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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
445 Twelfth Street, S.W.
TW-A325
Washington, DC 20554

Re: CC Docket No. 00-157

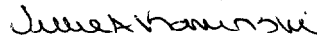
Dear Ms. Salas:

Prism Communication Services, Inc., hereby submits an original and four (4) copies of its Comments in Response to the Joint Application for Transfer of Control by NorthPoint Communications, Inc. and Verizon Communications in the above-referenced docket.

Also enclosed is a Return Copy of this filing. Please date-stamp this copy and return it in the envelope included for that purpose.

Any questions regarding this filing should be directed to the undersigned counsel.

Very truly yours,



Julie A. Kaminski
Deputy Chief Counsel-Telecommunications

cc: Service List

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Joint Application of NorthPoint)
Communications, Inc. and Verizon)
Communications for Authority Pursuant to)
Section 214 of the Communications Act of)
1934, as Amended, to Transfer Control of)
Blanket Authorization To Provide Domestic)
Interstate Telecommunications Services as a)
Non-Dominant Carrier)

CC Docket No. 00-157

COMMENTS OF PRISM COMMUNICATION SERVICES, INC.
IN RESPONSE TO THE JOINT APPLICATION FOR TRANSFER
OF CONTROL BY NORTHPOINT COMMUNICATIONS AND
VERIZON COMMUNICATIONS

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.
Randall B. Lowe, Chief Legal Officer
Julie A. Kaminski, Deputy Chief Counsel
--Telecommunications

October 2, 2000

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
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**COMMENTS OF PRISM COMMUNICATION SERVICES, INC.
IN RESPONSE TO THE JOINT APPLICATION FOR TRANSFER
OF CONTROL BY NORTHPOINT COMMUNICATIONS AND
VERIZON COMMUNICATIONS**

Prism Communication Services, Inc. (“Prism”) hereby submits its Comments on the Joint Application for Transfer of Control filed by Verizon Communications and NorthPoint Communications, Inc.¹ As set forth more fully herein, Prism believes that the proposed merger raises anti-competitive concerns that the Commission must carefully review in the larger context of the wireline digital subscriber line (“DSL”) market. Principal among these concerns, the merger provides Verizon the opportunity -- on an even larger scale -- to discriminate in favor of itself and its affiliates and against other wireline DSL providers. Verizon should not be allowed to build its empire while continuing to shut out those seeking to compete in the marketplace.

¹ In the Matter of Joint Application of NorthPoint Communications, Inc. and Verizon Communications for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, To Transfer Control of Blanket Authorization to Provide Domestic Interstate Telecommunications Services as a Non-Dominant Carrier, CC Docket No. 00-157, Application for Transfer of Control (filed August 25, 2000) (“Application”). Verizon and NorthPoint are sometimes referred to herein as “Applicants.”

The Application seeks Commission approval to transfer control of NorthPoint's section 214 authorization to provide domestic interstate telecommunications services as a non-dominant carrier in connection with the proposed merger of Verizon and NorthPoint DSL businesses into a "new non-dominant carrier."² As part of the merger, Verizon will provide the current NorthPoint with \$150 million in cash and make available \$200 million in debt.³ At the closing of the transaction, Verizon will contribute its DSL assets and a net cash investment of \$450 million to the "new" NorthPoint. The proposed merger will result in Verizon owning a 55 percent interest in the new carrier, with the remaining 45 percent owed by the current shareholders of NorthPoint.⁴

Verizon and NorthPoint contend that the proposed license transfer, and therefore the proposed merger, will promote the public interest. In support of their position, the Applicants posit that the transaction will speed the deployment of broadband access nationwide and thereby create the only effective challenge to the cable operators which, the Applicants contend, are the true dominant providers in the broadband market.⁵ The Applicants further claim that the transaction is in the public interest as it will create a "most separate" affiliate that will help accelerate broadband deployment by providing added assurance that all competing DSL providers receive non-discriminatory treatment and give regulators and competitors valuable "benchmarking" information.⁶ Finally, Verizon and NorthPoint state that the combination creates no realistic risk of any

² Application at 1.

³ Attachment 3 of Application at 1.

⁴ *Id.*

⁵ Application at 13.

⁶ *Id.* at 2.

countervailing competitive harm, as NorthPoint and Verizon are “merely two among many new entrants in the broadband access business.”⁷

Contrary to the Applicants’ claims, the proposed merger is not necessary to speed the deployment of broadband services. To the contrary, notwithstanding the purported “most separate affiliate,” the merger gives rise to the serious countervailing risk of anti-competitive conduct and creates significant incentives for Verizon to discriminate in favor of itself and the “new Northpoint” and against unaffiliated competitors. Indeed, the merger merely sets a larger stage on which Verizon may continue to play out its anti-competitive performance in the marketplace. For these reasons, the Commission must look behind the seemingly simple request to transfer NorthPoint’s 214 authorization and take action necessary to combat any possibility for anti-competitive conduct and to ensure the continued pace of competition in the wireline DSL market.

A. The proposed merger will not advance competition.

Verizon and NorthPoint claim that the combination of their DSL businesses will accelerate the deployment of advanced services and promote increased competition.⁸ To support this claim, the Applicant’s position the merger as the only way to truly achieve competition in advanced services by enabling the “new NorthPoint” to effectively compete against cable operators and their “closed” platform. Prism rejects the idea of Verizon as the savior of advanced services competition. Prism submits that real competition is more likely to take hold and with more players if the Verizons of the world allow other wireline DSL to truly compete on a level playing field. Moreover, Prism rejects Verizon’s claim that its platform is “open.” While Verizon’s network may be

⁷ *Id.*

⁸ *Id.* at 7-10.

statutorily open, the practical reality is that it remains in large part closed to real competition.

