[Service Date April 16, 2010]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of	)	DOCKET UT-090842
	)	
VERIZON COMMUNICATIONS, INC., and FRONTIER COMMUNICATIONS CORPORATION	)	ORDER 06
	)	
For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.	)	FINAL ORDER APPROVING AND ADOPTING, SUBJECT TO CONDITIONS, MULTIPARTY SETTLEMENT AGREEMENTS AND AUTHORIZING TRANSACTION
. . . .	)	

Synopsis*:* *The Washington Utilities and Transportation Commission approves and adopts, subject to conditions, five multiparty settlement agreements proposed by all parties, except Public Counsel and the Broadband Communications Association of Washington, and authorizes Frontier Communications Corporation to acquire indirect control of Verizon Northwest, Inc. The five agreements include commitments to ensure a smooth transition to replicated back-office and operations support systems, expand access to broadband service, and protect the financial integrity of Washington operations. The commitments also preserve Commission access to information necessary to perform its regulatory duties, protect service quality to retail and wholesale customers, protect customers, including low-income customers, from rate impacts, and preserve service offerings. The commitments, together with the settlement modifications and additional conditions imposed in this Order, reasonably assure that Frontier Communications Corporation's proposed acquisition of Verizon Northwest, Inc., will not harm the public interest.*

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SUMMARY

1 **PROCEEDING.** On May 29, 2009, Verizon Communications, Inc. (Verizon) and Frontier Communications Corporation (Frontier) (collectively referred to as the "Joint Applicants") filed with the Washington Utilities and Transportation Commission (Commission) a joint application for an order authorizing the indirect transfer of ownership and control of Verizon Northwest, Inc, (Verizon NW) to Frontier. The Commission set this matter for hearing.

2 All parties, except the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel), the Broadband Communications Association of Washington (BCAW), and the International Brotherhood of Electrical Workers Local 89 (IBEW), have entered into multiparty settlement agreements with the Joint Applicants. The settling parties ask the Commission to approve the transfer, subject to the various commitments in the settlement agreements, arguing that the transaction is consistent with the public interest and will do no harm. Although BCAW is not a signatory to any of the settlements, it also argues in favor of approval of the transaction. The IBEW did not state a position in this case. Public Counsel argues that the transaction is not in the public interest and urges the Commission to reject the settlement agreements and the proposed transfer.

3 **PARTY REPRESENTATIVES.** Gregory M. Romano, Seattle, Washington, and Joseph M. Ruggiero, Arlington, Virginia, represent Verizon. Charles L. Best, Portland, Oregon, and Kevin Saville, Mound, Minnesota, represent Frontier. Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents Comcast Phone of Washington (Comcast). Mark P. Trinchero, Davis Wright Tremaine, LLP, Portland, Oregon, represents Integra Telecom of Washington, Inc., tw telecom of Washington, llc, XO Communications Service, Inc., Covad Communications Company, and PAETEC Communications, on behalf of its subsidiary, McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (collectively referred to as the Joint Competitive Local Exchange Carriers or Joint CLECs). Lisa Rackner and Adam Lowney, McDowell and Rackner, PC, Portland, Oregon, represent Level 3 and 360networks. Brooks E. Harlow and David L. Rice, Miller

Nash, LLC, Seattle, Washington, represent BCAW. Stephen S. Melnikoff, General Attorney, Arlington, Virginia, represents the Department of Defense and all other Federal Executive Agencies (DoD/FEA). Scott J. Rubin, Bloomsburg, Pennsylvania, represents the IBEW.[1] Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).[2] Sarah Shifley, Assistant Attorney General, and Simon ffitch, Senior Assistant Attorney General, Seattle, Washington, represent Public Counsel.

4 **CONFIDENTIALITY.** Some information adduced in this proceeding has been designated as confidential or highly confidential pursuant to protective order. The discussion of this information, including testimony and cross-examination, during the evidentiary hearing was conducted as an *in camera* proceeding and is available only to those individuals who have agreed to abide by the terms and conditions of the protective order. The Commission respects the need for confidentiality, but also believes that its orders should be comprehensible and transparent. Accordingly, any reference to information designated as confidential or highly confidential in this proceeding will be referred to only in generalities when precise information could have competitive sensitivity.

COMMISSION DETERMINATION

5 We approve Joint Applicant's application to transfer control of Verizon NW to Frontier subject to the commitments in the five settlement agreements as modified in herein and the additional conditions we set forth in this Order. Frontier's proposal to acquire and operate Verizon NW is the largest telecommunications transaction involving the takeover of an incumbent local exchange carrier (ILEC) presented to the Commission since Verizon NW became part of Verizon through Bell Atlantic's

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[1] The IBEW did not submit prefiled testimony, participate in the hearing, or file a post-hearing brief.

[2] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

purchase of GTE in 1999 and Qwest's acquisition of US West in 2000.[3] The case is significant in that Verizon, the second largest wireline telecommunications provider in Washington, seeks to exit the wireline market by selling Verizon NW to Frontier, an entity heretofore having a relatively minor presence in the state.

6 Virtually all parties in the proceeding have resolved their concerns associated with their initial opposition to the proposed transaction. These parties, along with Joint Applicants, now contend we should approve and adopt a number of settlement agreements[4] and approve the proposed transaction, contending it is "consistent with the public interest," the standard by which the law requires we measure it. The settlement agreements include commitments that address important public service objectives including:

- Financial conditions designed to ensure that the new wireline carrier is financially strong;
- Protections for retail service quality and rates;
- Significant operations support systems (OSS) testing and reporting requirements;

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[3] *See* Fourth Supplemental Order entered December 16, 1999, in Docket UT-981367, *In the Matter of the Application of GTE Corporation and Bell Atlantic Corporation for an Order Disclaiming Jurisdiction, or in the Alternative, Approving the GTE-BELL ATLANTIC CORPORATION Merger. See also In re Application of US West, Inc., and Qwest Communications International, Inc., For an Order Disclaiming Jurisdiction or in the Alternative Approving the US West, Inc. – Qwest Communications International Inc., Merger*, Docket UT-991358, Ninth Supp. Order (June 19, 2000). We also recently approved the merger of CenturyTel and Embarq, two telecommunications entities with complementary operating characteristics and service territories in Washington, however that transaction pales in comparison to the one contemplated here. *In the Matter of the Joint Application of Embarq Corporation and CenturyTel, Inc. For Approval of Transfer of Control of United Telephone Company of the Norwest d/b/a Embarq and Embarq Communications, Inc.,* Docket UT-082119 Order 05 (May 28, 2009).

[4] Copies of the five multiparty settlement agreements filed in this case are attached to this Order as Appendices A – E.

- Extensive broadband deployment obligations that encompass investment levels, targeted coverage, and improved service levels;

- Improved procedures for addressing the needs of Washington Telephone Assistance Program (WTAP) qualified customers; and

- Resolution of interconnection and wholesale service issues.

7 Some of the commitments in the settlement agreements are patterned after provisions developed in connection with similar transactions the Commission has approved in recent years, while others go further and are more comprehensive than those previously found protective of the public interest.

8 Public Counsel remains the sole opponent to the transaction and actively opposes adoption of the settlement agreements without substantial modifications.

9 Under RCW 80.12 and WAC 480-143-170, the standard for review of this transaction is that the Commission will reject it if the Commission determines "the proposed transaction is not consistent with the public interest." This is sometimes called the "no harm" standard because the transaction must not harm the public interest in order to be approved.[5]

10 Verizon NW is the operating entity providing telephone services to hundreds of thousands of residential consumers and businesses across the state. Although the transaction itself is rather straightforward, there are a number of aspects that warrant full examination. In particular, parties to the proceeding raised concern about potential risks regarding the transaction's effect on (1) retail and wholesale service quality and rates, (2) transitional issues associated with transfer of the OSS necessary to provision, operate, maintain, and bill for retail and wholesale services, (3) Frontier's ability to successfully finance, support and integrate the acquired operations, and (4) the extent to which Frontier's service, operational, and broadband

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[5] *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., For an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (December 30, 2008).

expansion objectives can be met given the scope and scale of the acquired properties relative to Frontier's existing telecommunications operations.

11 Additionally, our record contains extensive testimony regarding Verizon's previous dispositions of ILEC operations, first in Hawaii and later in three New England states (Maine, New Hampshire, and Vermont), that did not go well for the acquiring entities and, more importantly, for consumers in those states. In both cases the acquiring entity entered bankruptcy sometime after closing of the transactions, and there were significant OSS issues that adversely affected both retail and wholesale service delivery. Ironically, despite the adverse results observed in the previous transactions, here we are asked to approve a portion of a much larger single transaction, one which encompasses 14 states and seeks to transfer nearly five million access lines. If the transaction is consummated, Frontier will more than triple in size.

12 The history of past Verizon wireline asset dispositions, coupled with the significant financial and operational challenges that Frontier may well face as it attempts to absorb an entity more than twice its present size, presents us with a dilemma as we evaluate the proposed transfer under our statutes and rules. To some degree, the Joint Applicants present us with a "Morton's Fork." Should we reject the transaction to dispose of its wireline assets, Verizon NW would continue to be owned and operated by one of the largest telecommunications companies in the world, albeit one that has made an affirmative decision to continue its transformation to a global internet protocol (IP) and wireless carrier. Rejecting the Joint Application would also leave Verizon NW in the hands of an increasingly distracted and unwilling owner that could effectively starve the wireline subsidiary of the capital investments and other resources necessary to maintain the level of service quality and offerings presently available.

13 Alternatively, if we approve the transaction, inclusive of all of the conditions agreed to by Frontier in the various settlement agreements presented to us for consideration, we face the risk of allowing a much smaller entity than Verizon that sets forth an ambitious strategy to grow quickly in a rapidly changing telecommunications environment. While Frontier's management exudes confidence regarding its ability to maintain or even improve the operation and range of services offered to Verizon NW customers, we recognize the risks surrounding the complexity, scope and scale of the transaction and Frontier's ability to finance, integrate, and operate the combined company. Although Frontier certainly aspires to complete the transaction and exhibits unquestionable confidence about its ability to overcome these risks, we must apply the law and assess the potential harm that could arise for Washington consumers if Frontier falls short of its financial and operational objectives.

