



June 9, 2010

***Ex Parte***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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:

Frontier Communications Corp. (“Frontier”) hereby submits a copy of the Public Service Commission of West Virginia’s order denying the May 24, 2010 request for reconsideration from the Consumer Advocate Division of the May 13, 2010 Commission Order approving Frontier and Verizon’s Joint Petition for consent and approval of the transfer of Verizon’s local exchange and long distance business in West Virginia to companies to be owned and controlled by Frontier Communications.<sup>1</sup>

A copy of this letter is being filed in the above-referenced docket.

Sincerely,

/s/ John T. Nakahata  
John T. Nakahata  
*Counsel to Frontier Communications Corp.*

Attachment

<sup>1</sup> Case No. 09-0871-T-PC

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 7<sup>th</sup> day of June 2010.

CASE NO. 09-0871-T-PC

FRONTIER COMMUNICATIONS CORPORATION, CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA dba FRONTIER COMMUNICATIONS OF WEST VIRGINIA, NEW COMMUNICATIONS HOLDINGS, INC., NEW COMMUNICATIONS ILEC HOLDINGS, INC., NEW COMMUNICATIONS ONLINE and LONG DISTANCE, INC., VERIZON WEST VIRGINIA INC., VERIZON LONG DISTANCE, LLC, and VERIZON ENTERPRISE SOLUTIONS, LLC.

Joint Petition for consent and approval of the transfer of Verizon's local exchange and long distance business in West Virginia to companies to be owned and controlled by Frontier Communications.

**COMMISSION ORDER**

The Commission denies the May 24, 2010, request for reconsideration by the Consumer Advocate Division (CAD) of the May 13, 2010 Commission Order (Order).

**BACKGROUND**

On May 29, 2009, Frontier Communications Corporation (Frontier), New Communications Holdings, Inc., New Communications ILEC Holdings, Inc., New Communications Online and Long Distance, Inc., Verizon West Virginia Inc. (Verizon WV), Verizon Long Distance, LLC and Verizon Enterprise Solutions, LLC (together Applicants) jointly applied for approval of transactions to spin off substantially all Verizon wireline business in West Virginia and merge those entities with Frontier (Transaction). Joint Application.

The Commission subsequently received and granted requests to intervene from CAD, competing carriers, the Communications Workers of America and the federal government.

On May 13, 2010, the Commission issued the Order approving the Transaction requested in the Joint Application, subject to a series of conditions designed to remediate

concerns raised by the parties at hearing. The Commission also adopted two settlements between the Applicants and competing carriers that were attached and incorporated into the conditions listed in Appendix A to the Order.

On May 24, 2010, CAD filed a request for reconsideration of portions of the Order (Petition for Reconsideration). CAD raised five points in its Petition for Reconsideration including (1) a renewed request for a third party audit of the cutover process, (2) a request to expand the termination fee waiver in Condition 16 of Appendix A to include fees that may be charged by third party service providers, (3) a request to add a condition requiring completion of the rehoming process of customers in Mineral County before cutover, (4) a request to modify Condition 28 of Appendix A, currently requiring Frontier to provide prior Commission notice of any staffing reduction of 5% or more and (5) a request to modify the language of Condition 3 to Appendix A that requires Frontier to spend \$48 million for expansion of broadband coverage in West Virginia.

On June 3, 2010, the Applicants filed a response in opposition to the Petition for Reconsideration.

The remainder of the procedural background of this matter is described in Appendix B of the Order.

### **DISCUSSION**

The Commission has reviewed the Petition for Reconsideration from CAD along with the response from the Applicants. For the reasons that follow, the Commission rejects the Petition for Reconsideration.

#### **Third Party Audit**

The first aspect of the Order CAD requested that the Commission revisit is the rejection by the Commission of a requirement for a third party audit of the cutover from Verizon to the Frontier network. CAD asserted that the settlements with competing carriers provide them with substantial protection in the form of pre-cutover testing for wholesale customers, but the Order allegedly leaves retail customers unprotected from a failed cutover. CAD therefore requested that the Commission require a third party audit of the cutover that would include an independent review to generate a report to the Commission prior to any cutover. Petition for Reconsideration at 2-4.

The Commission specifically addressed the request for a third party cutover audit in the Order. The Commission examined the record and found that the pre-cutover audit CAD proposed here was unnecessary and potentially detrimental to a successful cutover. The Commission concluded that the track record Frontier has demonstrated of successful cutovers

and the planned pre-cutover testing are sufficient precautions. Order at 19.<sup>1</sup> The Commission recognized the expertise of the Applicants and encouraged the Applicants to keep Commission Staff informed on their progress. The Applicants have agreed to do so. Id., and Applicants Response at 6.

