; (3) whether the merger would frustrate the Commission's efforts to enforce the Communications Act or substantially interfere with achievement of the objectives of the Act; and (4) whether affirmative public interest benefits would be realized as a result of the merger.¹² Applicants bear the burden of proving by a preponderance of the evidence that the transaction, on balance, serves the public interest.¹³

IV. DISCUSSION

5. We find that the merger before us will not result in a violation of the Communications Act or the Commission's rules and will not undermine the Commission's ability to enforce the Communications Act or substantially impair achievement of the objectives of that Act. Each of the potential public interest harms raised by the commenting parties is addressed below. After considering the potential public interest benefits and harms, we conclude that taken

⁹ *International Authorizations Granted*, Public Notice, Report No. TEL-00300, DA 00-2310 (rel. Oct. 12, 2000), ITC-T/C-20000905-00515.

¹⁰ 47 U.S.C. §§ 214(a), 310(d); *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer and Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 at 18030-35, paras. 8-14 (Sept. 14, 1998) (*WorldCom-MCI Order*).

¹¹ *WorldCom-MCI Order* at para. 9. These aims include, among other things, implementing Congress' pro-competitive, deregulatory national policy framework designed to open all communications markets to competition, preserving and advancing universal service, and accelerating private sector deployment of advanced services. *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, 26, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 99-279, Memorandum Report and Order, 14 FCC Rcd 14712 at 14737, para. 48 (1999) (*Ameritech –SBC Order*).

¹² *SBC/Ameritech Order*, 14 FCC Rcd at 14737, para. 48.

¹³ *WorldCom-MCI Order* 13 FCC Rcd at 11831-32, para. 10 & n. 33; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, Memorandum Opinion and Order, FCC 99-24, 14 FCC Rcd 3160 at 3169-70 para. 15 (1999) (*AT&T-TCI Order*).

as whole, the benefits of the merger outweigh the potential harms and that the merger is in the public interest.

6. As an initial matter, we conclude that the proposed merger will not result in a violation of section 271 of the Communications Act prohibiting Regional Bell Operating Companies (RBOCs) from providing in-region, interLATA service before they have demonstrated compliance with certain market opening requirements. At the time the applications were filed, OnePoint provided resold interLATA service in states where Verizon does not have authority to provide interLATA services pursuant to section 271 of the Communications Act.¹⁴ Based on this, AT&T alleges that the proposed merger will result in Verizon providing in-region interLATA service in violation of section 271.¹⁵ OnePoint, however, states that it owns no in-region interLATA facilities, and has committed to discontinue the provision of all interLATA services originating in the former Bell Atlantic states, where Verizon does not have section 214 authority, on or before closure of the merger.¹⁶ In particular, OnePoint states that it has divested itself of its long distance voice customers within the former Bell Atlantic states, and adds that it will cease providing the interLATA service component of its Internet offerings upon closure of the merger.¹⁷ Accordingly, based on the record before us, we conclude that the Applicants have taken the steps necessary to ensure that the merger will not result in the unlawful provision of interLATA services by Verizon. We specifically condition our approval on completion of OnePoint's efforts to discontinue the provision of all interLATA services originating in the former Bell Atlantic states where Verizon does not have section 271 authority. We also note that approval of the domestic wireline portion of the applications in no way limits our ability to take appropriate enforcement and remedial action if Verizon provides service in violation of section 271.

¹⁴ Verizon/OnePoint Applications at Public Interest Statement at 12.

¹⁵ AT&T Comments at 19-23. In addition to concerns regarding OnePoint's provisioning of resold long distance voice service, AT&T suggests that violations may arise from Verizon's control of OnePoint's Internet access and IP-based voice services. *Id.* at 20-21.

¹⁶ Verizon/OnePoint Applications at Public Interest Statement at 12; Verizon/OnePoint Reply at 17-18; *Notice of OnePoint's Divestiture of its InterLATA Business*, CC Docket No. 00-170, (filed Nov. 13, 2000) (Divestiture Notice); Letter from William F. Wallace, President and Chief Executive Officer, OnePoint Communications to Magalie Roman Salas, Secretary, Federal Communications Commission, (Dec. 6, 2000). (Wallace Letter).