14 Accordingly, our decision must balance these tangible and potential risks against the service improvements, expanded service offerings, and other mitigating factors included in the commitments that Joint Applicants, particularly Frontier, have made in the various settlement agreements. The overarching decision we face here is which entity, Frontier or Verizon, is the most capable and willing to address the long-term interests of the assets and consumers affected by the proposed transaction. Although we consider the choice between approving and disapproving the transaction to be a close call, we are persuaded that, on balance, Frontier is that entity. We believe the financial requirements, retail rate and service quality measures, the OSS testing and integration procedures, and the wholesale provisions of the settlements as modified by this Order, together with important broadband deployment conditions and the post-closing OSS special payment provision we apply to Verizon NW, are sufficient to meet the no harm standard that is applicable to this transaction. We find the Joint Applicants' proposed transfer of Verizon NW, subject to the various settlement commitments as modified below and the additional conditions we require herein, to be consistent with the public interest. Therefore, we approve the transaction.

15 In what follows, we discuss and analyze in the proposed transaction, the settlement agreements, and the record upon which the parties base their arguments.

MEMORANDUM

I. Background and Procedural History

16 On May 29, 2009, Verizon and Frontier filed a Joint Application asking the Commission to decline jurisdiction over, or in the alternative, for approval of the indirect transfer of control of Verizon's regulated Washington State operating subsidiaries to Frontier.

17 On July 6, 2009, the Joint Applicants filed testimony and exhibits in support of their initial filing. Frontier filed supplemental testimony on August 3, 2009. Commission Staff, Public Counsel, Comcast, Integra Telecom, and the DoD/FEA conducted discovery and filed their respective responsive testimony and exhibits on November 3, 2009, in which they identified their concerns with the transaction, as proposed. The Joint Applicants and BCAW[6] submitted rebuttal testimony on November 19, 2009. The parties commenced settlement negotiations based on the issues raised in the prefiled testimony and exhibits.

18 On December 22, 2009, the Joint Applicants and Comcast filed a multiparty settlement agreement and testimony in support of their agreement. On the same date, the Joint Applicants filed a multiparty settlement agreement reached with Level 3 as well as testimony in support. On December 23, 2009, the Joint Applicants filed a multiparty settlement agreement reached with the Joint CLECs and 360networks and testimony in support thereof. On December 24, 2009, the Joint Applicants and Staff filed a multiparty settlement agreement together with testimony in support of that agreement. On January 7, 2010, the Commission issued a notice that, among other things, allowed the parties who are not signatories to offer oral rebuttal testimony at hearing concerning the settlement agreements. The Commission further allowed the signatories to the settlement agreements to offer oral surrebuttal.

19 On January 29, 2010, the Joint Applicants and DoD/FEA filed a multiparty settlement agreement and testimony in support thereof. Accordingly, there are five separate multiparty settlement agreements for Commission consideration. These agreements are collectively referred to as the Settlement Agreements. Public Counsel, BCAW, and IBEW[7] are not signatories to any of the agreements.

20 The Commission conducted a public comment hearing in Everett, Washington, on October 15, 2009. Eight individuals presented comments during that hearing. The Commission conducted the evidentiary hearing in this matter in Olympia, Washington, from February 2 – 4, 2010. Twenty witnesses prefiled testimony and

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[6] As an intervenor, BCAW should have filed responsive, not rebuttal, testimony.

[7] Again, IBEW did not actively participate in any phase of this case.

exhibits totaling more than 2,800 pages and the transcript of this proceeding is approximately 680 pages.

21 On February 26, 2010, Verizon, Frontier, Commission Staff, Public Counsel, DoD/FEA and BCAW filed simultaneous post-hearing briefs. None of the CLECs filed post-hearing briefs.

A. Joint Application

22 In their May 29, 2009, Application, the Joint Applicants propose a series of transactions that, in the end, would result in the transfer of control of Verizon NW to Frontier pursuant to a parent company merger.[8] Verizon has three companies operating in Washington involved in this transaction: Verizon NW, Verizon Long Distance LLC (VLD) and Verizon Enterprise Solutions LLC (VES).[9] Verizon NW is the second largest ILEC in Washington and serves approximately 578,000 access lines in a total of 79 exchange service areas. VLD and VES are long distance companies. Together, they will transfer approximately 273,000 long distance lines in Washington to Frontier. Although three Verizon companies serving consumers in Washington are addressed in the joint application, the primary focus of this case is the transfer of Verizon NW.

23 The Joint Applicants have entered into a stock transaction in which a newly formed Verizon affiliate, which controls and sits atop all the subsidiaries involved in the transaction, is merged into Frontier using a tax free Reverse Morris Trust mechanism. To complete the transaction, Verizon intends to form a new subsidiary, New Communications Holdings, Inc. (NCH), which will be the holding company for Verizon NW, VLD and VES, as well as all the operating subsidiaries to be sold in the other states covered by the transaction.[10]

24 At closing NCH will be merged into Frontier and the surviving entity will then own and control the Verizon assets being transferred. NCH will have two newly formed

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[8] McCallion, Ex. No. TM-1T at 2.

[9] *Id.* at 3.

[10] *Id.* at 7 – 8.

subsidiaries: (1) New Communications ILEC Holdings Inc. (NCIH), which will own the stock of Verizon NW and the other operating ILECs in the affected states; and (2) New Communications Online and Long Distance Inc. (NewLD), which will hold the accounts receivables, liabilities, and customer relationships related to long distance operations (and other operations) in the service territories of NCIH in Washington and the other affected states.

25 The stock of NCH will then be distributed to Verizon shareholders; that is, NCH will be "spun off" from Verizon to Verizon's shareholders and become a separate corporation from Verizon.[11] Immediately following this spin-off, NCH will be merged into Frontier, and Frontier will be the surviving holding company, operating under its existing name and corporate structure, but also owning all of the stock of NCH's subsidiaries, NCIH and NewLD. Pursuant to this merger, Verizon shareholders will receive Frontier stock in exchange for their NCH stock. Once the merger is completed, NCH will cease to exist; thus, NCIH and NewLD will be direct subsidiaries of Frontier, and Verizon NW will be an indirect subsidiary. [12]

26 After the transaction Frontier, offering service as Frontier Northwest (Frontier NW), would offer substantially the same regulated retail and wholesale services under the same rates, terms, and conditions that are offered at the time of closing.[13] Frontier NW will also use the same OSS used by Verizon NW and those systems will be operated by Verizon NW personnel who will move over to Frontier NW.[14] The transaction would also transfer presubscribed customers from VLD and VES to Frontier.[15] Verizon argues that the proposed transaction will allow Verizon to focus on its ILEC, global IP and wireless operations in its remaining states which consist primarily of high-density urban and suburban service areas.[16]

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[11] *Id.*

[12] *Id.* at 8.

[13] *Id.*

[14] *Id.* at 3.

[15] *Id.*

[16] *Id.* at 5.

27 The transaction will take place according to the terms of a Merger and Distribution Agreement entered into on May 13, 2009, under which Frontier will acquire control of approximately 4.8 million access lines and related assets currently owned by subsidiaries of Verizon in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia, Wisconsin and a small portion of California.[17] In Washington, Frontier will acquire control of approximately 578,000 access lines in a total of 79 tariffed exchanges.[18] Upon completion of the transaction, Verizon NW will be a wholly-owned, indirect subsidiary of Frontier offering service as Frontier NW.[19] Frontier will also own and control NewLD which will provide long distance services in Washington.[20]

28 The Commission will retain the same regulatory authority over the provision of regulated services and Frontier NW will remain a rate-of-return regulated company unless or until Frontier seeks an alternative form of regulation (AFOR).[21] Frontier will offer service under the same tariffs and will offer substantially the same regulated retail and wholesale service under the same rates, terms, and conditions that are offered by Verizon NW.[22] Existing Verizon NW interconnection agreements and commercial wholesale agreements will remain in place.[23]

29 Frontier NW will use the same OSS used by Verizon NW prior to closing.[24] These systems are used to run essential aspects of the business such as retail and CLEC

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[17] *Id.* at 5 -6.

[18] *Id.* at 9.

[19] *Id.* at 8.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 10.

[23] *Id.* at 11.

[24] *Id.* at 10.

ordering and billing, network monitoring and maintenance, and all customer support functions.[25] The replicated systems to be transferred to Frontier will be substantially identical to the existing systems.[26] Frontier will be able to validate and confirm that the principal operating systems have been replicated properly prior to closing.[27] Verizon will continue to provide system support for at least a year after closing.[28] Verizon distinguishes this process from other Verizon transactions where the acquirers, FairPoint and Hawaiian Telecom, encountered post-transaction operational problems because the problems were associated with the use of newly developed operational and back-office systems and the associated cutover.[29]

30 Frontier is an ILEC currently providing service in 24 states to 2.25 million access lines.[30] Frontier asserts that it provides approximately 90 percent of its local exchange customers with high speed internet broadband capacity.[31] After this transaction, Frontier will operate Verizon NW as Frontier NW which will provide service in Oregon, Idaho, and Washington.[32]

31 Frontier argues that the transaction will not cause harm and is in the public interest because it: (1) will not distort or impair competition; (2) involves a company with the technical, managerial, and financial capability to operate successfully; (3) will not diminish service quality; (4) will allow customers to share in benefits that will result from the transaction; (5) will improve Frontier's access to capital and lower its cost of capital; and (6) will continue substantially the same regulated services under the same

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[25] *Id.* at 14.

[26] *Id.* at 15.

[27] *Id.*

[28] *Id.* at 17.

[29] *Id.* at 17 -18.

[30] McCarthy, Exh. No. DM-1T at 5.

[31] *Id.* at 6.

[32] *Id.* at 15.

rates, terms, and conditions.[33] Frontier argues that the transaction will benefit Washington customers because Frontier will provide a greater investment in broadband and expand broadband availability in the acquired service area.[34] Frontier asserts that it will generate improved operational performance through the deployment of Frontier's technology and processes in the acquired service areas in Washington.[35]

32 Frontier maintains that it has the financial and managerial experience necessary to operate the acquired area. Frontier's executive management and current employees, combined with the approximately 11,000 Verizon employees that will join Frontier after closing, will have the necessary management and technical expertise to operate the Verizon operations.[36] According to Frontier, Frontier NW will be part of the West Region and Frontier will assign local managers with customer service and operations support for a group of communities within the state as well as add six General Managers to be located in Everett, Kennewick, Pullman, Wenatchee, Lynnwood, and Kirkland, the major cities in the Verizon NW territory to be transferred.[37]

33 Frontier currently serves approximately 2.25 million access lines and this transaction will accelerate Frontier's growth to become the fifth largest ILEC in the United States serving predominately rural communities, suburban markets, and smaller cities.[38] In 2008, Frontier's revenue was $2.2 billion, with a net income of 182.7 million.[39] Frontier's current dividend per share is $1.00, resulting in a yield at or above 13 percent with a dividend payout ratio of 64.6 percent. After the transaction it intends to reduce the annual dividend to $0.75 and the dividend payout ratio will be lowered

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[33] *Id.* at 16 -17.

