Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Verizon Communications Inc.	)	
	)	
And	)	
Frontier Communications Corporation	)	WC Docket No. 15-44
	)	
Application for Consent to Partially Assign and Transfer Control of Domestic and International Authorizations Pursuant to Section 214 of the Communications Act of 1934, As Amended	)	

REPLY COMMENTS OF LUMOS NETWORKS, LLC
AND LUMOS NETWORKS OF WEST VIRGINIA, INC.

Pursuant to the Public Notice[1] issued in the above captioned proceeding, Lumos Networks, LLC and Lumos Networks of West Virginia, Inc. (collectively "Lumos") file these reply comments in response to the applications submitted in this proceeding.

Under the Commission's public interest standard, Verizon and Frontier (the Applicants") must show that the proposed transaction will not "substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes."[2] Lumos files these reply comments because it believes there is, absent appropriate

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[1] Public Notice, Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for the Partial Assignment or Transfer of Control of Certain Assets in California, Florida, and Texas, DA 15-320 (March 12, 2015).

[2] Application, *Verizon Communications Inc. and Frontier Communications Corporation Application for Consent to Partially Assign and Transfer Control of Domestic and International Authorizations Pursuant to Section 214 of the Communications Act of 1934, As Amended* Public Interest Statement at 10 *citing Applications of SBC Communications Inc. and BellSouth Corp. for Consent to Transfer Control or Assignment of Licenses and Authorizations,* Memorandum Opinion and Order, 15 FCC Rcd 25459, 25464 ¶ 13 (2000).

merger conditions, a substantial risk that the proposed transaction will substantially frustrate the Commission's implementation of the Pole Attachment Act.

Lumos Networks, LLC (f/k/a FiberNet, LLC) and Lumos Networks of West Virginia, Inc. are facilities-based competitive local exchange carriers ("CLECs"), each possessing a certificate of public convenience and necessity from the West Virginia Public Service Commission ("WV P.S.C."). Lumos provides a range of high speed data, broadband, voice and IP services over an expanding fiber optic network. Lumos' ability to construct its fiber network is dependent, among other things, on its ability to obtain nondiscriminatory access to poles and conduit owned by electric utilities and ILECs in the markets where Lumos operates. Lumos has previously explained to the FCC the critical role pole attachments play in deployment of next generation broadband networks.[3] Lumos has explained that utilities and ILECs are reluctant suppliers and that the pole attachment process is fraught with significant, unnecessary expenses and delays. Nonetheless, some pole owners are better than others; Frontier, since acquiring the West Virginia operations of Verizon, has been especially difficult to work with.

Lumos' challenges attaching to Frontier's poles are relevant to the Commission's consideration of the application because, as explained below, these issues are an outgrowth of Frontier's inability to adequately manage the ILEC properties it has already acquired. In particular, Lumos' experience on the ground in West Virginia as the result of a previous Frontier acquisition squarely contradicts Frontier's claims that the proposed transaction will be consistent with the public interest.

The Applicants contend that the proposed transaction is in the public interest for several reasons that relate to Frontier's dismal record in integrating Verizon's West Virginia operations.

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[3] *See e.g.,* National Broadband Plan Workshop, Deployment - Wired, Statement of David Armentrout President And Chief Operating Officer, FiberNet, Tr. at 4-7.

The Applicants tout their unique "local engagement model, which combines the advantages of service from a large company with the benefits of a local partner and community member."[4] The Application further promises efficiencies such as savings from "consolidating various administrative… functions" and "reducing corporate overhead."[5] Frontier expects "approximately $700 million annually in cost savings" from these efficiencies.[6] Frontier further claims that it has "consistently and smoothly managed numerous complex system and network transitions."[7] Included in this "accomplishment" is West Virginia, which became part of Frontier after its 2010 transaction with Verizon.[8]

