Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control	)	WC Docket No. 09-95

MEMORANDUM OPINION AND ORDER

Adopted: May 21, 2010 **Released: May 21, 2010**

By the Commission: Chairman Genachowski issuing a statement; Commissioners Copps and Clyburn issuing a joint statement.

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I. INTRODUCTION

1. Frontier Communications Corp. (Frontier) and Verizon Communications Inc. (Verizon, and together with Frontier, the Applicants) have requested permission for transfers that would result in control of 4.8 million access lines changing from Verizon to Frontier in primarily rural and smaller city areas in 14 states in the West, Midwest, and South. The lines at issue are used primarily for local residential and business telephone service, long-distance telephone service, wholesale service, and broadband Internet service.[1]

2. We are required to determine if the Applicants have demonstrated that the proposed transaction would serve "the public interest, convenience, and necessity."[2] This transaction holds promise for the future of broadband in certain areas of rural America. Of the 4.8 million access lines Frontier seeks to acquire, only approximately 62 percent are currently capable of providing broadband at any speed, and only approximately 50 percent at speeds of at least 3 Mbps.[3] Frontier, a mid-sized carrier dedicated to serving rural areas and smaller cities, has a track record of extensive broadband deployment and has committed to building out broadband to at least 85 percent of the transferred lines within the next few years—an increase of more than 1.2 million housing units.[4] The transaction does not appear likely to harm competition or consumers directly, but some commenters have raised concerns that Frontier will be unable to successfully integrate and operate the transferred assets, and will ultimately fail to meet its obligations to consumers, employees, and business partners.

3. We have carefully reviewed the record and requested extensive additional data from the Applicants. We conclude that, with certain conditions set forth below to mitigate potential harms, the likely public interest benefits of the transaction outweigh the potential public interest harms, and that the transaction therefore serves the public interest. We also note that nine states have granted their approval, providing additional comfort that the transaction, as conditioned at the state and federal levels, serves the public interest.[5] Accordingly, we grant our consent to the transfer conditioned on compliance with the

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[1] Verizon Communications Inc. and Frontier Communications, Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority (Frontier/Verizon Application or Application), *attached to* Application of Contel of the South, Inc. d/b/a Verizon Mid-States Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority, WC Docket No. 09-95 (filed May 29, 2009). (The Contel of the South application was designated the lead application.) We refer herein to both the transfer of control of Verizon and the transfer of control of Frontier to a reorganized Frontier as "the transaction."

[2] 47 U.S.C. §§ 214(a), 310(d).

[3] Letter from Kathleen Q. Abernathy, Chief Legal Officer, Frontier Communications Corp., to Chmn. Julius Genachowski and Commissioners, FCC, WC Docket No. 09-95 at 2 (filed May 10, 2010) (Frontier May 10 *Ex Parte*).

[4] *See* Frontier, Further Commitments by Frontier Communications Corp. 1-2 (filed May 10, 2010) (*Frontier May 10 Commitments*), *attached to* Frontier May 10 *Ex Parte*, Attach. A.

[5] *See Frontier Communications Corp. et al. 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*, Case No. 09-0871-T-PC, Order (W.Va. Pub. Serv. Comm'n May 13, 2010); *Frontier Communications Corporation, Verizon Communications, Inc., Verizon North Inc., Verizon South Inc., and New Communications of the Carolinas, Inc.; Joint Application for the approval of a Reorganization pursuant to Section 7-204 of the Public Utilities Act; the Issuance of Certificates of Exchange Service Authority pursuant to Section 13-405 to New Communications of the Carolinas, Inc.; the Discontinuance of Service for Verizon South Inc. pursuant to Section 13-406; the Issuance of an Order Approving Designation of New Communications of the Carolinas, Inc. as an Eligible Telecommunications Carrier Covering the Service Area Consisting of the Exchanges*

(continued....)

voluntary commitments listed in Appendix C and Appendix D, which shall constitute binding and enforceable conditions of our approval.

II. BACKGROUND

A. Description of the Applicants

1. Frontier Communications Corp.

4. Frontier, a publicly traded Delaware corporation,[6] is a full-service communications provider focused primarily on rural areas and smaller cities.[7] Frontier provides an array of telecommunications and other services to residential and business customers, including local and long-distance voice, broadband Internet service, and multichannel video service, through its wholly owned operating companies.[8] Frontier currently has approximately 2.3 million access lines in 24 states.[9]

2. Verizon Communications Inc.

5. Verizon, a publicly traded Delaware corporation, is a holding company with operating subsidiaries that provide a range of communications services in the United States and select foreign

(Continued from previous page)

to be Acquired from Verizon South Inc. upon the Closing of the Proposed Transaction and the Granting of All Other Necessary and Appropriate Relief, Case 09-0268, Final Order (Ill. Comm. Comm'n Apr. 21, 2010); *Verizon Communications Inc. and Frontier Communications Corp., For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.*, Docket UT-090942, Final Order Approving and Adopting, Subject to Conditions, Mulitparty Settlement Agreements and Authorizing Transaction, Order 06 (Wash. Pub. Util. Comm'n Apr. 16, 2010); *Verizon Communications Inc. and Frontier Communications Corporation, Joint Application for an Order Declining to Assert Jurisdiction, or, in the Alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, UN 1431, Order, Order No. 10-067 (Or. Pub. Util. Comm'n Feb. 24, 2010); *Joint Application, of Verizon California et al. for Approval of the Transfer of Verizon's Local Exchange and Long Distance Business*, Docket Nos. T-01846B-09-0274, T-03289A-09-0274, T-03198A-09-0274, T-20679A-09-0274, T-20680A-09-0274, T-20681A-09-0274, Opinion and Order, Decision No. 71486 (Ariz. Corp. Comm'n Feb. 23, 2010); *Joint Application of Frontier Communications Corporation et al. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-ACO, Opinion and Order (Ohio Pub. Util. Comm'n Feb. 11, 2010); *Joint Application of Frontier Communications Corporation et al. for Approval of the Sale of Assets, Transfer of Certificates and Customer Bases, and Issuance of Additional Certificates*, Application 09-06-005, Decision Granting the Joint Application of Frontier and Verizon, Decision 09-10-056 (Cal. Pub. Util. Comm'n Nov. 4, 2009); *Joint Application of Frontier Communications Corp. et al. for Approval of the Transfer of Assets, Authority and Certificates*, Docket No. 2009-220-C, Order Approving Transfer of Assets, Authority, and Certificates, Order No. 2009-769 (S.C. Pub. Util. Comm'n Oct. 29, 2009); *Joint Application of Verizon California Inc. et al. for Approval of a Transfer of Control, the Transfer of Certificate CPC 2 Sub 10 from Verizon to New Communications, and the designation of new Communications as an Eligible Telecommunications Carrier*, Docket No. 09-06005, Order (Nev. Pub. Util. Comm'n Oct. 28, 2009).

[6] Frontier, Quarterly Report (Form 10-Q), at 1 (May 6, 2010) (Frontier 10-Q), *available at* http://www.sec.gov/Archives/edgar/data/20520/000002052010000050/form10q1q10.htm.

[7] Frontier/Verizon Application, Exh. 1 at 6; Frontier 10-Q, Pt. I, Item II, Overview.

[8] Frontier/Verizon Application, Exh. 1 at 5-6; Frontier 10-Q, Pt. I, Notes to Consolidated Financial Statements, (11) Segment Information.

[9] Frontier/Verizon Application, Exh. 1 at 6. Frontier's current service territories are in Alabama, Arizona, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Utah, West Virginia, and Wisconsin. *Id.* Exh. 1 at 6 n.6.

countrics, including local and long-distance voice, broadband Internet service, and multichannel video service, and, through its majority owncrship of Verizon Wireless, wireless service.[10] Verizon provides broadband Internet service in 24 states and the District of Columbia[11] and has wireless 3G coverage in all 50 states, the District of Columbia, and Puerto Rico.[12] Verizon also provides a variety of services to other telecommunications carriers as well as large and small businesses.[13]

B. Description of the Transaction

6. On May 13, 2009, Frontier, Verizon, and New Communications Holdings, Inc. (NCH), a wholly owned subsidiary of Verizon, entered into an Agreement and Plan of Merger (Agreement). Pursuant to the terms of the Agreement, the proposed transaction consists of three distinct but immediately sequential steps. First, Verizon has undergone an internal reorganization consisting of several *pro forma* transactions,[14] whereby it has transferred to NCH those subsidiaries that own its local wireline operations and serve long-distance customers in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia, and Wisconsin as well as a small number (but not all) of Verizon's exchanges in California, including those bordering Arizona, Nevada, and Oregon.[15] These subsidiaries provide local exchange service and exchange access service, as well as long-distance service, to approximately 4.8 million access lines.[16] In some of these areas, these subsidiaries also provide broadband Internet service and multichannel video service.[17] Second, Verizon will make a *pro rata* distribution of NCH stock to Verizon shareholders.[18] Third, immediately after this distribution, NCH will merge with and into Frontier, resulting in a transfer of NCH's subsidiaries. NCH shareholders (*i.e.*, Verizon shareholders who have received NCH shares) will hold 68 percent of the merged company's stock and current Frontier shareholders the remaining 32 percent, while the Board of Directors will consist of nine members appointed by Frontier and three members appointed by Verizon.[19] No individual or company will own or control 10 percent or more of

[10] Verizon, Annual Report (Form 10-K), at 3 (Feb. 26, 2010) (Verizon 10-K), *available at* http://www.sec.gov/Archives/edgar/data/732712/000119312510041685/d10k.htm; Verizon 10-K at 6-7, 13-14; *see also* Verizon, Quarterly Report (Form 10-Q), at 24 (May 6, 2010) (Verizon 10-Q), *available at* http://www.sec.gov/Archives/edgar/data/732712/000119312510096291/d10q.htm#tx63432_10; Verizon 10-K at 1; Verizon 10-Q at 13, 16.

