

**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)	

**REPLY COMMENTS OF
SPRINT NEXTEL CORPORATION**

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On behalf of its wireless, long distance, broadband, and competitive local exchange carrier (“CLEC”) operations, Sprint Nextel Corporation (“Sprint”) submits the following reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Public Notice*¹ seeking comment on the applications of Frontier Communications Corporation (“Frontier”) and Verizon Communications Inc. (“Verizon”) (together, “Applicants”) for assignment or transfer of control of access lines from Verizon to Frontier.²

¹ 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).

² 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”).

I. INTRODUCTION AND SUMMARY

Section 214 of the Act³ requires that a proposed transaction must serve the public interest and the Commission has required applicants to prove this fact by a preponderance of the evidence.⁴ In approving a transaction of this type, the Commission considers whether the transaction “will *enhance*, rather than merely preserve, existing competition.”⁵ Sprint agrees with those commenters that suggest this transaction raises concerns that the public interest, including the promotion of competitive interests of wholesale customers, will not be served as the transaction is currently proposed.

Broadband circuit pricing, otherwise known as special access, is a significant concern to competitors and wholesale customers of Frontier and Verizon. Sprint agrees with Free Press⁶ that the Commission should undertake a serious review of this backhaul broadband transport market and ensure that special access services will be made available on just and reasonable terms following any transfer from Verizon to Frontier. To assist in establishing the actual cost of special access service, Sprint agrees that the Commission should obtain Automated Reporting Management Information System (ARMIS) data for these special access markets. Following review of such data, current special access rates should be either frozen or reduced in the transferred areas.

As noted by EarthLink, Inc., New Edge Network, Inc., NTELOS of West Virginia, Inc., Cbeyond, Inc., Integra Telecom, Inc., One Communications Corp., tw telecom inc., and Free Press, in any transfer of territory from a BOC to another carrier,

³ 47 U.S.C. § 214.

⁴ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control (“AT&T/BellSouth Merger Order”)*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶ 19 (rel. Mar. 26, 2007).

⁵ *Verizon Wireless/Alltel Merger Order*, 23 FCC Rcd 11401 at ¶ 28 (emphasis added). *See also* *Verizon Wireless/Rural Cellular Merger Order*, 23 FCC Rcd 12463, 12479 ¶ 32 (2008); *Sprint/Clearwire Order* at ¶ 21; *Sirius/XM Merger Order*, 23 FCC Rcd 12348, 12365 ¶ 29 (2008).

⁶ Comments of Free Press, WC Docket No. 09-95 at 14.

end user customers and wholesale customers should receive service after the transaction that is at least equal to that received before the transaction.⁷ This concept is at risk in the wholesale market because the operational support systems (“OSS”) of Verizon are likely to be replaced by less sophisticated Frontier systems resulting in service degradation for wholesale customers and degradation in competition available to end users. The OSS systems of Verizon, or comparable tested and implemented OSS replacement systems, should be required of Frontier as a condition of any transfer of property.

Finally, voluntary merger commitments, aimed at protecting public and competitor interests, have proven susceptible to company efforts determined to avoid actual application of previously agreed to voluntary conditions. Conditions that are binding and that can be easily enforced in a timely manner should be adopted.

II. SPECIAL ACCESS PRICES MUST BE CONTROLLED AND RBOC STATUS CONFIRMED IN FORMER VERIZON AREAS

Free Press urges the Commission to consider “commitments in pricing and capacity in the transport market that backhauls aggregated traffic from the affected local networks” including the traffic of cable, wireless, enterprise and anchor public institutions.⁸ The Commission has heard in many proceedings that backhaul, otherwise known as special access, is a significant concern not only to the deployment of broadband but also to the health of the long distance, CLEC, and wireless markets.⁹ Free Press notes that sufficient information concerning the future ownership of special access within the

⁷ See Comments of EarthLink, Inc. and New Edge Network, Inc., WC Docket No. 09-95 at 3-7; Petition of NTELOS of West Virginia to Condition Consent or Deny Applications, WC Docket No. 09-95 at 4-5; Petition to Deny of TW Telecom Inc, One Communications Corp., Integra Telecom, Inc., and CBeyond, Inc., WC Docket No. 09-95 at 17-27; and Comments of Free Press at 1-5.

⁸ Comments of Free Press at 14.

