Lampert, O'Connor & Johnston, P.C.

1776 K Street NW, Suite 700
Washington, DC 20006

Jennifer P. Bagg
bagg@lojlaw.com

tel (202) 887-6230
fax (202) 887-6231

March 11, 2010

Via Electronic Delivery

Ms. Marlene H. Dortch
Federal Communications Commission
The Portals, TW-A325
445 12th Street SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation –WC Dkt. 09-95, *Application of Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority*

Dear Ms. Dortch:

On March 10, 2010, Penny Bewick, Vice President, External Affairs, New Edge Network, Inc. ("New Edge") and also representing EarthLink, Inc. ("EarthLink"), Donna Lampert and Jennifer Bagg, Lampert, O'Connor & Johnston, P.C., met in person and by telephone with members of the Verizon-Frontier transaction team to discuss issues recently encountered with the transfer of Verizon's operation support systems ("OSS") and associated Application Programming Interfaces ("API") for broadband services and concerns with Frontier's OSS and API transfer generally. The attached handout was also discussed. Present at the meeting were Nick Alexander, Bill Dever, Alex Johns, and Carol Simpson, Wireline Competition Bureau; Paul de Sa and Steve Rosenberg, Office of Strategic Planning and Policy Analysis; and Virginia Metallo, Office of General Counsel.

EarthLink and its wholly-owned subsidiary New Edge raised concerns with the recent actions of Verizon to transfer the current Verizon OSS to a new OSS. EarthLink and New Edge concerns include statements made by Frontier regarding its OSS transfer plans in its February 26, 2010, response to the FCC's request for additional data. While EarthLink and New Edge have not and do not oppose the Verizon-Frontier transaction, we have emphasized throughout the proceeding that the transfer will only serve the public interest if broadband service deployment will not suffer.[1] 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 service providers will be unable to serve customers adequately and assist in deployment of more broadband across the U.S. As such, we requested that the FCC review

[1] *See* Comments of EarthLink, Inc. and New Edge Network, Inc., GN Dkt. 09-95 (Sept. 21, 2009); Letters from Jennifer P. Bagg, Counsel for EarthLink, Inc. and New Edge Network, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Aug. 24, 2009, Sept. 14, 2009, Sept. 15, 2009, Sept. 25, 2009, Sept. 28, 2009 and Nov. 30, 2009).

the contemplated Verizon-Frontier OSS system transfer, the companies commitments and plans regarding OSS and ensure that the implementation serves the public interest as described herein and consistent with our previous requests.

Verizon OSS Transfer Request

EarthLink and New Edge have been asked by Verizon to implement a transfer of the current Verizon OSS to a new OSS, which apparently is the system that will be operated by Frontier initially once the transaction is approved. While EarthLink, New Edge and Verizon have maintained a cooperative, working relationship, EarthLink and New Edge are concerned that the timing of the requested OSS transfer is premature and will cause needless expenditure of resources. Given the OSS-related issues raised at the Commission by wholesale customers, including EarthLink and New Edge, the transaction could likely be conditioned upon certain OSS commitments from Verizon and Frontier that would alter the OSS system changes that EarthLink and New Edge are now being asked to make. Further, while EarthLink and New Edge applaud Verizon's goal of planning ahead for the transfer, they have been disappointed by the lack of information Verizon has provided about this OSS transfer, inconsistencies in the communications received, the slow response time to questions and concerns regarding the proposed system change requirements, and the insufficient time to implement the requested changes.

The specifics of the Verizon OSS transfer request are as follows. On December 11, 2009, EarthLink received notice from Verizon that there were certain OSS-related changes that needed to be implemented to effectuate the Verizon-Frontier transaction. This notice included references to Verizon, Frontier, "RetainCo" and "SpinCo." On December 14, 2009, EarthLink submitted a list of questions by email to Verizon to clarify the implementation requirements. Verizon responded by email, over a month and half later, on January 26, 2010. At that time, EarthLink was advised that the system changes would take effect on March 21, 2010, for Verizon territories and on March 26, 2010, for Frontier territories.

Further, in response to a question by EarthLink about whether the changes would be permanent and/or whether Frontier would develop their own specifications, Verizon responded: "*These changes will be permanent. Frontier may make changes to these specifications after 7-1-2010 at their determination*." Verizon was also asked whether the terms of the current contract with Verizon would remain in place. Verizon responded: "*Yes, the current Terms and Conditions for your [Verizon Agreement] will apply for both RetainCo and SpinCo lines until June 30, 2010. After 6-30-2010, new Terms and Conditions will need be put into place for both the Frontier and Verizon areas that are specific to each area.*" These responses are significant in that they appear to indicate that as of July 1, 2010, Verizon plans to remove itself entirely from service ordering and provisioning and that Frontier would be free to make additional changes to the ordering and provisioning process unilaterally, as well amend the contracts under which parties currently operate. In addition, it appears that EarthLink and New Edge will be required to have multiple contracts with the new Frontier that are "specific to each area."