[11] *See* Verizon, Verizon High Speed Internet Service, http://www22.verizon.com/about/community/dc/technology/dc_vhsi.html (last visited May 11, 2010).

[12] *See* Verizon Wireless, Coverage Locater, http://www.verizonwireless.com/b2c/CoverageLocatorController?requesttype=NEWREQUEST (last visited May 11, 2010).

[13] Verizon 10-K at 11; Verizon 10-Q at 25.

[14] *See* Frontier/Verizon Application Exh. 1 at 9-10 for a complete list and description of the *pro forma* transactions.

[15] *See* Frontier/Verizon Application Exh. 1 at 8. The Virginia State Corporation Commission has granted Frontier a certificate of public convenience and necessity to allow Frontier to provide local exchange service in the Crows-Hematite exchange area of Virginia, which is currently served by Verizon West Virginia. *See Frontier Communications of Virginia, For a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services*, Case No. PUC 2009-00073, Final Order (Va. St. Corp. Comm'n May 17, 2010).

[16] Frontier/Verizon Application Exh. 1 at 2.

[17] *Id.*, Exh. 1 at 21-22.

[18] *See* Frontier/Verizon Application Exh. 1 at 10.

[19] None of the people Verizon names as director of Frontier may be an employee of Verizon or its affiliates.

Frontier's stock after the transaction. To finance the transaction, Frontier has raised approximately $3.3 billion in debt financing, "substantially all" of which will be paid to Verizon.[20] In addition, Verizon's shareholders will receive shares of Frontier common stock in an amount to be determined at closing, which is expected to have a value of approximately $5.25 billion,[21] for a total purchase price of approximately $8.6 billion.

7. On May 29, 2009, the parties filed applications with the Commission that addressed only the Verizon licenses and authorizations to be transferred to Frontier.[22] However, as the transaction is structured, the current shareholders of Verizon will acquire a 68 percent interest in Frontier, and the proposed merger thus also involves a "substantial change in ownership" of Frontier and its subsidiaries.[23] After discussions with Commission staff, the parties amended their applications on July 30, 2009 to properly reflect the full scope of licenses and authorizations to be transferred.[24]

8. The Applicants contend that the transaction will serve the public interest. Specifically, they claim that the transaction will (1) "promote broadband deployment and investment in [the transaction] areas"; (2) provide Frontier a stronger financial structure and increased cash flow, making it a stronger competitor; (3) bring Frontier's innovative customer service programs to the newly acquired areas; and (4) generate $500 million in synergies.[25] The Applicants also assert that the transaction will not result in any competitive harm, and that "Frontier will assume or honor all obligations under Verizon's current interconnection agreements, tariffs, and other existing arrangements."[26]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

A. Public Interest Review

9. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (Communications Act or Act), the Commission must determine whether the proposed transfer of control of certain licenses and authorizations held and controlled by Verizon and Frontier will serve the public

[20] *See* Letter from John T. Nakahata, Counsel for Frontier Communications Corp., to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95, Attach. 1 at 17 (filed Nov. 23, 2009) (Frontier Nov. 23 *Ex Parte*).

[21] *See* Press Release of Frontier Communications Corporation Announcing Transaction, rel. May 13, 2009, *available at* http://www.sec.gov/Archives/edgar/data/20520/000095015709000254/ex99-1.htm

[22] *See supra* para. 47.

[23] 47 U.S.C. § 309(c)(2)(B); *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Memorandum Opinion and Order, 24 FCC Rcd. 8741, 8744, para. 6 (2009) (*CenturyTel Order*); *Existing Shareholders of Citadel Broadcasting Corp. and of The Walt Disney Co., etc. for Consent to Transfers of Control*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083, 7085, 7107, paras. 2, 55 (2007) (*Citadel-Disney Order*); *see Reading Broadcasting, Inc.*, MM Docket No. 99-153, Decision, 17 FCC Rcd 14001, 14017, para. 44 (2002). While the transfer of more than 50% of the stock ownership of Frontier to former Verizon shareholders constitutes a change in control requiring Commission approval, transfers of ownership to a widely dispersed group of shareholders may present more limited issues (*e.g.*, with respect to the qualifications of the transferees) than transfers to more concentrated groups.

[24] Verizon Communications Inc. and Frontier Communications Corp. Amended and Revised Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority, WC Docket No. 09-95 (filed July 30, 2009).

[25] Frontier/Verizon Application, Exh. 1 at 2-4.

[26] Frontier/Verizon Application, Exh. 1 at 4.

interest, convenience, and necessity.[27] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[28] If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.[29] The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits.[30] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[31] If we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, we must designate the applications for hearing.[32]

10. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[33] which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest.[34] Our public interest analysis may also entail assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.[35] In conducting this analysis, the Commission may consider technological and market changes, as well as trends within the communications industry, including the nature and rate of change.[36]

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[27] 47 U.S.C. §§ 214(a), 310(d). Section 310(d) of the Act, 47 U.S.C. § 310(d), requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T/BellSouth Order*).

[28] *CenturyTel Order*, 24 FCC Rcd at 8745-46, para. 9.

[29] *Id.*

[30] *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5672, para. 19.

[31] *See, e.g., id.*

[32] *See, e.g., Application of Echostar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and Echostar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, at para. 25 (2002) (*EchoStar/DirecTV Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, et al.*, WT Docket Nos. 04-70, 04-254, and 04-323, Memorandum Opinion & Order, 19 FCC Rcd 21522, 21542-44, at para. 40 (2004) (*Cingular/AT&T Wireless Order*).

[33] *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

[34] *See* 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), Preamble; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18301, at para.17 (2005) (*SBC/AT&T Order*); *see also Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom Inc.*, WC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31, para. 9 (1998) (*WorldCom/MCI Order*); *cf.* 47 U.S.C. §§ 301, 303, 309(j), 310(d), 521(4), 532(a).

[35] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

[36] *See id.*

11. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[37] The Department of Justice (DOJ) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.[38] Under the Commission's review, the applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.[39] DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.[40] The Commission's competitive analysis under the public interest standard is somewhat broader—for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.[41]

12. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.[42] Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served.[43] Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.[44] Similarly, section 214(c) of the Act authorizes the Commission to impose "such terms and conditions as in its judgment the public convenience and necessity may require."[45] Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.[46] In using this broad authority, the Commission has generally imposed conditions to

[37] *See, e.g., id.* at 5673, para. 21.

[38] 15 U.S.C. § 18. As of September 1, 2009, both the Federal Trade Commission and the Department of Justice Antitrust Division had completed their review of this transaction and determined not to take any enforcement action during the HSR waiting period. *See* FTC, Transaction Granted: Early Termination (Sept. 2, 2009), *available at* http://www.ftc.gov/bc/earlyterm/2009/09/et090901.pdf.

[39] *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and* De Facto *Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17462, at para. 28 (2008) (*Verizon Wireless/Alltel Order*).

[40] *See id.*

[41] *See, e.g., Verizon Wireless/Alltel Order*, 23 FCC Rcd. at 17462, para. 28; *XM/Sirius Order*, 23 FCC Rcd at 12365-66, para. 32.

[42] *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21.

[43] *See, e.g., Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17462, para. 29; *Applications for Consent to Transfer Control of Licenses, XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc.*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd.12348, 12366, at para. 33 (2008) (*XM/Sirius Order*); *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

[44] 47 U.S.C. § 303(r); *see also Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

[45] 47 U.S.C. § 214(c); *see also Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

remedy specific harms likely to arise from transactions and that are related to the Commission's responsibilities under the Act and related statutes.[47]

IV. APPLICANTS' QUALIFICATIONS TO HOLD LICENSES

13. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign and transfer licenses under section 310(d) of the Act and the Commission's rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.[48] The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[49] This is not the case here. In the case of the transfer of control applications involving the Verizon subsidiaries, we need not re-evaluate Verizon's basic qualifications. Likewise, in the case of the transfer of control applications involving Frontier as transferor, we need not re-evaluate the basic qualifications of the current Frontier shareholders.

14. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act. Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite "citizenship, character, financial, technical, and other qualifications."[50] In this proceeding, the only challenge that has been raised with respect to the basic qualifications of either Frontier or the current Verizon shareholders (who will be obtaining majority ownership of Frontier under the terms of the Agreement)—both of which previously have been found qualified to control entities holding Commission licenses and authorizations—is with respect to the financial qualifications of Frontier after closing of the transaction. We address these challenges in section V.B, below.

(Continued from previous page)

[46] *See, e.g., Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *see also Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission's authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

[47] *See, e.g., Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

[48] *See, e.g., Applications of Sprint Nextel Corporation and Clearwire Corporation For Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582-83, para. 23 (2008) (*Sprint Nextel/Clearwire Order*); *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17464, para. 31.

[49] *See, e.g., Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17582-83, para. 23; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17464, para. 31.

[50] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *Applications of SBC Communications Inc. and BellSouth Corporation*, WT Docket No. 00-81, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25465, at para. 14 (2000) (*SBC/BellSouth Order*); *see also* 47 U.S.C. §§ 308, 310(d); 47 C.F.R. Parts 5, 25, 63.

V. POTENTIAL PUBLIC INTEREST HARMS

A. Horizontal Competitive Effects

15. Based on the record evidence, we conclude that this transaction is unlikely to have adverse horizontal effects in the transaction market area.[51] For there to be horizontal effects, the parties must currently provide or threaten to provide similar services within the same relevant geographic market.

16. The Applicants assert that currently they do not compete for customers in the transaction market area, as Frontier operates neither local exchange nor mobile facilities in any of the affected exchanges.[52] Moreover, Frontier is not acquiring Verizon's competitive local exchange carrier (LEC) operations that compete with Frontier in Frontier's existing service areas.[53] Because Verizon and Frontier do not currently compete against each other in the transaction market area, the transaction does not appear likely to have adverse effects on existing competition.

17. Because certain of Frontier's wire centers abut Verizon wire centers in the transaction market area, it is possible that the transaction may adversely affect potential competition. However, these adjacent service territories affect less than 13 percent of the exchanges involved in thc transaction and only approximately 555,000 residential lines out of more than 4.3 million residential and small business access lines that will be served by Frontier in the transaction market area after closing.[54] The adjacent exchanges are almost all small and rural. Only four adjacent exchanges have over 10,000 residential access lines, with the largest being Frontier's Lake Havasu City, Arizona exchange.[55] Given the limited numbcr of adjacent wire centers and the rural nature of these wire centers, we find it unlikely that the transaction will have an adverse effect on potential competition.[56]

B. Frontier's Financial Condition Post-Transaction

18. Citing the previous spin-offs by Verizon of access lines in Hawaii and New England to Hawaiian Telcom and FairPoint, respectively, opponents of the transaction contend that the acquisition will burden Frontier with so much debt as to create an unacceptable risk that Frontier will go bankrupt.

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[51] A transaction is said to be horizontal when the parties to the transaction sell products that are in the same relevant product and geographic markets. *See, e.g.*, *AT&T/BellSouth Order*, 22 FCC Rcd at 5675, para. 23 n.82. Firms not currently selling in the market that have committed to enter in the near future, or that would very likely sell in the market rapidly with direct competitive impact in the event of a small increase in the market price, would also be considered market participants for this purpose.

[52] Frontier/Verizon Application at 18.

[53] These Verizon competitive LECs operate in small portions of New York and Pennsylvania. Letter from John Nakahata, Counsel for Frontier Communications Corp., and Karen Zacharia, Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, at 2 n.4 (filed May 13, 2010) (Frontier/Verizon May 13 *Ex Parte*).

[54] Frontier/Verizon May 13 *Ex Parte* at 1-2. Frontier exchange area residential lines are as of May 31, 2009; other line counts are as of June 30, 2009. Total lines include residential lines for legacy Frontier territories and consumer (*i.e.*, residential and small business) lines for the territories acquired from Verizon. *Id.* at 1 n.1.

[55] That exchange has fewer than 20,000 residential lines. The adjacent Verizon wire centers combined have approximately 2,000 lines. *Id.* at 1 n.2.

[56] We recognize that carriers are generally less likely to compete in rural territories because of the high costs of reaching consumers and the relatively low potential revenues from less dense areas. *See Applications of GTE Corp. and Bell Atlantic Corp.*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14095, at para. 117 (2000) (*Bell Atlantic/GTE Order*). Thus, here, each carrier's incentive to encroach on the other's territories appears to be relatively small.

Opponents further maintain that Verizon, because of its greater financial stability, would be a safer steward of the lines it proposes to transfer to Frontier.

19. As part of its public interest inquiry, the Commission must consider whether the applicant for a license transfer has the "requisite . . . financial, technical, and other qualifications."[57] Although the Commission has a responsibility to consider the financial qualifications of the transferee, it is not the Commission's role to substitute its business judgment for that of the applicants or the market; rather, the relevant question here is whether Frontier has the requisite financial qualifications to hold and use these Commission licenses and authorizations in the public interest.

20. In this proceeding, a number of commenters point to claimed similarities between the proposed transaction and prior Verizon divestitures that led to serious problems for the purchasing entities, consumers, employees, and competitors.[58] In these prior divestitures, the acquiring companies took on significant debt to make the acquisitions, experienced significant operations support systems (OSS) failures post-cutover, and ultimately ended up in bankruptcy.[59] Commenters contend that the structure of the proposed transaction ensures that this will be "another Fairpoint."[60]

21. The outcome of any transaction is determined much more by the actions of the buyer than of the seller, and Frontier is a different entity than the buyers involved in previous Verizon divestitures. As one commenter noted, "Frontier . . . is perhaps the best financially situated mid-sized carrier."[61] We are nonetheless cognizant of the poor track record of Verizon's prior divestitures, and our assessment takes this history into account. We have developed a more extensive record here than in our review of the prior transactions and have adopted stringent conditions designed to prevent a recurrence of the problems that occurred following the earlier divestitures. To address financial concerns raised in the record, Commission staff has examined the Applicants' financial model in detail, requested additional information and clarification as necessary,[62] and required the Applicants to address a number of issues and concerns raised

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[57] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14947-48 at para. 568 (1999) (*SBC/Ameritech Order*); *see also* 47 U.S.C. §§ 308, 310(d); 47 C.F.R. Parts 5, 25, 63.

[58] Cbeyond *et al.* Comments at 5-6, 9-15, 18-22; CWA Comments at 4-5, 33; Free Press Comments at 1, 6-11; NASUCA Comments at 2-4; PAETEC Reply at 3-4, 7. In particular, opponents note that the Applicants are using a Reverse Morris Trust structure, as was the case in the prior Verizon spin-offs of Verizon Hawaii, Inc. to Hawaiian Telcom (which is controlled by The Carlyle Group), and of some of its New England assets to FairPoint Communications. *See generally* Application for Consent to Transfer Control of Verizon Hawaii Inc. and Certain Assets and Long Distance Relationships Related to Interstate Interexchange Telecommunications Service in the State of Hawaii, WC Docket No. 04-234, at 2 (filed June 21, 2004); Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc., WC Docket No. 07-22, at 2-3 (filed Jan. 31, 2007). In these transactions, a smaller company acquires assets from a larger one, with the small company typically taking on substantial debt to complete the transaction. *See* Free Press Comments at 6.

[59] Cbeyond *et al.* Comments at 3-5, 9-11; CWA Comments at 4-5, 33; Free Press Comments at 6-9; NASUCA Comments at 2-4; PAETEC Reply at 3-4, 7.

[60] *See, e.g.*, Cbeyond *et al.* Comments at 4-16; CWA Comments at 33-35; Free Press Comments at 6-9; PAETEC Reply at 3-4, 7.

[61] Free Press Comments at 2.

[62] *See, e.g.*, Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Kenneth F. Mason, Vice President–Government & Regulatory Affairs, Frontier Communications Corp, and Karen Zacharia, Vice President, Verizon, WC Docket No. 09-95 (Feb. 12, 2010) (*Frontier/Verizon Initial Data Request*); Letter from Sharon Gillett, (continued….)

by interested parties.[63] The record evidence developed through this inquiry leads us to conclude that the projections in Frontier's financial model are not obviously inconsistent with historical business performance in the legacy Frontier territories and the transaction market area (the lines being transferred from Verizon to Frontier). The model does not, on its face, call into question Frontier's ability to deliver the public interest benefits Frontier has promised, nor does the model raise obvious concerns about potential harms, such as large price increases or cuts in investment. Beyond the ordinary and largely unpredictable market risks that accompany any business transaction, there is no specific reason to think that this transaction is financially unsound. Moreover, it is not in Frontier's interest to enter into a deal that is premised on overly optimistic financial assumptions or that is likely to cause financial distress or bankruptcy; buyers have substantial incentives to avoid entering into transactions likely to lead to financial distress.

