

The public interest benefits of this merger thus are undiluted by any competitive concerns.<sup>1</sup> The instant transfer applications require no searching inquiry. The Commission can and should (given OnePoint's relatively tenuous financial position) grant the applications promptly in order to permit expeditious closing of the merger.<sup>2</sup>

**II. THE MERGER OF VERIZON AND ONEPOINT INDISPUTABLY ADVANCES THE PUBLIC INTEREST.**

The instant transaction serves the public interest. It will provide OnePoint the resources it needs – but has not been able to obtain elsewhere – to maintain and expand its core business of providing bundled telecommunications, video, and broadband services to residents of MDUs. In addition, it will enhance the ability of the combined company to compete against other providers of bundled services to MDUs – the incumbent cable companies, RCN, and a host of aggressive new entrants with close ties to major building owners and landlords. And, the combined company will be able to expedite its deployment of advanced services to residents of MDUs throughout the country, directly promoting one of the Commission's paramount policy goals.

**A. The Transaction Will Allow OnePoint To Maintain and Expand Its Core MDU Business.**

As evidenced by the attached Declaration of John D. Stavig ("Stavig Declaration," Attachment 1 hereto), OnePoint's Chief Financial Officer, this transaction is essential to

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<sup>1</sup> Even if the Commission concluded (contrary to the evidence) that this transaction would have some adverse effects, it must weigh those effects against the countervailing public interest benefits. As the Commission has made clear, the pertinent inquiry is whether "the transaction on balance serves the public interest, convenience, and necessity" – not whether there is any theoretical loss of actual or potential competition. *Applications of NYNEX Corp. and Bell Atlantic Corp.*, 12 FCC Rcd 19985, 20063 (1997) ("*Bell Atlantic/NYNEX Order*"). There can be no reasonable doubt that Verizon's acquisition of OnePoint meets this standard.

<sup>2</sup> The merger raises no Section 271 issues because OnePoint will divest its in-region long distance customers prior to closing. See section IV, *infra*.

OnePoint's competitive future. OnePoint needs additional long-term capital to survive and thrive. Without this merger, OnePoint would have to scale back its planned network deployment,<sup>3</sup> which would perpetuate substantial operating losses from its current resale platform and limit its ability to offer high-speed data services. Stavig Declaration at 2.

At this time, neither debt nor equity funding is a viable short-term option for OnePoint. *Id.* at 3. Rather, in light of OnePoint's current capital needs, the merger with Verizon appears to be the only realistic existing source of capital. *Id.* at 4. Several other start-up competitors in the MDU market have failed. In each case, after initial periods of growth, these companies were unable to secure sufficient capital to continue to operate and expand their businesses. *Id.* at 3-4. For OnePoint to avoid sharing their fate, it needs the capital and other resources that Verizon has to offer.

**B. The Combined Company Will Be a More Effective Competitor than Either Verizon or OnePoint Could Be on Its Own, Will Expedite Deployment of Advanced Services, and Will Offer an Open Alternative to the Closed Cable Broadband Networks.**

This merger will position the new company as a potent competitor, with direct and substantial benefits for both consumers and ISPs. The combined companies will have the ability to serve residents of MDUs in 32 jurisdictions. It will gain entree into the MDU market in areas served by each of the other RBOCs – BellSouth (in Florida, Georgia, and North Carolina), SBC (in Illinois), and Qwest (in Arizona and Colorado). Importantly, in each of these out-of-region locations, the combined company will be able to introduce a package of telecommunications,

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<sup>3</sup> OnePoint has plans to deploy and turn up switches outside Verizon's local service areas later this year.

video, and broadband Internet access services quickly, widely, and effectively. These offerings will plainly benefit the residents of MDUs in these states.

Verizon and OnePoint possess different and complementary assets and resources which, once joined, will enhance the company's attractiveness to building owners and residents. As an established competitor in the MDU market, OnePoint brings to the table numerous, strong relationships with MDU owners and developers – more than 300,000 passings nationwide, two-thirds of them outside Verizon's region.<sup>4</sup> Within these MDUs, OnePoint offers customers competitively priced, bundled local exchange, long distance, data, and video services with the convenience of a single point of contact for service and a unified bill. It has an extensive on-site (in-building) sales and support staff and a marketing force experienced in the special requirements of the MDU market. For its part, Verizon will contribute its technical skills and expansive product set. In addition, as noted above, Verizon's financial resources will be critical to the continued expansion and improvement of the combined company's MDU operations.