Frontier's claims that this transaction will proceed with a "smooth transition" ring hollow, since the transition in West Virginia has been anything but smooth. Since Frontier became the RBOC in West Virginia, Lumos has experienced significant difficulties in obtaining timely action on pole attachments, despite the Commission's requirements that pole owners comply with a specific timeline for processing pole attachment applications and performing make ready and despite Frontier's commitment to West Virginia CLECs to timely process pole attachment applications.[9] In Lumos' experience, Frontier has not responded to a significant volume of its pole attachment applications beyond assessing make-ready charges that it insists be paid upfront. In addition to Lumos having to perform the pole survey and make ready when Frontier exceeds the FCC timeline, obtaining a refund of the make ready charges from Frontier for work

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[4] App. at 13.

[5] App. at 17.

[6] App. at 2.

[7] App. at 21.

[8] App. at 4-5.

[9] "Joint Stipulation and Agreement for Settlement," Attachment 1 to May 13, 2010 West Virginia Public Service Commission Order, Case No. 09-0871-T-PC, attached hereto as Exhibit 1.).

it has not performed is a struggle. This implies that Frontier has eliminated staff positions that are integral to timely processing pole attachment applications in the name of "cost savings and efficiencies." This lack of investment in its role as owner of critical telecommunications infrastructure has led to costly and time consuming disputes between Frontier and attachers.

In 2010, Frontier signed a stipulation with CLECs, including Lumos' predecessors FiberNet, LLC and NTELOS of West Virginia, Inc., promising that it would reduce and resolve backlogged pole attachment requests as a condition of the West Virginia PSC's approval of Frontier's purchase of Verizon West Virginia Inc.[10] Frontier's failure to honor the commitments it made in 2010 cast serious doubts on the promises and commitments it offers to the Commission in its current application.

Frontier's behavior in the field towards Lumos' attachments reflects a lack of adequate administrative oversight of its outside plant personnel. In 2012, Frontier, without notice, cut down a working Lumos fiber cable that was providing service to a customer. As recently as April 2015, Frontier removed over 11,000 feet of strand and over 5,000 feet of fiber placed by Lumos without any notice to Lumos. The majority of the poles where Frontier recently removed Lumos fiber were not even owned or controlled by Frontier. Instead the licenses were issued by the electric utility which, under the Commission's rules, has the final say over the location and method of attachment.[11] On certain other occasions Frontier personnel have threatened to remove Lumos' fiber from Frontier's pole, manufacturing flimsy objections to the "safety" and propriety of the work done by Lumos' contractors.[12]

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[10] *See Id*.

[11] *See e.g., Implementation of Section 224 of the Act*, 26 FCC Rcd 5240 ¶ 69 (2011) *aff'd American Electric Power Service Corporation v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

[12] *See* Lumos Declaration of Jack Wade, attached as Exhibit 2.

Frontier has frivolously called law enforcement on Lumos contractors going about their lawful work or threatened to do so. In other circumstances, Frontier personnel insist that Frontier has an exclusive right to occupy and retain conduit it controls despite the plain language in Section 224 mandating access to such conduit. Lastly, Frontier ignores its obligations to promptly process pole attachment applications, to charge reasonable rates for pole attachments and make ready, and to apply applicable safety and engineering codes on a nondiscriminatory basis.[13]

Frontier's myriad failures to comply with its obligation to provide pole attachments on just reasonable and nondiscriminatory rates, terms and conditions indicate a disconnect between outside plant personnel and administrative operations. These breakdowns would not occur with an adequate corps of sufficiently trained administrative personnel to make sure outside plant staff comply with Frontier's obligations under Section 224. Given this experience, the Commission may reasonably predict there is an undue risk of similar lapses of supervision and inadequate performance of legally-mandated duties in the service territories that Frontier now seeks to acquire.

Absent behavioral conditions aimed at remedying these failures, the Commission must conclude that the proposed transaction will "substantially frustrate or impair the Commission's implementation or enforcement of" Section 224. Any proposed merger conditions should be self-executing and contain significant penalties for failure to honor those commitments.

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[13] *Id.*

Respectfully submitted,

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