[34] *Id.* at 17.

[35] *Id.* at 18.

[36] *Id.* at 28-30.

[37] *Id* at 31.

[38] *Id.* at 18.

[39] *Id.* at 34.

to 43 percent.[40] The acquisition of Verizon will decrease Frontier's leverage ratio (net debt divided by earnings before interest, taxes, depreciation, and amortization or EBITDA) from 3.8 times to 2.6 times.[41] Post-transaction, Frontier will have 8.6 million voice and broadband connections including more than 7 million access lines and $6.5 billion in revenues.[42] Frontier expects the transaction will increase its financial strength and improve its access to capital at lower rates.[43]

34 Frontier argues that the proposed transaction should not diminish service quality because it has a successful track record of acquiring, operating, and integrating telecommunications properties.[44] Frontier purchased and integrated over 750,000 access lines from Verizon's predecessor between 1993 and 2000.[45] In 2001, it purchased all of Global Crossing's local exchange carriers which served approximately 1.1 million access lines in 13 states.[46] Frontier also acquired Commonwealth Telephone Company in Pennsylvania and Global Valley Networks in California.[47] The company claims that each of the acquired businesses was integrated into Frontier's customer service and billing system platforms without adversely affecting customers.[48]

35 Frontier asserts that Verizon NW's customers will continue to receive the same regulated intrastate services at the same rates, service terms and conditions; the only

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[40] *Id.* at 35- 37.

[41] *Id.* at 38.

[42] *Id.* at 18.

[43] *Id.* at 19.

[44] *Id.* at 40 - 41.

[45] *Id.* at 44.

[46] *Id.*

[47] *Id.* at 44 - 45.

[48] *Id.* at 44.

significant change will be the name of the service provider.[49] None of the local exchanges Frontier intends to acquire overlap with exchanges it currently serves, so it asserts there should be no adverse impact on competition.[50] Moreover, Frontier will assume or honor all obligations under Verizon's current interconnection agreements, wholesale tariffs, and other existing wholesale arrangements.[51]

36 Frontier intends to expand broadband service to unserved or underserved customers in the acquired area and intends to reduce the 10 percent access line loss rate Verizon has recently experienced in these areas.[52]

37 To encourage customers to purchase the high-speed broadband services, Frontier proposes a promotion to offer free computers to customers who bundle voice and high-speed internet services.[53] Frontier also offers technicians to install the high-speed internet service, ensure that customers' computers are set up, and educate customers on the use of the service.[54]

B. Multiparty Settlement Agreements

38 On the eve of the evidentiary hearing that had been scheduled for December 15 - 18, 2009,[55] a number of parties opposing the proposed transaction were able to resolve their objections by entering into four separate settlement agreements which were submitted to the Commission for approval. Another party, DOD/FEA, later reached

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[49] *Id.* at 42.

[50] *Id.* at 53.

[51] *Id.*

[52] *Id.* at 23.

[53] *Id.* at 24 – 25.

[54] *Id.* at 26.

[55] During the prehearing conference on December 11, 2009, the Commission rescheduled the hearing to convene on February 2 – 4, 2010, because the settling parties had yet to file their settlement agreements and testimony in support thereof.

agreement with the Joint Applicants and submitted a fifth settlement agreement on January 29, 2010. While not a signatory to any of the Settlement Agreements, BCAW supports approval of the transaction. Public Counsel remains opposed to the transaction and actively participated in the hearing that took place February 2 - 4, 2010.

1. Joint Applicants and Staff Settlement Agreement[56]

39 Staff's settlement agreement with the Joint Applicants is the most comprehensive of the five settlement agreements addressing directly a range of financial reporting requirements and conditions, broadband deployment obligations, including a $40 million broadband deployment fund, provisions regarding retail service quality, caps or other restrictions on changes to retail service rates, transitional issues pertaining to copies of Verizon OSS to be used by Frontier after closing, and compliance requirements associated with Frontier's participation in the WTAP. The Joint Applicants/Staff Settlement Agreement[57] addresses six major issues, each of which is discussed separately below.

a. Financial Conditions

40 To address concerns about Frontier's financial viability after closing, the Joint Applicants/Staff Settlement Agreement contains a number of provisions labeled "financial conditions" that the parties assert are intended to ensure adequate monitoring of the financial condition of post-transaction Frontier. The proposed financial conditions are also designed to ensure that any synergy savings associated with the transaction are identified and reported so they may be tracked and incorporated into Frontier NW's Washington rate structure at some appropriate point in the near future and that any additional costs borne by Frontier as a result of the transaction, such as management or rebranding expenditures, are to be specifically excluded from Washington rates. Finally, the proposed financial conditions contain a

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[56] A copy of the Joint Applicants/Staff Settlement Agreement, Exh. No. 2HC, is attached and incorporated as Appendix A.

[57] Joint Applicants/Staff Settlement, Exh. No. 2HC.

series of reporting obligations that ensure continued compliance with the Commission's rules, provide transparency for affiliated interest transactions and post-closing transactions between Frontier and Verizon, and allow Staff to follow changes in capital investment.

41 In Commitment 1, for five years following closing Frontier agrees to provide quarterly reports showing the balances of intercompany receivables and payables and identification of any dividends paid to it by Frontier NW, its subsidiary.[58] This commitment is designed to enable the Commission to track cash flows between the parent and subsidiary operations and weigh such transactions against the operational and capital investment commitments made elsewhere in the Joint Applicants/Staff Settlement Agreement. Unreasonable or excessive subsidiary to parent loans or dividend payments will be identified and assessed against progress the company makes in its service quality and expanded service commitments.

42 Commitment 2 requires Frontier NW to file a petition for an alternative form of regulation (AFOR) within five years of closing and its filing must contain *pro forma* results of operations using the Commission's historical approach for normalization and removal of non-recurring transactions.[59] That is, Frontier NW's filing must apply the Commission's traditional "known and measurable" standard. Additionally, Frontier has agreed that its *pro forma* presentation must reflect cost of capital information based on "investment grade" debt and equity.

43 Commitment 3 requires that every six months for a period of four years following closing or until all synergies have been realized, Frontier NW will submit detailed reports quantifying all synergies arising from the transaction for Frontier and Frontier NW.[60] The report will include information showing costs and projected savings, consolidation and organizational changes to network operations and staffing in Washington, and any impacts on Washington operations and consumers.

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[58] Joint Applicants/Staff Settlement, Exh. No. 2HC, Attachment 1 at 1.

[59] *Id*.

[60] *Id.*

44 Commitments 4 and 11 address one-time external costs associated with closing the transaction and post-closing management costs greater than those presently incurred by Verizon NW and recovered from its consumers.[61] In essence, these commitments are designed to shield Washington consumers from incurring in rates any costs directly related to the transaction itself or unreasonable cost increases resulting from Frontier's intended management structure. Specifically, in Commitment 4, Frontier and Frontier NW are prohibited from seeking to recover from Washington consumers any separation, branding or transition costs, including the transaction-related fees accounting, banking, legal, and investment banking. The companies are required to account for and record such transaction costs in separate subaccounts at the parent and subsidiary level. Similarly, Commitment 11 prohibits Frontier from passing on any increases in overall management costs in the rates charged to retail and wholesale customers.

45 Commitment 5 prohibits Frontier as the parent corporation from encumbering the assets of Frontier NW as a consequence of any financing necessary to complete the transaction or any subsequent debt arrangements undertaken after closing.[62]

46 Commitments 6 and 9 address the closure of the contemplated transaction.[63] Commitment 6 specifically requires Frontier to submit, no later than thirty days after closing, information regarding EBITDA and the resulting price per share used to determine the number of shares required to fulfill the terms of the transaction. Pursuant to Commitment 9, the Joint Applicants must immediately notify the Commission of any material change to the terms and conditions of the transaction prior to closing.

47 As discussed in Section II.B.2 of this Order, there is considerable testimony regarding the replication and transfer of existing Verizon OSS platforms and utilization of those systems by Frontier for an indeterminate timeframe following closing. The Merger Agreement requires Verizon to provide post-closing transitional support for up to five

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[61] *Id.* at 2 and 3.

[62] *Id.* at 2.

[63] *Id.*

years. Accordingly, pursuant to Commitment 7, Frontier NW must provide annual reports that provide sufficient documentation of all transactions between Verizon and Frontier for all transition or related services (including OSS support services) for five years following closing of the transaction.[64]

48 The Joint Applicants/Staff Settlement Agreement also contains several reporting provisions that address our existing rules and practices applying to Verizon NW. Specifically, in Commitment 8, Frontier NW consents to continued application of the Commission's affiliated interest rule (WAC 480-120-375) for its post-closing operations in Washington.[65] Similarly, Frontier is required to annually certify compliance with the Federal Communications Commission's (FCC) affiliated interest rule and provide all necessary supporting information to Staff upon request.

49 Commitment 10 maintains the *status quo* regarding financial reporting; Frontier NW is required to maintain its books, financial statements, and report results of Washington operations in the same manner presently used by Verizon NW.[66] Finally, in Commitment 12, Frontier agrees that subsequent to closing, but prior to the effectiveness of any AFOR plan, it will submit annual reports regarding the expected remaining lives of all host and remote central office switches, including any proposed replacement plans and plans for deployment of new technologies.[67] The reports will include information regarding capital expenditures in Washington concerning switch replacements relative to Frontier's system nationwide.

b. Broadband Deployment

50 The Joint Applicants/Staff Settlement Agreement contains a series of forward-looking commitments regarding broadband service deployment objectives for Frontier after closing. These objectives include specific commitments by Frontier regarding investment levels, timing of deployment, and service performance requirements for

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[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.* at 3.

enhanced broadband service offered to Washington consumers and businesses located within Verizon NW's service area where broadband service is either negligible or nonexistent.[68] The parties assert that Frontier has agreed to a series of significant and measurable commitments that will greatly expand broadband availability in Washington in accordance with state and federal policy objectives to extend broadband coverage to consumers and businesses in unserved and underserved areas of the country.

51 In Commitment 13, Frontier agrees to spend at least $40 million on broadband deployment in Washington by December of 2014.[69] This commitment specifically excludes any amounts that Frontier may expend on Verizon NW's existing Fiber Optic System (FiOS) service offerings or a similar fiber to the home initiative that Frontier may choose to inaugurate prospectively. Commitment 13 also requires Frontier to set aside and deposit $40 million in the form of an irrevocable escrow account deposited in a Commission- approved account with a third party agent that may release funds prospectively only based upon written instruction from the Commission. The funds would be deposited at closing. Thereafter, the company may petition the Commission for reimbursement, on a quarterly basis, of expenditures made on Washington broadband projects that are consistent with the specific broadband commitments discussed below. Finally, this commitment requires Frontier to pay all of the administrative costs associated with setting up and administering the account.