In early February 2010, after several email and telephone exchanges regarding the timing and details of the proposed OSS implementation, EarthLink and New Edge received a new

notice from Verizon detailing the same system changes, but instead of referring to the Verizon-Frontier transaction as a basis for the change, Verizon asserted the new specifications were part of a Verizon "internal realignment" unrelated to the Verizon-Frontier transaction. Thereafter, during subsequent telephone conversations, Verizon asserted that it had always planned to reorganize its OSS system into two different regions and that third party contractors sent out incorrect information in the December 2009 notice.

Moreover, Verizon has indicated recently that from March 29 to May 6, 2010, EarthLink and New Edge will not be able to access the electronic Verizon OSS system for the Verizon territories being transferred to Frontier. As a result, during this time, EarthLink and New Edge will not be able to pre-qualify customers, impeding their ability to place any new orders in this region. In addition, EarthLink and New Edge will not be able to issue trouble tickets for existing customers on the electronic OSS system and it is unclear whether a manual work-around to raise trouble tickets will be available. This failure to have any electronic OSS during this period will have a significant impact on operations and also impact the contractual obligations of EarthLink and New Edge with both its customers and with Verizon.

When EarthLink and New Edge raised issues regarding a potential premature transfer and the pending merger application at the Commission, a Verizon associate general counsel indicated that Verizon had a clear understanding that the Commission had no problems with OSS-related issues in the transaction and that the Commission's forthcoming order would not include OSS conditions.

Frontier Response to FCC Data Request

Frontier's response to the FCC's February 12, 2010, information and document request ("Frontier Response") highlights additional concerns over the transfer of OSS systems in the proposed transaction. While Frontier highlights the system integrations it has undertaken in the past (Frontier Response, pp. 19-20), the largest – at 750,000 lines – pales in comparison to the proposed transaction which will effect over 4.8 million access lines and will have a substantial impact as compared to previous endeavors. Moreover, EarthLink and New Edge are concerned that decisions are being made regarding the OSS system transfer without consideration of the impact on wholesale customers (and their users). In addition, the Frontier Response calls into question the commitments to cost-savings and consumer benefits made by Frontier and Verizon.

Frontier describes its plan to run simultaneously two OSS systems: the duplicated Verizon OSS in the Verizon territories and a new Synchronoss OSS system in the Frontier territories (Frontier Response, pp. 12, 13). Wholesale providers need accurate and timely information in order to implement systems and inform their customers, but the use of two systems post-transaction will cause further delay and confusion. To date, EarthLink and New Edge have received no information directly from Frontier regarding any details of system changes in any states, including any details of the Synchronoss OSS system transfer and, thus, do not know which locations and customers will be affected and how they will be impacted by the changes.

EarthLink and New Edge are concerned that Frontier lacks sufficient experience running either the Verizon OSS system or Synchronoss, and, further, that Frontier has failed to implement adequate transfer and testing procedures to ensure a seamless transfer of the systems. While Frontier indicates it will work with "CLECs requesting a testing window" for the new Synchronoss system in West Virginia (Frontier Response, p. 13), we believe Frontier must establish and implement plans to test *both* OSS systems in *all* states with *all* entities impacted by the system transfers, including wholesale broadband service customers.

Frontier also appears ready to consolidate the two OSS systems into the new Synchronoss system in the near future, likely as soon as twelve months from the transaction closing (Frontier Response, pp. 13, 15). This will require wholesale customers such as EarthLink and New Edge to expend significant additional resources. Under this plan, wholesale customers are expending resources *now* to effectuate the transfer to two new systems and will be required to expend even more resources *later* to further consolidate the systems. Of equal concern is that this planned system consolidation will take place outside the purview of regulatory oversight, which could leave broadband customers and consumers without clear and swift redress should complications arise.

Frontier also references the conditions adopted in various state settlements as adequate to address any transfer concerns (Frontier Response, pp. 7, 10, 15). EarthLink and New Edge are concerned that entities that did not participate in each state proceeding (whether due to resource constraints or other reasons) will not be able to rely upon the commitments made in those states and, thus, will not be adequately protected. In addition, where Frontier has agreed to submit detailed OSS integration plans to certain state public utility commissions (Frontier Response, p. 15), we believe that these plans should be submitted to all interested and affected parties. It is vital the information is shared with the industry (and users) who will be affected by such plans.

Proposed OSS Conditions

As a result of the timing and concerns raised by Verizon and Frontier communications to date regarding changes to the broadband OSS systems, EarthLink and New Edge urge the Commission to ensure that wholesale customers are given adequate information, time, and access to details and resources necessary to implement system changes due to the proposed transaction, including the following:

- Require a Project Plan: Verizon and Frontier should be required to submit to the Commission and to its wholesale customers a clear project plan for the transfer of the OSS that contains system and process-level details, dates when the transfers(s) will occur and what wholesale customers need to do to prepare. Based on EarthLink and New Edge's experience to date, most information has been provided in response to questions raised to Verizon rather than Verizon providing comprehensive information. The information provided has been incomplete, inaccurate, inconsistent, and has not allowed enough time for EarthLink and New Edge to make the requested changes. Further, the plan must include details regarding system changes in all states involved in the transaction. To date, Verizon and Frontier have provided no information to EarthLink or New Edge of plans for OSS system changes in West

Virginia. Further, given the timing requirements in the Verizon notices, EarthLink and New Edge are concerned that significant resources will be dedicated to the reconfiguration only to require reconfiguration again should the Commission implement system-specific OSS requirements as part of its approval. As such, the project plan should contemplate system changes only *after* the Commission approves the pending application. At a minimum, the timeline for the transfer and related testing should be five months.