This combination of capabilities and scale will enable the combined companies to market an enhanced bundle of services to MDU residents, with DSL as the lead offering. This merger therefore directly advances the critically important – and, indeed, statutorily mandated – goal of expanding access to advanced services.<sup>5</sup> In addition, the combined companies will provide a

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<sup>4</sup> A “passing” is a dwelling unit in a building where a particular company has marketing rights.

<sup>5</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706 (1996); Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans, CC Docket No. 98-146, FCC 00-290, (rel. Aug. 21, 2000) (Second Report).

nearly ubiquitous, open broadband platform that ISPs can use to attain a nationwide footprint of their own.<sup>6</sup>

Verizon and OnePoint also expect to offer video streaming and video-on-demand. In fact, the companies anticipate that the streaming video component of their service packages for MDUs will enable them to offer consumers and ISPs the first serious competitive alternative to the entrenched cable companies.<sup>7</sup> Streaming video – which, not surprisingly, has been sharply limited by the major cable operators – will compete head-on against unregulated premium and pay-per-view cable services.

In short, the Applicants intend to stimulate and capitalize on the likely substantial market demand for service packages featuring both high-speed Internet access (not tied to use of a particular ISP) and video streaming. The combination of OnePoint's MDU experience and Verizon's resources therefore will produce a strong new competitor whose abilities will be greater than the sum of its parts.

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<sup>6</sup> The Declaration of Thomas W. Hazlett, Ph. D., attached to the recently filed Verizon/NorthPoint public interest statement, details the current, closed nature of the cable broadband networks and the importance of assuring open access. Joint Application of NorthPoint Communications, Inc. and Verizon Communications, CC Docket No. 00-157 (filed Aug. 25, 2000) (“Northpoint/Verizon Application”).

<sup>7</sup> The Commission itself has recognized the potential for streaming video to compete directly with cable services. *See, e.g.*, Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 99-230, FCC 99-418 at ¶¶ 15, 116 (rel. Jan. 14, 2000) (“Sixth Video Report”)(noting that, although Internet video is not yet “a direct competitor to traditional video services,” there are “[m]edia companies [that] continue to offer increasing amounts of video over their Web sites in the expectation that the pictures will be acceptable for the intended use or eventually improve to broadcasting or VCR quality”); B. Esbin, Office of Plans and Policy, *Internet Over Cable: Defining the Future in Terms of the Past* at 83, OPP Working paper No. 30 (Aug. 1998) (“live video images transmitted across the Internet by the technique known as ‘streaming’ video might appear much closer to traditional broadcasting, particularly from the point of view of the subscriber”).

### **III. THE MERGER CREATES NO COMPETITIVE CONCERNS.**

As described above, the proposed alliance between Verizon and OnePoint will produce public interest benefits.<sup>8</sup> In contrast, this transaction will have no countervailing adverse effect on competition.

#### **A. Service Bundles are Commonplace in MDUs.**

The MDU market segment includes consumers who live in “a wide variety of high-density residential complexes, including high and low-rise rental buildings, condominiums, and cooperatives.”<sup>9</sup> MDUs have characteristics – most notably, concentrated demand, lower unit costs, and generally younger, more sophisticated residents – that make them particularly attractive to telecommunications and video providers and distinguish them from the general mass market. In fact, in previous reports examining the state of competition in video delivery, the Commission has “considered multiple dwelling units (“MDUs”) a separate submarket” of the overall market for the delivery of video programming.<sup>10</sup>

The Commission has found that “[a]s of December 1997, there were approximately 24.9 million year-round occupied ‘households’ (or individual dwelling units) located in MDUs in the

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<sup>8</sup> The Applicants demonstrate that this transaction will not harm competition in any segment of the communications marketplace. Nonetheless, Verizon and OnePoint maintain that the Commission is limited by statute to assessing the interstate uses of the authorizations for which transfer authority is sought, and that the Commission may not review this particular merger under section 7 of the Clayton Act because “there is no substantial competition between [the merging parties].” See *Navajo Terminals, Inc. v. United States*, 620 F.2d 594, 601 (7<sup>th</sup> Cir. 1979).