⁹ See e.g. Comments of Sprint Nextel Corporation, GN Docket No. 09-51, June 8, 2009 at 8-26 and Comments of Sprint Nextel Corporation, WC Docket Nos. 06-172 and 07-97, Sept. 21, 2009 at 8-14.

markets to be transferred has not been provided.¹⁰ To close this information gap, Free Press proposes that the Applicants publicly provide “up-to-date information that was previously reported through the Automated Reporting Management Information System (ARMIS) system” because this information has been found to be “valuable in assessing previous transactions.”¹¹

Sprint agrees that the provision of ARMIS data is critical to assessing this market and, despite unfounded criticism by certain ILECs, a reliable means of assessing the actual cost of providing service. ILEC data regarding actual cost and revenues is the most direct means of assessing whether prices for this core functionality are just and reasonable. Rational pricing, in turn, is critical to broadband deployment and healthy CLEC, long distance and wireless markets.

Free Press asserts it “would be reasonable to implement reform of special access markets” as current special access rates chill “the level of end-user network deployment” in the broadband context.¹² In assessing whether this transaction benefits competition, Sprint agrees that an assessment of the special access markets in these areas is appropriate. In approving a transaction of this type, the Commission considers whether the transaction “will *enhance*, rather than merely preserve, existing competition.”¹³ A commitment to reductions in the rates charged for special access would be an appropriate means of ensuring that the transaction would enhance competition in the transferred areas.

¹⁰ Comments of Free Press at 15.

¹¹ *Id.*

¹² *Id.* at 14.

¹³ *Verizon Wireless/Alltel Merger Order*, 23 FCC Rcd 11401 at ¶ 28 (emphasis added). *See also Verizon Wireless/Rural Cellular Merger Order*, 23 FCC Rcd 12463, 12479 ¶ 32 (2008); *Sprint/Clearwire Order*, 23 FCC Rcd 17570 at ¶ 21; *Sirius/XM Merger Order*, 23 FCC Rcd 12348, 12365 ¶ 29 (2008).

In the past, the Commission, recognizing that some special access commitments are reasonable for parties to receive Commission approval of significant property transfer requests, has required a freeze of special access charges, reductions in special access rates, and other actions concerning special access terms and conditions for a future period of time.¹⁴ A similar freeze or reduction of special access rates is appropriate in the Frontier areas to ensure that broadband competition is increased as the Commission makes further progress on its imminent review of special access.¹⁵ This will promote the public interest in broadband competition as the Commission moves forward in the broader special access context.

One of the issues that could lead to significant pricing changes and competitive roadblocks is the removal of Bell Operating Company (“BOC”) status in the transferred areas. The Joint Commenters note that Applicants “offer no commitment that the Merged Firm will abide by Verizon’s obligations as a BOC” or that it will “forego seeking to avoid Section 251(c) pursuant to the rural exemption in Section 251(f)(1).”¹⁶ In the *FairPoint-Verizon Merger Order*¹⁷ the Commission found that FairPoint would be a Bell Operating Company following the transaction. The same logic should apply to Frontier in this proceeding, and Frontier should be a BOC in areas it acquires from Verizon.

Verizon, in the past, has not attempted to avail itself of the rural exemption in Section 251(f)(1) and has not objected to its 251(c) obligations. Frontier should be

¹⁴ See e.g., AT&T/BellSouth Merger Order at ¶227 and Appendix F pp. 3-6.

¹⁵ Letter from Julius Genachowski, Chairman, Federal Communications Commission, to The honorable Daniel K. Inouye, United States Senator, October 6, 2009. Chairman Genachowski, in dealing with special access, intends “to conduct our analysis” and “to move forward on an expedited basis.”

¹⁶ Joint Commenters at 35.

¹⁷ *In the Matter of 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 Red. 514 (2008) (“*FairPoint-Verizon Merger Order*”) at ¶ 33.

prohibited from removing territory where no rural exemption claim is currently being made from 251(c) obligations under a claim that 251(f)(1) rural exemption is permissible. Such a move would be a significant competitive step backwards and must not be permitted by the Commission.

III. FRONTIER SHOULD IMPLEMENT EITHER THE VERIZON OSS/API OR A COMPARABLE SYSTEM

Sprint operates as a significant wholesale customer of Verizon and of Frontier as it provides CLEC services in partnership with cable companies to millions of end user customers, many of which are in Verizon areas. Sprint also purchases special access facilities for its long distance, wireless voice and broadband, and terrestrial broadband services. In this regard, Sprint has extensive experience with the OSS offered by both Verizon and Frontier. The Frontier OSS systems would represent a significant reduction in service compared to the current Verizon OSS systems.

