



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
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February 26, 2010

REPLY TO
ATTENTION OF

Regulatory Law Office
U 4190

VIA ELECTRONIC FILING (2/26/10) & OVERNIGHT MAIL

Commission Executive Director and Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Subject: **DoD/FEA's Post-Hearing Brief**

In Re: **Docket No. UT-090842** – Joint Application of Verizon Communications Inc. and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.

To The Honorable Commission Executive Director and Secretary:

Enclosed for filing in the above-captioned proceeding are the hard copy original and fifteen (15) copies of the Post-Hearing Brief of the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to herein as "DoD/FEA"). A Certificate of Service is appended to this filing.

Copies of this document are being sent in accord with the Certificate of Service. Inquiries to this office regarding this proceeding should be directed to the undersigned at (703) 696-1643.

Thank you for your cooperation and assistance in this matter.

Sincerely,

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Enclosure: Fifteen (15) Copies
CF: See Certificate of Service
Honorable Patricia Clark (Email on 2/26/10)

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET NO. UT-090842
)	
VERIZON COMMUNICATIONS INC.)	
AND FRONTIER)	
COMMUNICATIONS CORPORATION)	THE UNITED STATES
)	DEPARTMENT OF DEFENSE AND
For An Order Declining to Assert)	ALL OTHER FEDERAL EXECUTIVE
Jurisdiction Over, or, in the Alternative,)	AGENCIES'
Approving the Indirect Transfer of)	
Control of Verizon Northwest Inc.)	
)	
_____)	CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing document, together with this Certificate of Service, in Docket No. UT-090842 to be sent this day by electronic service (email) and postage prepaid, properly addressed, first class U.S. Mail (or private courier) to the counsel and parties named below, as indicated:

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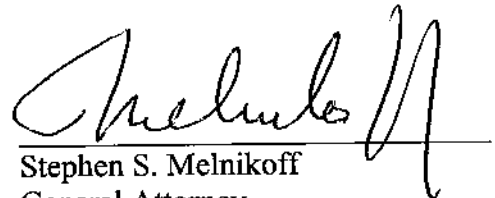
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(8/21/09)

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)
)
VERIZON COMMUNICATIONS INC.)
AND FRONTIER COMMUNICATIONS)
CORPORATION) DOCKET NO. 090842
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For An Order Declining to Assert)
Jurisdiction Over, or, in the Alternative,)
Approving the Indirect Transfer of)
Control of Verizon Northwest Inc.)
_____)

POST-HEARING BRIEF

of

**THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

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February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND BACKGROUND	1
DISCUSSION – DoD/FEA Settlement’s Proposed Conditions	3
Service Quality – Quarterly Monitoring Reports and Remedial Action	3
Retail Rates – Rate Cap on Basic and Essential Services to Business Customers	5
CONCLUSION	7

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POST-HEARING BRIEF

of

**THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (hereafter "DoD/FEA"), hereby files this Post-Hearing Brief in the above-captioned proceeding. This filing is made pursuant to the Notice issued January 7, 2010 by the presiding Administrative Law Judge. For the reasons set forth below, DoD/FEA recommends that the subject application be approved, subject to the Commission's acceptance of the terms of DoD/FEA's settlement agreement discussed below.

I. INTRODUCTION AND BACKGROUND

On May 29, 2009 Verizon Communications Inc. ("Verizon") and Frontier Communications Corporation ("Frontier") (hereafter referred to jointly as "Applicants") filed an application with the Washington Utilities and Transportation Commission (hereafter, "the

Commission”) seeking authority to transfer all the Washington exchanges and associated long distance services of Verizon Northwest Inc. to Frontier. Applicants submitted testimony in support of the application, and supplemented that testimony by a filing made on August 3, 2009. The Commission set the application for evidentiary hearing by order issued June 12, 2009 and scheduled a prehearing conference for July 7, 2009.

DoD/FEA filed a Petition to Intervene on June 30, 2009; that petition was granted in Order No. 2 in this proceeding issued July 28, 2009.¹ Thereafter, DoD/FEA, other intervenors, the Commission’s Staff and the Public Counsel Section, Office of the Attorney General, filed responsive testimony on November 3, 2009. DoD/FEA expert witness, Charles W. King, president of the consulting firm of Snavely King Majoros O’Connor & Bedell, Inc., recommended that the application be granted only if the Commission ordered certain conditions regarding Frontier’s financial qualifications, performance and service quality. Other intervenors also generally objected to a grant of the application as filed, and recommended rejection of the application or conditions that the Commission should impose if it decided to grant the application. Applicants filed Rebuttal Testimony on November 19.

Although the presiding officer set hearings for December 15 to 18, 2009, those hearings were postponed because the Applicants and several parties, including the Commission’s Staff and the wholesale customers, entered into agreements that settled the concerns that they had expressed.² By Notice issued December 15, 2009, the hearings were rescheduled to February 2-

¹ In the Petition to Intervene, DoD/FEA noted the presence of the Federal agencies in Washington and the interest of DoD/FEA in participating in this proceeding to protect the agencies’ interests as future customers of Frontier. Petition at pp. 2-3.