52 In Commitment 15, Frontier is required to deploy broadband service to no less than 95 percent of Washington wire centers, which is 97 out of a total of 102 Washington wire centers, within two years of closing.[70] By December 31, 2014, it is required to make broadband service available to approximately 89 percent of the households in aggregate within the existing footprint of the Verizon NW service area.

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[68]*Id.*

[69] *Id.*

[70] *Id.* at 4.

53 In Commitment 16, Frontier agrees to improve available download speeds to at least 1.5 Mbps and upload speeds of 381 kilobits per second (kbps) for 75percent of households in its service area by the end of 2011. These speeds will increase to 3 Mbps for downloading to 80 percent of households by the end of 2014.[71] Commitment 18, requires the company to maintain availability to so-called "stand alone DSL" for at least 12 months following close of the transaction.[72] The term "stand alone" means that consumers within the company's service territory may purchase broadband service separately from basic voice local exchange service.

54 Finally, in Commitment 17, Frontier is required to submit within 90 days of closing an initial broadband deployment plan and file annual progress reports on May 1 of each year succeeding closing that contain wire-center specific deployment achievement results according to a number of deployment metrics.[73] These reports will serve as the basis for determining Frontier's collective progress towards achieving each broadband deployment commitment.

c. Retail Service Quality

55 The Settlement Agreement includes several provisions addressing retail service quality following closing. According to Staff and the Joint Applicants, these measures are intended to ensure that Frontier maintains or improves the quality of service Verizon NW currently provides to residential and business consumers within Verizon NW's service area.

56 In Commitment 19, Frontier is required to augment Verizon NW's existing Service Performance Guarantee (SPG) which provides a credit of $25 to a residential customer for any service installation commitment the company misses.[74] Frontier agreed to continue the SPG and increase the credit to $35 for any missed residential consumer commitment. The company also agreed to offer its consumers service

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[71] *Id.*

[72] *Id.* at 5.

[73] *Id.*

[74] *Id.*

alternatives for failure to deliver service on time and to provide a $5 credit for out-of-service conditions lasting more than two days. No sooner than 24 months following closing, Frontier is allowed to petition the Commission to modify the SPG, including eliminating the increased credit.

57 Commitment 20 establishes a service quality reporting and penalty mechanism pursuant to which, for three years following closing, Frontier must individually meet six retail service quality metrics.[75] Failure to meet an individual metric or combination of metrics would subject the company to a progression of escalating penalties, which are cumulative over a three-year period, and will be returned to consumers in the form of annual bill credits. The six service performance objectives are intended to provide a financial incentive so that:

a. The average out-of-service interval for all service interruptions for regulated local exchange service (residential and business services) may not exceed 24.0 hours per month.

b. The average out-of-service interval for all other regulated service offerings may not exceed 36.0 hours per month.

c. Average trouble reports per 100 access lines may not exceed 4.0 for two consecutive months in accordance with WAC 480-120-438.

d. Average out-of-service trouble reports per 100 access lines may not exceed 15.0 per year.

e. The average answer-time for the company's repair office must meet the requirements of WAC 480-120-133 each month.

f. The average answer-time for the company's business office must meet the requirements of WAC 480-120-133 each month.

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[75] *Id.* at 6.

58 After closing, to the extent Frontier is unable to meet any of the monthly or annual service performance objectives set forth above, a graduated set of service quality penalties are assessed which would result in customer credits up to an annual amount of $100,000 for each missed metric during the first year of the service quality plan. Commitment 20 also provides additional credits of $100,000 per metric for the second year of the plan and an additional $200,000 per metric if a metric is missed in all three years. In total, up to $3.6 million ($600,000 in year one, $1.2 million in year two, and $1.8 million in year three) retail bill credits may be available from Frontier if a substantial and deteriorating pattern of service quality is measured and assessed.

59 Commitment 21 requires Frontier NW to provide an annual report card to all consumers and the Commission of its service quality performance for each metric.[76] Additionally, the company is specifically prohibited from seeking to recover any service quality penalty or credit amounts in any future rate proceedings.

60 Commitment 22 requires Frontier NW to continue the yellow page revenue imputation associated with the Commission's decision in Docket UT-061777.[77] There, in exchange for spinning off its yellow pages and telephone directory operations to a third party, we approved an imputation of $37.5 million per year of yellow pages revenue to the company's intrastate regulated operations in Washington from the date of our approval in 2008 through December 31, 2016.

d. Retail Service Rates

61 Several provisions in the Joint Applicants/Staff Settlement Agreement address retail service rates after Frontier assumes control of Verizon NW. These provisions are designed to preclude any specific harm to consumers in the form of increased rates or reduced service terms and conditions. In Commitment 23, Frontier is required to maintain the terms, conditions and rates in Verizon NW tariffs upon closing.[78] For a

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[76] *Id.* at 7.

[77] *Washington Utilities and Transportation Commission v. Verizon Northwest, Inc.*, Docket UT-061777, Order 01 (June 30, 2008).

[78] Joint Applicants/Staff Settlement, Exh. No. 2HC, Attachment 1 at 7.

minimum of three years after closing, the company may not increase retail rates for flat or measured residential service rates except for certain "exogenous" events. Such events are not specifically defined except for potential proceedings at the FCC or this Commission pertaining to comprehensive access charge reform. Subject to this commitment, existing residential consumers will continue to receive the same regulated services at the same rates for a minimum of three years following closing.

62 In Commitment 24, Frontier is required to continue to provide all "grandfathered" services for at least six months after closing or until the company obtains Commission approval to offer similar services, whichever is later.[79] Grandfathered services are service offerings currently provided by Verizon NW that are not available to new customers.

63 Commitment 25 requires Frontier to offer customers purchasing intrastate long distance services, including those provided as part of a bundle of telecommunications services, the option to switch for at least 90 days following closing to another provider at no charge.[80] Commitment 26 requires Frontier to continue to offer all existing bundled service packages for the first twelve months following closing.[81]

e. Operations Support Systems (OSS)

64 In addition to unease about Frontier's ability to obtain adequate financing to carry out the contemplated transaction, Staff and other parties expressed concern about the potential impact of the transaction on the company's "back office" systems, also known as "operations support systems" or OSS; the necessary computer-based information systems that serve as the underlying support for the efficient provisioning, maintaining, engineering, and repairing, and billing of telecommunications retail and wholesale services. A potential risk of the proposed transaction is Verizon's intent to replicate its existing OSS. As previously discussed, the two previous Verizon wireline spin-offs had appalling consequences for retail and

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[79] *Id.*

[80] *Id.*

[81] *Id.*

wholesale consumers due, in large measure, to the failure to adequately test and successfully convert the legacy Verizon OSS to the acquiring companies' systems.

65 Here, the Joint Applicants' plans to replicate entirely Verizon's OSS for Frontier became a contentious issue addressed directly by Staff, Public Counsel, and a number of CLECs. In the Merger Agreement, Verizon intends to replicate its support systems and utilize those replicated systems to provide service in Washington for at least 60 days prior to closing of the proposed transaction. Staff, in its responsive testimony expresses strong concerns about the ability of the Joint Applicants to replicate the existing Verizon systems and successfully transition those systems to Frontier. Given the commitments on this issue contained in the Joint Applicants/Staff Settlement Agreement and the CLEC settlement agreements, Staff is now satisfied that the replication and conversion of Verizon systems to Frontier has sufficient safeguards to distinguish this from the adverse consequences witnessed in the Hawaiian Telecom transfer to the Carlyle Group or the transfer of the New England properties to FairPoint.[82]

66 In Commitment 27, Verizon NW is required to put into production the replicated systems at least 60 days prior to the transaction closing date.[83] During the 60-day period, Verizon NW will be utilizing the replicated systems for all retail and wholesale service delivery functions, including installation, maintenance, and billing activities of Verizon NW. It will also be tracking the functional performance of each system and will report the results of actual production metrics to Staff prior to closing. As part of this commitment, Verizon will also pay for a neutral third-party reviewer acceptable to Verizon and Commission Staff. The third-party reviewer will review, validate, and report to Staff the results of all pre-production functionality tests before the replicated systems are put into actual production mode. Verizon agreed, as part of the Settlement, to provide Staff with additional access to the pre-production

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[82] Both of the previous divestitures led to disastrous consequences because those companies chose to develop their own new and unproven systems and undertook cutover from the Verizon OSS systems into their new OSS systems too quickly. The outcomes of those companies' decisions led to bankruptcy filings by both companies. Staff's review of the replication was undertaken with a certain amount of skepticism due to the history of the previous Verizon divestitures. Williamson, Exh. No. RTW-IHCT at 7 – 10.

[83] Joint Applicants/Staff Settlement, Exh. No. 2HC, Attachment 1 at 7 - 8.

and production systems replication processes and the right to review systems testing results.

67 In Commitment 28, the transaction may not proceed with closing until each company has validated that OSS systems are fully functional.[84] Verizon is specifically required to complete all system testing and submit a report to Staff at least five days prior to closing validating that the OSS systems are completely operational. The report must include at least 60 days' of operating results including the following metrics for the production mode period that precedes closing:

- Installation Commitments – Percent of Commitment met.
- Network Trouble – Troubles per 100 access lines.
- Repair – Percent of Out-of-Service troubles per 100 access lines.
- Billing Error complaints.

68 In Commitment 29 Frontier agreed to submit any plans to transition from the replicated Verizon support system element to Frontier's legacy OSS for three years following closing; a circumstance referred to as the second OSS transition.[85] Should it attempt to do so within the three- year window, Frontier is required to provide 180 days' advanced notification to Staff of any OSS changes by submitting a detailed operations support integration plan that will describe the system being replaced, the surviving system, and the reason for the transition.

69 Commitment 30 requires Frontier to give notice at least 180 days notice to Staff and CLECs before it transitions any replicated OSS systems that supports wholesale service operations.[86] We note that other settlement agreements discussed in Sections I.B (2)(3) and (4), contain a number of more detailed and concrete wholesale service provisions that address directly the concerns of Frontier's competitors.

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[84] *Id.* at 8.

[85] *Id.*

[86] *Id.* at 9.

