

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Applications of Verizon Northwest Inc., ) WC Docket No. 09-95  
Verizon Communications Inc. and Frontier )  
Communications Corporation for Consent to )  
Transfer Control of Domestic Section 214 )  
Authority )  
)  
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)  
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**COMMENTS OF FREE PRESS**

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## SUMMARY

This transaction advances Verizon's plan to shed the remaining rural areas within its footprint. The company on the receiving end of these rural lines is Frontier Communications. Frontier is a much smaller company, which stands to more than double the number of lines they operate and increase its debt substantially. The companies have requested the Commission find such a transfer to be in the public interest.

This transaction exhibits numerous similarities to Verizon's previous effort to rid themselves of rural customers. In 2008, Verizon transferred its lines in Maine, New Hampshire and Vermont to FairPoint Communications. The company was required to take on considerable debt, not to mention a very large increase in access lines. Despite concerns raised during the proceeding regarding the company's readiness to provide adequate service, the Commission approved the merger condition-free. FairPoint promised federal and state regulators high investment, increased broadband and exceptional service quality. Since the merger, the company has failed in all these categories. FairPoint is now on the brink of bankruptcy and has left state regulators up in arms.

As the Commission works to extend broadband to all Americans, consideration must be given to the clear drive by investors to push the largest telephone companies to sell off rural lines and concentrate resources on densely populated areas. This trend has the potential to leave rural areas with ill-equipped companies offering inadequate service at high prices. This is in direct contrast to the stated intent of Congress and the Obama Administration to foster universal broadband to all Americans. The Commission must closely examine these moves to focus solely on urban customers.

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**I. Introduction**

The Commission has requested comment on the proposed transaction shifting more than 4 million terrestrial lines in fourteen states from Verizon to Frontier Communications. In a similar move to their 2008 sale of lines to FairPoint, Verizon has once again requested that the Commission find that selling rural lines to a smaller company is in the public interest—even though it more than doubles the size of the smaller company and creates high levels of debt. Simultaneous with this proposed transaction, of course, the Commission is engaged in a Congressionally mandated proceeding to create a national broadband plan that evaluates all operant economic forces and likely deployment outcomes.

Since the Commission is working to ensure universal access to broadband, they must view this transaction as part of larger trend. Pressure from investors is pushing large telecommunications companies to sell off networks that lack certain population density characteristics. The Frontier transaction is the second of its kind. Because its predecessor, the FairPoint transaction, presents a cautionary tale and because we might reasonably expect the

Frontier sale to be the second of many, the Commission must give it special attention. The transaction brings one of the central dilemmas of rural broadband deployment into stark clarity. Verizon has made it clear they *do not* want to invest in these areas. Yet they are selling them to companies that probably *cannot* invest in them at the level required to produce a uniform national broadband infrastructure. That is certainly true in the case of FairPoint; and it is probably true for Frontier, even though it is perhaps the best financially situated mid-sized carrier.

It is easy to see a future in which high-density urban areas have a broadband infrastructure with a much higher quality than exists everywhere else. Without careful Commission intervention to reverse the trend begun by the FairPoint sale, rural consumers are in danger of being stuck with slow, expensive connections, in direct contrast to the vision of Congress and the Obama Administration. The Commission must carefully consider how to ensure that the environment resulting from this transaction is in the interests of the millions of Americans affected. At this stage, many of the answers to the most difficult questions are not yet apparent. But the questions are clear – and the Commission should engage them systematically before moving forward.