<sup>9</sup> *Sixth Video Report*, ¶ 144.

<sup>10</sup> Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 99-230, *Request for Information*, 19 CR 2045, at ¶ 8 (rel. June 23, 1999), citing *1998 Competition Report*, 13 FCC Rcd at 24363-70, *1997 Competition Report*, 13 FCC Rcd at 1109-14.

U.S., comprising approximately 25% of the total 99.5 million year-round housing units nationwide.”<sup>11</sup> A more recent study reported that, at the end of 1998, approximately 30 percent of the U.S. population (or 81 million people) lived in MDUs.<sup>12</sup> The sheer size of this market engenders a corresponding revenue opportunity: according to the Yankee Group, the provision of video, data and voice services to the U.S. residential MDU market yields about \$20 billion annually.<sup>13</sup>

Additionally, the MDU market is well-suited to the provision of bundled services. For one thing, “[t]he majority of MTU residents are early technology adopters with significant disposable income.”<sup>14</sup> In addition, larger MDUs (those with 50 or more units) can yield greater revenue opportunity per individual customer served, because of the bundling opportunities and the customer concentration. MDUs permit providers to focus their marketing efforts and maximize the potential payoff per unit of marketing dollars spent. These factors support a natural inclination for service providers to bundle high-speed broadband access, video and voice services into single packages for consumers who reside in MDUs.

The market is reacting accordingly. As the Commission noted in the *Sixth Video Competition Report*, “[t]raditional franchised cable operators appear to be combining nonvideo communications services with their multichannel video offerings in order to compete more

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<sup>11</sup> *Id.*

<sup>12</sup> See F. Murphy, First Union Capital Markets, Investext Report 2879925, CAIS Internet Inc.: Initiating Coverage — Company Report, \*4 (June 16, 1999).

<sup>13</sup> See MDU Communications, Inc., *Corporate Profile*, available at, <[http://www.mduc.com/aboutmdu\\_corporateprofile.html](http://www.mduc.com/aboutmdu_corporateprofile.html)>.

<sup>14</sup> G. Ioffe, *Capitalizing on the MTU Market: MTU Buildings Present Challenges*, Boardwatch, 92 (May 2000).

effectively, particularly in the MDU market.”<sup>15</sup> In the same report, the Commission found that other entities, such as local exchange carriers, have begun to offer video and broadband access along with the traditional communications services as part of their service offerings to MDU customers.<sup>16</sup> Thus, service bundles are fast becoming the norm in MDUs.

**B. The Removal of Either Verizon or OnePoint as a Potential Competitor Will Have No Adverse Effects.**

**1. A variety of companies compete to provide service to MDU residents.**

Competition to serve residents of MDUs is intense. This is not surprising given the significant revenue potential that these residential customers represented. A wide variety of companies serve MDUs, although the most significant providers of bundled services remain the entrenched cable operators.

Cable companies. The cable companies have a dominant position competing to provide packages of services to MDU residents. This results in large part from their pre-existing relationships with MDU owners and operators. The cable companies are capitalizing on their market dominance by offering service bundles encompassing the full range of communications offerings. For example, in the *Sixth Video Competition Report*, the Commission noted that Time Warner and Cox Communications “offer[] video programming and local telephone service to MDUs in many of [their] service areas.”<sup>17</sup> Another major cable operator, Media One (now part of AT&T), has targeted a number of cities in Verizon’s region, and reported in February of this year

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<sup>15</sup> *Sixth Video Report*, ¶ 147.

<sup>16</sup> *See id.*, ¶ 148-49 (noting that carriers are offering a “combination of video, high-speed Internet access, and local and long distance telephone services” to MDU customers).