22. Commenters have raised the specific concern that Frontier's practice of paying dividends is not sustainable.[64] As an initial matter, we note that the payment of large dividends is a common practice among mid-sized carriers and is not necessarily evidence of financial instability. Shareholders require a return on their investment, and companies can provide such a return by increasing the value of their shares or by issuing dividends. Frontier has chosen primarily the latter course, as have many other incumbent LECs.

23. While Frontier's dividends may be larger than those paid by similarly situated carriers, they are not so far outside the mainstream as to be a major cause for concern. Frontier also has committed to cut its dividend by 25 percent after closing.[65] Frontier's financial model indicates that it will have sufficient free cash flow to cover its planned capital and operating expenditures and still pay dividends—even if no synergies are realized.[66] If Frontier should experience an unexpected reduction in free cash flow, it will still likely be able to meet its broadband deployment and service quality commitments—which are made enforceable by this Order—by reducing its dividend payments.

24. We emphasize that we are not concluding—and could not conclude—that Frontier will be free of financial difficulties after closing. All transactions carry risks, and all companies are vulnerable to

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Chief, Wireline Competition Bureau, to Kenneth F. Mason, Vice President–Government & Regulatory Affairs, Frontier Communications Corp., WC Docket No. 09-95 (Apr. 20, 2010) (*Frontier Supplemental Data Request*); Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Karen Zacharia, Vice President, Verizon, WC Docket No. 09-95 (Apr. 20, 2010) (*Verizon Supplemental Data Request*).

[63] Some commenters were concerned that Frontier's financial projections were based on outdated data. *See, e.g.*, NASUCA Comments at 20. Addressing this concern, the Commission asked Frontier to "[e]xplain how the transaction summary would be affected with the final year-end 2009 financial results for Frontier and Spinco rather than year-end 2008 financial results." *Frontier/Verizon Initial Data Request* at 5. Commenters further expressed concern that Frontier's financial numbers were opaque and that the Commission needed to do an independent financial analysis. *See, e.g.*, CWA Ex Parte Presentation, Verizon-Frontier Transaction 3, 22 (Nov. 19, 2009), *attached to* Letter from Debbie Goldman, Counsel, CWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95 (filed Nov. 20, 2009). The Commission responded by asking Frontier for the original numbers used for its summary to investors. *Frontier/Verizon Initial Data Request* at 5. Commenters also contended that Frontier's debt covenants could lead to financial distress for the company. *See; e.g.*, Letter from Debbie Goldman, Counsel, CWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, Attach. 1 (filed Apr. 8, 2010). The Commission consequently examined the bond covenants to look for triggers of distress. *See Frontier/Verizon Initial Data Request* at 5-7; Response of Frontier Communications Corp. to the Commission's February 12, 2010 Information and Document Request, WC Docket No. 09-95, at 27-35 (filed Feb. 26, 2010) (*Frontier Initial Data Response*).

[64] CWA Comments at 21-26; *see also* NASUCA Reply at 5-6 (citing and seconding CWA's analysis).

[65] Frontier/Verizon Application Exh. 1 at 3.

[66] Frontier/Verizon Reply at 3, 20.

market fluctuations, industry-wide pressures, and unforeseeable events. However, it would be inappropriate for us to deny these applications based on the financial evidence in the record. There is no persuasive evidence in the record that this transaction is unduly risky, or that Frontier is an underfunded or an irresponsible buyer unlikely to fulfill its obligations to the public interest.

25. Finally, we are not persuaded by the argument that we should reject the transaction because Verizon is financially more stable.[67] As discussed above, in assessing whether a proposed transaction will serve the public interest, the Commission generally will not evaluate the qualifications of the transferor.[68] The relevant question is not Frontier's financial standing in comparison to Verizon's, but rather whether Frontier has the requisite financial qualifications to hold Commission licenses and authorizations in the public interest. As discussed above, we find that Frontier has the requisite financial qualifications.

C. Operations Support Systems and Wholesale Customer Service

26. After closing, the Applicants will transfer current Verizon customers in West Virginia onto Frontier's existing operations support systems (OSS); in the other thirteen states (the Legacy GTE Area), customers will continue to be serviced by a replica of Verizon's OSS, operated by Frontier. Commenters opposing the transaction raise concerns that fall into four general categories: (1) concerns about Frontier's use of, and potential premature abandonment of, Verizon's OSS in thirteen states; (2) concerns about deficiencies in Frontier's own OSS in West Virginia; (3) allegations that the same OSS problems that FairPoint and Hawaiian Telcom experienced will arise here as well; and (4) additional concerns about wholesale customer service.

27. Ensuring robust competition not only for American households but also for American businesses requires particular attention to the role of wholesale communications markets, through which providers of broadband and other services secure critical inputs from one another.[69] Well-functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas. We therefore take seriously the allegations that wholesale-related harms will result if the proposed transaction is approved. As set forth in greater detail below, we conclude that the voluntary commitments that Applicants have offered, coupled with monitoring and enforcement by the Commission, will sufficiently minimize the risks of harm.

1. OSS in the Legacy GTE Area

28. Applicants state that post-transaction Frontier will use the same OSS used by Verizon prior to closing in the Legacy GTE Area, including all ordering interfaces, e-bonding,[70] and application programming interfaces (APIs), and that no new system development will be necessary.[71] Verizon has created a replica of its existing OSS so that the systems will be transferred to Frontier as physically separate, functional systems that are substantially identical to the existing systems. The hardware supporting the replicated systems is located in a Fort Wayne, Indiana data center, which is devoted exclusively to the replicated systems and will be transferred to Frontier at closing. This data center controls substantially all of the systems needed to operate the transferred assets, including those necessary to

[67] *See* CWA Comments at 19-21.

[68] *See supra* paras. 13-14.

[69] *See* FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, at 42 (2010) (FCC, NATIONAL BROADBAND PLAN).

[70] "E-bonding" is the electronic ordering and provisioning of services and unbundled elements between carriers.

[71] Frontier/Verizon Reply at 34.

manage wholesale and competitive LEC relationships.[72] Applicants assert that wholesale customers in the Legacy GTE Area will not have to change their existing systems interfaces to process orders, track provisioning, or manage troubles, nor otherwise have their existing OSS arrangements significantly disrupted.[73] Under the Agreement, Frontier will have the option to use these duplicate Verizon systems for as long as it wishes without additional cost, pursuant to an indefinite lease.[74] In addition, pursuant to a maintenance contract between the parties, Verizon will continue to maintain the replicated systems for at least one year after closing; Frontier has the option of renewing this contract for up to five years after closing but must pay Verizon each year the contract is in place.

29. While commenters have generally characterized Verizon's OSS as superior to Frontier's, some still express reservations about the OSS conversion in the Legacy GTE Area. Cbeyond *et al.* contend that the OSS duplication and Verizon's obligation to provide system support for one year simply postpones any OSS integration issues in the Legacy GTE Area that would otherwise occur at closing.[75] Others express concerns regarding Frontier's limited experience managing such a large company as a wholesale provider, and with the new OSS it will be operating in the Legacy GTE Area. They also express concerns that the replication process may not go as planned and that Frontier's payments to Verizon for OSS maintenance under the contract could put even more financial pressure on the company.[76]

30. Commenters have also expressed concern about the maintenance contract between Verizon and Frontier, noting that FairPoint cancelled its OSS contract with Verizon in the face of financial pressures, and that the cancellation contributed to FairPoint's bankruptcy.[77] We note that FairPoint's Transition Services Agreement with Verizon was a much more comprehensive and expensive contract, under which Verizon leased its OSS to FairPoint and continued to operate it until FairPoint's newly created systems were operational and ready for cutover; here, by contrast, Frontier will begin to operate the replicated OSS, and Verizon will merely provide system maintenance and upkeep.[78] Nevertheless, the possibility that Frontier will choose to cancel its contract in order to save costs before it is ready to assume full responsibility for OSS in the Legacy GTE Area is a legitimate concern.

31. In response to the concerns raised in the record about OSS in the Legacy GTE Area, Frontier has proposed a series of voluntary commitments. Among other things, Frontier has committed to "maintain wholesale functionality, performance and e-bonding at a level that is at least comparable to what Verizon is providing prior to the close of the transaction."[79] Frontier also agrees to notify the Commission and seek

[72] *Id.* at 34-35.

[73] *Id.* at 35.

[74] *Id.*

[75] Cbeyond *et al.* Comments at 20.

[76] *Id.* at 18; CWA Comments at 5, 31; PAETEC Reply at 7.

[77] *See, e.g.*, Letter from Thomas Jones, Counsel for Cbeyond, Inc., *et al.*, to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95, at 9 (filed Jan. 28, 2010) (Cbeyond *et al.* Jan. 28 *Ex Parte*) (arguing that "Frontier will have a financial incentive not to renew the contract after one year even if its provision of wholesale service could benefit from renewal of the agreement").

