

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

IN THE MATTER OF

WC Docket No. 09-95

**VERIZON COMMUNICATIONS, INC. AND
FRONTIER COMMUNICATIONS CORP.**

**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**

REPLY COMMENTS OF PAETEC COMMUNICATIONS, INC.

Mark C. Del Bianco
Law Office of Mark C. Del Bianco
3929 Washington St.
Kensington, MD 20895
Tel: (301) 933-7216
mark@markdelbianco.com

William Haas
Vice President, Public Policy and
Regulatory
PAETEC Communications, Inc.
One PAETEC Plaza
600 Willowbrook Office Park
Fairport, NY 14450
Tel: 319-790-7295
William.Haas@PAETEC.com

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REPLY COMMENTS OF PAETEC COMMUNICATIONS, INC.

PAETEC Communications, Inc. (“PAETEC”)¹ submits these reply comments in response to the public notice issued by the Federal Communications Commission (the “Commission”) seeking public comment on a series of applications filed by Frontier Communications Corporation (“Frontier,” including its local operating subsidiaries) and Verizon Communications Inc. (“Verizon”) (collectively, the “Applicants”) pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d).² The Applicants seek Commission approval for various assignments and transfers of control of licenses and authorizations to be made in connection with the merger of Frontier and a wholly owned subsidiary of Verizon that owns or by the closing of this proposed transaction will own local exchange networks and other assets in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia, and Wisconsin, and a portion of Verizon’s local exchange networks in California (all, collectively, the “Affected States”).

This transaction is Part III of Verizon’s ongoing plan to divest itself of its rural or less densely populated ILEC service areas. Part I, of course, was the ill-fated Hawaii Telecom spinoff that began back in 2004 and continues to bedevil consumers, regulators and competitors alike to this day. Part II was the 2008 divestiture of Verizon’s Maine, New Hampshire and

¹ On behalf of itself and its affiliated US LEC and McLeodUSA Telecommunications Services, Inc. operating subsidiaries.

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 Docket No. 09-95 (filed July 30, 2009) (“VZ-Frontier Application”).

Vermont ILEC properties to FairPoint Communications Corp. (“FairPoint”), a saga that seems to get worse daily and now has FairPoint teetering on the brink of bankruptcy.

Numerous parties have filed comments describing the public interest harms that resulted from those earlier transactions, and analyzing why similar harms will inevitably result in this case unless the Commission takes additional steps to protect consumers and competitors.³

PAETEC agrees with these commentors about the wide array of harms that will likely occur, but it focuses these reply comments on the potential harm to wholesale competition and the proactive steps that the Commission can and should take to offset the harms.

SUMMARY

PAETEC urges the Commission to take heed of the lessons learned from Parts I and II of the great Verizon rural line divestiture experiment. If it is to grant the Applications, the Commission must condition the grant on specific, enforceable merger conditions that ensure continuity and fairness in the pricing of wholesale services and the availability of stable, electronic, high capacity wholesale operating support systems to enable competition in the telecommunications marketplace. These conditions include, but are not necessarily limited to, those identified below.

³ *See, e.g.*, Petition to Deny of TW Telecom Inc., One Communications Corp., Integra Telecom, Inc., and CBeyond, Inc., WC Docket No. 09-95 (filed Sept. 21, 2009) (“TWT Petition”) at 4-16; Petition of NTELOS of West Virginia to Condition Consent or Deny Application, WC Docket No. 09-95 (filed Sept. 21, 2009) (“NTELOS Petition”) at 2-5; and Comments of Earthlink, Inc. and New Edge Networks, WC Docket No. 09-95 (filed Sept. 21, 2009) (“Earthlink Comments”) at 7-9.

I. Introduction

PAETEC is a premier national provider of competitive wireline local, long distance, data and Internet services based in Fairport, New York. Since PAETEC completed its acquisition of McLeodUSA Inc. (“McLeodUSA”) in 2008, the combined company has been one of the nation’s largest non-Bell communications service providers, serving 83 of the top 100 metropolitan statistical areas. Primarily serving medium to large business customers, PAETEC provides service to its customers through its own switches and lines, but it also relies on last mile facilities leased from other carriers – either as special access services or unbundled network elements (“UNEs”).