<sup>17</sup> *Id.*, ¶ 147.

that it had over 20,000 telephone customers in Massachusetts alone.<sup>18</sup> Jones Communications (now a part of Comcast), another cable operator, reported initial penetration rates of 23 percent in those buildings where it has targeted its bundled services efforts.<sup>19</sup> While impressive in their own right, those penetration rates seriously underestimate the cable companies' marketing strength: Jones Communications enjoys a phenomenal 80 percent take rate for buildings where Jones has marketing rights.<sup>20</sup>

CLECs and alternative video service providers. New entrants providing both competitive telephony and alternative video services are a significant emerging power in the battle to provide service to MDU residents. The most well known -- and probably the largest single-source, facilities-based provider of bundled services to MDUs -- is RCN. RCN's strategy includes partnering with key providers (such as Pepco Communications) in targeted areas and revenue sharing with building owners and operators. The strategy unquestionably is working. For example, in New York, RCN has achieved a voice/video penetration rate of more than 60 percent in targeted buildings.<sup>21</sup> RCN now serves over 950 buildings in Manhattan and Queens, which represents a 38 percent jump from 1999's figures.<sup>22</sup> The company is enjoying similar growth in Boston and Washington, D.C. and is targeting new markets in Verizon's region, including

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<sup>18</sup> Peter J. Howe, "Area-code woes snag competition," *Boston Globe*, Feb. 22, 2000, at D7.

<sup>19</sup> Kent Gibbons, "Back from the Dead: demand for telephony," *Multichannel News*, June 29, 1998, at 22A.

<sup>20</sup> Paul Farhi, "Wired In to One-Stop Shopping: Jones Takes First Steps in Offering Phone, Cable and Internet Service," *Washington Post*, Nov. 23, 1998, at F5.

<sup>21</sup> See RCN Press Release: *RCN's McCourt Says Company Sees Strong Penetrations in Buildings in Which It Controls All Services* (Jan. 11, 1999).

<sup>22</sup> See RCN Press Release: *RCN Expands Its Strong Presence in New York Market with Moves into Brooklyn and the Bronx* (Aug. 3, 2000).



Philadelphia and New Jersey. Other new entrants competing to serve MDUs in Verizon's territory include U.S. OnLine; First Regional Telecom; Darwin Networks, Inc.; Everest Broadband Networks; WaKuL; CoreComm; Skyway; LoftNet; StarView Communications; and MDU Communications International, Inc. In a number of cases, these entities have reached partnering agreements with real estate ownership groups or other similar organizations.<sup>23</sup>

Other telecommunications companies. SBC and AT&T also have begun targeting residential customers in MDUs by offering bundled services. AT&T has entered the market through both its CLEC and its cable subsidiaries. Indeed, the Commission has found that AT&T's acquisitions of MediaOne and TCI Cable would "accelerate competition among providers of local telephony, video, and broadband services" in those areas where facilities were present.<sup>24</sup> Given AT&T's dominance of the cable market, it should become an even more powerful force in the MDU arena. For its part, SBC has been termed "one of the premier carriers serving the MDU market, offering a bundle of voice, enhanced network services, and video."<sup>25</sup>

BLECs. In addition to the "traditional" service providers, another group of competitors in the MDU market is the "building-centric service providers" or "BLECs."<sup>26</sup> The focus of the BLEC is to bring the benefits of the high-speed networks constructed by the different facilities-based carriers into the buildings, up the risers, and into the individual residence or office. These

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<sup>23</sup> Some of these entities, as discussed below, are "BLECs" – that is, companies that are owned by real estate investment trusts and other large property management organizations.

<sup>24</sup> Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp. Transferee, CS Docket No. 99-251, FCC 00-202, at ¶ 160 (rel. June 6, 2000) (*Memorandum Opinion and Order*).

<sup>25</sup> The Yankee Group, *Residential MDUs: A Market Yet to Be Tapped?* (Nov. 1999), at 13.

<sup>26</sup> See New Paradigm Resources Group, Inc., *CLEC Report 2000*, Ch. 2, at 14 (12<sup>th</sup> ed., 2000).