## **II. Discussion**

### **A. The Transaction Could Exacerbate U.S. Broadband Problems**

#### **1. The Commission Must Place This Transaction in the Larger Context**

The transaction before the Commission raises numerous concerns for rural consumers of broadband. The Verizon led trend of focusing resources on urban areas while abandoning networks in rural America has serious implications for the Commission's goal of universal and robust deployment of broadband. The instant proceeding has Verizon attempting to offload

some 4.8 million access lines in 14 states.<sup>1</sup> The lines are overwhelmingly rural and represent the final step in Verizon's mission to rid themselves of rural consumers. Their lack of investment in these areas in recent years has foreshadowed this sale. These areas have far lower levels of DSL equipped lines than the national average. Simply put, Verizon has left many of these consumers on the wrong side of the digital divide and now seeks to hand their problem over to somebody else. By its own admission, 40 percent of the homes within the territory at issue have no access to broadband.<sup>2</sup>

This comes despite Verizon's recognition that "[m]aking broadband available to these unserved, rural areas is a challenge for the Commission and other policymakers that must be a central concern as the Commission develops a national broadband strategy."<sup>3</sup> Indeed, only two years ago, Verizon made bold public statements to the state in most dire need of increased broadband buildout, West Virginia. Verizon stated they were "genuinely committed to broadband deployment in West Virginia's rural communities."<sup>4</sup> In response to the Governor of West Virginia's vision to have universal broadband in the state by 2010, Verizon told West Virginians they were "stepping up to the challenge."<sup>5</sup> It appears that Verizon's "thinking has matured" in this short time span, as Verizon now seeks to effectively exclude themselves from

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<sup>1</sup> Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority, *Application of Contel of the South, Inc. d/b/a Verizon Mid-States, Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority*, WC Docket No. 09-95, at Exhibit 1 pp. 1-2 (*"Frontier Application"*).

<sup>2</sup> *Frontier Application* at Exhibit 1, p. 2

<sup>3</sup> Comments of Verizon and Verizon Wireless, In the Matter of *Report on Rural Broadband Strategy*, GN Docket No. 09-29, p. 2 (2009).

<sup>4</sup> Verizon Press Release, "Verizon Announces Plans to Expand High-Speed Internet Availability for Rural West Virginians," August 15, 2007.

<sup>5</sup> *Id.*

working to bring wireline broadband to millions of rural Americans.<sup>6</sup> In announcing this transaction, Verizon had little to say about their commitments to the rural broadband problem, but rather heralded the benefits of “reshaping our asset base” to focus on “more densely populated markets.”<sup>7</sup> The Commission must carefully study this fundamental shift. If conventional wisdom is correct and this transaction becomes a pattern followed by other major, well-capitalized broadband providers, the FCC will face a serious challenge to its broadband goals.

Even the areas that do have broadband access in the Verizon territories up for sale are likely to have only first generation ADSL. These offerings a far cry from what Congress envisioned for a broadband infrastructure. The law provides a very specific and quantifiable definition of “advanced telecommunications capability.” The 1996 Act states, “[t]he term ‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to *originate and receive* high-quality voice, data, graphics, and video telecommunications using any technology.”<sup>8</sup> Looking at the present day environment for Internet video, one cannot reasonably conclude consumers can experience “high-quality” video at a bitrate below 5 Mbps.<sup>9</sup> Unfortunately, many Americans do not have the ability to receive video at such speeds and the

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<sup>6</sup> Saul Hansell, “Verizon Boss Hangs Up on Landline Phone Business,” *New York Times*, Sept. 18, 2009.

<sup>7</sup> Verizon Press Release, “Verizon to Divest Wireline Businesses in 14 States; Significant Benefits to Verizon Shareholders,” May 13, 2009.

<sup>8</sup> 7 U.S.C. § 1302(d)(1) (*emphasis added*).

<sup>9</sup> See Comments of Free Press, In the Matter of *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, pp. 10-13 (“706 Comments”).

overwhelming majority cannot originate at such speeds.<sup>10</sup> Furthermore, those consumers that do subscribe to such a service are required to pay an exorbitant monthly fee and still likely receive an extremely asymmetrical connection. Free Press has offered the Commission extensive data illustrating that advanced telecommunications capability is not being deployed in a “reasonable and timely fashion.”<sup>11</sup> The statutory obligations set forth by Congress more than a decade ago have gone unmet.