¹⁷ OnePoint states that all of its long distance customers were transitioned to Talk.com effective October 31, 2000. Wallace Letter at 1. The Applicants also state that while OnePoint provides pre-paid calling cards to customers in out-of-region states, effective with the closing of the merger, it will block in-region originating calls unless and until Verizon has obtained section 271 authorization. Verizon/OnePoint Reply at 17, n. 45; Wallace Letter at 1. OnePoint states that it will cease providing the interLATA service component of Internet access service upon closure of this merger consistent with the *Qwest/ US West Merger Order*. One point adds that it does not provide any Internet voice services. Wallace Letter at 2. OnePoint states that it does not operate any in-region, interLATA DSL circuits. *Id.* The Applicants also note that all DSL services currently provided by OnePoint in Verizon's region use leased intraLATA links provisioned by multiple providers. Verizon/OnePoint Reply at 18. None of the DSL facilities crosses a LATA boundary to a central node. *Id.*

1. Potential Public Interest Harms

7. We also conclude that the proposed merger will not frustrate achievement of the most significant objectives of the Communications Act such as promoting competition. Contrary to AT&T's assertions, we conclude that any potential public interest harms of this merger are not likely to be significant. In particular, this merger will not eliminate a significant local exchange competitor. OnePoint's competitive local exchange presence in Verizon's region is *de minimis* – it serves approximately 11,000 local telephone customers, all on a resale basis.¹⁸ Moreover, as discussed below, OnePoint is unlikely to have the ability to expand its operations without the acquisition by Verizon.¹⁹ Accordingly, we find it unlikely that OnePoint's elimination as an independent competitor will result in a public interest harm.

8. We also disagree with AT&T's assertions regarding the anti-competitive implications of potential “spillover effects” from this merger. This type of concern arises when an incumbent LEC increases the footprint over which it operates as an incumbent LEC, for example by merging with another incumbent LEC. In addressing prior merger applications, the Commission has found that expansion of the geographic area served by a single incumbent LEC may allow the incumbent to benefit more from discriminating in-region where it controls bottleneck facilities.²⁰ In the instant case, Verizon is not expanding the area in which it operates as an incumbent LEC; rather it is entering additional areas as a competitive LEC. Thus, the merged entity will not experience the increased incentive to discriminate under the “spillover model.”²¹

9. We also do not accept AT&T's argument that we will create perverse incentives if

¹⁸ Verizon/OnePoint Reply at 8. OnePoint serves only 43,000 customers nationally and three-quarters of these are located outside Verizon's local service area. Verizon/OnePoint Applications at 11. In Verizon's region, OnePoint serves 14 customers in Delaware, 154 in the District of Columbia, 5800 in Maryland, 195 in Pennsylvania and 4600 in Virginia. *Id.* In Maryland and Virginia, where OnePoint serves the largest number of its customers, there are other competitive LECs addressing the residential and small business markets. See Local Competition: Status as of June 30, 2000, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Tables 6 & 7 (Dec. 2000). OnePoint's operations in Delaware, the District of Columbia, and Pennsylvania are extremely limited, involving only a few hundred customers.

¹⁹ Verizon/OnePoint Applications, Declaration of John D. Stavig. See e.g., Vince Vittore, *Darwinian Dilemma: CLECs Play Their Own Game of Survivor*, Telephony, Oct. 16, 2000 at 8; Vincent Ryan, *Abandoned Ship: ICG's Investors, Execs Bail Out as Carrier's Outlook Worsens*, Telephony, Sept. 25, 2000 at 10; Yuki Noguchi, *Teligent Lays Off 780 to Cut Costs*, Washington Post, Nov. 9, 2000, at E1, E5.

²⁰ AT&T Comments at 15-16 citing *Ameritech-SBC Order* 14 FCC Rcd at 14797, para 192; *Application of GTE Corp. and Bell Atlantic Corp. for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Landing License*, FCC 00-211, para. 183 (June 16,2000).

²¹ See *Qwest Communications International, Inc. and US WEST, Inc., Applications for Transfer of Control of Domestic and International Sections of 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing Licenses*, CC Docket No. 99-272, Memorandum Opinion and Order, 15 FCC Rcd 5376 at 5397, para. 41 (2000).

we allow incumbent LECs to purchase competitors that are experiencing financial difficulties purportedly rooted in discrimination by the incumbent.²² A substantial majority of OnePoint's operations are outside of Verizon's service area and any difficulties in these areas cannot reasonably be attributed to Verizon.²³ Moreover, there are no specific allegations in the present record of anti-competitive conduct by Verizon designed to harm OnePoint or competitive LECs in general.