70 Finally, Commitment 31 requires Frontier to maintain functionality performance and e-bonding capabilities at the same level that Verizon is presently providing.[87]

f. Washington Telephone Assistance Plan

71 The final issue addressed in the Joint Applicants/Staff Settlement Agreement pertains to Frontier's procedures and compliance with administration of the Washington Telephone Assistance Plan (WTAP).[88] The commitments are designed to improve the Washington operating company's compliance with WTAP requirements. In Commitment 32, Frontier is required to provide a one-time $75 credit to any WTAP-qualified customer for whom a WTAP discount, credit or waiver is not processed within the first bill cycle of application.[89] Commitment 33 requires Frontier to provide detailed monthly reports to the Commission regarding its performance in processing WTAP applications.[90] Pursuant to Commitment 34, Frontier agreed to provide clear scripts to its customer service and sales representatives so that customers are appropriately informed that WTAP rates are not available on any bundled service offerings.[91] Finally, in Commitment 35, Frontier agreed to proactively verify customer eligibility for the WTAP program by initiating three-way calls between it, the consumer, and Department of Social and Health Services (DSHS) during DSHS' business hours.[92]

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[87] *Id.*

[88] Staff's compliance investigation section has investigated Verizon NW three times since 2005 concerning, among other things, the failure to properly process WTAP applications and bill those consumers at appropriate rates. Despite numerous efforts, Verizon NW failed to comply with WTAP rules and laws; approximately one-third of all complaints against Verizon NW were WTAP-related. This pattern of noncompliance resulted in the Commission issuing a complaint for penalties, which was ultimately settled by Verizon NW agreeing to pay penalties of $37,000 for failure to apply WTAP rates. Stillwell, Exh. No. SLS-1T at 2 – 5.

[89] Joint Applicants/Staff Settlement, Exh. No. 2HC, Attachment 1 at 9.

[90] *Id.*

[91] *Id.*

[92] *Id.*

2. Joint Applicants and Comcast Settlement Agreement[93]

72 Through 30 separate conditions, the Joint Applicants and Comcast resolved in a settlement agreement Comcast's concerns regarding OSS transition issues, prospective interconnection terms and conditions, wholesale service performance and pricing issues, and provisions pertaining to certain ancillary services.[94] Each condition is described below.

a. OSS

73 Comcast reached agreement with the Joint Applicants regarding procedures it believes are necessary for wholesale service order testing to ensure that, post-closing the replicated OSS will operate substantially similar to the pre-transaction systems. In particular, Frontier and Verizon agreed that Comcast will be able to conduct order testing on the replicated OSS, in a testing environment, and submit particular types of test orders during a specified window. The Joint Applicants/Comcast Settlement requires Verizon to compile the testing results in a report that will be issued prior to using the replicated OSS in a production environment actually used to serve customers. Prior to using the replicated OSS in production mode, the report must show that the functional performance of the replicated OSS is at least equal to the functionality of Verizon's current systems. The Joint Applicants/Comcast Settlement Agreement also spells out in detail how the order testing will work, and how Verizon and Comcast will work together to resolve concerns associated with any testing results.

74 Commitments I.1.a through I.1.g deal with Comcast's use of the replicated OSS to perform system testing of its wholesale service orders.[95] Specifically, Commitment I.1.a allows Comcast to use a "CLEC Testing Environment" (CTE) on the replicated OSS from February 15, 2010, through March 12, 2010; a period that precedes the

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[93] Joint Applicants/Comcast Settlement Agreement, Exh. No. 1 is attached and incorporated as Appendix B.

[94] Joint Applicants/Comcast Settlement, Exh. No. 1.

[95] *Id*. at 2 – 3.

systems' placement into actual production. Using the CTE, Comcast will be able to place and assess performance of certain test wholesale service orders. Commitment I.1.b allows Comcast to submit test orders for directory listings and local number portability under varying conditions and for differing customer types. Commitments I.1.c through I.1.g concern specific administrative and procedural steps Comcast and the Joint Applicants will follow during the CTE testing period, including disputes that may be brought to the Commission.

75 Commitments I.1.h and I.1.i concern the post-CTE, but pre-closing period, under which Verizon NW's replicated OSS will be placed into actual production.[96] Commitment I.1.h is similar to Commitment 27 in the Joint Applicants/Staff Settlement Agreement, pursuant to which Verizon NW will utilize the replicated OSS on a live basis for its own retail operations for 60 days prior to closing. Under Commitment I.1.h of the Joint Applicants/Comcast Settlement Agreement, Verizon NW will use the replicated OSS to support actual wholesale service orders placed by Comcast for 60 days before closing. During this period, Frontier is required to validate the functionality of the replicated OSS and work with Verizon NW on resolution of any problems that arise, including those specifically brought to their attention by Comcast. Furthermore, should any wholesale service order problems arise, Frontier and Verizon must modify the replicated OSS prior to transferring the systems to Frontier at closing.

76 Commitment I.1.i requires Verizon and Frontier to provide Comcast with written notice, prior to closing, that replication of the OSS has been successfully completed. Thereafter, Comcast has five business days to notify Verizon and Frontier of any concerns it has regarding the success of replication. Verizon and Frontier will work with Comcast to address such concerns prior to closing.

77 Commitments I.2.a, I.2.b, and I.2.c, collectively, concern any post-closing effort by Frontier to transition from the replicated OSS to legacy Frontier OSS or replacement systems.[97] Specifically, Frontier is prevented from migrating off the replicated OSS

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[96] *Id.* at 4.

[97] *Id.*

for one year following closing. Thereafter, as with Commitments 29 and 30 of the Joint Applicants/Staff Settlement Agreement, Frontier must provide Comcast with 180 days' advance notice of any intent to undertake a second OSS transition. Frontier is required to ensure that, at a minimum, the replacement systems maintain functionality that is comparable to the replicated OSS.

78 Commitment I.3 requires Verizon, Frontier, and Comcast to work cooperatively on transitioning E-911 functionality and related database systems.[98]

b. Wholesale Service and Interconnection Matters

79 The remainder of the Joint Applicants/Comcast Settlement addresses commitments or limitations on changes to existing Verizon wholesale service processes and rates, and to interconnection terms and conditions.

80 For wholesale services, Commitment II.a prevents Frontier from discontinuing any wholesale service offering for one year following closing, except as may be approved by the Commission.[99] Commitments II.b and II.c prevent Frontier from seeking to recover through wholesale service rates any one-time branding and transactional costs, or increased management costs resulting from the transaction.[100] Commitment II.d requires Frontier to maintain the monthly wholesale service performance reports that Verizon presently provides to its competitors.[101] It also requires Frontier to adhere to the FCC's telephone number porting rule that specifies one business porting interval for simple wireline to wireline and intermodal requests.

81 Commitments II.e, II.f, and II.g address the status of existing interconnection agreements and wholesale services, continuation and extension of such agreements and services following closing, and the basis on which replacement interconnection

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[98] *Id.*

[99] *Id* at 4 - 5.

[100] *Id.* at 5. Commitment II.c is identical to Commitment 11 in the Joint Applicants/Staff Settlement.

[101] *Id.*

agreements can be established.[102] Commitment II.e requires Frontier to assume responsibility for all interconnection, commercial, and line-sharing agreements, interstate special access and intrastate tariffs, and other wholesale service arrangements in effect at the time of closing. Frontier is required to maintain these arrangements for any remaining or unexpired term or for 24 months following closing, whichever is longer. Frontier is also prohibited from altering any rate, term or condition of such wholesale services except for changes requested by an interconnecting party (*i.e.*, a competitor) or pursuant to a change of law. Commitment II.f requires Frontier to allow interconnecting carriers to extend existing interconnection agreements for up to 30 months following closing, regardless of whether the initial or current term of an agreement has expired. Finally, Commitment II.g requires Frontier to allow a carrier to use its existing interconnection agreement as the basis for negotiating a new agreement.[103]

82 Commitments II.h, II.i, and II.j address specific interconnection and wholesale service rates and service availability following closing.[104] Commitment II.h effectively imposes caps, for 24 months following closing, on all rates for tandem transport service, interstate special access, tariffed intrastate wholesale services, reciprocal compensation, and interconnection rate elements arising under Sections 251 and 252 of The Telecommunications Act of 1996 (Act).[105] Under Commitment II.i Frontier will not attempt to avoid any of its interconnection obligations arising under the Act on the grounds that it is not an ILEC or that it is a rural carrier to whom certain interconnection obligations do not apply. Finally, Commitment II.j prohibits Frontier from seeking to reclassify a wire center as unimpaired or filing a forbearance petition pursuant to Section 10 of the Act,[106] for purposes of relieving itself of any existing unbundled network element (UNE) obligation.

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[102] *Id.*

[103] *Id.*

[104] *Id.* at 5 - 6.

[105] *See* 47 U.S.C. §§ 251- 252.

[106] *See* 47 U.S.C. § 10.

83 Commitments II.k through II.m address certain administrative or procedural activities pertaining to effective wholesale service delivery.[107] Commitment II.k requires Frontier to maintain effective escalation contact lists and procedures for wholesale service ordering, provisioning, billing, and OSS maintenance. Commitment II.l requires Frontier to maintain similar wholesale service informational forums including a CLEC manual, industry letters, and the CLEC User Forum process. Commitments II.m and II.n require Frontier to maintain a "Change Management Process" (CMP) and adequate staffing of wholesale service support centers at the same or similar levels to those provided by Verizon.

3. Joint Applicants and Joint CLECs Settlement Agreement[108]

84 Similar to Comcast, a group of six CLECs that actively compete in Washington reached an agreement with the Joint Applicants addressing their concerns with the transaction over wholesale service issues.[109] In large measure the 19 provisions of the Joint Applicants/Joint CLECs Settlement Agreement are identical or similar to provisions of the Joint Applicants/Comcast Settlement. For brevity's sake we do not repeat discussion of those items having the same or similar characteristics as the Joint Applicants/Comcast Settlement.

85 There are, however, two provisions of the Joint Applicants/Joint CLECs Settlement that are different. First, Commitment 4, pertaining to monthly reporting on certain wholesale service performance metrics, contains a clause which, ostensibly, requires the Commission to initiate a separate proceeding after closing to monitor Frontier's wholesale service quality performance and establish prospective wholesale service quality benchmarks.[110] Second, pursuant to Commitment 15.b, the Joint Applicants and Joint CLECs address any post-closing OSS transition (second transition) away

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[107] *Id.* at 6.

[108] Joint Applicants/Joint CLECs Settlement Agreement, Exh. No. DM/TM/DD-2 is attached and incorporated as Appendix C.

[109] Joint Applicants/ Joint CLECs Settlement, Exh. No. DM/TM/DD-2.