BLECs “blend expertise in telecommunications with a background in real estate ownership and management.”<sup>27</sup> Unlike the typical local exchange carrier, many BLECs are owned by real estate investment trusts (“REITs”) and other large property management companies, not by telecommunications providers. These companies enjoy the significant advantage of “a massive portfolio [of properties] up front.”<sup>28</sup>

**2. Neither Verizon nor OnePoint Is a Significant Competitor Providing Bundled Services to Residents in MDUs.**

Neither OnePoint nor Verizon is a force in providing bundled services to residents of MDUs. For its part, OnePoint serves only 43,000 customers nationwide, and three-quarters of these are located outside Verizon’s local service areas. In addition, OnePoint is purely a reseller within Verizon’s region. Although Verizon traditionally has provided local telephone service to residents of MDUs, facilities-based competitors like RCN, Cox, MediaOne, Jones, and Time Warner are increasingly offering service packages (including telephony) that are taken by up to 80 percent of new residents of MDUs where these companies have marketing agreements. Verizon lags far behind these companies in providing bundled service packages.

There are only five specific geographic areas where OnePoint and Verizon both market to MDU customers. OnePoint has fewer than 200 residential subscribers in three of these geographic areas – Washington, D.C., Philadelphia and Delaware. In the other two – Maryland and Virginia – OnePoint has approximately 5,800 and 4,600 subscribers, respectively. In each of these areas, there are numerous other competing providers of both voice and bundled services to

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<sup>27</sup> *Id.*

<sup>28</sup> K. Anderson, *Buildings Looking to Get Wired Say “BLEC”*, TechWeb News (Aug. 16, 2000), available at, <<http://www.techweb.com/wire/story/TWB20000816S0009>>.

MDU customers, the majority of whom (including the cable operators and RCN) are largely or entirely facilities-based.<sup>29</sup> Under these circumstances, the merger plainly does not create any anticompetitive effects.

#### **IV. THE APPLICANTS WILL COMPLY WITH SECTION 271.**

OnePoint currently serves 8,100 long distance customers in states where Verizon does not have authority to provide interLATA services pursuant to section 271 of the Telecommunications Act of 1996. OnePoint will divest these customers to an unaffiliated third party prior to closing the transaction.

Specifically, OnePoint will file a notice of discontinuation of service with the Commission, and OnePoint and the default long distance carrier chosen for the divested customers will jointly file a request for waiver of the Commission's slamming rules. OnePoint will mail two letters to affected subscribers (the second coming approximately two weeks after the first) advising them that it will be discontinuing long distance service and that they need to arrange for a new long distance carrier. The letter will also inform customers that they will need to remove any PIC freeze; that they may complain to the FCC (the letter will explain how to do so); that One Point will waive any OnePoint-imposed PIC change charge or termination fee for transferring to another long distance carrier; and that they will have their long distance service defaulted to the identified carrier by a date certain (which will be prior to closing) if they do not act. Accordingly, the merged company will comply with Section 271 when the merger closes.

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<sup>29</sup> In Maryland, RCN and Jones Communications (now Comcast) are among the carriers providing bundled service offerings to residential customers in MDUs. In Virginia, RCN/Starpower, Jones (Comcast) and Cox provide bundled service offerings to residential customers in MDUs.

## **V. CONCLUSION**

For the reasons discussed above, the transfer of OnePoint's Section 214 authorizations to Verizon will serve the public interest, convenience, and necessity. The instant applications therefore should be granted promptly.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Joint Applications of OnePoint Communications )  
Corp. and Verizon Communications for Authority ) CC Docket No. 00-\_\_  
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 )

**DECLARATION OF JOHN D. STAVIG**

1. My name is John D. Stavig. I am the Chief Financial Officer for OnePoint Communications Corp. and all of its operating companies (collectively, "OnePoint" or "the Company"). I have served in this position since 1998. As Chief Financial Officer, I am familiar with the current financial condition of the Company, the state of the capital markets, and projections of the resources necessary for OnePoint to remain competitive as a provider of telecommunications services for apartment and condominium residents.
2. The proposed transaction between OnePoint and Verizon Communications ("Verizon") is essential to ensure the Company has the necessary resources to continue as a robust participant in the telecommunications industry. OnePoint and other start-up carriers require significant capital resources in order to launch, develop and expand their operations. Initiating and expanding services requires substantial up front investments in network facilities and marketing activities. Ongoing capital resources are required to fund initial operating losses, to develop back office systems, and to purchase and install

fixed assets. Further, achieving profitability in this business requires a scale of operations that can be developed only over a multi-year period. During this period, each start-up carrier must continuously justify its progress to the capital markets in order to receive additional financing. Although OnePoint demonstrated strong initial success entering the market and in accessing the capital markets, its future is dependent on securing significant additional long-term capital.