The vision set by Congress and today’s reality in broadband has direct implications for the transaction being proposed to the Commission. Verizon is the industry leader in delivering high-capacity networks and residential broadband services. Yet they are exiting the field here. Frontier, like FairPoint, is not promising to match Verizon’s fiber deployments, nor do their current broadband offerings or near-future plans reach the Congressionally established standard. Under new ownership burdened with heavy debt loads, the geography and demography of these service territories will make it difficult to reach this standard absent changes in many of the policies the Commission is currently reviewing in its National Broadband Plan docket. Consequently, the Commission must examine how Verizon can mitigate these problems and in so doing raise the likelihood that this transaction can be found to be in the public interest.

## **2. The Potential “FairPoint-ization” of Rural Broadband Poses a Serious Challenge for Regulators**

The review of this transaction should pay careful attention to the assumptions, predictions, and realities of the FairPoint transaction. In January of 2008, the Commission allowed Verizon

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<sup>10</sup> *Id.* at 13.

<sup>11</sup> 47 U.S.C. § 1302(b). *See e.g. 706 Comments* at pp. 17-65. *See also* Comments of Free Press, In the Matter of *A National Broadband Plan for Our Future*, GN Docket No. 09-51, pp. 31-58 (“*NBP Comments*”); Reply Comments of Free Press, In the Matter of *A National Broadband Plan for Our Future*, GN Docket No. 09-51, pp. 13-53.

to offload the service territories of Maine, New Hampshire and Vermont to FairPoint Communications.<sup>12</sup> FairPoint offered federal and state regulators repeated promises that the company intended to invest millions in the acquired service territory and provide broadband to hundreds of thousands of unserved households.<sup>13</sup> The transaction relied on an unusual provision in tax law that permits tax free mergers, known as a reverse Morris trust. The parent company (Verizon) spins off an asset (rural networks) to a sub-company that is then owned by the parent company shareholders. The sub-company then merges with another company (FairPoint) that is smaller than the new sub-company. This unusual configuration results in a small company more than doubling in size. It takes on substantial debt from the transaction, but the sale is tax free for both buyer and seller. This unusual scheme means that it is in the financial interests of large companies like Verizon to find much smaller firms to buy their unwanted assets. By definition, these smaller firms are taking on significant risk and debt in order to take part in the deal. The dubious nature of this type of transaction must be a focal point of Commission inquiry.

The potential pitfalls were made clear in the FairPoint case. All of FairPoint's broadband promises were to be met despite the fact that FairPoint was taking on a debt load of more than \$2 billion and dramatically expanding the size of the company.<sup>14</sup> FairPoint, which maintained

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<sup>12</sup> *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.*, WC Docket No. 07-22, Memorandum Opinion and Order, 23 FCC Rcd 514 (2008) (“*FairPoint Order*”).

<sup>13</sup> *See e.g.* Ex Parte of FairPoint Communications, Inc. & Verizon, In the Matter of Application for Transfer of Certain Verizon Spectrum Licenses in Maine, New Hampshire and Vermont to FairPoint, WC Docket No. 07-22 (Dec. 14, 2007).

<sup>14</sup> Tux Turkel, “FairPoint’s debt to rise N.H. officials call meeting for Sunday,” *Kennebec Journal*, March 29, 2008.

300,000 access lines at the time, increased that to 1.8 million as a result of the deal.<sup>15</sup> Of course, numerous entities called these build-out commitments into question in the record.<sup>16</sup> The Commission unwisely rejected these concerns calling them “speculative.”<sup>17</sup> The results have been nothing short of catastrophic for consumers in these states. The vast promises made by FairPoint and accompanying assurances of Verizon have failed to come to fruition.<sup>18</sup> The company has run into serious operational and financial difficulty since the deal was completed, which has resulted in a substantial negative impact on FairPoint’s customers. Last winter, when an ice storm hit the region, FairPoint needed days to restore service, in some cases more than a week. The head of the local electrical workers union noted, “Verizon had the capabilities to do whatever needed to get done. FairPoint doesn’t.”<sup>19</sup> Only two years after the transaction, FairPoint has failed to meet state benchmarks and has asked bondholders to accept delayed payments.<sup>20</sup> If bondholders do not agree to this request, the company may be forced into

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<sup>15</sup> Kevin Kelley, “Fairpoint on its own as competition builds,” *Vermont Business Magazine*, Feb. 1, 2009.