The current Frontier graphic user interface (“GUI”) systems and batch-processing require significant manual processing on the Sprint end and greatly increase our costs as compared to the electronic data interface (“EDI”) based system of Verizon. The Verizon OSS systems used in the CLEC space allow Customer Service Record (“CSR”), Local Service Record (“LSR”), and Directory Service Record (“DSR”) records to be exchanged via an electronic data interface with automated back-end processing. In contrast, Frontier’s much less efficient GUI is a web-based interface that requires manual entry, on at least the Sprint side, for CSR and LSR records. In the case of directory assistance records, a one-off batch-process is required by Frontier that is problematic and

inefficient. The Frontier process fails to support enhanced directory listings (caption and indent listings).¹⁸

Additional problems are also apparent in the number portability area. Frontier has implemented a process in much of its legacy territory that automates the removal of ported telephone numbers from its switches at 6:00 p.m. the calendar day after the number port is scheduled via the delivered Firm Order Commitment (“FOC”). The Frontier process often results in end user customers being out of service when the New Service Provider (“NSP”) was not able to activate the telephone number because the customer was not available for installation at the scheduled time, or because the customer had a last minute cancellation.

The Local Number Portability Administration (“LNPA”) “Best Practice” is for the Old Service Provider (“OSP”) to leave the telephone number in its switch until the NSP activates the number at NPAC and the OSP receives the message from the NPAC that the NSP had completed its end of the port.¹⁹ Without compliance with this procedure, customers may be left without service because their numbers have been taken out of the OSP switch before the new install has taken place.

Further, when an OSP fails to send a concurring “SV create record” to NPAC, a mechanism that reduces unwanted end user service outages is engaged. This process sets “nine hour timers” that slow the porting process at the NSP to accommodate the

¹⁸ Sprint understands that Frontier is in the process of decommissioning their D1 operator service/directory assistance database and will no longer be able to support Directory Assistance updates and will move some functionality to the LSSI Volt Delta data base. In order to provide parity between listings from competitors and from Frontier, development efforts will be required at Frontier or its contractor. These include completion of work which is apparently underway to allow records to be sent to the Volt Delta data base. A project at Frontier to feed the Volt Delta data base with directory straight-line and enhanced/caption listings must move from the conceptual stage to rapid completion and installation. Caption listings must be included in the development process.

¹⁹ LNPA-WG, Best Practices 31, *Inter-Service Provider LNP Operations Flows*, Version 2.0a, Figure 7, Flow Step (July 9, 2003) available at http://www.npac.com/cmas/LNPA/best_practices_31.htm.

concurrency failure. Frontier does not send a concurring SV create record to NPAC, thus triggering two nine hour timers which automatically extend the timing of the port. The most recent LNPA Working Group Industry Best Practice recommendations concludes that all service providers should send matching SV create messages to NPAC.²⁰

Sprint believes competition in these areas would be improved if the Commission required Frontier to comply with industry best practices. Such action would also support the industry goal of one-day porting.²¹ The practice of taking a number down in an ILEC switch without receiving an auto-concurrency from the NPAC must cease, as recommended by LNPA WG, through the sending of SV create messages to NPAC. Without this functionality, one day number porting, as required by the Commission, cannot occur and end user customers are at unnecessary risk of being left without service. In this context, the Commission should condition the transaction by making any recognized Best Industry Practices now in place or coming from the *Number Portability NPRM* mandatory.

Sprint is not alone in its concern that use of Frontier legacy OSS will degrade current performance in the wholesale market in Verizon areas. EarthLink and New Edge note that “Frontier does not currently offer an API that Parties can build-out to.”²² They note that the Frontier system will be a “step-down from the Verizon systems . . . and would effectively result in a decrease of service to customers (and potential customers) in numerous states.” EarthLink and New Edge suggest that the FCC should require as a

²⁰ North American Numbering Council (NANC) Local Number Portability Administration Working Group (LNPA WG) Recommended Plan For Implementation of FCC Order 09-41, Version 1, Sept. 8, 2009 at 21-22 available at <http://www.nanc-chair.org/docs/documents.html>. To create an enforceable standard LNPA WG asks the Commission to “formally endorse and adopt the requirements” in its recommendations.

²¹ *In the Matter of Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244 and *Telephone Number Portability*, CC Docket No. 95-116, Report and order and Further Notice of Proposed rulemaking, FCC 99-41, (rel. May 13, 2009) (“*Number Portability NPRM*”).