PAETEC is both a buyer and a provider of wholesale telecommunications services. It purchases and sells special access services and is a purchaser of UNEs from ILECs throughout the United States, including both of the Applicants. In its position as a local, long distance and exchange access provider, PAETEC is acutely aware of the importance of the pricing of wholesale services – no matter what their regulatory classification or nomenclature – and the availability of stable, electronic, high capacity wholesale operating support systems to enable competition in the telecommunications marketplace.

II. The Commission Must Preserve and Extend Frontier’s Use of High Quality Wholesale OSS in All its ILEC Territories in the Affected States

PAETEC is keenly concerned with the potential harm that this transaction will cause to the wholesale operations support systems (“OSS”) market. Wholesale services are an essential component to increasing telecommunications competition generally and particularly to increasing broadband deployment and uptake throughout the United States. High quality,

electronically bonded wholesale OSS are the key to the ability of competitors to provide their customers with timely, accurate and competitively priced services.

PAETEC has long utilized special access services for loop connections to the majority of its end user and wholesale customers, but it has also become a large purchaser of higher capacity UNEs in certain Affected States due to its acquisitions of US LEC and McLeodUSA. Thus, PAETEC is intimately familiar with the wholesale and special access markets in the Affected States and throughout the Verizon and Frontier footprints, and with the potential impact of the proposed transaction on wholesale competition in those markets.

PAETEC is one of Verizon's largest wholesale customers, with total annual wholesale purchases above the \$100 million level. PAETEC's wholesale relationship covers the entire Verizon footprint, including the Affected States. This spend includes switched and special access services, private line, high capacity, operator services/directory assistance and other wholesale telecom services. PAETEC's current Frontier wholesale spend is less, but still significant. If the Frontier-Verizon transaction is approved, PAETEC's spending level in the Frontier territory will significantly increase.

PAETEC agrees with Earthlink that, despite its many shortcomings, "[t]he 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."⁴ Unfortunately, as Earthlink also noted, "[m]any [other] markets, however, do not have real-time, efficient OSS, or any access to an API [application programming interface] and mergers are exacerbating the problems."⁵ In PAETEC's experience, the markets in which Frontier operating

⁴ Earthlink Comments at 5.

⁵ *Id.*

companies are the ILECs are among those that “do not have real-time, efficient OSS, or any access to an API.” As NTELOS, which like PAETEC competes in existing Frontier ILEC territories, succinctly noted, “Frontier’s wholesale support systems are unsophisticated and not designed for mass quantity.”⁶ The problem is not just limited to Frontier: 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 from mid-sized and rural incumbent carriers like Frontier has hindered the development of competition outside of the top 50 markets throughout the U.S.

A variety of CLEC commentators have documented the problems that both Hawaii Telecom and FairPoint have had in implementing wholesale OSSs to replace the legacy Verizon systems and have pointed out the risk that similar problems will result here.⁷ PAETEC agrees with these analyses and with other competitors who have documented the shortcomings of the existing Frontier wholesale systems.⁸ This transaction as presently proposed will inevitably run into - and exacerbate - the same problems unless the Commission acts forcefully.

PAETEC has grave concerns about Frontier’s lack of expertise in high quality wholesale OSS and its ability to execute on its plans to support PAETEC and other buyers of its wholesale offerings. Only continued access to the existing Verizon wholesale OSS and associated APIs (collectively, “Verizon OSS/API”) will enable PAETEC and other ILEC competitors to maintain and improve their service to customers in the Affected States and result in the faster and wider deployment of broadband across the U.S. If Frontier were to transition in the Affected States from Verizon’s OSS to Frontier’s existing wholesale OSS, this backward

⁶ NTELOS Petition at 2.

⁷ See TWT Petition at 4-16.

⁸ Earthlink Comments at 7; NTELOS Petition at 2; TWT Petition at 24-29.

step would be a disaster for the competitive local exchange market, for individual competitors such as PAETEC and for consumers generally.