The Commission rejects allegations of a disparity between the treatment of wholesale and retail telephone customers. Instead of causing a disparity between customer classes, the Commission believes that testing by future Frontier wholesale customers in advance of the cutover should help to alleviate concerns about the cutover. The Commission believes that wholesale testing may discover system errors that could hamper retail ordering, because both wholesale and retail customers often request similar telecommunications services.

The Commission also notes that retail customers do not interact with Frontier through an e-bonded ordering system, but would instead order services through a representative at a call center. Without the need to interconnect two ordering systems, retail customers have no need for a separate testing regimen. The planned testing by Frontier, including numerous data extracts loaded by Frontier, will satisfactorily evaluate the operability of retail customer information. Frontier Ex. 5 at 29, 33-4. Finally, as noted in the recent order approving the Transaction by the Federal Communications Commission, the West Virginia cutover will be to an ordering system that is currently operating instead of a totally new system as in the failed Hawaiian Telecom and FairPoint Communications transactions. In the Matter of Application of Frontier Communications Corporation and Verizon Communications Inc., for Assignment or Transfer of Control, WC Docket No. 09-95 (May 21, 2010) at ¶ 33.

While it may sound appealing, requiring a pre-cutover audit applies a “more is better” hypothesis to the cutover process without any real analysis that it is likely to be true. The Commission has considered the potential benefits of interjecting itself, or a third party, into the cutover process and has determined that in reality it will impose another layer of oversight, cost and delay. We have stated in strong terms that we expect the Applicants to stay in front of this cutover. They have the expertise and personnel to complete it in a timely and reasonable manner. We expect and require nothing less. Without any new justification for a third party audit, the Commission rejects the CAD request to require one for this Transaction.

### Early Termination Fees

CAD also requested that the Commission expand the scope of the termination fee waiver contained in Condition 16 of Appendix A to include reimbursement of early termination fees that third party service providers, primarily DirecTV, Inc., (DirecTV), or

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<sup>1</sup>No regulatory body examining the Transaction has seen fit to require a pre-cutover audit and in New England such a process did not prevent any problems. In fact, the testimony indicates that the auditor did not object to the New England cutover despite reservations from Verizon. See, CAD Cross Ex. 39.

Cellco Partnership dba Verizon Wireless (Verizon Wireless), may charge customers for early termination with bundles that include satellite television or wireless service.<sup>2</sup> Petition for Reconsideration at 4-6.

In the Order, the Commission conditioned approval for the Transaction on Frontier waiving early termination fees for current Verizon WV customers participating in a Verizon bundle for the first ninety days after closing on the Transaction. Order Appendix A at Condition 16. This condition, however, did not include termination fees charged by third parties.

At hearing, CAD introduced and confirmed information contained in CAD Cross Exhibit 3, stating that Verizon planned to negotiate an agreement for Verizon WV customers to continue its bundled DirecTV service after the Transaction. Transcript of January 12, 2010 Commission Hearing at 190-91.<sup>3</sup> Frontier stated that negotiations between Verizon and DirecTV were ongoing as of the hearing date. *Id.* The Applicants also plan to discontinue the existing Verizon WV wireless bundle, but Verizon Wireless customers will continue to receive service from Verizon. CAD Cross Ex. 4 and Tr. 1/12/10 at 195.

The Commission believes that a contract for continuation of existing satellite television service from DirecTV through Frontier on the same terms and conditions eliminates the risk of unexpected or unwarranted termination fees for those customers as a result of the Transaction. CAD has not presented any evidence or allegation that the Applicants have failed to obtain the anticipated contract. Similarly, current bundled wireless customers may continue their existing service after closing of the Transaction directly from Verizon Wireless. Thus, the Commission does not find any prejudice to customers with third party service from DirecTV or Verizon Wireless and rejects the request to modify the conditions of the Order on that basis.<sup>4</sup>

### Rehoming of Customers

The third element of the CAD Petition for Reconsideration is a request to add a condition requiring the completion of a project before cutover to rehome service for approximately 2,000 Verizon customers located in Mineral County, West Virginia, from

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<sup>2</sup>The Commission does not regulate satellite television service, but does regulate telephone company promotion and billing practices, including billing as part of bundled services. Jeffrey v. Verizon West Virginia Inc., Case No. 08-0480-T-C (Commission Order, June 2, 2008).

<sup>3</sup>The Commission will subsequently refer to the Transcript from the evidentiary hearing by date as Tr. 1/12/10 and subsequent days in like manner.

<sup>4</sup>CAD also tangentially reiterated its request for a detailed separately mailed notice of the Transaction. The Commission has already considered and rejected that request. It sees no reason to impose added expense to the Transaction for the marginal possibility that an additional piece of mail will highlight a well publicized utility transfer. Order at 26.

switches located in Maryland. Petition for Reconsideration at 6. In direct testimony, CAD witness Roycroft briefly raised a concern that Verizon did not have detailed plans to prevent a service disruption to these customers. CAD Ex. 1 at 50-51. Verizon responded in rebuttal testimony by stating that it would rehome service to customers served from Maryland exchanges before the cutover at its expense. Verizon Ex. 2 at 36.