[78] *See* Frontier/Verizon Reply at 4-5, 36, and McCarthy Decl. at 29; FairPoint, SEC Form S-4/A, Exh.2.6 (filed May 25, 2007), *available at* http://www.sec.gov/Archives/edgar/data/1062613/000104746907004640/a2177254zex-2_6.htm. FairPoint agreed to pay Verizon a base fee of $14,200,000 per month for the first eight months of the contract, with higher fees starting in month 13—far more than Frontier's *annual* fee of $94 million.

[79] *See* Letter from Kathleen Q. Abernathy, Chief Legal Officer, Frontier Communications Corp., to Chmn. Julius Genachowski and Commissioners, FCC, WC Docket No. 09-95, Commitment 12 (filed May 19, 2010) (Frontier (continued....)

input from competitive LECs on any changes in wholesale functionality or e-bonding at least 180 days before transitioning from Verizon's OSS or cancelling its maintenance contract with Verizon.[80] Frontier also agrees to establish and report to the Commission, on a quarterly basis, a series of OSS performance metrics designed to ensure an appropriate level of OSS performance in the Legacy GTE Area after closing.[81] These commitments will allow the Commission to monitor Frontier's performance and ensure that (1) if Frontier terminates its maintenance contract with Verizon, the termination will not affect service quality; and (2) Frontier has an incentive to ensure that the integration and organization of OSS in the Legacy GTE area are done efficiently. Accordingly, we find that Frontier's commitments are sufficient to mitigate potential harms relating to OSS in the Legacy GTE Area.

32. Finally, we note that commenters raised concerns regarding the performance of the replicated Verizon OSS as operated by Verizon in the weeks immediately prior to the issuance of this Order.[82] Specifically, they allege that staffing levels and proficiency have been inadequate and resulted in unacceptable levels of delay and service quality during "the last two weeks of April and throughout May."[83] In response to these concerns, Verizon has voluntarily committed to establish and report to the Commission, on a weekly basis, a series of OSS performance metrics designed to ensure an appropriate level of OSS performance in the Legacy GTE Area during the period between the adoption of this order and closing, and to hold weekly calls with competitive LECs until closing to address OSS issues.[84] We find that Verizon's commitments are sufficient to address the commenters' concerns in this regard.

2. OSS in West Virginia

33. The OSS cutover process in West Virginia will differ from that in the Legacy GTE Area. Unlike the Legacy GTE Area, which is served by a single OSS system, in West Virginia Verizon uses a combination of systems to support its operations.[85] Rather than replicating each of those systems for a single state, the Applicants will transfer former Verizon customers onto Frontier's existing OSS, supplemented by a new electronic ordering gateway.[86] Applicants state that data from Verizon's systems

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May 19 Commitments Letter). The commitments in this letter are reproduced in Appendix C. These conditions are voluntary, enforceable commitments, but are not general statements of Commission policy, and do not alter Commission precedent or bind future Commission policy or rules.

[80] *See* Appendix C, Commitments 9, 10; *see also* Frontier May 10 *Ex Parte* Letter at 2-4.

[81] *See* Appendix C, Commitment 12; *see also* Frontier May 10 *Ex Parte* Letter at 2-4.

[82] *See* Letter from Thomas Jones, Counsel for Cbeyond, Inc., *et al.*, to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95, at 1-2 (filed May 13, 2010) (Cbeyond *et al.* May 13 *Ex Parte*); Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95, at 1 (filed May 17, 2010) (PAETEC May 17 *Ex Parte*); Letter from Thomas Jones, Counsel for Cbeyond, Inc., *et al.*, to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95, at 1-4 (filed May 19, 2010) (Cbeyond *et al.* May 19 *Ex Parte*).

[83] *See* Cbeyond *et al.* May 13 *Ex Parte* at 1-2.

[84] *See* Letter from Kathleen Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Chmn. Julius Genachowski and Commissioners, FCC, WC Docket No. 09-95, Commitment 1(b) (filed May 19, 2010) (Verizon May 19 Commitments Letter). The commitments in this letter are reproduced in Appendix D. These conditions are voluntary, enforceable commitments, but are not general statements of Commission policy, and do not alter Commission precedent or bind future Commission policy or rules.

[85] Frontier/Verizon Reply at 36.

[86] *Id.*

will be transferred to Frontier's existing systems that serve West Virginia and the rest of Frontier's retail and wholesale customers nationwide.[87] Verizon has identified the relevant customer data from its systems and furnished Frontier with data descriptions, data formats and layouts, and a series of full test data extracts from the Verizon systems. Frontier will map the test data to its own OSS, and then load and test its systems to confirm that the data have been mapped properly. Before closing, Verizon will extract final data from its information systems and deliver those data to Frontier for use on Frontier's systems.[88]

34. With respect to West Virginia, commenters contend that Frontier's OSS are "less sophisticated" than and "almost certain to be a significant step-down" from Verizon's systems.[89] For example, Earthlink notes that Verizon's OSS for wholesale broadband services provides "real-time, electronic access to pre-qualification, ordering, order status and trouble ticketing," but Frontier's OSS does not.[90] NTELOS identifies several specific areas where Frontier's OSS is lacking compared to Verizon's, including that Frontier's trouble resolution system is inferior to Verizon's on-line trouble reporting and loop testing system, and that Frontier's access service request and trunk ordering systems are manual, whereas Verizon's are electronic.[91] Similarly, Cbeyond *et al.* note that Verizon currently provides functions that Frontier does not offer, including monthly performance reports with provisioning and repair metrics, regular customer summits to elicit feedback from large wholesale customers, and electronic interfaces for ordering and verification.[92] Some commenters also fear that Frontier's OSS is not sufficiently scalable to handle the addition of 600,000 lines in West Virginia all at once.[93] Applicants respond that concerns about the scalability of Frontier's systems in West Virginia are unwarranted because its systems are fully scalable, and because Frontier has prior experience integrating acquired lines.[94]

35. Frontier has already taken steps and made commitments that address many of the concerns commenters have raised. First, Frontier has purchased a new electronic gateway, Synchronoss, which will allow e-bonding for access service requests, local service requests, pre-order information, and trouble ticket

[87] *Id.* at 36-37.

[88] *Id.*

[89] Cbeyond *et al.* Comments at 24-26, 30-31; Earthlink Comments at 5-6; NTELOS Comments at 2; PAETEC Reply at 6-7; Sprint Reply at 3, 6-8. A number of commenters urge the Commission to condition approval of the merger on Frontier's implementing Verizon's OSS, or comparable tested and implemented OSS replacement systems, throughout Frontier's entire service area. *See, e.g.*, Earthlink Comments at 5-7; Michigan PSC Comments at 2; NASUCA Reply at 3; PAETEC Reply at 14-15; Sprint Reply at 3. We limit our consideration of Frontier's OSS performance here, however, to the transaction market area.

[90] Earthlink Comments at 5-6; *see also* PAETEC Reply at 6-7; Sprint Reply at 6.

[91] NTELOS Comments at 4-5; *see also* PAETEC Reply at 6-7; Sprint Reply at 6.

[92] Cbeyond *et al.* Comments at 24-26, 30-31.

[93] NTELOS Comments at 5-6.

[94] Frontier/Verizon Reply at 36-37 (noting that Frontier will be "adding approximately 600,000 lines in West Virginia to systems that already support about 2.2 million lines – a significant but manageable increase"). Frontier cites to two recently completed OSS conversions, which it claims are comparable to the planned West Virginia conversion: approximately 450,000 lines in its acquisition of Commonwealth in 2007, and approximately 400,000 access lines in its 2008 conversion of the former Rochester Telephone systems. *Id.* at 37-38. However, commenters note that these conversions took place over the course of several years, and were still plagued with glitches; here, the West Virginia conversion will require Frontier to absorb a greater number of lines effectively overnight. *See* Cbeyond *et al.* Comments at 18; CWA Comments at 30-32.

submission.[95] Frontier plans to incorporate Synchronoss into its OSS in West Virginia first, and then to roll it out to the rest of its territory.[96] Frontier has also stated that it will put in place industry standard APIs in West Virginia, which will permit electronic receipt of firm order confirmations, validation of orders, and design layout records.[97] Frontier has also committed to honor Verizon's obligations under its Performance Assurance Plan and Carrier-to-Carrier Guidelines in West Virginia.[98] Finally, Frontier has committed to implement OSS in West Virginia "at a level that is functionally comparable to what Verizon is providing" at closing.[99]

36. Frontier has incorporated all of these commitments into the voluntary commitments it has offered in this proceeding, which are binding and enforceable conditions of our approval. This will allow the Commission to monitor Frontier's OSS performance in West Virginia to ensure that it does not deteriorate after closing, and to take any enforcement action necessary if it does. Accordingly, we find that Frontier's commitments are sufficient to mitigate potential harms relating to OSS in West Virginia.

3. OSS Issues in Previous Verizon Spin-offs

37. In describing their OSS concerns, commenters compare the proposed transaction to Verizon's prior divestitures to Hawaiian Telcom and FairPoint.[100] In both of those transfers, the purchasing companies experienced OSS failures post-cutover.