<sup>16</sup> See e.g. Letter of Free Press and Consumer Federation of America, In the Matter of *Application for Transfer of Certain Verizon Spectrum Licenses in Maine, New Hampshire and Vermont to FairPoint*, WC Docket No. 07-22, p. 2. See also Reply Comments of the Communications Workers of America and International Brotherhood of Electrical Workers, In the Matter of *Application for Transfer of Certain Verizon Spectrum Licenses in Maine, New Hampshire and Vermont to FairPoint*, WC Docket No. 07-22, pp. 3-4.

<sup>17</sup> *FairPoint Order* at para. 21.

<sup>18</sup> See e.g. Chelsea Conaboy, “FairPoint to renege on deal,” *Concord Monitor*, Sept. 10, 2009.

<sup>19</sup> Kevin Kelley, “Fairpoint on its own as competition builds,” *Vermont Business Magazine*, Feb. 1, 2009.

<sup>20</sup> Steve Zind, “Vermont still not happy with Fairpoint service,” *Vermont Public Radio*, June 22, 2009.

bankruptcy.<sup>21</sup> Most recently, state regulators have taken a firm stand stating the company must illustrate to regulators how they intend to improve. The dire situation has left state regulators with no choice but to threaten to pull the company's operating license.<sup>22</sup> Any proposed transaction that takes on the form of the FairPoint-Verizon transaction of 2008 should be viewed with extreme caution.

While Frontier is certainly a different company with a different financial standing in a very turbulent capital market, the similarities of the current transaction to FairPoint are still striking. The descriptions and promises provided in the companies' filings are numerous:

FairPoint: FairPoint Communications, Inc., is an experienced and respected provider of telecommunications services to rural and small urban areas, with a particular emphasis on the provision of broadband services.<sup>23</sup>

Frontier: Frontier is a wireline communications company dedicated primarily to serving rural areas and smaller cities, where it has a proven track record of success.<sup>24</sup>

FairPoint: FairPoint's current broadband service is available, on average, to approximately 88 percent of access lines served by FairPoint's local exchange networks. FairPoint plans to increase broadband availability from current levels in Maine, New Hampshire, and Vermont within twelve months after the completion of the merger by expanding investment and offering quality broadband-based services.<sup>25</sup>

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<sup>21</sup> David Brooks, "FairPoint Struggles to Reduce Debt," *Nashua Telegraph*, June 26, 2009.

<sup>22</sup> Dave Gram, "Vt. Threat to pull telecom's license 'not a bluff'," *Associated Press*, Sept. 9, 2009.

<sup>23</sup> Consolidated Application for Consent to Transfer Assets, In the Matter of *Application of Verizon New England, Inc, NYNEX Long Distance Company, Bell Atlantic Communications, Inc., Verizon Select Services Inc., Verizon Communications Inc., and Northern New England Spinco Inc., Transferors, and FairPoint Communications Inc., Transferee, For Consent to Transfer Certain Assets and Long-Distance Customer Relationships in the States of Maine, New Hampshire, and Vermont*, WC Docket No. 07-22, p. 17 ("*FairPoint Application*").

<sup>24</sup> *Frontier Application* at Exhibit 1, p. 2.

<sup>25</sup> *FairPoint Application* at 18.