Rather than advancing competition, the merger will result in a reduction of competitors in the ADSL residential and business markets. Although the Applicants failed to provide any relevant data, they claim that they are in complementary business markets. According to the Applicants, Verizon has focused on providing DSL services to residence customers, while NorthPoint has focused on providing DSL services for business customers.⁹ Their current websites, however, bely their claims. Verizon's website touts its InfoSpeed DSL service for business customers and NorthPoint's website lauds its residential DSL services sold nationwide through Internet service providers.¹⁰ As such, the merger will reduce the number of competitors in both the residential and business ADSL markets. Less consumer choice and less competition is clearly not in the public interest.

B. The merger will provide Verizon a greater incentive to discriminate against its competitors and engage in anti-competitive behavior.

The proposed merger amasses more power in Verizon, thereby giving Verizon a greater opportunity to discriminate in favor of itself and its affiliates and against other competitors. The continued reference throughout the Application to a "new" NorthPoint does not disguise the fact that it will be nothing more than an extension of Verizon. Verizon is contributing its DSL assets and a net cash investment of \$450 million to the "new" NorthPoint. The proposed merger will result in Verizon owning a majority

⁹ *Id* at 5.

¹⁰ See http://www.bellatlantic.com/smallbiz/offers/idsl_index.htm and <http://www.NorthPointcom.com/residential/asp>. The Applicant's provide no data as to their relative number of business and residential customers.

interest in, and appointing the majority of the board of directors of, the “new NorthPoint.”¹¹ Verizon is in control and has a significant vested interest in the success of the company. In sum, the “new NorthPoint” is nothing more than the old Verizon. Under these circumstances, the potential for discriminatory conduct and cross-subsidization, particularly in Verizon’s incumbent region, cannot be underestimated.

Prism suggests that the “most separate affiliate” offered by Verizon and NorthPoint does not ameliorate these concerns. The Applicants provide little, if any, information on how Verizon will keep the “most separate affiliate” truly separate and distinct from its incumbent operations and how it will effect nondiscriminatory treatment of non-affiliate competitors. Verizon currently continues to discriminate in favor of itself and against its wholesale CLEC and DLEC customers. As is reflected in the most recent monthly performance measurements data submitted by Verizon and compiled by the Commission, Verizon’s provisioning to its own retail customers is improving while Verizon’s provisioning performance to its CLEC and DLEC wholesale customers – such as Prism – is worsening.¹² Prism’s experience in the Bell Atlantic region supports these findings. This can only be made worse in the DSL arena as Verizon will have every financial incentive to discriminate in favor of itself, albeit in the form of a “new NorthPoint.” The expanded network and geographical reach associated with the merger allows Verizon to accomplish this on a greater scale.

Verizon should not be allowed to build its empire on one hand – now including NYNEX and GTE and soon OnePoint and NorthPoint – while on the other hand continuing to push down its competitors through anti-competitive conduct. This is

¹¹ Application at 11.

¹² See the FCC’s website at http://www.fcc.gov/ccb/asd/BA_NYNEX/perfMonGraphs.html.

particularly true in the context of the nascent market for competitive DSL services, where competitors rely on Verizon for the very facilities that they need to compete.

Notwithstanding that competitors are aggressively marketing and rolling out services, competitive local exchange carriers (“CLECs”) and data local exchange carrier (“DLECs”) continue to struggle to obtain non-discriminatory access to the facilities they need to compete. If the incumbents fail to offer wholesale services in accordance with their statutory obligations – *i.e.*, on rates, terms and conditions that are just, reasonable and nondiscriminatory -- competition will languish. The ability of Verizon to amass more market power in the DSL arena provides it a greater opportunity to shake off these meddlesome competitors and their statutory rights.

As a result of the foregoing, the proposed merger between Verizon’s DSL operations and NorthPoint demands a higher level of scrutiny on the public interest scale. It is surely not in the public interest for the end game to be a few wireline DSL providers to meet the public’s appetite for advanced services.

It is, therefore, critical that the Commission exercise caution in reviewing the Application and its simple request for transfer of NorthPoint's 214 authorization. The potential for increased competitive harm arising from the merger is great. The Commission must therefore take all action necessary to combat any possibility for anti-competitive conduct on the part of Verizon and to ensure the continued pace of competition in the wireline DSL market.

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.

By: Julie A. Kaminski
Randall B. Lowe, Chief Legal Officer
Julie A. Kaminski, Deputy Chief Counsel
– Telecommunications

October 2, 2000

CERTIFICATE OF SERVICE

I, Jane L. Hall, hereby certify that a correct copy of the Comments of Prism Communication Services, Inc. in response to the Joint Application for Transfer of Control by Verizon Communications and NorthPoint Communications in CC Docket No. 00-157, was served via courier to the following individuals, this 2nd day of October, 2000.

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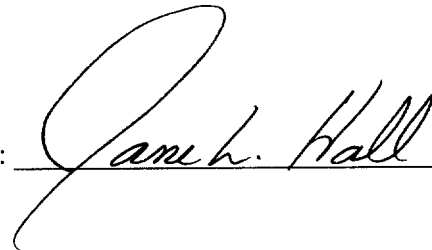
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Date: October 2, 2000

By: _____

A handwritten signature in cursive script, appearing to read "James H. Hall", is written over a horizontal line.

* Delivery via first-class U.S. mail, postage prepaid.