38. While we recognize that problems may arise in any major OSS conversion and that OSS issues were major factors in the failure of prior Verizon spin-offs, there is no evidence in the record to support allegations that the OSS cutovers in this transaction, in and of themselves, pose a significant threat to Frontier's viability. As Applicants note, the purchasers in both the Hawaiian Telcom and FairPoint transactions chose to move the Verizon lines they acquired onto entirely new OSS; here, in both West Virginia and the Legacy GTE Area, Applicants are converting customers to existing, operating OSS that have been tested and proven to be functional.[101] In addition, for the past several months, competitive carriers have participated in OSS testing in both the Legacy GTE Area and West Virginia to ensure that the transition would not be disruptive to their businesses,[102] and no evidence of widespread or systemic OSS malfunctions has been submitted into the record here to indicate that the systems conversions were either going poorly or failing.[103] As we have explained, our analysis in this proceeding focuses on

[95] Frontier/Verizon Reply at 47; Letter from John T. Nakahata, Counsel for Frontier Communications Corp., and Michael E. Glover, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, at 3-4 (filed Dec. 22, 2009) (Frontier/Verizon Dec. 22 *Ex Parte*); *Frontier Initial Data Response* at 12-14.

[96] *Frontier Initial Data Response* at 12-13.

[97] Frontier/Verizon Reply at 47.

[98] *See* Appendix C, Commitment 23.

[99] *See* Appendix C, Commitment 20; *see also* Frontier May 10 *Ex Parte* at 2-4.

[100] *See, e.g.,* Cbeyond *et al.* Comments at 5-6, 9-15, 18-22; CWA Comments at 4-5, 33; Free Press Comments at 6-11; NASUCA Comments at 2-4; PAETEC Reply at 3-4, 7.

[101] Frontier/Verizon Reply at 40-42.

[102] *See Frontier Initial Data Response* at 7; Response of Verizon to the Commission's February 12, 2010 Information and Document Request, WC Docket No. 09-95, at 9-10 (filed Feb. 26, 2010) (*Verizon Initial Data Response*).

[103] As noted above, there have been some claims of competitors experiencing problems with the replicated OSS in Fort Wayne, but we find that Verizon's commitments are sufficient to address concerns in this regard. *See supra* para. 32; *see also* Appendix D.

whether Frontier has demonstrated an ability and willingness to provide quality OSS to former Verizon customers. We believe that it has, and that actions the Applicants have already taken, along with the voluntary commitments Frontier has made in this proceeding, are sufficient to address any transaction-specific harms relating to OSS.

4. Other Wholesale Customer Service Issues

39. *Interconnection Agreements and Obligations.* Several commenters warn that post-transaction Frontier could thwart competition in the merged territories by modifying or avoiding the terms of interconnection agreements and obligations in place in the transaction service area. For example, KDL expresses concern that post-transaction Frontier will be "less cooperative in providing access to necessary inputs" than Verizon has been.[104] Cbeyond *et al.* contend that Frontier's interconnection agreement in West Virginia allows it to reject a port request if the Frontier customer at issue has not paid the balance due on her account with Frontier, which it states is a violation of Frontier's duty to provide number portability under section 251(b)(2).[105] NTELOS claims that Verizon offers a range of wholesale services at rates reviewed and authorized by the West Virginia Commission, but Frontier's interconnection agreement offers very few Unbundled Network Elements (UNEs), and those that are offered are at rates significantly higher than Verizon's.[106] In addition, a number of commenters express concern that, unlike Verizon, post-transaction Frontier will argue that it is eligible for the rural telephone company exemption from interconnection obligations provided in section 251(f)(1) of the Act,[107] which commenters claim could have a chilling effect on competition.[108]

40. In response, Frontier has voluntarily committed to "assume those interconnection agreements between Verizon and other carriers that relate to service wholly within the new Frontier areas," and "to put in place new interconnection agreements on substantially the same terms and conditions, so as not to disrupt existing arrangements" where existing interconnection agreements relate in part to services outside the transaction service area.[109] It has further committed to make changes to its existing systems in West Virginia as necessary to meet the obligations of its interconnection and other agreements.[110] In addition, Frontier has committed to "honor all obligations under Verizon incumbent LEC's current interconnection agreements, wholesale tariffs, and other existing wholesale arrangements that are in effect at closing."[111] Frontier has committed not to assert that it is exempt from section 251(c) obligations pursuant to section 251(f)(1) in the areas transferred from Verizon that are rural telephone companies outside of West Virginia, or "to move or reclassify any exchanges or wire centers currently located in Verizon West Virginia's legacy service areas so as to . . . take advantage of the rural exemption under Section 251(f)(1)."[112] We conclude that these commitments adequately address commenters' concerns.

[104] KDL Comments at 2.

[105] Cbeyond *et al.* Comments at 30. Cbeyond *et al.* noted that Verizon has no such provision in its interconnection agreement. *Id.*

[106] NTELOS Comments at 3.

[107] 47 U.S.C. § 251(f).

[108] Cbeyond *et al.* Comments at 35-36; KDL Comments at 5-7; Sprint Reply at 5-6.

[109] *See* Appendix C, Commitments 28.

[110] *See* Appendix C, Commitments 20-24; *see also* Frontier/Verizon Reply at 47.

[111] *See* Appendix C, Commitments 28.

[112] See *id.*, Commitments 18, 27.

41. *Wholesale Pricing and Fees*. Several commenters worry that post-transaction Frontier will raise wholesale prices in the transaction service area above the rates currently offered by Verizon, to the detriment of competition in those areas.[113] They allege that Frontier's wholesale and UNE rates are generally higher than Verizon's and that, without a commitment from Frontier to offer the same (or better) prices, terms, and conditions as offered by Verizon on a going-forward basis, "millions of customers" may lose alternatives that exist today, while others will be denied broadband alternatives.[114] More specifically, Cbeyond *et al.* argue that serving wholesale customers will threaten Frontier's profitability because it supports competitors' success; thus, they see a serious risk that Frontier will use its limited resources and its obligations to other stakeholders as an excuse for poor service to wholesale customers.[115]

42. Verizon and Frontier have offered a number of voluntary commitments designed to mitigate these concerns. Frontier has committed to honor all obligations under Verizon's current wholesale tariffs and other wholesale arrangements that are in effect at closing,[116] including adhering to Verizon's Statement of Rates for UNEs,[117] and not discontinuing any wholesale service offered to competitive carriers as of the transaction closing date.[118] Frontier has committed not to seek to recover one-time transfer, branding, transaction costs, or management costs associated with the transaction through wholesale service rates.[119] Both Verizon and Frontier have committed to adjust all revenue commitments and volume thresholds for retail enterprise and wholesale customers with volume and term agreements so that customers that maintain the volumes they currently purchase in the transaction service area and Verizon's remaining states, respectively, will continue to qualify for the same volume discounts in their respective areas.[120] We conclude that these commitments adequately address the concerns that have been raised.[121]

43. *Regulatory Status of Frontier in West Virginia*. Opponents of the transaction have urged the Commission to classify Frontier as a Bell Operating Company (BOC) with respect to the West Virginia

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[113] Cbeyond *et al.* Comments at 22-23, 33-34; Earthlink Comments at 8-9; NTELOS Comments at 2-3; PAETEC Reply at 11, 13-15.

[114] Earthlink Comments at 8; PAETEC Reply at 14-15.

[115] Cbeyond *et al.* Comments at 23.

[116] *See* Appendix C, Commitment 28.

[117] *Id.*

[118] *See* Appendix C, Commitments 16, 25.

[119] *See* Appendix C, Commitments 17, 26.

[120] See Appendix C, Commitment 29; Appendix D, Commitment 2.

[121] These commitments, taken in combination, also address certain additional concerns raised by commenters. For example, Frontier's adoption of the Verizon OSS in the Legacy GTE Area and commitments to process orders under the terms of applicable interconnection agreements, utilize an OSS Change Management Process similar to Verizon's, and not discontinue existing wholesale services for a period of one year would appear to be sufficient to address concerns with respect to billing the transport element of each DS1 special access circuit ordered by a wholesale customer as a "MetroLAN" rate element. *See, e.g.*, Cbeyond *et al.* May 13 *Ex Parte* at 4, 9; Appendix C, Commitments 7, 14, and 16. Competitors have also raised allegations concerning past discriminatory conduct by Verizon with respect to pole attachments, access to remote terminals, and UNE loop requests, and assert that Frontier is likely to perpetuate the alleged anticompetitive behavior in the transaction market areas unless conditions are imposed. *See, e.g.*, Letter from Thomas Jones, Counsel for Cbeyond *et al.*, to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95 (filed Jan. 12, 2010) (Cbeyond *et al.* Jan 12 *Ex Parte*); Cbeyond *et al.* Jan. 28 *Ex Parte*. In the absence of any basis for concluding that Frontier is likely to engage in such behavior post-merger, these issues are more appropriately addressed in enforcement proceedings or rulemakings of general applicability.

exchanges it is acquiring from Verizon.[122] Frontier raises no objection to this argument.[123] Section 3(4) of the Act defines a BOC as either one of a group of specifically listed companies—one of which is the Chesapeake and Potomac Telephone Company of West Virginia—or as "any successor or assign of any such company that provides wireline telephone exchange service."[124] Consistent with this definition and with Commission precedent,[125] we determine that Frontier is a successor to the former Chesapeake and Potomac Telephone Company of West Virginia, and is therefore responsible for all obligations that apply to BOCs under the Act.

