

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

**Verizon/Frontier Divestiture
Docket No. UT-090842**

Public Counsel Response to Bench Request No. 1

BENCH REQUEST NO. 1:

The Commission recently learned that Verizon has altered the terms and conditions of its Internet service offerings to Washington consumers. Specifically, according to a recent posting on Verizon's website <http://www22.verizon.com/residential/wifi>, and a letter sent to Internet consumers, Verizon WiFi (which is currently provided free to existing and future Verizon Internet consumers) will not be available after March 26, 2010, in a number of states including Washington.

In light of this announcement, please respond to the following questions no later than April 5, 2010:

1. How, if at all, will Verizon's action impact the value of the property to be transferred to Frontier?
2. To what extent, if at all, will there be attrition of current Verizon Internet or bundled Voice and Internet customers due the limitation of service?
3. If there are anticipated impacts on the value of the property to be transferred or if there is anticipated attrition of current customers, how will that change the analysis of the "no harm" standard as articulated by Verizon.¹

PUBLIC COUNSEL RESPONSE:

- 1. How, if at all, will Verizon's action impact the value of the property to be transferred to Frontier?**

Termination of WiFi service will lower the value of the property that Verizon proposes to transfer to Frontier.² At this time, Public Counsel cannot determine the specific amount by which termination of WiFi service will decrease the value of the property. However, regardless of the specific "price" of the WiFi service, there is no doubt that Verizon believes this service offering is *valuable* to customers and the Company. Upon announcement of its partnership with Boingo, the

¹ Verizon Post-Hearing Brief, p. 5.

² Verizon made WiFi available to its Washington Internet customers in August 2009, prior to entering into the commitments included in the Settlement Agreement with Commission Staff and the Commission's evaluation of the proposed transaction and the Staff Settlement. See <http://forums.verizon.com/t5/Verizon-at-Home/Verizon-Brings-Free-Wi-Fi-to-Millions-of-Broadband-Customers/ba-p/59727?jsessionid=BA5C617349D9DCBD2D55B0895B2934A0> (last visited March 30, 2010).

Company stated in its *Verizon At Home Blog*, “[w]e think the new WiFi service *will be a real value for customers.*”³ (One possible means of valuing the impact may be to look at the terms of Verizon’s contract with Boingo since Verizon contracts with Boingo for provision of WiFi services.⁴)

2. To what extent, if at all, will there be attrition of current Verizon Internet or bundled Voice and Internet customers due the limitation of service?

While Public Counsel does not have an estimate of the exact impact that termination of WiFi will have on customers’ decision to purchase or retain Internet service from Verizon, it is clear that customers who previously received Verizon’s WiFi service will now have to access WiFi from a different provider at their own expense. This would not be the case absent the termination.

Verizon’s WiFi service is available at no additional cost to customers who subscribe to HSI service at greater than 3 Mbps⁵ or FiOS service at 20 Mbps.⁶ Based on information available through the Boingo website, the price of unlimited access to its WiFi hotspots is \$9.99 per month.⁷ This change in terms of service amounts to a significant change in the value of the service customers will receive—up to a third of the cost of the lowest price HSI service that is eligible for free WiFi access.⁸ Thus, it is reasonable to assume that the termination of WiFi service *will* result in some level of customer attrition since the service provided to customers now includes one less feature without a commensurate reduction in price.

It is noteworthy that the WiFi service Verizon provides is not available *at all* to the lower tiers of service for either HSI or FiOS, nor as a stand-alone service addition. In the informational pages for WiFi accessibility for HSI and FiOS customers on Verizon’s website, the Company encourages customers who are interested in the WiFi feature to upgrade their services to “provide faster downloads, as well as take advantage of the Verizon WiFi service.”⁹ In this sense, WiFi service is a means by which Verizon currently encourages customers to subscribe to higher cost services and bundles. Changing this element of the offerings associated with these services means Frontier loses yet another strategic advantage that Verizon, a more diversified provider, is able to employ in its efforts to increase subscription to its services and retain customers.

³ *Id.* (emphasis added).

⁴ Verizon News Release, “Verizon Broadband Better Than Ever With Free Wi-Fi,” July 27, 2009, *available at* http://forums.verizon.com/vrzn/attachments/vrzn/ResidentialBlog/76/1/Verizon_Wi-Fi_Service_News_Release_FINAL.pdf (last visited March 30, 2010).

⁵ *Available at* <http://www22.verizon.com/ResidentialHelp/HighSpeed/Networking/SetUp/WiFi/124621.htm> (last visited March 30, 2010).

⁶ *Available at* <http://www22.verizon.com/ResidentialHelp/FiOSInternet/Networking/Setup/Wi-Fi/124656.htm> (last visited March 30, 2010).

⁷ *Available at* <http://www.boingo.com/what-is-boingo.php> (last visited March 30, 2010).

⁸ Verizon lists its 3 Mbps HSI service starting price at \$29.99 for customers with a Verizon home phone. *See* <https://www22.verizon.com/Residential/HighSpeedInternet/Plans/Plans.htm> (last visited March 30, 2010).

⁹ *See* http://forums.verizon.com/vrzn/attachments/vrzn/ResidentialBlog/76/1/Verizon_Wi-Fi_Service_News_Release_FINAL.pdf (last visited March 30, 2010).

3. If there are anticipated impacts on the value of the property to be transferred or if there is anticipated attrition of current customers, how will that change the analysis of the “no harm” standard as articulated by Verizon?

On brief, the Joint Applicants list the various factors that the Commission may consider under the “no harm” standard.¹⁰ The Joint Applicants then asserted that the proposed “transaction (including all of the settlements that were reached with various parties) does ‘no harm.’”¹¹ The termination of WiFi service in the territories which Verizon seeks to transfer to Frontier creates a diminution of value to Internet customers, and a very real harm, both to the value of services provided to customers, and to Frontier’s ability to retain customers and revenues—*i.e.*, remain financially capable to operate successfully—going forward.¹²

It is noteworthy that Verizon *only* eliminated WiFi service in those areas it seeks to transfer. This change in service offering does not apply to its customers in the service areas it will retain if the divestiture is approved by the various states as well as the FCC. Thus, it is likely that the termination of WiFi service would *not* have occurred but for this transaction. With that in mind, three issues become evident: (1) this change is occurring despite the fact that the proposed transaction has not been approved by several states and the FCC; (2) since this is directly related to the proposed transaction—it is only happening in jurisdictions where Verizon intends to sell its landline operations—the harm it brings to customers is directly related to the transaction; and, (3) this change in the terms of service is at odds with the terms of the proposed Settlement with Commission Staff (Staff Settlement).

First, it is premature and presumptuous of Verizon to take any action that could hasten the departure of customers prior to the divestiture, especially in states where there are still decisions pending. This is a particularly bold move in light of the fact that an administrative law judge in Illinois recently issued a draft decision recommending rejection of the proposed transaction.¹³ Furthermore, decisions are still pending from this Commission, as well as West Virginia and the FCC.¹⁴

Second, as previously discussed, the elimination of WiFi service for current Verizon Internet customers in Washington represents a diminution in service to the customer, which inflicts some degree of harm. While Public Counsel does not have quantifiable impact data, Verizon’s own press release on the addition of the WiFi service, entitled “Verizon Broadband Better Than Ever With Free Wi-Fi,” stated, “Verizon continues to enhance its broadband service capabilities for

¹⁰ Verizon Post-Hearing Brief, ¶10.

¹¹ *Id.*

¹² Among the factors the Joint Applicants list are the technical, managerial and *financial capability of the surviving entity to operate successfully* any impact on rates, terms and conditions of service. *Id.*

¹³ See Proposed Order, ICC Case 09-0268 (dated March 9, 2010), *available at* <http://www.icc.illinois.gov/docket/files.aspx?no=09-0268&docId=147716> (last visited March 31, 2010).

¹⁴ In addition, an Application for Rehearing has been filed by two parties in the Ohio proceedings. See Application for Rehearing of Communications Workers of America and International Brotherhood of Electrical Workers, PUCO Case No. 09-454-TP-ACO, *available at* <http://dis.puc.state.oh.us/TiffToPDF/A1001001A10C12B52117F63486.pdf> (last visited March 29, 2010).

consumers to offer competitive advantages over rival communication providers.”¹⁵ This statement indicates that the loss of WiFi access lessens the value of Internet services provided to customers, as well as Verizon’s, and potentially Frontier’s, “competitive advantages”. As noted previously, Verizon has *only* terminated WiFi access for Internet customers in the areas it seeks to transfer. Verizon *has not indicated* it will terminate the WiFi offering in states where it plans to continue offering Internet services, again suggesting that this harm is specific to the proposed transaction itself.

Third, the Staff Settlement obligates Frontier to offer Internet services under the same terms and conditions as those offered by Verizon on the day the agreement was entered.¹⁶ Specifically, Frontier has obligated itself to offer HSI and FiOS under the same “rates, terms and conditions” as Verizon.¹⁷ Such “rates, terms and conditions” would include WiFi access for customers who received access to that service as of the date of the Staff Settlement. HSI and FiOS may also be purchased in bundles, addressed in Condition 26 of the Settlement. Condition 26 again obligates Frontier to provide services “as offered by Verizon *today*.”¹⁸ Thus, it appears that Verizon’s elimination of this service violates this Settlement provision in that it would alter the service provisions from what existed at the time the Staff Settlement was signed. This is also supported by testimony from the companies and Staff stating that the continuation of Verizon services at the same rates, terms, and conditions supported a finding that the divestiture would not harm the public interest in Washington.

¹⁵ Verizon Press Release, “Verizon Broadband Better Than Ever With Free Wi-Fi,” July 27, 2009, available at: http://forums.verizon.com/vrzn/attachments/vrzn/ResidentialBlog/76/1/Verizon_Wi-Fi_Service_News_Release_FINAL.pdf (last visited March 30, 2010).

¹⁶ Staff Settlement, Conditions 18 and 26.

¹⁷ Condition 18 of the Staff Settlement addresses stand-alone Internet services.

¹⁸ Emphasis added.