

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

**In the Matter of** )  
 )  
**Interpretation of Section 271 of the** )  
**Telecommunications Act of 1996 As To Whether** ) **WC Docket No. 10-14**  
**The Statutory Listing of Loops and Transport** )  
**Includes the Requirement That Existing Dark Fiber** )  
**Be Made Available To Competitors** )

**COMMENTS OF COMPTTEL**

COMPTTEL, through undersigned counsel, hereby submits these comments in support of the Maine Public Utilities Commission’s (“MPUC”) Petition For A Declaratory Ruling with respect to whether FairPoint Communications-NNE, as the successor-in-interest to Verizon New England, must make line sharing, dark fiber loops, dark fiber transport and dark fiber entrance facilities available to competitive telecommunications carriers pursuant to Section 271 of the Communications Act of 1934, as amended, 47 U.S.C. §271. The MPUC’s Petition was filed as a result of a ruling by the United States Court of Appeals for the First Circuit that under the doctrine of primary jurisdiction, the FCC, rather than the MPUC, should make this determination in the first instance.<sup>1</sup> COMPTTEL urges the Commission to grant the MPUC’s Petition as expeditiously as possible and to confirm, consistent with its Section 271 precedent, that the loop

---

<sup>1</sup> See, *Verizon New England, Inc. v. Maine Public Utilities Commission*, 509 F.3d 1, 11 (1<sup>st</sup> Cir. 2007) (concluding that whether line sharing and dark fiber fall within the definition of Section 271 loops and transport is complicated and technical and should be addressed by the expert agency charged with administering the statute); MPUC Petition at 4.

and transport provisioning obligations of Section 271(c)(2)(B)(iv) and (v) include line sharing and dark fiber.

The MPUC's Petition could not be more straightforward in asking the Commission to clarify that the unbundling obligations of Section 271 include line sharing, dark fiber loops, dark fiber transport and dark fiber entrance facilities. Significantly, it is one of three Petitions currently before the Commission asking for interpretations of Section 271.<sup>2</sup> One of those Petitions has been pending before the Commission with no action for almost four years.<sup>3</sup> Two of the Petitions were filed by State Public Utilities Commissions seeking guidance with respect to (1) the pricing of Section 271 elements<sup>4</sup> and (2) the definition of Section 271 elements.<sup>5</sup> The third Petition was filed by COMPTTEL and a group of competitive carriers (the "Section 271 Coalition") asking the Commission to initiate a proceeding to adopt rules to implement the rights and obligations that Congress established in Section 271.<sup>6</sup>

---

<sup>2</sup> See *In the Matter of Georgia Public Service Commission's Petition For Declaratory Ruling and Confirmation of Just and Reasonableness of Established Rates*, WC Docket No. 06-90 (filed Apr. 28, 2006) and *In the Matter of Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222 (filed November 9, 2009).

<sup>3</sup> *In the Matter of Georgia Public Service Commission's Petition For Declaratory Ruling and Confirmation of Just and Reasonableness of Established Rates*, WC Docket No. 06-90 (filed Apr. 28, 2006).

<sup>4</sup> *Id.*

<sup>5</sup> MPUC Petition.

<sup>6</sup> *In the Matter of Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222 (filed November 9, 2009).

The Bell Operating Companies (“BOCs”) have an independent obligation under Section 271(c)(2)(B) of the Act to provide access to a checklist of network elements, even when those network elements are no longer required to be made available pursuant to Section 251(c)(3) of the Act. Specifically, Section 271(c)(2)(B) establishes an independent obligation for the BOCs to provide access to loops, switching, transport, and signaling pursuant to competitive checklist items 4-6 and 10, regardless of whether impairment is found to exist under section 251(c)(3).<sup>7</sup> The Commission has determined that where a Section 271 checklist item is no longer subject to Section 251 unbundling, its pricing should be governed by the “just and reasonable” standard of Sections 201 and 202.<sup>8</sup> At the same time, however, the Commission has (1) failed to identify a pricing methodology that would yield “just and reasonable” rates for 271 elements; (2) declined to clarify whether this Commission or the state commissions have jurisdiction to set Section 271 rates; and (3) failed to otherwise adopt rules that would give meaning to the BOCs’ continuing obligations to provide access to unbundled network elements under Section 271. The unfortunate result of the Commission’s inaction is that the rights of requesting telecommunications carriers to access network elements pursuant to Section 271 in many states have been rendered largely theoretical due to the lack of any mechanism to enforce those rights.

In granting the BOCs authority to enter the long distance market, the Commission has confirmed over and over again that that the local loop transmission and transport elements that

---

<sup>7</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 at ¶¶653-655 (2003).

<sup>8</sup> *Id.* at ¶656.

must be made available pursuant to Section 271(c)(2)(B)(iv) and (v) include the features and functionalities of the loops and transport, which in turn include both line sharing and dark fiber.<sup>9</sup>

The Commission need only reiterate those conclusions in response to the MPUC Petition.