Frontier: Frontier has made broadband connections available to 92% of its customers in its existing service areas...Indeed, increasing broadband availability will be a business imperative for Frontier in order to retain customers and to reduce the access line loss Verizon has recently been experiencing in these areas.<sup>26</sup>

FairPoint: Verizon's broadband facilities currently reach approximately 62 percent of its access lines in the three northern New England states.<sup>27</sup>

Frontier: Today, Verizon's subsidiaries offer broadband to only about 60 percent of the homes and businesses in the communities that Frontier is acquiring.<sup>28</sup>

FairPoint: Among other things, the transaction will provide FairPoint with improved access to and a lower cost of capital, making more cash available for discretionary capital expenditures as FairPoint upgrades its newly acquired facilities as well as its legacy properties.<sup>29</sup>

Frontier: the transaction will yield efficiencies in the form of annual operating expense savings of \$500 million from the consolidation of various administrative functions and systems such as accounting and information systems and lower prices on capital expenditures as a result of Frontier's greater purchasing power due to its increased size.<sup>30</sup>

Furthermore, numerous other similarities exist that the companies neglected to highlight in their applications to the Commission. Most importantly, the transaction intends to use the same tax loophole as the FairPoint transaction. Thus, similar to FairPoint, Frontier will take on an additional \$3 *billion* in debt and see their access lines increase from 2.2 million to 7 million.<sup>31</sup> In fact, the applicants specifically and favorably cite the FairPoint

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<sup>26</sup> *Frontier Application* at Exhibit 1, p. 2.

<sup>27</sup> Ex Parte of FairPoint Communications, Inc., In the Matter of *Applications 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.*, WC Docket No. 07-22, at p. 2 (Dec. 12, 2007).

<sup>28</sup> *Frontier Application* at Exhibit 1, p. 2.

<sup>29</sup> *FairPoint Application* at 19.

<sup>30</sup> *Frontier Application* at Exhibit 1, p. 3.

<sup>31</sup> See Amy Thomson, "Verizon to Sell Lines to Frontier for \$5.25 Billion," *Bloomberg*, May 13, 2009; "Frontier Communications to Acquire Verizon Assets Creating Nation's

(continued on next page)

transaction to justify the current sale.<sup>32</sup>

What we are witnessing appears to be the beginning of a pattern. The RBOCs have shifted into a business model that relies on the triple play of voice, video, and data to meet a monthly ARPU figure. That benchmark ARPU figure is rapidly becoming a necessity for satisfying investors who subsequently question whether retaining particular local and regional networks is in the long-term interests of the company. It appears that Verizon has made the calculation that to deploy next generation fiber networks, the benchmark ARPU figure can only be realistically met in areas with a particular population density profile. Lines that do not meet this profile should be sold as quickly as possible to cut losses. It is a rational business decision (though one that was never acknowledged during the promised benefits the company touted in the last several years in their push for deregulation and consolidation). However, it presents a serious problem for regulators seeking to promote the uniform deployment of high capacity broadband infrastructure to the entire country. What should the Commission do if RBOCs will not invest in their rural lines to bring them up to a uniform national standard and small companies (who purchase the lines through highly leveraged transactions) cannot invest in the lines to that standard because of scale or capitalization or debt load? The answer is far from clear, but clearly it must be found before this transaction can proceed. The status-quo of the FairPoint deal—letting rural consumers cope with a poor quality infrastructure—cannot be a long term solution.

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(footnote continued)

Largest

Pure Rural Communications Services Provider,” Frontier Communications Press Release, May 13, 2009.

<sup>32</sup> *Frontier Application* at Exhibit 1, p. 12.

If the Verizon-Frontier transaction represents the continuation of a pattern begun with Verizon-FairPoint, the Commission must treat this proceeding as a bellwether, a test-case for addressing and mitigating potential problems that may arise from this pattern. In particular, the Commission must contemplate the long term implications of RBOCs shedding rural lines en masse. It is likely only a matter of time and investor pressure before AT&T and Qwest follow the lead of Verizon in this respect.<sup>33</sup> If that occurs, there is a very real danger that high-density areas of the country will have access to high-capacity broadband networks, while the rest of the country is left with an infrastructure of lower or even sub-standard quality. An analysis of the economics of this problem should be conducted in advance of approving this transaction to identify such steps as may be taken now to mitigate the potential problems we may reasonably expect to emerge. That is not to say that the transaction should be denied. It is unlikely that denying the transaction will leave consumers in the affected areas any better off. Verizon's business incentives clearly have not and will not dictate any investment in these areas at all. Frontier may not be able to deliver the network that we would like to see, but a willing Frontier is more likely to support these service territories than an unwilling Verizon. The goal here should be to put Frontier and other local area networks in these territories in the best possible position to succeed in delivering a high-quality infrastructure.