At hearing, Verizon witnesses expanded on its rehoming plan. As of January 15, 2010, Verizon had predominantly completed the engineering work, obtained most of the needed easements and installed some of the rewiring. Tr. 1/15/10 at 94-95. Verizon still expected to complete the process before closing. *Id.* It also stated that the rehoming process would have no impact on DSL service. *Id.* at 92-94.

In their response, the Applicants stated that the rehoming is now well underway including already rehoming 99% of the planned migration to the Gormanian and Elk Garden exchanges. Verizon plans to rehome customers to the Keyser exchange starting on June 8, 2010. Applicants Response at 9-10.

The Commission has reviewed the testimony regarding the rehoming process for West Virginia customers served through offices located in Maryland and the update contained in the Applicants Response. The Commission is satisfied that work to connect those customers to West Virginia facilities is substantially underway and on track for completion before the cutover to Frontier. The Commission will hold Verizon WV to its promise to provide the same service for these customers after cutover, and the current record does not justify additional conditions to the Transaction. The CAD argument assumes that these customers would be severed from existing service if the rehoming process falls behind schedule. The Commission believes that, if necessary, Verizon can continue to serve these customers through existing facilities until the rehoming project is complete. Thus, the Commission rejects the need to reconsider the Order on the basis of the Mineral County rehoming project.

### Staffing Reduction Reporting

CAD also requested that the Commission expand a condition it imposed on the Transaction requiring Frontier to report staffing reductions exceeding 5% of its workforce to include any series of reductions aggregating to 5% or more of the workforce. CAD argued that the expanded requirement is necessary to prevent Frontier from evading the Commission requirement by segmenting a workforce reduction into multiple reductions below the 5% threshold. Petition for Reconsideration at 7.

The Commission is not inclined to modify Condition 28 of Appendix A on the Transaction. The Commission adopted the 5% threshold to differentiate between significant staffing changes that Commission expects Frontier to justify under Condition 28 from minor staffing fluctuations that occur in any large organization. Obviously, the Commission would reject any attempt by Frontier to segment a staff reduction to evade Commission review.

CAD has not, however, presented evidence showing an intent to evade review.<sup>5</sup> Thus, the Commission will not presume that intent at this point and declines to modify Condition 28. The Commission does note that CAD may separately petition the Commission, and the Commission always reserves the right, to investigate staffing reductions that negatively affect customer service apart from those covered by Condition 28.

### Broadband Commitment

Finally, CAD requested that the Commission clarify Condition 3 from Appendix A to prohibit Frontier from counting indirectly obtained federal funds toward that investment requirement. Petition for Reconsideration at 7-8. Condition 3 requires Frontier to spend at least \$48 million to expand broadband availability in the Verizon WV service area. It also prohibits Frontier from counting “any federal stimulus funding Frontier obtains. . .” toward that amount. Appendix A to the Order. The Commission believes that the current language of Condition 3 prohibits Frontier from counting federal stimulus funds, whether directly from the federal government or indirectly through either a state or local government toward the \$48 million investment requirement. The Applicants likewise interpret Condition 3 to prohibit applying indirectly obtained stimulus funds toward the \$48 million investment requirement. Applicants Response at 11. While the Commission appreciates the cautious approach CAD advocates, the Commission finds the revision unnecessary and therefore rejects the request to modify Condition 3.

Thus, based on the foregoing discussion, the Commission rejects the CAD Petition for Reconsideration.

### FINDINGS OF FACT

1. The Applicants filed for Commission consent and approval for the Transaction described in the Order. Joint Application.
2. CAD requested that the Commission reconsider five aspects of the Order. CAD Petition for Reconsideration.

### CONCLUSIONS OF LAW

1. CAD did not present any new factual or legal basis justifying a reconsideration of the Order. Id.

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<sup>5</sup>The Commission also rejects the assertion by the Applicants that Commission authority to require reporting of staffing changes is limited to significant staff reductions. The Commission has clear statutory authority to require descriptions from the Applicants of any utility practices in conducting their service. W.Va. Code §24-2-9. In this case, however, the Commission limits the requirement for the reasons stated above.

2. It is reasonable to deny the CAD Petition for Reconsideration of the Order.

**ORDER**

IT IS THEREFORE ORDERED that the CAD Petition for Reconsideration of the May 13, 2010 Order is denied.

IT IS FURTHER ORDERED that on entry of this Order the Executive Secretary shall remove this matter from the active docket of Commission cases.

IT IS FURTHER ORDERED that the Commission Executive Secretary shall serve a copy of this Order by electronic service on all parties requesting that service, on all other parties by First Class Mail and on Staff by hand delivery.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

Commissioner Staats dissents and would deny the Transaction.

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