

May 12, 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:

The Verizon-Frontier transaction has been structured as a spin-off followed by the acquisition of the spun-off corporation (“SpinCo”) by Frontier. Such a transaction is commonly referred to as a Reverse Morris Trust or “RMT.” We understand that some parties have recently asserted that the use of an RMT in the context of the Verizon-Frontier transaction is harmful to consumers and somehow improper. They are wrong. As the parties explained in their December 17, 2009 *ex parte*, an RMT is a fully lawful structure and has been used in a variety of industries. See Letter From J. Nakahata, Frontier Communications Corp. *et al.* to M. Dortch, FCC, WC Docket No. 09-95, at 8 (Dec. 17, 2009). And, importantly, the Internal Revenue Service has already issued a private letter ruling approving the tax-free treatment of this specific transaction.

The use of a “spin-off” or an RMT in a corporate transaction is neither novel nor improper: they are well-established and long-approved mechanisms endorsed by Congress. In 1951, Congress adopted the policy that corporate spin-offs are tax-free transactions provided that the SpinCo satisfies certain requirements and the shareholders of the corporation that is spinning off SpinCo are not, in effect, receiving a dividend or cashing out their investment.¹ In 1997, during the Clinton administration, Congress clarified this policy by setting forth the requirements pursuant to which an RMT would be a tax-free transaction. In particular, Congress determined that a spin-off followed by an acquisition of SpinCo will be tax-free if, after the acquisition, the historic shareholders of the corporation that spun it off continue to own more than 50% of SpinCo through the acquiring corporation.²

Congress’ determination that these transactions should be tax-free makes sense. In straightforward terms, before a spin-off, shareholders own the stock of one company; after a spin-off, they own the stock of two companies which together conduct the same corporate operations as the single company that existed prior to the spin-off. When a spin-off is followed

¹ See Bittker and Eustice, “Federal Income Taxation of Corporations and Shareholders,” ¶ 11.01[2][a] (Seventh Ed.); Tax Management Portfolio, Corporate Separations, No. 776-3rd, p. A-2.

² See H.R. Rep No. 220, 105th Cong., 1st Sess. (1997), Conference Report on 1997 Taxpayer Relief Act.

by a merger, so long as the historic shareholders are not cashing out their investment or otherwise receiving a dividend in the course of the transaction, they are still continuing to own indirectly the same assets they indirectly owned pre-transaction, and thus no tax is owed.

In this case, the historic Verizon shareholders are not cashing out their investment or otherwise receiving a dividend and, after Frontier's acquisition of SpinCo, the historic Verizon shareholders will continue to own more than 50% of SpinCo through their ownership of Frontier. A historic stockholder will allocate his or her historic basis in Verizon stock to the retained Verizon stock and the new stock of Frontier and would owe tax on a sale of the stock at such time as the shareholder sells the stock (assuming it were sold at a gain). Corporations in a variety of industries have made use of the RMT in a broad range of transactions, including Procter & Gamble's divestiture of its Folger coffee subsidiary to J.M. Smucker; Weyerhaeuser Co.'s \$6 billion deal with Domtar Inc. to combine their white-paper businesses; H.J. Heinz's \$2.8 billion divestiture of various brands, including Starkist tuna and 9-lives cat food, to Del Monte Foods; and Alberto-Culver Co.'s \$3 billion sponsored spin-off of its Sally beauty supply distribution business to Clayton, Dubilier & Rice Inc.³

The Verizon-Frontier transaction has been structured and will be completed in accordance with the requirements of section 355 of the Code and is consistent with Congressional policy and intent. Thus, the IRS on February 5, 2010 issued a favorable private letter ruling to Verizon indicating that the transaction will be tax-free to Verizon, SpinCo, and Verizon's shareholders that receive SpinCo stock.

Moreover, Frontier believes this transaction structure is in the public interest. Here, use of the RMT structure facilitates broadband investment, in furtherance of the Commission's broadband goals. Frontier will acquire operations that Verizon no longer finds strategic, and Frontier will upgrade these operations by investing in broadband. Just as tax credits facilitate broadband investment in rural areas, here this structure permits Frontier to expand its reach into serving the rural, suburban, and smaller urban areas that are its strategic focus. The result will be greater investment in the new Frontier areas and increased deployment of and subscribership to next generation services in these communities.

³ See, e.g., Procter & Gamble, 10-Q, at 11 (Oct. 29, 2009); Del Monte Foods Co., 10-Q, at 6 (March 17, 2003); Weyerhaeuser Co., 10-Q, at 7 (May 10, 2007); Domtar Inc., Form 6-K, at 2 (Aug. 24, 2006); Alberto-Culver, Press Release: Alberto-Culver Co. Announces \$2.6 Billion Agreement to Spin/Merge Sally Beauty Company with Regis Corporation, at 2 (Jan. 10, 2006).

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A copy of this letter is being filed in the above-referenced docket. Please let me know if you have any questions.

Sincerely,



John T. Nakahata
Counsel to Frontier Communications Corp.