² The Staff and Applicants filed a settlement agreement on December 24, 2009 (hereafter, “Staff Settlement”). Before that, Applicants filed settlement agreements with Level 3 Communications, LLC (December 22, 2009), with Comcast Phone of Washington, LLC (December 22, 2009) and with the following competitive local exchange carriers on December 23, 2009: XO Communications Services, Inc., Integra Telecom of Washington, Inc., tw

4, 2010. On January 29, 2010, prior to commencement of the hearings, DoD/FEA and the Applicants executed and filed a settlement agreement (hereafter, “the DoD/FEA Settlement”). DoD/FEA simultaneously filed the Supplemental Testimony of Mr. King in support of the DoD/FEA Settlement.³ Thereafter, counsel for DoD/FEA participated by telephone (as available) in the hearings held in this proceeding from February 2-4.

Based on the conditions contained in the settlement agreements identified in footnote 2 above, combined with the conditions of the DoD/FEA Settlement described herein, DoD/FEA believes, on balance, all of its concerns are addressed. Thus, DoD/FEA recommends that the Commission grant the application subject to those conditions. Because DoD/FEA’s concerns will be resolved by such a conditional grant, we will not comment extensively on the testimonies of the other parties or the other record exhibits herein. Rather, we note the significant public interest benefits that accrue as a result of the settlement terms filed in this proceeding.

II. DISCUSSION – DoD/FEA Settlement’s Proposed Conditions

A. Service Quality – Quarterly Monitoring Reports and Remedial Action

A major concern of DoD/FEA and other intervenors in this proceeding has been the quality of service provided by Frontier in other jurisdictions compared with that of Verizon in Washington and nationwide. Other service quality issues focused on the possibility that the transfer of back-office systems to Frontier would lead, as it had in other Verizon sales of exchanges, to degradation of service and ensuing financial difficulties for the purchasing carrier.⁴

telecom of Washington, llc, Covad Communications Company, McLeod USA
Telecommunications Services, Inc. d/b/a PAETEC and 360networks (USA), Inc.

³ DoD/FEA Exhibit CWK-7T.

⁴ See, e.g., DoD/FEA Exhibit CWK-1T, pp. 4-11, 21-29.

In the settlement agreements, Frontier has committed to a number of actions that minimize the possible harmful impact on service quality, both retail and wholesale, that intervenors' testimony had identified. The agreement with DoD/FEA builds on the foundation set by those agreements. Condition 1 to which Frontier has agreed in the DoD/FEA Settlement provides as follows:

Retail Service Quality:

1. For a three (3) year period after the close of the transaction, within thirty (30) days following the end of each quarter, Frontier NW* will file with the Commission and Staff a quarterly report card of the averaged quarterly results for the retail service quality metrics (a) through (f) identified in paragraph 20 of the pending Staff-Verizon-Frontier Agreement filed December 24, 2009. Frontier NW will make such quarterly report cards publicly available through Frontier's Internet website. The quarterly report cards may be utilized by the Commission or Staff at its discretion. Within sixty (60) days of the filing, for any quarterly metrics that are missed by Frontier NW, Frontier NW will provide to the Commission and Staff a plan that identifies the specific steps to be taken by Frontier NW to address the missed metrics. That plan shall include a budget for the remedial actions to be taken, and Frontier will commit to make the expenditures forecast in that budget and will not use the budgeted funds for any other purpose. The funding and expenditures will then be tracked monthly in sub-accounts of Frontier NW until the missed metrics are satisfactorily met in a subsequent quarter. Frontier shall not seek to defer any of the remediation expenses for recovery in future rate cases. Should the metrics not be met in a following quarter, Frontier NW shall reassess the reasons for failure and develop and submit a new remedial plan and budget commitment as provided above.

* Frontier Communications Corporation will rename Verizon Northwest Inc. as Frontier Northwest Inc. after the closing of the proposed transaction. Throughout this document Frontier NW refers to the renamed Verizon Northwest Inc. after closing of the proposed transaction.

The above condition is designed to ensure that service quality is monitored on a quarterly, rather than annual, basis, and that Frontier will budget, and set aside funds, specifically to address and resolve promptly service quality problems as they may be identified in its filings with the Commission. Quarterly reports, development of specific remedial measures as needed, and committing funds to resolve service quality issues will ensure that Frontier has a focused response to service problems and that it will not divert funds to other

uses.⁵ The close monitoring of service quality and the requirement of immediate action to remedy problems is in the public interest and should be included in the Commission's grant of the subject application.

B. Retail Rates – Rate Cap on Basic and Essential Services to Business Customers

A second concern of DoD/FEA in this proceeding has been the potential adverse impact on retail rates paid by customers, especially business customers, as a result of the transaction. The concern is that the costs of the transaction may lead Frontier to seek revenue increases that would not be required absent the transaction. The Staff Settlement addressed the issue in part, in that Frontier agreed not to increase residential basic rates for a three-year period following close of the transaction.⁶ The DoD/FEA agreement builds upon that commitment by expanding the scope of the rate cap to services considered basic and essential to business customers, as follows:

Retail Service Rates:

2. For a minimum period of three (3) years after the close of the transaction, Frontier NW shall cap the rates for Retail Flat and Measured Rate Business Services (1FB and 1MB), and PBX, Centrex, and interstate and intrastate special access services, at their levels in effect at the close of the transaction. Frontier NW may petition the Commission to seek recovery from the impact of exogenous events that materially impact the operations of the Verizon NW transferred exchanges, including but not limited to, orders of the Federal Communications Commission ("FCC") and this Commission (such as a generic intrastate access proceeding); DoD/FEA may file to participate in the Commission's consideration of such a petition by Frontier.

This condition is in the public interest and should be approved by the Commission in granting the application. Limiting the rate cap to residential services is inadequate, for several reasons. First, as Mr. King testified:

If only residential rates are capped, then Frontier will likely seek to resolve any perceived revenue inadequacies by increasing business service rates. This provision ensures that

⁵ See DoD/FEA Exhibit CWK-7T, Mr. King's Supplemental Testimony in Support of Settlement, at pp. 4-5.

⁶ Joint Applicants and Staff Exhibit 2HC, Staff Settlement, Condition 23, Attachment 1, p. 7.

during a 3-year transition period business customers receive the same stability and protection from rate increases that residential customers would enjoy.⁷

We note in this regard that Frontier plans to adopt Verizon's current rates. Those rates were the product of a settlement in Docket No. UT-040788, to which DoD/FEA was a party.⁸ Thus, maintaining a cap on all rates for the transition period continues the rate relationships that were established in a formal proceeding that encompassed all of the services that Frontier will provide.

Moreover, Verizon did not seek in that proceeding, or in any other proceeding, to establish that the level of competition in the affected exchanges could support a finding that any of Verizon's business services could be classified as "competitive" pursuant to RCW 80.36.330. In the absence of competitors able to constrain Frontier's ability to price business services, Frontier would be situated to impose sustainable rate increases for business customers in its new rural service areas. In short, business and residential customers are presumably similarly situated as to the availability of competitive alternatives, and thus should be treated equally in establishing a rate cap. Any changes in business (and residential) rates are properly done in a general rate proceeding that uses the costs that Frontier incurs in providing its services in Washington as the basis for revised rates. Again, pricing restrictions should not be confined to basic services for residential customers, because Frontier would then have the incentive and the ability to shift the burden of its perceived need for additional revenue onto users of the non-constrained regulated services. No segment of customers by default should have to bear any harmful or adverse impacts of the proposed transaction.

Finally, a formal proceeding during the three-year transition period to raise business rates would require the Commission to perform audits and allocations to ensure that the transition costs, such as branding, and other costs that were incurred only because of the transaction, are not included in the costs upon which rates are based. Although Frontier has agreed not to

⁷ *Id.*, p. 5

⁸ Order No. 15, Docket No. UT-040788, issued April 12, 2005.

include such costs for regulatory purposes⁹, oversight of that process would be required. The three-year cap on business rates thus conserves both Commission and ratepayer resources, and allows for a natural timing out of costs that should be borne by the parent company, not the Washington operations.

III. CONCLUSION

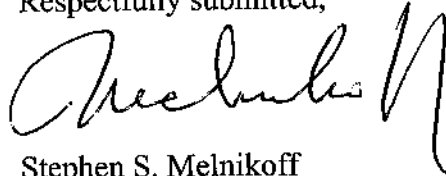
The standard of review for a grant of the Applicants' proposed transaction is that it will not result in harm to customers or to the public interest.¹⁰ The DoD/FEA Settlement, which was the product of "gives" and "takes" of the negotiation process, ensures that this standard is met and that a conditional grant is in the public interest. The overall results of the DoD/FEA settlement add certainty and protections building on the significant foundation of the other settlements, and resolve all issues raised by DoD/FEA in this proceeding. To deny the transaction would effectively require Verizon to continue to operate in a state it wishes to exit and serve customers it would prefer not to have. This would not be a prescription for reliable, efficient and responsive telecommunications service. While there are legitimate risks in transferring Verizon's service territory to Frontier, that company appears eager to expand the scope of services, both regulated and non-regulated, offered in Washington. DoD/FEA believes, on balance, the risk is minimized, given Frontier's experience in providing rurally oriented local exchange carrier services and particularly with the appropriate safeguard conditions of the settlements reached with the parties and a vigilant Commission and Staff ready to act if necessary. Additionally, the risks of forcing Verizon to stay in Washington when there is an acceptable alternative, has its own disadvantages. Thus, we believe approval of the Verizon-Frontier transaction in Washington, with the agreed-upon conditions of the settlements filed in this proceeding, is in the public interest.

⁹ Joint Applicants and Staff Exhibit 2HC, Staff Settlement, Conditions 4 and 11, Attachment 1, pp.2-3.

¹⁰ WAC 480-143; Order No. 2, Docket No. UT-090842, p. 5.

WHEREFORE, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Commission to grant the Application and related relief in all respects, subject to the conditions specified herein.

Respectfully submitted,



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For

The United States Department of Defense

And

All Other Federal Executive Agencies

February 26, 2010