This demonstrable public interest harm can only be offset by requiring Frontier to maintain the Verizon OSS/API in place for wholesale service offerings in the acquired ILEC territories for at least five years, or until such time as Frontier's OSS has been adequately tested and certified as fully functional as proposed below. In addition, Frontier should be required to extend the Verizon OSS/API to all Frontier ILEC territories in the Affected States by December 31, 2011, unless a Commission order permitting it to adopt a different (and better) OSS/API in all Frontier ILEC territories has been issued. This is similar to the requirement that the Commission recently imposed in the CenturyTel/Embarq transaction.⁹

PAETEC would not object to Frontier transitioning to an OSS or API superior to the Verizon OSS/API at some point in the future. However, any such transition must be (i) subject to strict Commission oversight and a reasonable implementation process and timeframe, (ii) contingent on pre-cutover testing and verification by a third party, and (iii) contingent on the testing and development of the OSS or API being funded solely by Frontier and, accordingly, made available at no cost to wholesale customers, including competitors. Only with these conditions can the Commission ensure that down the road wholesale customers and their customers will not be harmed. Absent these conditions, an OSS/API transition could become a significant barrier to competition by forcing competitors in the old and new Frontier regions to use inefficient replacement OSS/APIs and to incur substantial costs, including the cost of development of new electronic interfaces for establishing wholesale connections with Frontier.

⁹ See Memorandum Opinion and Order In the Matter of Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc., FCC 09-54 (rel. June 25, 2009) at Appendix C, page 28.

It is appropriate for the Commission to exercise its jurisdiction to require these OSS/API conditions on a nationwide basis. In Parts I and II of the Verizon divestiture plan, only one and three states were affected, respectively, and it made sense for state commissions to address the wholesale OSS issues. However, there are 14 Affected States here. Uniformity of OSS across multiple states is highly preferable. Leaving that decision to state utility commissions could lead to 14 different OSS standards being adopted. That the Affected States represent diverse regions of the country that have not typically worked together on OSS issues makes that task even more difficult to manage on a state by state basis.¹⁰ Moreover, it is doubtful that any competitor has the financial and personnel resources to participate in PUC proceedings in separate state proceedings. PAETEC, perhaps the largest of the CLEC competitors competing in the Frontier exchanges, certainly does not have the resources and is limiting its participation to one or two key states. In addition, Commission involvement is appropriate to ensure nationwide consistency on these crucial competitive issues: the sheer number of states involved makes the possibility of inconsistent state decisions highly likely if the Commission forbears from involvement.

III. The Commission Must Preserve and Extend the Existing Wholesale Pricing in All Frontier ILEC Territories in the Affected States

a. Preservation of Existing Negotiated and Tariffed Competitor Cost Structures

PAETEC has a number of single and multi-state arrangements covering the Affected States in place today with Verizon, including tariff arrangements, interconnection agreements

¹⁰ There is precedent for a group of state regulators to coordinate OSS testing, but that precedent is not helpful. The Qwest Regional Oversight Committee effort to test the Qwest OSS throughout the 14 states was successful because all 14 of those states had a common history of regulating Qwest as the incumbent LEC in that region of the country. The same situation is not present here.

and commercial wholesale agreements. These generally provide for discounts on circuits in a particular state based on PAETEC's national or regional purchases of wholesale products and services. If the transaction closes without conditions, PAETEC's annual wholesale costs to provide services to its existing customers in the Affected States will inevitably increase. Either this increase will be passed through by PAETEC to its end user customers or, alternatively, PAETEC's future business plans in the Affected States may be curtailed.

PAETEC has demonstrated for many years that it is a premier provider in the Affected States' marketplaces and it wishes to continue to grow in those markets. It will not do so without the basic assurance that its existing wholesale costs, now under contractual or tariffed pricing protection, will not be subject to the vagaries of uncertainty created by the proposed transaction. However the Commission analyzes the situation, this uncertainty and the possible price increases are net harms resulting from the transaction. They harm PAETEC, consumers in the Affected States and competition in the Affected States' telecommunications markets. At best, PAETEC will lose money every month on existing customers and quickly have to raise prices if it can do so under its existing customer contracts. At worst, it will need to reconsider seriously the viability of the markets in some of the Affected States. In either event, the real losers will be competition and consumers in the Affected States.