[110] *Id.* at 5.

from the replicated OSS to another OSS platform.[111] Like the Joint Applicants/Comcast Settlement, this provision requires Frontier to give 180 days' notice of any intent to undertake the second transition but, more importantly, it also allows the CLECs to submit and test wholesale service orders to evaluate the effectiveness of the new systems prior to actual production.[112]

4. Joint Applicants and Level 3 Settlement Agreement[113]

86 Level 3, another CLEC with significant competitive operations in Washington, reached a separate settlement with the Joint Applicants. This Settlement addresses the continuation of existing interconnection agreements and facilities in multiple states, including Washington, the terms for amending existing agreements based on a recent agreement and provision in West Virginia regarding the exchange of indirect traffic, and the timing for commencement of negotiations for replacement interconnection agreements.[114]

5. Joint Applicants and DoD/FEA Settlement Agreement[115]

87 Subsequent to the filing of the multiparty settlements described above, DOD/FEA and Joint Applicants reached their own settlement agreement which basically supplements two provisions of the Joint Applicants/Staff Settlement.[116]

88 Commitment 1 addresses retail service quality reporting for the three-year period following closing.[117] This commitment builds on Commitment 20 of the Joint

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[111] *Id.* at 8.

[112] These "test" wholesale service orders would not involve actual service requests.

[113] Joint Applicants/Level 3 Settlement Agreement, Exh. No. DM/RT-3 is attached and incorporated as Appendix D.

[114] Joint Applicants/Level 3 Settlement, Exh. No. DM/RT-3.

[115] Joint Applicants/ DoD/FEA Settlement Agreement, Exh. No. 4 is attached and incorporated as Appendix E.

[116] Joint Applicants/ DoD/FEA Settlement, Exh. No. 4.

Applicants/Staff Settlement regarding retail service quality metrics and service credits. Specifically, Commitment 1 of the Joint Applicants/DoD/FEA Settlement requires Frontier to file quarterly reports with the Commission, no later than 30 days following the close of each quarter, including the averaged quarterly results for each of the metrics contained in Commitment 20 of the Joint Applicants/Staff Settlement Agreement. For any service quality metric where the company's performance misses or falls short of the service quality objective, Frontier is required, within 60 days of filing a quarterly report, to make a second filing that identifies the specific steps taken and monies budgeted to address the service quality condition. To the extent the company's quarterly service performance fails to improve to satisfactory levels, Frontier must reassess the situation and submit a new remedial plan and budget to rectify the situation.

89 Commitment 2 of the Joint Applicants/DoD/FEA Settlement also builds on a provision of the Joint Applicants/Staff Settlement.[118] Specifically, Commitment 2 of the DoD/FEA Settlement Agreement extends the three-year cap on residential retail fixed and measured rates in the Joint Applicants/Staff Settlement to retail flat and measured business services, PBX, Centrex, interstate and intrastate special access rates applied to business customers in Washington. [119] As with the Joint Applicants/Staff Settlement Agreement, Frontier is allowed to petition the Commission for relief from the rate cap to seek recovery for the impact of certain "exogenous events" such as changes arising from a restructuring of interstate or intrastate access charges by the FCC or this Commission, respectively. DoD/FEA retains the right to participate in such proceedings.

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[117] *Id.* at 8.

[118] *Id.*

[119]Commitment 23 of the Joint Applicants/Staff Settlement Agreement, Exh. No. 2HC, Attachment 1 at 7.

C. Public Counsel's Opposition to Transaction

90 Public Counsel presented three witnesses in opposition to the transaction. These witnesses propose that the transaction, as currently structured, should not be approved because it poses significant risk to Washington consumers. Public Counsel's witnesses provide extensive criticism of the transaction, noting, in particular, the apparent lack of meaningful due diligence performed by Frontier on the assets to be acquired, the lack of sufficiently detailed and realistic financial projections for post-transaction Frontier, the waning utility of Verizon's legacy wireline business, and considerable risks that exist should Frontier be unable or struggle to effectively integrate the acquired operations within its existing businesses. Public Counsel contends that although Frontier discusses the risks of the transaction in its Securities and Exchange Commission (SEC) Form S-4 filing, it does not appear to have accounted for those risks in the financial projections on which the proposed transaction is based.[120]

1. Financial Risks

91 Public Counsel argues that a number of financial issues concerning the terms and conditions of the transaction pose significant downside risk to Frontier and its consumers and cast doubt on Frontier's ability to achieve the purported benefits of this transaction.[121] These issues include Frontier's failure to conduct due diligence on the value of the property to be acquired, the validity of the assumptions in its financial model regarding Frontier's post-transaction operations, the risks associated with its dividend policy, and the risks if Frontier is unable to effectively integrate the acquired operations.

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[120] Hill, Exh. No. SGH-1T at 4.

[121] *Id.*

92 Public Counsel contends that the Joint Applicants have not demonstrated the actual value of the assets acquired from Verizon and, as a result, Frontier cannot effectively assess or project the revenue stream expected from its future operations. It argues that the telephone assets to be acquired by Frontier (referred in the Merger Agreement as Spinco) are an amalgamation of various Verizon properties that have never actually operated as a stand-alone business. It also points out that the allocation and valuation of Spinco's costs, capital, and revenues have been determined by Verizon's management through an ambiguous allocation process that separated Spinco's operations from Verizon's other enterprises and that value determinations and financial projections attributed to these assets have not been audited by an independent third party.[122]

93 Specifically, Public Counsel questions the validity of the following assumptions used in Frontier's financial model[123] through 2014:

- Revenues for Spinco are expected to continue to decline but at a slower rate that the rate of loss over the past five years.[124]
- Annual access line losses will decline.
- High-speed internet penetration will almost double.
- Long distance penetration will increase.
- Revenue per access line will increase by an amount greater than predicted for Frontier's existing operations in 2014.
- Operating expenses are expected to decline at rates higher than historical levels.

94 Public Counsel asserts that over the past two years Frontier's revenues, operating income, and income from continuing operations have declined at 3.3 percent, 11.5

[122] Public Counsel argues that Verizon has a vested interest in ensuring that the property valuation is high and this interest leads to the conclusion that the purchase price was inflated by the seller. *Id.*

[123] The information in the financial model is highly confidential and has been summarized here to protect the proprietary nature of precise information.

[124] Hill, Exh. No. SGH-1T at 18.

percent, and 22 percent, respectively.[125] Since 2007, Frontier's access line loss rate has increased from 4.5 percent annually to 5.07 percent despite the company's efforts to mitigate such losses with additional high-speed internet customers.[126]

95 With respect to operating expenditures, Frontier's financial advisors project significant reductions in annual operating costs. Public Counsel questions the accuracy of these reductions because Frontier has not prepared a stress analysis to assess the strength of its post-merger financial projections.[127] Finally, Public Counsel asserts that the costs of expected debt could have a significant effect on Frontier's future earnings.

96 Public Counsel states that the specific terms and conditions associated with the additional $3.3 billion in debt needed by Frontier to finance this transaction have not been secured and, therefore, the actual finance costs are unknown.[128] Although the Merger Agreement allows Frontier to walk away from the transaction if it cannot secure debt financing at or below 9.5 percent, the actual financing costs, which affect future revenues could be higher.[129] Using the maximum interest rate stated in the Merger Agreement, Public Counsel argues that increasing Frontier's debt by $3.3 billion will add approximately $313 million in interest expense to the costs of operating the company.[130]

97 Public Counsel also addresses the risks associated with Frontier's dividend policy and its impact on funds available for infrastructure investment. It notes that Frontier currently pays shareholders more in dividends than it earns, which means its common

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[125] *Id.* at 20 – 21.

[126] Public Counsel expresses concern with Frontier's expectation to significantly expand its access lines over the next five years; an expectation that may adversely affects its perspective on the timing and ability to integrate Verizon's operations.

[127] Hill, SGH-1T at 47 -46.

[128] Roycroft, TRR-1T at 60 – 61.

[129] *Id.* at 62.

[130] Hill, SGH-1T at 12 – 13.

equity as a percent of total capital is decreasing rapidly.[131] Even though Frontier intends to reduce its annual dividend from $1.00 per share to $.75 per share, Public Counsel argues that Frontier will still be paying out dividends in excess of its earnings.[132]

98 It estimates that Frontier will have to issue an additional 750 million shares[133] to Verizon shareholders at a price of $7.00 per share to fulfill the equity portion of the purchase price.[134] Using the reduced dividend pay-out Frontier will apply on a going forward basis, Public Counsel then estimates an additional $562.5 million in annual dividend outflow.[135] Furthermore, based on the history of equity holders in entities previously spun-off by Verizon to other companies, Public Counsel contends it is highly likely that the recipients of the new Frontier equity (*i.e.*, existing Verizon shareholders) will flood the market with sales sometime after closing, which will put significant downward pressure on Frontier's stock price.[136] It argues that the long-term impacts of a reduced stock price and an aggressive dividend payout policy would adversely affect the company's ability to make the necessary capital investments to sustain the assets it is acquiring[137] or meet its commitments to deploy broadband.[138]

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[131] *Id.* at 20.

[132] Roycroft, TRR-1T at 55 – 56.

[133] 750 million shares is more than twice the 310 million shares currently outstanding for Frontier. Hill, Exh. No. SGH-1T at 13.

[134] *Id.*

[135] *Id*, at 18.

[136] *Id.*

[137] Roycroft, TRR-1T at 56. Public Counsel asserts that capital spending in the property to be acquired declined significantly between 2004 and 2009. In contrast, Frontier projects to increase capital spending in 2011, but to a level less than the annual maximum expenditures by Verizon during the previous five years. It then plans to decrease such expenditures.

[138] Roycroft, TRR-1T at 55 – 56. Public Counsel questions the reliability of Frontier's financial forecasts on broadband infrastructure given Verizon's estimates of the level of capital spending necessary to extend broadband availability to 80 percent of the consumers in the operating entity's service area.

99 In a comparative analysis of the financial condition of both companies, Public Counsel contrasts its analysis of Frontier's financial risks with that of Verizon. It argues that, unlike Frontier, Verizon has increasing revenues and net income from continuing operations and an average dividend payout of 80 percent of earnings.[139] Verizon's capital structure consists of 53 percent common equity and 47 percent debt, and the debt is rated "A," which is well into the investment grade.[140] In contrast, Frontier's current bond rating is below investment grade.[141] Public Counsel concludes that Frontier is a much smaller and more financially risky company than Verizon.

100 Public Counsel asserts that the foregoing observations and others call into question both the integrity of the process Frontier used to evaluate the proposed transaction as well as the reliability of the forecasts used to support it. Public Counsel argues that:

> [W]hile this transaction is different in some ways from the FairPoint purchase of Verizon rural local exchange properties, the possibility of a similar financial outcome is real. The financial health of FairPoint has declined to the point where [it] filed for bankruptcy protection on October 26, 2009. Ratepayers are also the ultimate recipients of the risks inherent in the transaction proposed by Frontier and Verizon. As noted above, there are difficulties with many of the assumptions and projections underlying this merger, indicating that the risks to ratepayers are greater than they would be if the merger is denied.[142]

101 Even though it opposes the transaction, Public Counsel recommends a number of conditions that may support the financial well-being of Frontier after the transaction. For example, it argues that a more efficient way to avoid financial difficulty for the

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[139] Hill, Exh. No. SGH-1T at 22.

[140] *Id.*

[141] *Id.* at 21.

[142] *Id.* at 48 – 49. In addition to the transactions involving Hawaiian Telecom and FairPoint, Verizon's spin-off of Idearc, its former yellow-pages operation, entered bankruptcy in early November 2009. Roycroft, Exh. No. TRR-1T at 15 – 16.

merged entity would be to either lower the purchase price or condition approval on some additional significant monetary contribution by Verizon.[143] However, either of these options would require striking the provisions within the Merger Agreement wherein Frontier committed to make Verizon whole should regulators impose additional financial burdens on Verizon.

102 Public Counsel states that the Merger Agreement requires Frontier to compensate Verizon for any regulatory requirements that reduce Verizon's proceeds from the transaction.[144] The "Required Payment Amount" (RPA) or, as a Public Counsel witness termed it the "regulatory claw-back" provision, provides that the price Frontier will pay Verizon will increase in amount commensurate with any regulatory costs imposed on Verizon. Thus, the RPA "allows Verizon to avoid the consequences of any regulatory actions taken that might improve the public interest profile of this transaction."[145] Public Counsel argues that the RPA is essentially an "escape clause for Verizon [that] shifts the risk to Frontier, and ultimately to Frontier's ratepayers."[146] Public Counsel contends that, contrary to the RPA's intent, Verizon should have some continuing stake in the outcome and operation of the divested properties to ensure that the transition and post-closing operation runs as smoothly as possible.[147]

2. OSS

103 Public Counsel also evaluated the Joint Applicants' back-office and OSS transition process[148] and found that potential problem areas and risks include:

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[143] Hill, Exh. No. SGH-1T at 5.

[144] Merger Agreement dated May 13, 2009, pp. 21 and 22, Sections 1.144 and 1.167 and Hill, Exh. No. SGH-1T at 5 – 6.

[145] Roycroft, Exh. No. TRR-1T at 17. *See also* Merger Agreement, Sections 1.144 and 1.167.

[146] Roycroft, Exh. No. TRR-1T at 16 – 17.

[147] *Id.* at 18.

[148] *Id.* at 27 – 45.

- None of Verizon's previous dispositions have followed an OSS "replication" model (which means neither Verizon nor Frontier have experience following this approach).

- Some of the systems to be replicated are not in Verizon's Fort Wayne data center which means that some of the replicated systems will have to be physically migrated to that location.

- The post-closing replicated OSS will be operated by Verizon personnel unless or until Frontier migrates to its own OSS platform. If so, there may not be sufficient commonality between personnel currently operating the Verizon OSS and personnel anticipated to operate the Frontier platform.

- The replicated OSS will only support existing Verizon services and product sets and will likely require substantial revision to support different Frontier services and products.

- The Merger Agreement does not contain an explicit service guarantee by Verizon regarding the performance of the replicated OSS.

- The Merger Agreement contains a provision for a "Verizon Software License Agreement" (SLA) that governs post-closing operation and maintenance, at an annual maintenance fee of $94 million, of the replicated systems by Verizon.

- The magnitude of the maintenance fee is likely to compel Frontier to attempt to migrate off the replicated systems as quickly as possible to capture and retain merger synergies associated with migration to an OSS platform used in other Frontier operations.

- The SLA requires additional payments for Verizon training of Frontier personnel.

- The level of detail and apparent level of planning for converting systems supporting 911coverage is cursory.

3. Impact on Rates

104 Public Counsel argues that Frontier's acquisition may result in changes to rates and other terms and conditions associated with the existing products and services purchased by Washington consumers. It notes that Frontier's service pricing across the country, including packages or bundles of services, tends to be higher than similar Verizon offerings.[149] It expresses concern that Washington consumers may face rising prices due to Frontier's intent to market aggressively more expensive services and packages to increase its revenue per access line.[150] Additionally, consumers of Verizon's service bundles may be forced to pay an early termination fee should Frontier impose price increases after closing.[151]

4. Broadband Availability and Quality

105 Regarding broadband services, the availability of Verizon's FiOS service in Washington varies widely and in a large portion of the service area it is unavailable.[152] Likewise, DSL is not available in many areas[153] Public Counsel disputes Frontier's claim that DSL is available to over 90 percent of its current consumers.[154] Public Counsel concedes that this claim may be true on average across Frontier's entire service territory, but there are many locations, including entire states, where the level of DSL availability is significantly lower.[155] Moreover, where DSL is available, Public Counsel argues that Frontier's DSL performance levels (*i.e.*,

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[149] *Id.* at 49 – 50.

[150] *Id.*at 24 – 25.

[151] *Id.* at 51 – 52. Frontier customers experienced problems with the company over early termination fees which resulted in a settlement in New York State over its practices.

[152] *Id.* at 68.

[153] *Id*.

[154] *Id.* at 68 – 69.

[155] *Id.* at 69.

upstream and downstream speeds) are much slower than Verizon's broadband offerings and its service prices are substantially higher.[156]

106 Public Counsel argues that Frontier did little or no direct examination of the quality of the outside plant facilities it will be acquiring from Verizon in Washington which casts doubt on any financial projections it has made with respect to upgrading these facilities to be DSL-capable. It contends the condition of the outside plant has a direct correlation to Frontier's ability to deploy broadband services.[157]

5. Service Quality

107 With respect to service quality issues, Public Counsel presents two basic concepts: (1) the risk of potential deterioration in customer service and service quality should be fully transferred to the shareholders of Frontier; and (2) the Commission should impose concrete and enforceable service quality measurements including appropriate financial incentives.[158] Public Counsel argues that the scale of the transaction to Frontier, the negative history of other Verizon dispositions, the replication of Verizon's OSS, Frontier's inexperience operating these systems, and the downstream effects of a potential future migration from the Verizon OSS to Frontier's OSS, all foreshadow problems that may impact Washington consumers.[159]

108 Public Counsel describes Frontier's service performance across its existing footprint relative to its internal performance objectives. In 2008, the company either failed to meet or missed by a wide margin the internal performance goals it established for a

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[156] *Id.* at 69 – 72.

[157] Frontier apparently assumes that 100 percent of the outside plant it will be acquiring in Washington is DSL capable (i.e., requiring absolutely no line conditioning related to moisture, removal of bridge taps, or other grooming requirements). As a result, Frontier dramatically lowered its capital investment projections associated with meeting the 90 percent DSL availability target in the areas to be acquired. Verizon's internal estimates associate significant expenditures for line conditioning. Roycroft, Exh. No. TRR-1T at 75 – 77.

[158] Alexander, Exh. No. BRA-1T at 5 - 6.

[159] *Id.* at 9 – 15.

number of measures.[160] Thus, Public Counsel argues that the facts speak differently than Frontier's claims about exceptional service quality.[161] Although the Commission has service quality rules with which telecommunications companies are required to comply, Public Counsel contends that it would be a mistake to approve the transaction and then observe a serious degradation in service quality.

109 As a preventive measure, Public Counsel proposes that Frontier be required to comply with a Service Quality Index (SQI) that is comprised of a series of key service quality performance measures.[162] The specific measures Public Counsel recommends establish benchmarks for premise installation appointments, installation of local exchange service, business office calls, repair service calls, network trouble report rates, out-of-service (OOS) trouble rates, OOS repair intervals for residential customers, and Commission complaint rates.[163]

110 Public Counsel also recommends that Frontier submit monthly and quarterly SQI reports of each performance standard as well as an annual report (by January 31 of each year) showing the monthly and annual average results for each SQI measure.[164] Public Counsel proposes that the SQI include a self-enforcement mechanism that provides direct compensation to consumers whenever the company fails to meet the SQI standards.[165] Each one percent difference between actual annual results and a benchmark target should be assigned one "service compensation" point. Public Counsel recommends that penalties apply in graduated fashion for each point below or beyond the target with a maximum annual penalty of $9.5 million (an amount that is nearly 4 percent of 2008 intrastate revenues for Verizon Northwest).[166] The annual

[160] *Id.* at 22 – 25.

[161] *Id.* at 26.

[162] *Id.* at 35 – 36.

[163] *Id*.

[164] *Id.* at 40.

[165] *Id.* at 41.

[166] *Id* at 42.

penalty amount, if any, would be refunded to Washington consumers in the form of rebates through bill credits.[167]

111 In addition to the SQI mechanism, Public Counsel proposes additional consumer protection measures in the event there are significant billing anomalies or errors that arise as a result of the OSS transition plan.[168] Specifically, Frontier must report to the Commission any instances of billing errors including, but not limited to, delayed processing and mailing, and pricing of services. Public Counsel recommends a "service performance guarantee" that would provide Washington consumers with a bill credit ($10 for residential customers and $50 for business customers) if Frontier fails to issue a bill on time or issues a bill that contains an error or errors that are caused by Frontier.[169]

6. Summary and Conditions Necessary for Approval

112 Public Counsel recommends that the transaction, as presently structured, should be denied because it poses a significant number of risks to Washington consumers without commensurate and quantifiable benefits. If the Commission does not adopt Public Counsel's recommendation, then Public Counsel proposes the following conditions to approval of the transaction:

- Verizon should contribute at least $600 million to Frontier to assist with necessary capital spending in Washington (either a cash transfer or a reduction to the $3.3 billion payment Frontier is required to make to Verizon at closing).[170]

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[167] *Id.* at 43.

[168] *Id.* at 44.

[169] *Id.*

[170] Because the assets in Washington approximate 12 percent of the total acquisition across the 14 states at issue, this recommendation translates into approximately $72.4 million available to Frontier for the Washington property.

- Frontier should be required to monitor and report quarterly use of the funds to be contributed by Verizon and they may only be used for improving the telephone plant being acquired.

- Until the post-merger company (Frontier) is able to achieve an investment-grade bond rating, it should be prohibited from paying out dividends greater than its earnings.