Several state commissions, including the Maine Commission,<sup>10</sup> have attempted to assume the responsibility this Commission has avoided by issuing post-271 approval decisions on the

---

<sup>9</sup> See e.g., *In the Matter of Verizon Pennsylvania, Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, 16 FCC Rcd 17419 at ¶¶ 76-78, 109, 112 and App. C, ¶¶48-52 (2001); *In the Matter of Joint Applications by SBC Communications, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, 16 FCC Rcd 20719 at ¶¶ 97, 104, 116, n. 365 and App. D ¶¶48-52(2001); *In the Matter of Application by Verizon New England, Inc. et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, 17 FCC Rcd 3300 at ¶¶91-92 and App.D at ¶¶ 48-52) (2002); *In the Matter of Application of Verizon New England, Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, 17 FCC Rcd 7625 at ¶¶48, 56 and App. D at ¶¶ 48-52 (2002); *In the Matter of Application by Verizon New England, Inc. et al. for Authorization To Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, 16 FCC Rcd 8988 at ¶¶121, 163 (2002); *In the Matter of Application of Verizon Virginia, Inc. et al. for Authorization To Provide In-Region, InterLATA Services in Virginia*, CC Docket No. 02-214, 17 FCC Rcd 21880 at ¶¶145, 151 and App. C at ¶¶48-53 (2002); *In the Matter of Application of Verizon Maryland, Inc. et al. for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C. and West Virginia*, CC Docket No. 02-384, 18 FCC Rcd 5212 at ¶¶5, 123 and App. F at ¶¶48-53 (2003); *In the Matter of Application of Verizon New England, Inc. et al. for Authorization To Provide In-Region, InterLATA Service in New Hampshire and Delaware*, CC Docket No. 02-157, 17 FCC Rcd 18660 at ¶¶118, 141 and App. F at ¶¶48-53 (2002); *In the Matter of Application of Verizon New York, Inc. et al. for Authorization To Provide In-Region, InterLATA Services in Connecticut*, WC Docket No. 01-100, 16 FCC Rcd 14147 at ¶10 and App. D at ¶¶49-53 (2001); *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona*, CC Docket N0 03-194, 21 FCC Rcd 7169 at App. C, ¶¶48-53 (2003); *In the Matter of Joint Application of SBC Communications, Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin*, CC Docket No. 03-167, 18 FCC Rcd 21543 at ¶¶144-150 (2003); *In the Matter of the Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, CC Docket No. 02-314, 17 FCC Rcd 26303 at ¶¶335-342, 350-356 (2002). Moreover, Section 51.319(e) of the Commission's rules, 47 C.F.R. §51.319(e), requires incumbent LECs to provide access to dark fiber transport pursuant to Section 251(c)(3) of the Act. If dark fiber transport must be provided under Section 251(c)(3), there is no doubt that it must be provided under Section 271(c)(2)(B)(v).

BOCs' obligations under Section 271(c)(2)(B). The Circuit Courts have concluded, however, that it is this Commission that has the jurisdiction and responsibility for implementation and enforcement of Section 271, not the states.<sup>11</sup> As luck would have it, it is the BOCs – the carriers upon which Congress imposed the obligations set forth in Section 271 -- that have benefited from the Commission's failure to define carriers' rights and obligations under Section 271 and it is the competitive carriers – the requesting carriers that should be the beneficiaries of Section 271 – that have suffered the consequences.

The Commission has been charged by Congress with executing and enforcing the provisions of the Communications Act.<sup>12</sup> Section 271 is a provision of the Communications Act that requires the BOCs to provide requesting telecommunications carriers access to unbundled loops and transport at just and reasonable rates. It has now been 14 years since Congress enacted Section 271. It is high time that the Commission took action to execute and enforce Section 271. It should begin by granting the Petitions for Declaratory Ruling filed by the Maine Public

---

<sup>10</sup> When the Commission granted Verizon, FairPoint's predecessor-in-interest, permission to enter the long distance market in Maine, it promised that it would work in concert with the MPUC to closely monitor Verizon's post-approval compliance with Section 271 to ensure that Verizon did not cease to meet any of the conditions required for Section 271 approval. *In the Matter of Application of Verizon New England, Inc. et al. for Authorization To Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, 17 FCC Rcd 11659 at ¶65 (2002). COMPTel is unaware of any work the Commission has undertaken in fulfillment of this promise.

<sup>11</sup> See e.g., *Verizon New England, Inc. v. Maine Public Utilities Commission et al.*, 509 F. 3d 1 (2007); *Illinois Bell Telephone Company, Inc. v. Box*, 548 F. 3d 607 (7<sup>th</sup> Cir. 2008); *Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission*, 530 F. 3d 676 (8<sup>th</sup> Cir. 2008); *Qwest Corporation v. Arizona Corporation Commission*, 567 F. 3d 1109 (9<sup>th</sup> Cir. 2009); *BellSouth Telecommunications, Inc. v. Georgia Public Service Commission*, 555 F. 3d 1287 (11<sup>th</sup> Cir. 2009).

<sup>12</sup> 47 U.S.C. §151.

Utilities Commission and the Georgia Public Service Commission and the Petition for Expedited Rulemaking filed by COMPTTEL and the other members of the Section 271 Coalition.

Respectfully submitted,

Mary C. Albert  
COMPTTEL  
900 17th Street, NW  
Suite 400  
Washington, D.C. 20006  
(202) 296-6650

March 1, 2010