Given the highly likely and clearly demonstrable harms, the Commission can only approve the transaction pursuant to Sections 214(a) and 310(d) if it finds that there are *or it imposes conditions that create* public interest benefits that outweigh the harms. There is no possibility that the Commission can find benefits to the wholesale market from this transaction. Approval of the transaction will not bolster competition and will diminish consumer welfare rather than improve it over time. Therefore, approval can only be justified if the Applicants

offer, or the Commission imposes, specific, enforceable conditions designed to ensure that wholesale customers – competitors - will not be harmed as a result of the proposed transfer.

These specific harms arise in each transaction where an RBOC or other large ILEC spins off rural properties where wholesale pricing is covered by multi-state agreements. There is a simple solution: require Frontier and Verizon to renegotiate the rates, terms and conditions of the existing wholesale agreements between competitors and Verizon so that competitors are no worse off in either the Frontier or Verizon territories after the transaction closes. This requirement is hardly controversial. For example, it was a condition agreed to by Verizon and FairPoint in all three states covered by their merger transaction.¹¹ Unlike some of the other conditions, this condition appears to have been successfully implemented.

The Applicants here have already made a non-binding public commitment to the measured adoption of at least some existing Verizon/CLEC multi-state commercial agreements.¹² Nonetheless, PAETEC's costs could increase by a substantial amount in the Affected States because those commitments are not yet binding and it is not clear that they cover all financial aspects of the complex business arrangements that PAETEC and other CLECs have in place with Verizon.

While PAETEC cannot discuss the details of its Verizon agreements publicly because of their commercially sensitive nature, it is concerned because simple pro rata division will not solve the problem. Because of different levels of spending and different types of product and service purchases by PAETEC in different Verizon states, adjustment on a pro rata basis

¹¹ See Settlement Agreement between Verizon and FairPoint Communications and the staff of the N.H. Public Utilities Commission, DT 07-011 (N.H. P.U. C.) (filed January 23, 2008) (“FairPoint Settlement Agreement”) at Exhibit 1, Section 9 and Exhibit 2, Section 4.

¹² VZ-Frontier Application, Exhibit 1 (Public Interest Statement) at 4-5 and 19-20.

will not be sufficient to ensure that PAETEC remains in the same relative financial position in each of the Affected States after the closing. The problem can only be resolved if Frontier and Verizon will jointly renegotiate to ensure that PAETEC and other competitors are not harmed. This means that Verizon may have to be a party to this merger condition, as it was in the FairPoint transaction.

Frontier and Verizon could take initial steps to begin addressing our concern on this point long before any Commission decision on their applications. To date, neither Verizon nor Frontier has reached out to begin discussions on amending the agreements, as FairPoint and Verizon did in connection with their transaction. PAETEC is willing to give Verizon written permission for it to disclose to Frontier the details of our agreements with Verizon. PAETEC is also willing to provide a summary of these agreements to Commission staff under suitable protective order so they can understand the ramifications, should that become necessary due to the failure of commercial negotiations with Verizon and Frontier.

b. The Commission Should Require Frontier to Maintain and Extend Verizon Wholesale Pricing Throughout The Frontier ILEC Territories in the Affected States

As a result of this transaction, the cost structure of the Frontier operating ILECs will inevitably change in a way that is favorable to Frontier. At worst, Frontier's costs – whether calculated on a TELRIC or some other basis - will be similar to those of Verizon in the existing Verizon ILEC territories in the Affected States. At best, the combination of the existing and to-be-acquired Frontier ILEC territories may result in costs even lower those of Verizon in the Affected States due to economies of scope and scale or to changed regulatory classifications for Frontier's operating companies or certain of their costs. Therefore, it is

quite appropriate for the Commission to ensure that these changes result in public interest benefits that offset the demonstrable harms the transaction will cause to the wholesale market.

This can best be done by requiring Frontier to maintain Verizon's pricing of all tariffed wholesale products and services for at least three years. In addition, Frontier should be required to apply the tariffed Verizon rates, terms and conditions to the same services when it is providing them in existing Frontier ILEC territories in the Affected States for three years after the transaction closing date.

As with renegotiation of multi-state agreements to prevent financial harm to wholesale competitors, the first part of this condition should be non-controversial. Indeed, Verizon and FairPoint agreed in their merger transaction to extend the pricing in existing interconnection agreements and to freeze special access rates and tariffed rates for other wholesale services (including UNEs) for three years following the merger closing.¹³ In PAETEC's experience, this condition has been successfully implemented and has prevented harm to the wholesale market that would otherwise have occurred in the divested New England states. Similarly, the Applicants in this proceeding have already made a broad, non-binding public commitment to maintain Verizon's pricing for at least some wholesale items: "As to wholesale customers, Frontier will assume or honor all obligations under Verizon's current interconnection agreements, tariffs, and other existing arrangements, . . ."¹⁴

Nonetheless, PAETEC's costs could increase by a substantial amount in the Affected States because that commitment is not binding and it is not clear that it will cover all

¹³ See FairPoint Settlement Agreement at Exhibit 1, Section 9 and Exhibit 2, Sections 4 and 7(a).

¹⁴ VZ-Frontier Application, Exhibit 1 (Public Interest Statement) at 4-5.

wholesale products and services. This possible loophole should be closed with a binding merger condition that covers all wholesale products and services.

The question of applying existing Verizon rates, terms, and conditions to wholesale services of an acquiring carrier provided within an Affected State but outside the acquired ILEC areas is novel in this transaction. It did not arise in the Hawaii Telecom and FairPoint transactions because neither of those acquirors had existing ILEC operations in the states in which it was acquiring Verizon lines. Nonetheless, the rationale is compelling for applying the tariffed Verizon rates, terms and conditions when Frontier is providing the same services in its existing ILEC territories. The Commission should, therefore, require this extension as a condition of its approval of the transaction.

CONCLUSION

For the foregoing reasons, PAETEC respectfully urges the Commission not to approve the transaction unless the following are included as fully enforceable conditions in the order:

(1) Frontier must be required to maintain the Verizon OSS/API in place in the acquired ILEC territories and expand that OSS/API to all Frontier ILEC territories by December 31, 2011, unless a Commission order permitting it to adopt a different OSS/API has been issued.

(2) Frontier and Verizon must renegotiate the rates, terms and conditions of the existing wholesale agreements between competitors and Verizon so that competitors are no worse off in either the Frontier or Verizon territories after the transaction closes. If all agreements cannot be renegotiated prior to the transaction closing date, Frontier and Verizon must commit to retroactive true-up of the final agreements so that competitors are never harmed.

(3) Frontier must offer wholesale services to customers in all of its ILEC territories throughout the Affected States on the same – or better – prices, terms and conditions that Verizon currently makes available.

Respectfully submitted,

Mark C. Del Bianco
Law Office of Mark C. Del Bianco
3929 Washington St.
Kensington, MD 20895
Tel: (301) 933 – 7216
mark@markdelbianco.com

Date: October 13, 2009

/s/ _____
William Haas
Vice President, Public Policy and
Regulatory
PAETEC Communications, Inc.
One PAETEC Plaza
600 Willowbrook Office Park
Fairport, NY 14450
Tel: 319-790-7295
William.Haas@PAETEC.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of October, 2009, a true and correct copy of the foregoing Reply Comments of PAETEC Communications, Inc. was served electronically on the following:

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554
(via ECFS filing)

Best Copy and Printing, Inc.
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Alex Johns
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554
alexis.johns@fcc.gov

Jeff Tobias
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554
jeff.tobias@fcc.gov

David Krech
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554
david.krech@fcc.gov

Jim Bird
Office of General Counsel