As we have noted, the experience of FairPoint – albeit exacerbated by the untimely market crash – suggests a very serious problem on the horizon. It raises a variety of questions. How should the Commission look at transactions that may create a substantial and enduring rural/urban digital divide? From where should the Commission expect capital investment to

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<sup>33</sup> It should also be noted that both AT&T and Qwest have begun deploying VDSL technology in more densely populated areas.

originate and what kinds of networks does it appear likely will be built? Is it acceptable to facilitate a future in which Charleston, WV is permanently left behind the networks available on the eastern seaboard? What are the key economic inputs that will facilitate infrastructure development in the service territories sold off by Verizon? What kind of network does Frontier expect to deliver – in 3 years, 5 years, or 10 years? What policy choices would encourage better and more affordable network connectivity for consumers? Should we finish the USF and Intercarrier Compensation (ICC) reform first before permitting another transaction of this type? It may not be possible to know the viability of rural networks in the future without knowing the outcome of these USF-ICC questions. For instance, the lines being transferred received more than \$116 million in 2008.<sup>34</sup> The Commission should take up all of these questions and model the likely outcomes not only of this transaction but also of the larger shift in the industry it represents. Further, these considerations should be folded into the broader review of broadband policy being conducted under the National Broadband Strategy team.

**B. The Commission Should Act to Ensure the Result of this Transaction does not Harm Consumers**

We recommend the Commission explore numerous issues that may modify this transaction sufficient to place it in the public interest, or at least reduce the damage of its most problematic outcomes. We expect there will be several areas in which Verizon could take steps prior to the transaction to more adequately provision the new-Frontier networks with capacity and support. And we believe there are benchmarks that Frontier should be obliged to meet in order to satisfy the Commission that the future of these networks will reach at least minimum

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<sup>34</sup> Free Press Analysis of “Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of April 1, 2009,” Part 2-State by State Top Ten Recipients of High-Cost Support, June 5, 2009, p. 1.

standards. For instance, Frontier currently offers advertised downstream speeds of 3 Mbps for \$54.99,<sup>35</sup> while Verizon offers the same advertised speed for \$29.99.<sup>36</sup> The Commission should ensure that such disparities are not exacerbated with the completion of this transaction.

The Commission should set reasonable and forward-looking benchmarks for broadband buildout, capacity, and affordability in the new-Frontier network territories. These should be benchmarked state by state in coordination with state authorities, and they should be set in accordance with the forward-looking definition of broadband that we outlined above. Rates should be held to levels that are reasonably comparable to other parts of the country. Numerous transactions have been subject to such conditions, many with far less impact on the future of rural broadband deployment.<sup>37</sup> In order to reasonably expect Frontier to achieve these standards, the Commission should explore what support is necessary from Verizon as a part of the transaction to ensure that the new-Frontier lines are not left in the same situation as FairPoint. As a part of the transaction, Verizon should make a showing that their financial commitment to

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<sup>35</sup> See <http://www.frontier.com/products/ProductOverview.aspx?type=1&p=511> (Accessed on Sept. 19, 2009).

<sup>36</sup> Conditioned upon a 1-year agreement. See <http://www22.verizon.com/Residential/HighSpeedInternet/Plans/Plans.htm> (Accessed on Sept. 19, 2009).

<sup>37</sup> See e.g. *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc*, WC Docket No. 08-238, Memorandum Opinion and Order, 24 FCC Rcd 8772 (2009), Appendix C; *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5809 (2007), at Appendix F; *Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14159 (2000), para. 278 (“*GTE Merger*”); *Applications of Ameritech Corp. and SBC Communications For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14868 (1999), para. 376 (“*Ameritech Merger*”).