3. Specifically, the Company will be required to raise significant additional capital during 2000 in order to fund its current business plan. The Company's business plan entails the expansion into new markets and the deployment of considerable equipment in multiple dwelling unit buildings during the 2000 calendar year. These investments will enable the Company to provide differentiated and higher margin facilities-based voice and data services. Without sufficient capital to purchase this equipment and fund market expansion, the Company will be forced to scale back its network deployment, thereby continuing operating losses from OnePoint's current resale platform and restricting its ability to offer competitive high-speed data services. This will likely have a material adverse effect on the Company's revenue results, overall financial position, and ability to continue operations.
4. In addition to its immediate capital needs, the Company expects to have significant ongoing cash requirements for at least the next several years due to continued expansion of its customer base and the need to invest in facilities and equipment to support voice, data and video services. The Company's future cash requirements will depend on a number of factors including (i) the rate at which the Company secures Rights of Entry, (ii) the level of penetration achieved for telephony, data and video services and the

pricing of such services, (iii) the rate at which the Company deploys network facilities, the cost of equipment required to do so, and its ability to aggregate traffic onto the Company's facilities, and (iv) the expansion into additional markets, if any.

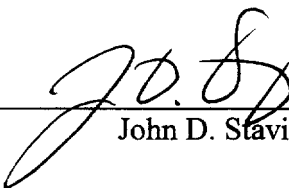
5. OnePoint expects that its current financing will be sufficient to meet its operational rollout plans through the third quarter of 2000. In order to be able to achieve the business objectives it has identified to remain competitive in the market, the Company will need to raise significant additional capital. In the past, OnePoint has funded the majority of its capital requirements through the issuance of debt securities. In 1998, the Company issued \$175 million of high-yield debt . With the support of equity investors, it has secured an additional \$35 million of bank debt. However, additional indebtedness is tightly restricted under the existing loan agreements. With limited access to additional debt, the Company needs to raise equity capital, either through the public or private markets.
6. At this time, however, equity funding also does not appear to be an attractive option to meet OnePoint's near-term capital needs. Recently, equity funding for start-up carriers has fallen off precipitously and access to capital is considerably more problematic for companies such as OnePoint. Further, raising equity funding takes considerable time and, at this point, the Company may not be able to access these markets in time to meet its capital requirements in the event the transaction with Verizon is not completed. Failure to meet OnePoint's capital needs may force the Company to scale back significantly or perhaps even cease operations.
7. Significantly, many comparable competitive carriers that have targeted the residential multi-dwelling unit market with competitive telephony services over the past five years

have failed. Companies such as Optel, Cable Plus, GE ResCom, ICS and MTS have either declared bankruptcy or been forced to sell their assets at significant losses. After initial periods of growth, each of these companies was unable to secure sufficient capital to continue to operate and expand its business. Despite OnePoint's initial success in the market, its fate is also dependent on its ability to secure significant capital resources in order to continue operations.

8. The proposed transaction with Verizon will give OnePoint access to critical funding. Indeed, the proposed capital program is more than twice the level the Company had proposed as a stand-alone entity. By providing this much needed capital, the transaction with Verizon will enable the Company not only to fund its proposed business plan, but to expand its plans to provide advanced services to residential customers in multiple dwelling unit buildings across the country. In this manner, the transaction will not only sustain a competitive carrier with an uncertain future, it will also invigorate its efforts to provide more services to more customers in more markets.




I declare under penalty of perjury that the foregoing is true and correct.

  
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John D. Stavig

Executed on: August 31, 2000

## CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of September 2000, I caused copies of the *Applications for Transfer of Control and Public Interest Statement* of OnePoint Communications, Corp., and Verizon Communications to be served upon the parties listed below by United States mail, postage prepaid.