44. *Big Footprint*. Consistent with the "Big Footprint" theory that the Commission addressed in prior BOC mergers,[126] we find that the increase in the size of Frontier's study area resulting from the transaction could, in theory, increase its incentive to engage in anticompetitive activity, although we think it is likely to have a lesser effect in the instant case than in the prior BOC mergers.[127] Additionally, to the extent that Frontier has been less willing to cooperate with competitors than Verizon—as some commenters allege[128]—following the transaction, Frontier may extend this behavior to the acquired territories.[129] In order to address these potential harms, the Applicants have proposed a series of voluntary commitments to protect competitors' interests, summarized above and included in Appendix C, which we find adequately address both of these concerns.

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[122] *See* Letter from Thomas Jones, Counsel for Cbeyond, Inc., *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, Attach. A at 4 (filed Jan. 24, 2010). ("In the portions of West Virginia served by Verizon prior to the Closing Date, Frontier [should] be classified as a Bell Operating Company . . . .").

[123] Frontier/Verizon May 13 *Ex Parte* at 2 ("Frontier [does] not dispute that the properties that it [is] acquiring that were successors to the former Chesapeake and Potomac Telephone Company of West Virginia were classified as a [BOC].").

[124] 47 U.S.C. § 153(4). The Chesapeake and Potomac Telephone Company of West Virginia is now part of Verizon, and the West Virginia exchanges at issue in this proceeding were part of the Chesapeake and Potomac Telephone Company of West Virginia. *See Bell Atlantic/GTE Order*, 15 FCC Rcd at 14040-41, para. 10 and n.17 (merging Bell Atlantic and GTE, which thereafter conducted business in West Virginia as Verizon West Virginia, Inc.).

[125] *See Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, 23 FCC Rcd 514, 533-37, paras. 33-37 (2008) (assigning BOC status to FairPoint with respect to exchanges it acquired from Verizon).

[126] *See SBC/Ameritech Order*, 14 FCC Rcd at 14797-98, paras. 192-93; *see also AT&T/BellSouth Order*, 22 FCC Rcd at 5751-53, paras. 183-85; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14115-16, paras. 176-78.

[127] As the Commission explained in the *SBC/Ameritech Order*, a merger between two incumbent LECs may increase the merged entity's incentive to engage in anticompetitive behavior by allowing the resulting entity to capture or internalize a higher proportion of the benefits of such anticompetitive strategies against regional or national competitors. *See SBC/Ameritech Order*, 14 FCC Rcd at 14798, para. 193. The larger the resulting incumbent LEC, the greater its ability to internalize these spillover effects. Because Frontier after the merger will still be significantly smaller than SBC after its acquisition of Ameritech or Verizon after Bell Atlantic's acquisition of GTE, it is unlikely to be able to internalize as large a proportion of the benefits of anticompetitive activity as those companies. Accordingly, we do not find that the "Big Footprint" theory raises the same magnitude of concerns here as it did in past mergers.

[128] *See* Cbeyond *et al.* Jan. 28 *Ex Parte* at 3-4; NASUCA Comments at 32.

[129] *See SBC/Ameritech Order*, 14 FCC Rcd at 14950, para. 571; *see also* NASUCA Comments at 32.

D. Fiber-Based Video Service

45. Frontier is also acquiring 69,000 FiOS TV subscribers from Verizon in Indiana, Oregon, and Washington.[130] CWA expressed concerns regarding Frontier's willingness and ability to continue providing fiber-based video services in the transaction market area.[131] Frontier responds that it "will continue to provide video services in affected areas after completion of the merger,"[132] and that it will "honor all of the build-out commitments for the [FiOS] service areas it is purchasing."[133] Frontier has also received approvals from the relevant local franchise authorities in the affeeted states.[134] In addition, Frontier states that its cost structure and estimates are based on providing both video and data services.[135] We find that Frontier's statements in the record, along with the approvals of the relevant local franchise authorities, are a sufficient assurance that Frontier will honor Verizon's existing obligations with respect to FiOS TV in the transaction market area.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

46. We next consider whether the transaction is likely to generate verifiable, transaction-specific publie interest benefits.[136] In doing so, we ask whether post-transaction Frontier will be able and is likely to pursue business strategies resulting in demonstrable and verifiable benefits that would not be pursued but for the transaction.[137] As discussed below, we find that the proposed transaction is likely to generate significant transaction-specific public interest benefits.

A. Analytical Framework

47. The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction- or merger-specific (*i.e.*, the claimed benefit "must be likely to be accomplished as a result of the transaction but unlikely to be realized by other means that entail fewer anticompetitive effects").[138] Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each claimed benefit to enable the Commission to

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[130] Letter from John Nakahata, Counsel for Frontier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95 (filed Jan. 29, 2010), Attach. 2 at 1 (Frontier Jan. 29 *Ex Parte*).

[131] CWA Comments at 4, 45-46.

[132] Frontier/Verizon Reply at 48.

[133] *Id.* at 15.

[134] *See* Press Release, Frontier Communications, Frontier Communications Receives All Necessary Local Franchise Authority Approvals Required for Verizon Transaction (Jan. 27, 2010), *attached to* Frontier Jan. 29 *Ex Parte*.

[135] *See Frontier Initial Data Response* at 44. Frontier also currently partners with Dish Network for video services, and notes that the Verizon properties to be acquired currently have a DirecTV offering, which is expected to be available for these markets after the transaction closes. *Id.* at 43.

[136] *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5760, para. 200; *WorldCom/MCI Order*, 13 FCC Rcd at 18134-35, para. 194.

[137] *See, e.g., Verizon Communications, Inc. and América Móvil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6210, at para. 34 (2007) (*Verizon/América Móvil Order*); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255.

[138] *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirectTV Order*, 17 FCC Rcd at 20630, para. 189; *cf.* DOJ/FTC Guidelines § 4.

verify its likelihood and magnitude.[139] In addition, as the Commission has noted, "the magnitude of benefits must be calculated net of the cost of achieving them."[140] Furthermore, the Commission will discount or dismiss speculative benefits that it cannot verify. Thus, as the Commission explained in the *EchoStar/DirecTV Order*, "benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present."[141] Third, the Commission "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost"[142] because "reductions in marginal cost are more likely to result in lower prices for consumers."[143]

48. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.[144] As such, the Commission applies a "sliding scale approach" to evaluating benefit claims.[145] Under this sliding scale approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[146] On the other hand, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the transaction.[147]

B. Analysis

49. The Applicants claim that the transaction will likely result in benefits in three principal areas: accelerated broadband deployment; improved service in rural areas; and synergies of approximately $500 million. As discussed below, while we do not accept all of the Applicants' claims or their exact quantification of benefits, we do agree that the transaction is likely to result in significant benefits to consumers.

50. *Broadband Deployment.* The primary public interest benefit claimed by the Applicants is increased broadband deployment in the transaction market area. To date Verizon has deployed broadband to only approximately 62 percent of housing units in the transaction market areas,[148] and has deployed broadband with a maximum advertised download speed of at least 3 Mbps to only approximately 50 percent of housing units in the transaction market areas.[149] In contrast, Frontier, which has a broadband

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[139] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirectTV Order*, 17 FCC Rcd at 20630, para. 190; *see also Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

[140] *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202; *EchoStar/DirectTV Order*, 17 FCC Rcd at 20631, para. 190.

[141] *Id.* at 20631, para. 190.

[142] *Id.* at 20631, para. 191; *see also AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 202.

[143] *Id.* at 5761, para. 202; *see also DOJ/FTC Guidelines* § 4.

[144] *See AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 201; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 256; *see also Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

[145] *AT&T/BellSouth Order*, 22 FCC Rcd at 5761, para. 203 (internal quotation marks omitted).

[146] *EchoStar/DirectTV Order*, 17 FCC Rcd at 20631, para. 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825); *cf. DOJ/FTC Guidelines* § 4.

[147] *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5762, para. 203.

[148] *See* Letter from John T. Nakahata, Counsel for Frontier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, at 2 (filed Apr. 26, 2010).