Frontier's last mile networks is sufficient to help them feasibly attain the required standard. This could be calculated as a down payment on investment requirements based on reasonable estimates of what is necessary to provision these millions of lines with a quality broadband infrastructure over time.

Furthermore, the Commission should explore commitments in pricing and capacity in the transport market that backhauls aggregated traffic from the affected local area networks to the Internet. These transport lines will service not only Frontier, but also other network operators (such as cable and wireless) as well as enterprise and anchor public institutions such as schools, libraries and hospitals. If transport costs can be held at levels reasonably comparable to urban markets on the East Coast, the end-user networks stand a greater chance of achieving higher capacities to residential and business customers at reasonable cost. Reasonable transport rates will benefit all end-user networks and facilitate at least some level of price competition between these networks. Moreover, available special access data suggests even the large cities in many of the states where lines are being transferred are currently dominated by Verizon.<sup>38</sup> Similarly, in six large cities in the states being transferred a GAO report found that "competitive alternatives for dedicated access are not widely available."<sup>39</sup> The rural areas at issue in this proceeding are surely subject to far less competition and thus must be studied by the Commission. It would be reasonable to implement reform of special access markets in these territories in places where rates are reducing the level of end-user network deployment.

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<sup>38</sup> See Peter Bluhm & Dr. Robert Loube, "Competitive Issues in Special Access Markets," National Regulatory Research Institute, January 21, 2009, Appendix C, D.

<sup>39</sup> The six cities are: Chicago, IL, Detroit, MI, Greenville, SC, Phoenix, AZ, Portland, OR and Seattle, WA. See Government Accountability Office, "FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Service," GAO-07-80, Nov. 2006, p. 10.

Furthermore, the information provided within the application on what aspects of these backhaul networks will continue to be owned and operated by Verizon is insufficient.<sup>40</sup> The Commission should ensure they have a full understanding of what is actually being transferred to Frontier and who will control and operate the various aspects of the network.

In order to explore and verify the questions raised by this proposed transaction – as well as to have a full picture of the nature of the transaction and its likely outcomes – the Commission should require a significant data showing from the parties. The data should include the location, capacity, and pricing for middle-mile transport networks that link the new-Frontier end-user networks to the nearest Internet exchange point. In addition, the Commission should explore other data showings that would facilitate a full analysis of the transaction such as broadband availability, subscribership, and speed data for end-users in each affected Census Block or Block Group. The Commission should also require Verizon to publicly provide up-to-date information that was previously reported through the Automated Reporting Management Information System (ARMIS) system. The Commission has found this information valuable in assessing previous transactions.<sup>41</sup> Although granted forbearance from numerous reporting requirements including infrastructure and operating data, the ILECs “committed to collect and retain these data internally for twenty four months.”<sup>42</sup> The data included in these reports would offer the Commission and Commenters critical information on aspects of the network that will potentially

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<sup>40</sup> *Frontier Application* at p. 8, n. 12 (“Verizon Business... will purchase exchange and other services from Frontier in order to serve these customers.”)

<sup>41</sup> *See e.g. GTE Merger* at para. 72; *Ameritech Merger* at para. 566. The commission declined to make use of the information in the FairPoint transaction, much to their detriment. *Fairpoint Order* at para. 39, n. 140.

<sup>42</sup> *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, et al.*,

WC Docket No. 08-190, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13656, at para. 12 (2008).

be transferred to Frontier.<sup>43</sup> Other information previously collected including through ARMIS could also provide valuable insight into the companies at issue in this proceeding.<sup>44</sup> The overwhelming majority of information collected through ARMIS was offered to the public. Thus, we see no reason why this information shouldn't be made part of the record for all parties to analyze. Furthermore, we encourage the Commission to make use of its "ability to audit and examine certain Verizon records."<sup>45</sup>

Finally, we caution the Commission strongly against accepting voluntary commitments in lieu of binding obligations. The track record of parties before the agency promising beneficial consumer outcomes without accountability is not pretty. Perhaps most prominent was the Commission's decision to simply rely on the promises offered by FairPoint.<sup>46</sup> As we outlined above, these commitments continue to be years away from reality and state regulators have been left to try and hold the company to these promises. Another instance where network operators ultimately failed to follow-through on their commitments comes from the cable industry. The Commission relied on the voluntary commitments of cable operators in declining to attach open

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<sup>43</sup> See e.g. Comments of Free Press, In the Matters of *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket Nos. 08-190, 07-38, p. 7 (2008).

<sup>44</sup> See e.g. *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket Nos. 07-204, 07-273, Memorandum Opinion and Order, 23 FCC Rcd 18490, para. 12 (2008).

<sup>45</sup> Ex Parte of Verizon Communications, In the Matters of *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, Petition of Verizon For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-273, 07-21, p. 3 (Sept. 19, 2008).

<sup>46</sup> *FairPoint Order* at paras. 29-32.

access conditions on the mergers that created the concentrated cable market that exists today. In the merger of AT&T and MediaOne, AT&T promised that they would offer customers “a choice of ISPs.”<sup>47</sup> The Commission subsequently declined attaching conditions, specifically citing these commitments from AT&T.<sup>48</sup> This trend continued with the subsequent merger of Comcast and AT&T Broadband. Comcast promised to offer, “high-speed Internet customers a choice of ISPs.”<sup>49</sup> In a letter to the Commission, Comcast assured the Commission it was “committed to negotiating mutually beneficial commercial arrangements with independent ISPs.”<sup>50</sup> In turn, the Commission declined to adopt any conditions ensuring access for third-party ISPs, specifically citing the “commitment to ISP choice.”<sup>51</sup> Less than a year after the Commission’s ruling, Comcast completely reversed course, stating they were “no longer so keen on the idea.”<sup>52</sup> Today, Comcast customers have no choice amongst ISPs. In fact it appears that the only cable broadband customers who find themselves with a choice amongst ISPs is the sole result of the Federal Trade Commission *mandating* that Time Warner Cable provide wholesale

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<sup>47</sup> Letter from AT&T Corporation, In the Matter of *Applications for Transfer of Control to AT&T Corp. of Licenses and Authorizations Held by MediaOne Group, Inc.*, CS Docket No. 99-251, p. 3 (Dec. 6, 1999).

<sup>48</sup> *Applications for Transfer of Control to AT&T Corp. of Licenses and Authorizations Held by MediaOne Group, Inc.*, CS Docket No. 99-251, Memorandum Opinion and Order, 15 FCC Rcd 9870, paras. 120-121 (2000).

<sup>49</sup> Ex Parte of Comcast Corporation, In the Matter of *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, GN Docket No. 00-185, p. 1 (Feb. 27, 2002).

<sup>50</sup> Letter from Comcast Corporation, In the Matter of *Applications for Consent to Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, p. 18 (July 2, 2002).

<sup>51</sup> *Applications for Consent to Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd 23301, para. 137 (2002).

<sup>52</sup> Christopher Stern, “Cable’s Closed Connections,” *Washington Post*, Oct. 11, 2003.

access to certain third parties.<sup>53</sup> We encourage the Commission to consider these and other transactions where promises were not made binding conditions and subsequently never came to fruition.

### **III. Conclusion**

It is unfortunate for the parties that a spotlight must be cast on this particular transaction. However, the public interest requires a high standard of analysis here. Because of the implications of pattern formation—and the severity of the crisis in the nation’s broadband infrastructure that would occur if the most negative outcomes of this pattern were to come to pass—the Commission must take a very close look and conduct a serious and comprehensive analysis of possible outcomes and solutions.

Respectfully Submitted,

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<sup>53</sup> See *NBP Comments* at pp. 95-98.