²² Comments of EarthLink, Inc. and New Edge Network, Inc., at 6-7.

condition of the merger “that Frontier adopt the Verizon OSS/API systems to which both wholesale broadband service providers and customers of these providers are accustomed.” EarthLink and New Edge noted that this is not a new concept because the *Embarq/Century Tel Order* required Century Tel to adopt the better, automated OSS of Embarq.²³

The Joint Commenters also point to past problems caused by Verizon divestitures in the Hawaiian Telecom and FairPoint transactions as a significant warning sign that trouble is ahead if the instant transaction is approved without significant conditions.²⁴ At best, “the Applicants are merely postponing any OSS integration issues that would otherwise occur at closing until sometime after closing.”²⁵ There have been no details provided about how OSS will be transitioned or a specific timeline for the transition. Indeed, there is concern that the “Merged Firm will use the excuse of limited resources and the need to meet commitments to other stakeholders as the basis for starving its wholesale operations” including development of efficient OSS systems.²⁶

In order to protect wholesale competition in these areas, the Commission should require that Frontier maintain current capabilities in these territories. Frontier should adopt the Verizon wholesale systems or have in place comparable systems that have been tested that provide comparable functionality to those of Verizon before any transfer is allowed. Without such conditions, this transaction risks the repeat of the financial

²³ See, *Applications Filed for the Transfer of Control of Embarq corporation to CenturyTel, Inc.*, EC Dkt. 08-238, Memorandum Opinion and Order, FCC 09-54 (rel. Jun. 25. 2009) (“*Embarq/Century Tel Order*”).

²⁴ Petition to Deny of tw telecom Inc., One Communications Corp, Integra Telecom, Inc., and Cbeyond, Inc. (“Joint Commenters”) at 17.

²⁵ *Id.* at 19.

²⁶ *Id.* at 23.

problems unfolding in FairPoint areas recently divested in a similar transaction by Verizon.

IV. VOLUNTARY COMMITMENTS REQUIRE AN EFFECTIVE ENFORCEMENT MECHANISM

Following the AT&T-BellSouth merger, Sprint has gained significant experience with voluntary merger commitment enforcement. In regard to enforcement of the interconnection contract merger commitments in that proceeding,²⁷ Sprint has been forced into regulatory activity and court proceedings in multiple states where AT&T contested application of its voluntary merger commitments on jurisdictional and allegedly substantive grounds.²⁸ This experience has lead Sprint to an inescapable conclusion: a truly determined ILEC, prepared to dedicate significant resources to fighting voluntary merger commitments that lack a clear and timely enforcement mechanism, can litigate long enough that the voluntary merger commitments expire before a party that should be benefitting from them can require enforcement. Under these circumstances, voluntary merger commitments, aimed at protecting the public and competitive interest, need to include a clear and timely enforcement process.

Free Press “caution[ed] the Commission strongly against accepting voluntary commitments in lieu of binding obligations.” It noted that the voluntary commitments

²⁷ *AT&T/BellSouth Merger Order* Appendix F.

²⁸ See, e.g. *In the Matter of the Verified Petition of Sprint Communications Company L.P., Sprint Spectrum L.P. and Nextel West Corp. for Arbitration of Interconnection Agreements with Southwestern Bell Telephone Company, d/b/a AT&T Missouri*, Missouri Docket No. CO-2009-0239; *In the Matter of the Petition of Sprint Communications Company, L.P., Sprint Spectrum L.P., and Nextel West Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish Interconnection Agreements with Michigan Bell Telephone Company d/b/a AT&T Michigan*, Michigan Public Service Comm. Case No. U-15788; *Michigan Bell v. Isiogu*, No. 2:09-cv-12577-PJD-RSW, (D. Mich. filed July 1, 2009); *Southwestern Bell v. Clayton*, No. 4:09-cv-871 (CEJ), (D. Mo. Filed June 5, 2009); and *Petition of the AT&T ILECs for a Declaratory Ruling, In the Matter Of Petitions for Declaratory Ruling that Sprint Nextel Corporation, Its Affiliates, and Other Requesting Carriers May Not Impose a Bill-and-Keep Arrangement Or a Facility Pring Arrangement Under the Commitments Approved By The Commission in Approving the AT&T-BellSouth Merger*, WC Docket No. 08-23 (filed February 5, 2008).

“were not made binding conditions and subsequently never came to fruition.”²⁹ Sprint shares this concern and joins Free Press in calling for binding obligations of any merger commitments adopted in this proceeding. In addition, if any such obligations are time-bound by the Commission, the time for which the obligations are in effect should not begin until all legal and regulatory appeals have been concluded.

V. CONCLUSION

In assessing this transaction, the Commission must determine whether it will not only preserve, but enhance competition. Sprint supports the other commenters in this proceeding that have called for conditions on the provision of special access services, OSS systems and LNP. The Commission should also ensure that any conditions adopted are binding and easily enforced.

Respectfully submitted,

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²⁹ Comments of Free Press at 17-18.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Nextel Corporation was filed electronically or via US Mail on this 13th day of October, 2009 to the parties listed below.

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