  
Robin Walker

Honorable Madeline Albright  
Secretary of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Honorable William S. Cohen  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Carl J. Kunasek, Chairman  
Jim Irvin, Commissioner  
William A. Mundell, Commissioner  
Arizona Corporation Commission  
Utilities Division  
1200 West Washington  
Phoenix, AZ 85007-2996

The Honorable Jane Hull  
Governor of Arizona  
1700 West Washington  
Phoenix, AZ 85007

Raymond L. Gifford, Esq., Chairman  
Robert J. Hix, Commissioner  
Polly Page, Commissioner  
Colorado Public Utilities Commission  
1580 Logan Street, Office Level 2  
Denver, CO 80203

Bill Owens, Governor  
136 State Capitol  
Denver, CO 80203-1792

Dr. Robert J. McMahon, Chairman  
Joshua M. Twilley, Vice-Chairman  
John R. McClelland, Commissioner  
Arnetta McRae, Commissioner  
Dr. Donald J. Puglisi, Commissioner  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, DE 19904

Thomas R. Carper, Governor  
Legislative Hall  
Dover, DE 19901

Angel M. Cartagena, Jr., Chairman  
Edward M. Meyers, Commissioner  
Agnes M. Alexander, Commissioner  
Public Service Commission of the  
District of Columbia  
1333 H Street, NW  
Washington, DC 20005

Mayor Anthony A. Williams  
Government of the District of Columbia  
441 4th Street, NW  
Washington, DC 20001

J. Terry Deason, Chairman  
E. Leon Jacobs, Jr., Commissioner  
Lila A. Jaber, Commissioner  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Governor Jeb Bush  
The Capitol  
Tallahassee, FL 32399-0001

Bob Durden, Chairman  
David L. Burgess, Vice-Chairman  
Robert Baker, Jr., Commissioner  
Stan Wise, Commissioner  
Lauren McDonald, Jr., Commissioner  
Georgia Public Service Commission  
47 Trinity Avenue  
Atlanta, GA 30334

The Honorable Roy E. Barnes  
State Capitol Building  
Constituent Services, Room 111  
Atlanta, GA 30334

Richard L. Mathias, Chairman  
Ruth K. Kretschmer, Commissioner  
Terry S. Harvill, Commissioner  
Edward C. Hurley, Commissioner  
Mary Frances Squires, Commissioner  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701

George H. Ryan, Governor  
207 Statehouse  
Springfield, IL 62706

Glenn F. Ivey, Chairman  
Claude M. Ligon, Commissioner  
Susanne Brogan, Commissioner  
Catherine I. Riley, Commissioner  
J. Joseph Curran, III, Commissioner  
William Donald Schaefer Tower  
6 St. Paul Street, 16th Floor  
Baltimore, MD 21202

Parris N. Glendening, Governor  
State House  
Annapolis, MD 21401

Jo Anne Sanford, Chair  
Ralph A. Hunt, Commissioner  
Judy Hunt, Commissioner  
William R. Pittman, Commissioner  
J. Richard Conder, Commissioner  
Robert V. Owens, Jr., Commissioner  
Sam J. Ervin, IV, Commissioner  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

Governor James B. Hunt, Jr.  
Office of the Governor  
20301 Mail Service Center  
Raleigh, NC 27699-0301

John Quain, Chairman  
Robert Bloom, Vice-Chairman  
Nora M. Brownell, Commissioner  
Aaron Wilson, Jr., Commissioner  
Terrance J. Fitzpatrick, Commissioner  
Commonwealth of Pennsylvania  
Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Governor Tom Ridge  
225 Main Capitol  
Harrisburg, PA 17120

Hullihen Williams Moore, Chairman  
Theodore V. Morrison, Jr.,  
Commissioner  
Clinton Millier, Commissioner  
The State Corporation Commission  
Division of Communications  
P.O. Box 1197  
Richmond, VA 23218

The Honorable James S. Gilmore, III  
Governor of Virginia  
Office of the Governor  
State Capitol, Third Floor  
Richmond, VA 23219