10. *Other Issues.* Based on the record in this proceeding, we conclude that OnePoint's exclusive marketing contracts with the owners of MDUs do not violate the Commission's current rules or otherwise warrant the imposition of conditions on this merger. The Commission has prohibited exclusive access agreements involving commercial multiple tenant environments (MTEs) on a prospective basis, but the Commission has not prohibited exclusive marketing agreements, although it has solicited comment on whether such arrangements should be permitted.²⁴ ALTS argues that exclusive agreements threaten the efficient operation of competitive markets in both commercial and residential buildings and recommends that, as a condition of the Commission's approval of the applications, Verizon be required to nullify any exclusive marketing agreements in areas where it is the incumbent LEC.²⁵ OnePoint, however, avers that it does not have exclusive *access* agreements with either commercial MTEs or residential MDUs. Its agreements only give it exclusive preferential marketing rights and establish a sales channel relationship in which the property owners' on-site representatives work with OnePoint to make marketing materials available to tenants and prospective tenants and to take orders.²⁶ We also find no concrete support in the record presently before us for ALTS' concern that OnePoint's exclusive marketing agreements are somehow tantamount to exclusive access. In fact, OnePoint clearly states that its exclusive marketing agreements do not prevent customers from obtaining service from other carriers.²⁷ Thus, OnePoint's existing contracts appear to be in compliance with our current requirements. Of course, the merged entity will be fully subject to any future restrictions the Commission may place on exclusive marketing contracts.

²² AT&T Comments at 17-18.

²³ See note 18 *supra*.

²⁴ See *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket in Docket No. 88-57, FCC 00-366 at para. 27 (rel. Oct. 25, 2000).

²⁵ ALTS Comments at 4-5. According to ALTS, there is evidence to suggest that OnePoint enters into exclusive contracts with owners of residential MDUs that grant OnePoint exclusive marketing rights to the building. *Id.* at 2. ALTS asserts that Verizon stands to inherit these rights and gain *de facto* exclusive access to serve these residential MDUs within its region as a result of acquiring OnePoint. *Id.* See also AT&T Comments at 14.

²⁶ Verizon/OnePoint Reply Comments at 14.

²⁷ *Id.* at 14-15.

2. Potential Public Interest Benefits

11. Based on the present record, we also conclude that the merger is likely to result in public interest benefits. We conclude that the Applicants are correct in asserting that Verizon's acquisition of OnePoint's operations outside the Verizon service area will facilitate competitive entry in areas served primarily by other RBOCs. The merged company will have the resources to expand existing OnePoint market footholds in areas served by each of the rival RBOCs – BellSouth (in Florida, Georgia, and North Carolina), SBC (in Illinois), and Qwest (in Arizona and Colorado).²⁸ OnePoint will allow Verizon to compete more effectively in these areas by providing, an extensive on-site sales and support staff, and marketing experience in areas where Verizon enjoys little or no current presence. In this regard, we also emphasize that a substantial majority of OnePoint's customers and operations are outside Verizon's territory.²⁹

12. Contrary to AT&T's assertions,³⁰ we also conclude that OnePoint's operations outside Verizon's region would be impaired without the infusion of capital that Verizon will provide. Indeed, we find it likely that Verizon's financial resources will be critical if OnePoint's existing competitive inroads in these areas are to expand. It is also clear that the availability of capital for expansion by competitive LECs has diminished greatly in recent months.³¹ Verizon's acquisition of OnePoint's out-of-region operations will strengthen their operations and accelerate competition in those areas.

V. CONCLUSION

13. After reviewing the various potential public interest harms and benefits that are expected to arise from the proposed merger, we conclude that the benefits, exceed any potential harms. Accordingly, we approve the transfer of the domestic wireline section 214 authorities associated with this merger.

VI. ORDERING PARAGRAPHS

14. Accordingly, having reviewed the domestic wireline portion of the applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(c), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), that the transfers of the blanket domestic section 214 authorization filed by Verizon Communications and OnePoint Communications, Corp. in the above-captioned proceeding ARE GRANTED.

²⁸ Verizon/OnePoint Public Interest Statement at 3.

²⁹ See note 18 *supra*.

³⁰ AT&T Comments at 16-17.

³¹ See note 19 *supra*.

15. IT IS FURTHER ORDERED, that this grant is CONDITIONED on completion of OnePoint's efforts to discontinue the provision of all interLATA services within the former Bell Atlantic states, where Verizon does not have section 271 authority, prior to the close of its merger with Verizon.

16. IT IS FURTHER ORDERED, that the "Petition to Deny of AT&T" IS DENIED.

17. IT IS FURTHER ORDERED, that the request by the Association for Local Telecommunications Services for the imposition of conditions on the merger IS DENIED.

18. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau