

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

In the Matter of)	
)	
Verizon Communications Inc. and)	
Frontier Communications Corporation)	
)	
Application for Consent to Assign and Transfer)	WC Docket No. 09-95
Control of Authority to Provide Global)	
Facilities-Based and Global Resale)	
International Telecommunications Services and)	
to Assign and Transfer Control of Domestic)	
Common Carrier Transmission Lines, Pursuant)	
to Section 214 of the Communications Act of)	
1934, as Amended)	

COMMENTS OF EARTHLINK, INC. AND NEW EDGE NETWORK, INC.

EarthLink, Inc., and New Edge Network, Inc.,¹ in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice,² file these comments on the applications by Frontier Communications Corporation (“Frontier”) and Verizon Communications Inc. (“Verizon”) (together, “Applicants”) for assignment or transfer of control

¹ EarthLink, Inc. (“EarthLink”) is an Internet service provider (“ISP”), providing nationwide Internet access and related value-added services to individual and business customers. The company’s primary service offerings are dial-up and high-speed Internet access services and related value-added services, such as search, advertising and ancillary services sold as add-on features to our Internet access services. In addition, New Edge Network, Inc. (“New Edge”), a wholly-owned subsidiary of EarthLink, is a competitive Local Exchange Carrier that builds and manages private IP-based wide area networks for businesses and communications carriers using a blend of available access technologies (including DSL, T1 lines, fiber-optic and wireless broadband connections).

² Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, Public Notice, DA 09-1793 (rel. Aug. 11, 2009).

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of access lines from Verizon to Frontier.³ As explained herein, the public interest will be best served by requiring Frontier to implement the Verizon Operation Support System (“OSS”) and associated Application Interface (“API”) (“Verizon OSS/API”) for its wholesale broadband service offerings and to continue Verizon’s wholesale service offerings, including stand-alone DSL, at reasonable rates and terms.

INTRODUCTION AND SUMMARY

Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Communications Act”),⁴ the Commission must determine whether the proposed transfer of control to Frontier of certain licenses and authorizations currently held and controlled by Verizon will serve the public interest. In making this assessment, the Commission must find that the public interest benefits outweigh any potential public interest harms and that approval of the transaction will bolster competition and consumer welfare rather than diminish it over time after the transaction is consummated.⁵ In order for the proposed transaction to rise to this standard, several conditions to the transaction must be imposed to ensure that all customers currently

³ See *Verizon Communications Inc. and Frontier Communications Corporation, Application for Consent to Assign and Transfer Control of Authority to Provide Global Facilities-Based and Global Resale International Telecommunications Services and to Assign and Transfer Control of Domestic Common Carrier Transmission Lines, Pursuant to Section 214 of the Communications Act of 1934, as Amended*, WC Dkt. 09-95 (filed May 29, 2009) (“Application”).

⁴ See 47 U.S.C. §§ 214(a), 310(d).

⁵ See, e.g., *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18433, ¶ 16 (2005) (“*Verizon/MCI Order*”); *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 514, ¶ 11 (2008); *Applications Filed for the Transfer of Control of Embarq corporation to CenturyTel, Inc.*, WC Dkt. 08-238, Memorandum Opinion and Order, FCC 09-54 (rel. Jun. 25, 2009) (“*Embarq/CenturyTel Order*”).

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served by Verizon and transferred to Frontier under the terms of the proposed transaction – including wholesale customers – would not be harmed as a result of the transfer.

Specifically, the transfer will only serve the public interest if the Commission ensures that broadband service deployment will not suffer. As such, the Commission should impose the following conditions upon its grant of the proposed transaction: (1) Frontier must be required to adopt the Verizon OSS/API – or a better OSS and API so long as there is a reasonable implementation process and timeframe – for broadband services to wholesale customers on a permanent basis to ensure existing customers will not be harmed and broadband deployment can continue to expand in these areas after they become controlled by Frontier; and (2) Frontier must continue to offer wholesale broadband services to customers in these areas, including stand-alone wholesale broadband services on the same – or better – prices, terms and conditions that Verizon currently makes available. To ensure the transaction will serve the public interest, the FCC should also commit to review the OSS and API functions for wholesale broadband services no less than annually for three years after the proposed transaction is consummated and stand prepared to revisit the requirements, and impose additional requirements, if necessary to ensure the public interest continues to be served by the transaction.

DISCUSSION

Wholesale broadband services, especially as they serve homes and businesses in rural areas, are an essential component to increasing broadband deployment and uptake throughout the United States. Notably, EarthLink's successful wholesale broadband service relationship with Verizon has increased the number of consumers that enjoy the benefits of broadband services

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and competition.⁶ Likewise, New Edge has operated as a successful provider of wholesale broadband services, offering customers a single source for high-speed connectivity.

Unfortunately, at the same time, the lack of adequate, fully functional and real-time OSS and APIs, and the absence of wholesale broadband service offerings at reasonable rates and terms especially from mid-sized and rural incumbent carriers, has been a gating impediment to bringing even more consumers broadband services. Without continued access to fully functioning OSS and APIs, as well as wholesale inputs in the proposed Frontier territories, EarthLink and New Edge, and other competitive broadband services providers will be unable to serve customers adequately and assist in deploying more broadband across the U.S.⁷ Indeed, the proposed transaction will impact approximately 4.8 million access lines (*i.e.*, customers) in predominately rural and smaller city service areas.⁸ Thus, unless the Commission ensures that the transaction will not diminish competitive broadband service options, such as those offered to consumers and businesses by EarthLink, New Edge and others, the proposed transaction could result in increased harm to a large pool of customers using and seeking a broadband alternative.

⁶ See Ex Parte Letter from Jennifer P. Bagg, Counsel for EarthLink and New Edge, to Marlene H. Dortch, FCC, GN Dkt. 09-51 (Sept. 14, 2009).

⁷ See, e.g., American Recovery and Investment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Congress charged the FCC with creating a national broadband plan by February 17, 2010 to ensure all people in the United States have access to broadband and establish benchmarks for meeting that goal); *In the Matter of A National Broadband Plan for Our Future*, Notice of Inquiry, 24 FCC Rcd 4342 (Apr. 8, 2009) (“*NBP NOI*”) ¶ 5 (“Our goal must be for every American Citizen and every American business to have access to robust broadband services”).

⁸ Application at p. 2.

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I. Frontier must be required to implement the Verizon OSS/API on a permanent basis.

The OSS offered by Verizon for wholesale broadband services is among the best in the country, providing real-time, electronic access to pre-qualification, ordering, order status and trouble ticketing. In fact, the Verizon OSS/API offers EarthLink access to stand-alone DSL ordering information, further increasing consumer broadband options throughout the Verizon territory. Many markets, however, do not have real-time, efficient OSS, or any access to an API and mergers are exacerbating the problems. For example, over the past year, integration issues in the Verizon/FairPoint transfer have resulted in well-publicized customer problems.⁹ Indeed, New Edge has come face-to-face with problems in the FairPoint territories and, as a result of FairPoint's poor OSS, has been forced to withdraw entirely from the FairPoint pre-qualification system. In other words, due to problems with the FairPoint OSS, FairPoint's lack of internal processes and the horrendous service New Edge has received from FairPoint, New Edge is no longer able to offer to its customers any services in the FairPoint region previously well-served by Verizon. To avoid a repeat of the FairPoint debacle and to ensure that the comparatively better practices and capabilities in place at Verizon are not replaced with any lesser practices and capabilities, the FCC must require Frontier to implement on a permanent basis the real-time, up-to-date Verizon OSS, including the API, without charge to wholesale broadband customers.

⁹ See, e.g., Clarke Canfield, Daily Press, *Maine, New Hampshire and Vermont to Hold Joint Conference with FairPoint Executives* (Sept. 7, 2009) available at <http://www.dailypress.com/sns-ap-us-fairpoint-hearing,0,3867911.story> (quoting Anne Ross, general counsel for the New Hampshire Public Utilities Commission, "This level of service and operational and financial problems is unprecedented, at least in the last 20 years, especially in a company of this size. It's not unusual to have problems in smaller companies, but for a company with this size network and customer base, it's unusual to see problems of this magnitude").

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Despite Applicant's assurances that they "have in place a plan for smooth transition of OSS systems and operations so that neither retail nor wholesale customers will experience disruptions in service, ordering, or billing,"¹⁰ more is needed to ensure customers do not suffer a decrease in quality of services. Today, with Verizon, wholesale broadband providers can order easily and compete effectively using the Verizon API. Indeed, EarthLink and New Edge have built-out APIs to Verizon and have a seamless pre-qualification and ordering process. Notably, Frontier does not currently offer an API that parties can build-out to. Thus, despite promises of a "smooth transition" to the Frontier OSS systems and operations, the current Frontier system is almost certain to be a significant step-down from the Verizon systems, which would effectively result in a decrease of service to customers (and potential customers) in the numerous states affected by this transaction: Arizona, California, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington and West Virginia. With so many customers potentially impacted negatively by this transaction, unless the FCC steps-in and requires as a condition of this merger that Frontier adopt the Verizon OSS/API systems to which both wholesale broadband service providers and customers of these providers are accustomed, the public interest will be disserved.

Indeed, unless Frontier adopts as a baseline the Verizon OSS/API, or a superior OSS or API without cost to customers and with a reasonable implementation process and timeframe, competitors in the new Frontier regions will be forced to incur substantial costs to interface with the Frontier system, including development of new electronic interfaces for establishing wholesale connections with Frontier. Wholesale providers would also incur additional expenses

¹⁰ Application at p. 21.

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associated with training employees to use a new OSS and API. The FCC must ensure that competitors are not required to pay for Frontier's development of new OSS or API by incurring new charges or increased charges of any kind.

This is not to say that Frontier should not strive to adopt an even better system than that currently provided by Verizon. Indeed, as Frontier's Chairman and CEO proclaimed, "With more than 7 million access lines in 27 states, we will be the largest pure rural communications provider of voice, broadband and video services in the U.S."¹¹ EarthLink and New Edge hope the new Frontier, as the largest rural communications provider, will set the standard for the best system that other, smaller rural companies can follow.

The FCC should learn from the past. The *Embarq/CenturyTel Order* recognized the negative impact on competition that antiquated OSS can have. CenturyTel's OSS was determined to be "largely manual with little if any automated or interactive capabilities" and unable to "provide as rapid and efficient processing as the Embarq system."¹² As a result, the merging entities adopted the better, automated OSS of Embarq. The same should be done here: Verizon has the better, more efficient OSS and has built an API usable by wholesale providers, including EarthLink, and, thus, as a condition to this proposed transaction, Frontier must replace its more antiquated system.

¹¹ Press Release, Frontier Communications to Acquire Verizon Assets Creating Nation's Largest Pure Rural Communications Services Provider (May 13, 2009) *available at* www.frontier.com.

¹² *Embarq/CenturyTel Order* at ¶¶ 20-23.

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II. Frontier must be required to continue to offer wholesale broadband access services on prices, terms, and conditions at least equal to those offered by Verizon.

While Applicant's claim that "existing . . . wholesale customers will continue to receive substantially the same services on the same terms and conditions under their existing contracts, agreements, and tariffs" and "wholesale arrangements will remain the same as a result of this transaction,"¹³ more is needed. If the transaction is to serve the public interest, Frontier should not be permitted to force wholesale purchasers to pay for the inefficiencies created by the proposed transaction, such as diminished scale and scope economies as compared to Verizon.

As the FCC has emphasized throughout the National Broadband Plan proceeding in setting its goal "for every American citizen and every American business to have access to robust broadband services,"¹⁴ broadband brings consumers the capability to access a wide range of resources, services, and products. Notably, stand-alone DSL services also serve an important role in broadband deployment and uptake, especially as more consumers cut their landlines. Indeed, at this time, Verizon offers stand-alone DSL to wholesale providers at rates that make it commercially feasible to offer consumers a competitive alternative to broadband service. Without a commitment from Frontier to offer the same – or better – prices, terms and conditions as offered by Verizon on a going-forward basis, millions of customers may lose the alternative that exists today and others will be denied this important pro-competitive broadband alternative.

Further, to the extent that any current agreements must be modified as a result of this transaction, the Applicants should be required to bear the cost of the modifications and any related filings. The FCC must also preclude Frontier from exploiting any opportunities created

¹³ Application at p. 19.

¹⁴ *NBP NOI* at ¶ 5.

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by the proposed transaction to raise competitors' costs under existing agreements and to continue to offer new agreements under the Verizon cost structure.

III. The FCC must commit to reviewing the impact of the proposed transactions on wholesale broadband services to ensure it continues to serve the public interest.

Adopting the OSS, API and wholesale input requirements as conditions to the proposed transaction will go a long way to ensuring the affected 4.8 million access lines will continue to be served by, and have access to, the same competitive broadband alternatives that exist today. In addition to these conditions, however, the FCC must establish a process to ensure that post-consummation of the proposed transaction, the public interest continues to be served and commit to no less than annual reviews of the proposed transaction for at least three years.¹⁵

Moreover, the FCC should put in place an easy-to-use system that will allow both retail and wholesale customers to submit information regarding the transition, or any complaints of violations of conditions. For example, if wholesale broadband customers twelve months post-consummation find they are unable to pre-qualify customers efficiently or are generally refused wholesale broadband services, the FCC should commit to timely review of such complaints and revisit the conditions imposed on the transaction if necessary.

CONCLUSION

For the foregoing reasons, EarthLink and New Edge urge the FCC to require Frontier, as a condition to the assignment or transfer of control from Verizon, to maintain the OSS and API

¹⁵ See *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum and Opinion Order, 22 FCC Rcd. 5662, App. F: Conditions (2006); *Verizon/MCI Order*, App. G: Conditions; *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of transfer of Control*, Memorandum and Opinion Order, 20 FCC Rcd. 18290, App. F: Conditions (2005) (imposing merger conditions and review for three years).

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equivalent or better to the current systems Verizon offers in those regions and to continue to offer stand-alone DSL to wholesale broadband service providers on reasonable terms and rates and for the FCC to commit to reviewing such conditions, and the proposed transactions impact on consumers and competition, after consummation of the proposed transaction.

Respectfully submitted,



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