- Establish a Project Team: Verizon and Frontier must be required to ensure that properly trained personnel who fully understand the implications of the OSS transfer are working on the OSS system changes. For example, the Verizon system change notices contained no information regarding trouble-ticketing system changes, which is essential to a fully functioning OSS and APIs and which demonstrated a lack of understanding of the OSS system. As such, a project team consisting of qualified personnel with defined roles should be established, and points of contact and contact details provided to wholesale customers. It is vital that Frontier personnel are included on the project team as, to date, EarthLink and New Edge have only received and engaged in communication with Verizon.
- Implement a Test System: A test system for all broadband OSS and APIs involved in the transaction should be implemented based on industry best practices. Testing will allow users to ensure that changes will work in the production environment. Without testing, parties are forced to make educated guesses that the coding is correct. Verizon currently has a test system and, as such, it should not be onerous to replicate one for Frontier. In addition, Verizon and Frontier should establish and document a back-out plan for each cutover date to address any unexpected situations that may arise from cutover.
- Extend Conditions of all Settlement Agreements/State Conditions: Verizon and Frontier should be required to extend the conditions reached at state public utility commissions and terms of every settlement agreement entered into to all customers impacted by the proposed transaction, including wholesale broadband service customers.
- Commit to Annual Review and Oversight for 3 Years: The FCC should ensure no less than annual reviews of the proposed transaction for at least three years. In light of Frontier's stated plans to consolidate further its OSS systems at least twelve months from the transaction closing, the FCC should remain vigilant and involved in any actions by Frontier that may have detrimental effects on consumers and competition. Moreover, the FCC should implement an easy-to-use system that will enable customers to submit information regarding the transition or any complaints regarding adherence to the applicants' commitments.

Given the recent industry experiences with similar transactions, these steps are the minimum needed to ensure reality meets promises. It is vital to guarantee continued access to fully functioning broadband OSS and APIs, supported by knowledgeable and well trained

employees, so that competitive broadband service providers will be able to serve customers adequately and continue to spur on deployment and adoption of broadband across the U.S.[2] As a result of the transaction, Frontier has the opportunity to greatly improve services to residential and wholesale customers by implementing a similar – or better – fully functional and comprehensive OSS as offered by Verizon.

EarthLink and New Edge also highlighted the Commission's opportunity here to examine broadband OSS issues, including costs and related implementation, technical concerns, user benefits and market issues. To promote further its broadband goals in general and the public interest in the proposed transaction, the Commission must ensure that the commitments made by Verizon and Frontier are met. Especially in light of the inadequate and confusing information provided by Verizon, as well as the lack of responsiveness to questions and concerns raised, it is vital that the FCC adopt a rigorous oversight process and related enforcement mechanisms post-transaction.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in the above-referenced docket for inclusion in the public record. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,

Jennifer P. Bagg
Counsel for EarthLink, Inc. and
New Edge Network, Inc.

CC (*via email*):
Nick Alexander
Paul de Sa
Bill Dever
Alex Johns
Virginia Metallo
Steve Rosenberg
Carol Simpson

[2] Comments of EarthLink, Inc. and New Edge Network, Inc., 3-4, GN Dkt. 09-95 (Sept. 21, 2009).

The FCC Should Require OSS Commitments to Ensure the Transaction Serves the Public Interest

Require a project plan:

- ✓ There must be a clear plan for the transfer of OSS with system and process-level details, wholesale customer requirements and dates for transfers and testing.
- ✓ The plan must be submitted to the FCC and to wholesale customers.
- ✓ Need 5 months for transfer and testing.

Establish a project team:

- ✓ The plan must include properly trained personnel who fully understand implications of OSS transfer that are appointed to work with wholesale customers.
- ✓ Points of contact and contact details must be provided to wholesale customers.

Implement a test system:

- ✓ A test system must be implemented based on industry best practices.
- ✓ In addition, there must be a back-out plan for each cutover date to address any unexpected situations that may arise from cutover.

Extend state conditions and settlement agreements:

- ✓ All conditions reached at state public utility commissions and all terms of settlement agreements must be extended to all customers impacted by transaction, including wholesale broadband service customers.

Provide FCC annual review and oversight for 3 years:

- ✓ The FCC should require no less than annual reviews for at least 3 years.
- ✓ In light of Frontier's stated plan to further consolidate OSS systems in as soon as 12 months, FCC should remain vigilant and involved in any actions that may have a detrimental effect on consumers and competition.
- ✓ FCC should implement a system to submit transaction-related information or complaints.