[149] Letter from John T. Nakahata & Madeleine V. Findley, Counsel for Frontier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, Attach. 1 at 2 (filed May 10, 2010).

deployment rate of 92 percent in its existing, less population-dense footprint,[150] has committed to extend broadband to many more housing units in the transaction market area. Specifically, Frontier has committed to offer broadband service at actual speeds of at least 3 Mbps downstream to at least 85 percent of housing units in the transaction market area by the end of 2013, and actual speeds of at least 4 Mbps downstream to at least 85 percent of housing units in the transaction market area by the end of 2015, with interim deployment benchmarks and detailed progress reports.[151] Frontier has also committed that all new broadband deployment in the transaction market area will offer actual speeds of at least 1 Mbps upstream.[152] In addition, subject to appropriate confidentiality protections, Frontier will provide the Commission, upon request, with periodic reports on its broadband adoption initiatives.[153]

51. Frontier has also agreed to make available to the Commission data on its broadband deployment progress at an unprecedented level of detail to enable the Commission to effectively monitor Frontier's compliance with its deployment commitments.[154] With respect to households currently unserved by broadband, Frontier will make available to the Commission data on the number of households to which it has deployed broadband that are located in wire centers that, to the best of Frontier's knowledge, were unserved by terrestrial broadband service as of the transaction closing date, and will target any new broadband universal service funding to unserved households. We also note Frontier's commitment to meet the broadband needs of unserved and underserved anchor institutions such as schools, hospitals, and government buildings through an anchor institution initiative focused on fiber solutions.[155] In addition, Frontier will work cooperatively with the Commission to facilitate the Commission's efforts to develop and implement a meaningful and fair broadband speed evaluation.[156]

52. We find Frontier's broadband deployment commitments to be a substantial public interest benefit. Frontier's voluntary commitments, which are verifiable and enforceable, will ensure that broadband is available to more than 1.2 million housing units, many of them in rural America, that currently do not have access to DSL, and will provide a total of more than 4.3 million housing units—accounting for approximately 11.3 million Americans—access to DSL with actual speeds of 4 Mbps download and 1Mbps upload,[157] consistent with goals set forth in the National Broadband Plan.[158]

53. We emphasize that these voluntary commitments rely on private investment, and do not rely on public funding sources such as universal service support. This type of private-sector investment in broadband, and the competition it will promote among providers, is critical to ensuring a healthy and innovative broadband ecosystem and to encouraging new products and services that benefit American consumers and businesses of every size. In addition, reform of the Universal Service Fund to directly

[150] Frontier/Verizon Application, Exh. 1 at 15, n.23 ("The acquired territories average 35 access lines per square mile, as compared with 17 access lines per square mile in Frontier's existing territories.").

[151] *See* Appendix C, Commitment 3.

[152] *See* Appendix C, Commitment 1.

[153] *See* Appendix C, Commitment 5.

[154] *See* Appendix C, Commitment 3.

[155] See Appendix C, Commitment 2.

[156] *See* Appendix C, Commitment 6.

[157] *See* Letter from John T. Nakahata, counsel for Frontier Communications Corp., to Marlene F. Dortch, Secretary, FCC, WC Docket No. 09-95, at 1 (filed May 18, 2010).

[158] *See* FCC, NATIONAL BROADBAND PLAN at 135.

support broadband should lead to significant incremental deployment in the transaction market area,[159] and Frontier has committed to targeting any available new broadband USF funding to areas not served by competitors.[160] To the extent that commenters express doubts about Frontier's commitment to broadband expansion,[161] we believe that the voluntary commitments Frontier has undertaken—along with the prospect of Commission enforcement action if they are not met—satisfactorily address those concerns.

54. Finally, we do not agree that Frontier's broadband deployment commitments should be discounted or rejected because they do not promise to unilaterally achieve the "100 Mbps for 100 million homes" target set forth in the National Broadband Plan,[162] or otherwise mandate that Frontier "deliver the network that we would like to see" in a perfect world.[163] The Plan itself envisions that these objectives will have to be achieved incrementally[164] and by maximizing private investment,[165] and that rural areas like those implicated in this transaction pose the greatest challenge for service providers.[166] In the instant case, we can not ignore the benefit of accelerated broadband deployment that is "likely to be accomplished as a result of the merger" in favor of the hope that the status quo might result in a better outcome.[167]

55. *Improved Service in Rural Areas*. The Applicants claim that the transaction will improve service in rural areas. Specifically, the Applicants assert that "residential and business customers in service areas with 4.8 million lines in predominantly rural and smaller city service areas will join consumers across Frontier's territories and become a key strategic focus of Frontier."[168]

56. Based on the record, we conclude that Frontier is more likely to improve service quality in the transaction market areas than Verizon would absent the transaction. Verizon has not focused investment in these areas,[169] and has shown no indication that it will change course in the future.[170] In

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[159] *Id.* at 144-51.

[160] *See* Appendix C, Commitment 4.

[161] *See, e.g.*, CWA Comments at 39-45.

[162] *Id.* at 9, 40.

[163] Free Press Comments at 11.

[164] *See, e.g.*, FCC, NATIONAL BROADBAND PLAN at 135-36 (discussing incremental deployment to achieve universal, actual data rates of 4 Mbps (download) and 1 Mbps (upload) by 2020).

[165] *See id.* at 9.

[166] *See* ACTING CHMN. MICHAEL J. COPPS, FCC, BRINGING BROADBAND TO RURAL AMERICA: REPORT ON A RURAL BROADBAND STRATEGY 48 (2009) (RURAL BROADBAND REPORT) ("[R]ural networks can often be even more expensive to deploy and potentially more expensive to maintain than networks in non-rural areas for a variety of reasons, which can serve as a formidable barrier to rural broadband deployment."), *attached to Rural Broadband Report Published in the Public Record*, GN Docket No. 09-29, Public Notice, 24 FCC Rcd 12791 (Oct. 19, 2009).

[167] *See supra* note .

[168] Frontier/Verizon Application, Exh. 1 at 2.

[169] *See, e.g., Verizon West Virginia Inc., Investigation into Quality of Service*, Case No. 08-0761-T-GI, Order (WV PSC May 10, 2010) (ordering Verizon to set up an escrow account with an initial payment of $72.4 million for the purpose of upgrading its copper plant), *available at* http://www.psc.state.wv.us/scripts/orders/ViewDocument.cfm?CaseActivityID=295970&Source=Docket.

[170] *See* Free Press Comments at 11 ("It is unlikely that denying [this] transaction will leave consumers in the affected areas any better off. Verizon's business incentives clearly have not and will not dictate any investment in these areas at all.").

contrast, Frontier's business model is predicated on improving service quality to "meet the growing competition for traditional telecommunications products and to develop new revenue to offset the continuing decline in access lines and access minutes that incumbent local exchange carriers . . . have experienced since 2000."[171] Frontier's incentives in this regard likely will result in improved service quality and, as discussed above, accelerated availability of broadband services.

57. *Synergies.* The Applicants claim that the transaction is likely to result in cost savings and greater economies of scale and scope.[172] The Applicants contend that the transaction will generate synergies of approximately $500 million annually once fully implemented, and that these synergies will flow from Frontier's ability to "consolidate various administrative functions and systems such as accounting and information systems, as well as to better integrate and merge network monitoring, customer care, and back office support systems."[173] Commenters respond that the claimed benefits from these synergies are vague and not sufficiently verifiable.[174] Based on the record evidence, we do not fully accept the Applicants' claim of $500 million in cost savings. The record indicates, however, that the transaction is likely to result in savings in fixed and marginal costs, some of which are likely to accrue to the benefit of consumers. As discussed above, Frontier's financial model indicates that it will have sufficient free cash flow to cover its planned capital and operating expenditures and still pay dividends—even if no synergies are realized.[175] Thus, we find that even if the claimed $500 million in synergies are not fully realized, the other public interest benefits discussed above are substantial enough to justify approval of the transaction.

VII. ORDERING CLAUSES

58. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), that the applications filed by Verizon Communications Inc. and Frontier Communications Corp. for the transfer of control of the domestic section 214 authorizations set forth in Appendix B and for the assignment and transfer of control of licenses and international section 214 authorizations set forth in Appendix B ARE GRANTED.

59. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, New Communications of the Southwest Inc. is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20090528-00563.

60. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, New Communications of the Carolinas Inc. is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20090528-00564.

[171] Frontier/Verizon Reply at 2.

[172] *See* Frontier/Verizon Application, Exh. 1 at 17.

[173] Frontier/Verizon Application at 7-9, and Exh. 1 at 3; Frontier/Verizon Reply at 8.

[174] *See, e.g.*, CWA Comments at 17.

[175] *See supra* para. 23.

61. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, New Communications Online and Long Distance Inc. is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20090528-00565.

62. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control and licenses and authorizations from Verizon Communications Inc. to Frontier Communications Corp. filed by Cbeyond *et al.*, and NTELOS of West Virginia, Inc. ARE DENIED for the reasons stated herein.

63. IT IS FURTHER ORDERED, as a condition of this grant and pursuant to section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), that Verizon and Frontier shall comply with the conditions set forth in Appendices C and D of this Order.

64. IT IS FURTHER ORDERED that the above grant shall include authority for Verizon Communications Inc. and Frontier Communications Corp. to acquire control of: (a) any license or authorization issued to Verizon Communications Inc. and Frontier Communications Corp. and their subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

65. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Memorandum Opinion and Order IS EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary