April 23, 2010

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: *Application of Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority*, WC Docket No. 09-95

Dear Ms. Dortch:

On April 22, 2010, at the request of the Wireline Competition Bureau and the Office of the General Counsel, Karen Zacharia and Katharine Saunders of Verizon, and John Nakahata of Wiltshire & Grannis, on behalf of Frontier Communications Corporation ("Frontier") (together with Verizon, "Applicants") spoke with Nicholas Alexander of the Wireline Competition Bureau, and Neil Dellar of the Office of General Counsel-Transaction Team to discuss the timeline for approval and timely close of the Frontier-Verizon transaction. The companies are anticipating a closing date at the end of the second quarter 2010, which, for the following reasons, necessitates final regulatory approvals by mid-May.

1. State regulatory approvals are virtually complete with only West Virginia still pending.
2. Financing has been secured and, as a result, Frontier is incurring interest costs of $22 million per month without any offsetting revenue stream.
3. The West Virginia transition process is prepared for a closing of June 30/July1 and if placed on hold results in ongoing costs per month of $7 million.
4. The June 30/July 1 close date enables OSS transition over the Independence Day weekend, thus minimizing disruptions to consumers and competitors.
5. Broadband deployment commitments can commence sooner rather than later, prior to the weather challenges associated with winter construction.
6. An early May regulatory approval accommodates the long lead time needed to meet legal and exchange requirements and logistical timelines associated with the spinoff.

The applications for this transaction were initially filed in May 2009, and Applicants have responded promptly to all information requests. Regulatory approvals in the states are almost complete, with only one state and the FCC still outstanding. Closing this transaction as soon as possible is in the public interest because it will allow Frontier promptly to begin implementing the broadband investments it has committed to during the state proceedings, including commencing construction in areas where construction must be halted in the winter. Frontier's post-close business plan is focused on expanding broadband access in the territories it is

acquiring, but it cannot begin to accomplish these objectives until after the transaction closes. Frontier has scheduled a Board meeting for May 12, 2010 at which the Board will be briefed as to the final steps and action items associated with a closing date of June 30/July 1, 2010.

Moreover, the financing for the Frontier-Verizon transaction was completed on April 12, 2010, through a privately placed notes offering. *See, e.g.* Letter from John T. Nakahata, Wiltshire & Grannis LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95 (Apr. 13, 2010). As a result, Frontier is obligated to pay interest (approximately $22 million per month) –without any offsetting public interest or private benefit for every month that closing does not occur. In addition to the interest costs outlined above, each month of delay results in an additional cost to Frontier of approximately $7 million related to the West Virginia transition, as the transition would have to be put on hold, but the resources to conduct the transition and post-close implementation would have to remain in place. Closing the transaction around the end of June would permit much of the OSS transition work for West Virginia to occur over the Independence Day weekend, which is a more favorable time for systems work, and that would not be the case were closing delayed for a month.

Unlike some transactions, Applicants cannot simply close immediately upon receipt of the last regulatory approvals. In this case, Applicants have several significant legal and practical requirements related to Verizon's spin-off of New Communications Holdings Inc. to its shareholders that need to be completed prior to closing; such requirements cannot be completed without receipt of all regulatory approvals. First, under the Securities Act of 1933 and the rules of the U.S. Securities and Exchange Commission, Frontier is required to provide Verizon shareholders with a prospectus prior to the closing of the merger of SpinCo and Frontier, and Verizon is required to provide its shareholders with an information statement containing comparable information before the spin-off occurs. *See* Securities Act of 1933, Sec. 5(b)(2) (requiring provision of a prospectus to Verizon's shareholders); Securities and Exchange Commission, Division of Corporation Finance, *Staff Legal Bulletin No. 4* (Sept. 16, 1997) (stating that a subsidiary does not have to register a spin-off under the Securities Act of 1933 under certain conditions, including if the parent of the company to be spun off provides adequate information to its shareholders and the trading markets "by the date it spins-off the securities"; this is satisfied if "it gives its shareholders an information statement that describes the spin-off and the subsidiary"). In this case, both the Frontier prospectus delivery requirement and the Verizon information statement requirement will be met with the same document (the "Information Statement/Prospectus").

To properly meet these requirements, however, the Information Statement/Prospectus needs to contain accurate information regarding the transaction. *See, e.g.,* Rule 14c-6(a) promulgated under the Securities Exchange Act of 1934 ("No information statement shall contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading …."). Thus, the Information Statement/Prospectus cannot be finalized or sent to Verizon's stockholders while it is still missing information that would be considered to be material to its stockholders. Information about the receipt of the approval of the Federal Communications Commission,

which is a pre-condition to the closing of the transaction, and any material conditions that may be placed upon that approval, would be considered to be material information because it would assist Verizon's stockholders in determining if or when the transaction would close, and whether it would be desirable for them to retain or sell their shares of Frontier common stock following the closing of the transaction. Furthermore, conditions that impose new financial obligations or requirements on Frontier following the transaction would need to be described in the Information Statement/Prospectus and could impact the pro forma combined financial data and results of operations of Frontier after the merger that are presented in the Information Statement/Prospectus. Additionally, the Information Statement/Prospectus must include not only the approximate date of closing, but also provide the date as of which a Verizon stockholder must hold his or her shares of Verizon common stock in order to receive shares of Frontier common stock in the transaction (*i.e.*, the "record date").

The Information Statement/Prospectus must be provided to those individuals or entities that are Verizon's stockholders as of the close of business on the record date, and the Applicants thus cannot know to whom they Information Statement/Prospectus must be provided until the record date has passed. The logistics of finalizing, printing, and mailing the Information Statement/Prospectus to the approximately 2.5 million record and beneficial holders of Verizon common stock so that these holders will receive the Information Statement/Prospectus prior to the closing of the transaction will take approximately 30 days on an expedited schedule.[1] That is because Applicants:

- Need to identify record and beneficial shareholders as of the record date and print approximately 2.5 million mailing labels.
- Need to print 2.5 million copies of the more than 400-page Information Statement/Prospectus that must be provided to all Verizon stockholders prior to the closing.
- Need to assemble and mail 2.5 million shareholder packages (first-class mail or equivalent).
- Need to account for time for shareholders to receive them prior to close.

Even with overtime and weekend processing, it takes significant time to complete and print the Information Statements/Prospectus, and Applicants must ensure sufficient leeway for shareholders to receive them prior to the closing. The postage costs for this Information Statement/Prospectus are themselves substantial – approximately $12.5 million. Applicants cannot jumpstart the process by pre-printing the Information Statement/Prospectus since, as described above, the Information Statement/Prospectus requires information that will not be determined until after Applicants have obtained the required regulatory approvals and after the record date.

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[1] In connection with the FairPoint transaction, very expensive round-the-clock printing on printing presses throughout the Northeast and as far west as Indiana had to be used to complete the process in the 24 days between the record date and closing. Requiring such exigencies raised the applicable out of pocket costs substantially.

Moreover, the record date may only be set according to certain legal requirements. First, the Verizon Board of Directors must vote to set the record date. *See* Del. Genl. Corp. Law § 213(c) (setting requirements for fixing date for determination of stockholders of record). Once the record date is set, Verizon must provide the New York Stock Exchange ("NYSE") ten days notice prior to the record date. *See* New York Stock Exchange Listed Company Manual, Rule 204.21 ("The notice is required to be received by the Exchange not later than the tenth day prior to the record date ...."). The notice to the NYSE of the record date is required to "state the purpose or purposes for which the record date has been fixed." *Id.* The record date must be no more than sixty days prior to the date of closing. *See* Del. Genl. Corp. Law §213(c). Putting these requirements together with the practical realities of finalizing, printing and delivering the Information Statement/Prospectus, the Applicants will have to give notice to the NYSE at least 40 days prior to close.

The setting of the record date has substantial implications for the transaction and for the NYSE. It is expected that under NYSE practice, approximately two business days prior to the record date, there will be two markets for Verizon common stock on the NYSE—a "regular way" market in which a person selling Verizon common stock will also be selling the right to receive shares of Frontier stock at closing, and an "ex-distribution market" in which the Verizon shareholder will only be selling his or her interest in Verizon common stock and will be retaining the right to receive Frontier common stock in the merger. *See* Form 10 Information Statement, New Communications Holdings Inc., at 3 (filed Apr. 20, 2010, file no. 000-53950) (stating that as of two days before the record date, "[i]t is currently expected that … there will be two markets in Verizon common stock on the NYSE: a 'regular way' market and an 'ex-distribution' market" and explaining the right to sell due-bills in the regular way market). This is the same way that shares have traded after the record date in other spin-off transactions. *See, e.g.* Verizon Communications Establishes Record and Closing Dates for Spin-off of Northern New England Spinco, Verizon (Feb. 26, 2008) ("Verizon has been advised by the New York Stock Exchange that beginning on or about March 5 and continuing through the anticipated closing date of the merger, there will be two markets in Verizon common stock on the NYSE: a "regular way" market and an "ex-distribution" market."). During the same time period, there is also expected to be two markets for Frontier common stock on the NYSE: a "regular way" market and a "when issued" market which will be a market for the shares of Frontier common stock that will be issued at the closing of the Merger.

If closing does not occur on or about the date contemplated by the Board determination and as disclosed in the Information Statement/Prospectus – if, for example, a regulatory approval does not occur – the NYSE will have to unwind and cancel all trades in the Verizon "ex-distribution" market as well as all trades in the Frontier "when issued" market.. As a result, all persons who traded in these markets will have failed transactions. *See id.* (noting that "[i]f the merger is not completed," all trades in the ex-distribution market "will be cancelled"). Further, if the closing of the transaction is delayed materially so that the Information Statement/Prospectus cannot be received by Verizon's stockholders within 60 days following the record date or the financial information in the Information Statement/Prospectus becomes stale due to the passage of time, the parties will have to reset the record date, re-identify the applicable shareholders, and revise, print and mail an updated Information Statement/Prospectus or an amendment to that

document – likely another $12.5 million in postage alone. Thus, in addition to the reasons above, there are extraordinarily high financial and legal risks to trying to start the record date process before all regulatory approvals are received. To comply with their obligations, therefore, Applicants need to obtain notice of all regulatory determinations by the middle of May 2010.

Additionally, staff asked about requirements that closing take place at or near the end of the month. First, the merger agreement specifically states that the closing of the merger shall take place "on the last Business Day of the month" unless the parties agree to waive that provision. *See* Merger Agreement at §2.2. From a practical perspective, closing at a time other than at or around month's end presents risks of customer service problems by increasing the possibility of billing errors and service disruptions. Further, both companies must prepare financial statements for the period they control the company which are most efficiently prepared on or about the last day of the month. From an accounting perspective, trying to close mid-month would require complicated systems and financial adjustments, raising the possibility of errors.

Staff also asked when the merger agreement terminates. The agreement provides that either party may terminate the agreement after July 31, 2010 if the transaction has not closed by that date, though it permits extension by either party under certain circumstances for one or more one-month periods (not to exceed four months). *See* Merger Agreement at § 9.1(b). Furthermore, if the transaction is not closed by October 1, 2010, all of the funds that were placed into escrow as described above will automatically be returned, including interest. Frontier will never obtain access to those funds and New Communications Holdings would need to obtain new financing for the transaction (potentially at a higher interest rate).

A copy of this letter is being filed in the above referenced docket for inclusion in the public record, pursuant to the Commission's rules.

Respectfully submitted,

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