- Frontier should file with the Commission a report summarizing the results of its debt financing and demonstrating that the new debt was not financed at a rate above 9.5 percent.

- Verizon should commit to modifying the Merger Agreement to eliminate the "Required Payment Amount" provision.

- Verizon should be required to create and maintain for 12 months following closing an archive of customer records to verify data transferred to Frontier.

- Verizon should establish a $40 million fund to insure the condition of its outside plant in Washington. The amount of the fund, at Verizon's request and expense, could be adjusted by completion of a third-party audit addressing the condition of Verizon's outside plant in Washington. Problems with outside plant identified in the audit should be remedied at Verizon's expense.

- Verizon should face penalties of up to $7.7 million per year associated with negative performance of the replicated OSS systems it supplies Frontier.

- Frontier should commit to making broadband services available in 100 percent of its wire centers and to 90 percent of its Washington consumers by the end of 2013. Frontier should expand broadband availability to 100 percent of its consumers by 2015.

- Frontier should deploy and promote broadband services so that, by the end of 2013, at least 90 percent of its customers can achieve download speeds of 3 Mbps; 75 percent of its customers can achieve download speeds of 6 Mbps; and 50 percent of customers can achieve download speeds of 10 Mbps.

- Frontier should complete Verizon's current commitment for fiber build-out obligations in Washington.

- To achieve these broadband objectives, Frontier should commit to exceed Verizon's baseline level of capital investment by at least $89 million during the period ending December 31, 2013, or by an amount sufficient to meet the broadband objectives.

- Frontier should offer broadband services at Verizon's advertised prices for 1 Mbps and 3 Mbps service ($19.99 per month and $29.99 per month, respectively) for a period of 24 months following the merger.

- Frontier should not impose its broadband "download cap" in Washington.

- Frontier should provide individual written notice to its consumers regarding the merger, and should notify customers of any change in services that result from the merger. Changes in billing format should also be clearly explained to customers, both in writing, and through a web-based tutorial.

- Frontier should not be allowed to migrate any Verizon customer to a Frontier plan that either increases rates or diminishes service levels. Frontier should impose a rate freeze for 24 months.

- All early termination charges should be waived for a period of 90 days following the merger and the long-distance primary interexchange carrier (PIC) charge should be waived for Verizon long-distance customers who do not select Frontier.

- Thirty days following the cutover of any replicated systems by Verizon, Verizon should provide to the Commission a status report on the performance of the replicated systems. The report should identify the systems cutover and any problems with the cutover. The report should specifically address the cutover to replicated 911 systems, how these systems perform, and any problems with 911 systems. Verizon should continue to issue monthly reports on the performance of all replicated systems for 12 months following closing.

- Verizon should notify all interested parties of the plans associated with 911 system replication, results of testing replicated 911 systems, and the date on which the cutover takes place.

- Frontier should be required, for a period of four years following the closing, to submit quarterly reports to the Commission on the integration of business and repair office operations and billing systems.

- Frontier should be required, for a period of four years following the closing, to submit quarterly reports to the Commission on any consolidation of network operations and staffing levels associated with network operations in Washington.

- Frontier should be required to comply with an SQI that reflects key indicia of service quality performance with rebates issued to consumers for non-compliance with the SQI.

- Frontier should be required to issue bill credits to consumers whose bill was not issued on time or that contains an error caused by Frontier.

In oral rebuttal to the settlement agreements, Public Counsel affirmed his position.

II. Discussion and Decision

113 Among the diverse parties to this proceeding, only Public Counsel opposes the transaction. All other parties were able to resolve their concerns or differences with the Joint Applicants according to specific commitments set forth in five settlement agreements or otherwise chose not to participate in our proceeding. Public Counsel's primary arguments in opposition express concern with Frontier's financial fitness and ability to assume and operate the Verizon properties, the replication of Verizon's OSS, and service quality measures to ensure that Washington consumers are not adversely affected by this transaction.

114 We find the settlement agreements, attached as Appendices A - E to this Order, and as modified in the discussion set forth below, fairly resolve the issues presented for our consideration in this proceeding. Collectively, we find the proposed transaction, as modified by the commitments in the settlement agreements, and as further conditioned in this Order, consistent with and will result in no net harm to the public interest. Accordingly, we approve the proposed transaction subject to the specific terms of the settlement agreements as modified by this order, and subject to certain additional conditions we apply to Joint Applicants.

A. Standard of Review for Property Transfers

115 The Commission's authority and responsibility regarding transfers of ownership and control of public services companies are found in RCW 80.12 and WAC 480-143.[171]

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[171] RCW 80.12.020 states:

> No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchise, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchise, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do.

RCW 80.12.030 provides that "[a]ny such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void."

These statutes and rules require Commission approval whenever a public service company agrees to a change-of-control transaction. The standard governing our review is:

> If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.[172]

116 There is no single statutory definition of the public interest to be considered in telecommunications merger and property transfer proceedings, but specific statutes do provide direction regarding state policy concerning telecommunications utility service. In particular, RCW 80.36.300 establishes state policy to:

(1) Preserve affordable universal telecommunication service;

(2) Maintain and advance the efficiency and availability of telecommunications service;

(3) Ensure that customers pay only reasonable charges for telecommunication service;

(4) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies;

(5) Promote diversity in the supply of telecommunications services and products in telecommunications market throughout the state; and

(6) Permit flexible regulation of competitive telecommunications companies and services.

117 These objectives constitute a clear statement of policy as it pertains to telecommunications service, but the approach for determining what is in the public

[172] WAC 480-143-170.

interest varies with the form of the transaction and the attending circumstances.[173] In previous telecommunications merger proceedings, we addressed the public interest by taking into consideration the following factors:

- The impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition;

- Whether the surviving corporation has the technical, managerial and financial capability to operate the operating subsidiary;

- The potential impact on service quality, including the impact on investment in Washington and neglect and abandonment of facilities;

- How any benefits or synergies would be shared between customers and shareholders;

- The financial impacts of the proposed merger on cost of capital, capital structure, and access to financial markets; and

- The impact of the merger on rates, terms, and conditions of service.[174]

118 Our review considers the interests of customers, shareholders, and the broader public.[175] We must balance the costs and benefits for the public and for affected

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[173] *In re Application of US West, Inc., and Qwest Communications International, Inc., For an Order Disclaiming Jurisdiction or in tbe Alternative Approving the US West, Inc. – Qwest Communications International, Inc., Merger,* Docket UT-991358, Ninth Supp. Order (June 19, 2000), citing *In Re PacifiCorp and Scottish Power PLC,* Docket . UE-981627, Third Supp. Order (April 2, 1999).

[174] *See* n. 3 regarding Docket UT-991358; *In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc.,* Docket UT-050814, Order 07 (December 23, 2005). *See also* Staff's Post-hearing Brief at 4.

[175] No party contested the applicability of the "no harm" standard.

customers. If the costs outweigh the benefits, the result is harm and the Commission should deny or condition the approval so no net harm results."[176]

119 In light of the foregoing, we organize our analysis of the multiparty settlements around the issues presented in the joint application. We consider the settling parties' positions on these issues as well as that of Public Counsel.

B. Issues

1. Financial Structure, Projections, and Conditions.

120 Front and center in this proceeding is the financial fitness of Frontier and its ability to finance, acquire, and successfully integrate and operate Verizon NW and the other wireline properties included in the proposed transaction.

121 While it is indisputable that Verizon is a much larger and diversified entity than Frontier and that currently Verizon NW consumers benefit from Verizon's higher credit rating than Frontier's, it is also true that Verizon's diverging interests make it increasingly difficult for Verizon NW to compete internally for the investment capital necessary to maintain its operations in Washington. Our role then is to determine which of the entities – Verizon or Frontier – is more likely to successfully operate and maintain the financial health of Verizon NW prospectively.

122 During our hearing, a number of concerns were raised about Frontier's existing financial capacity and the potential adverse effects of the contemplated financing arrangements it will be required to undertake to consummate an approximately $8.6 billion transaction. Specific concerns were:

- Frontier's existing credit rating is BB (below investment grade) relative to Verizon's A rating (investment grade).[177]

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[176] *In the Matter of the Joint Application of Verizon Communications, Inc., and MCI, Inc.,* Docket UT-050814, Order 07 (December 23, 2005).

[177] Public Counsel Post-hearing Brief at 13.

- Frontier's dividend policy has historically resulted in payments in excess of net earnings.[178]

- The method used to determine the value of the Verizon properties to be transferred is undocumented and may have inflated the purchase price.[179]

- The extent to which Frontier conducted adequate due diligence on the plant conditions of the properties to be acquired.[180]

- The ability of Frontier to obtain adequate financing at reasonable cost for the $3.3 billion cash payment to Verizon at closing and the post-closing effect of the additional debt on the consolidated balance sheet of Frontier.[181]

- The validity or reasonableness of Frontier's financial projections for the post-closing combined corporate entity and for the individual Washington operating entity.[182]

- Frontier's ability to achieve the operating and financial metrics associated with increased broadband revenue and reduced access line loss.[183]

- The level of capital expenditures necessary to operate the acquired Washington operating entity.[184]

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[178] *Id.* at 15.

[179] *Id.* at 9.

[180] *Id.* at 19.

[181] *Id.* at 46.

[182] *Id.* at 16.

[183] *Id.* at 22.

[184] *Id.* at 20.

123 In response to these concerns, the Joint Applicants and Staff urge the Commission to consider the financial terms of their settlement agreement in the context of a complete package of terms and conditions designed to ensure there will be "no harm" to consumers. They point out that the Joint Applicants/Staff Settlement Agreement consists of a mix of provisions; some of which are designed to mitigate any potential harm to Washington consumers while others provide or extend specific benefits that would not be available but for the transaction.[185] As to the 12 specific financial provisions of the settlement agreement, Staff and Joint Applicants contend they are designed to give the Commission the information it needs to prospectively monitor and evaluate financial transactions and performance as well as the relationship between Frontier NW and its parent company.[186] These commitments are also intended to shield Washington consumers from any unanticipated or adverse financial effects of the transaction.[187]

124 Joint Applicants/Staff Settlement Agreement Commitments 1, 3, 6, 7, 8, 10, and 12 deal with a range of reporting and compliance obligations applicable to Frontier after closing. Commitments 4 and 11 are designed to insulate retail and wholesale customers from the costs of separation, branding, transition, and increased management costs associated with the transfer to Frontier and Commitment 5 prevents Frontier from directly pledging Verizon NW's assets. Collectively, these provisions are designed to ensure continued compliance with our existing rules, provide supplemental financial information to enable adequate monitoring of the post-closing operations of Frontier, and prevent harm to consumers in the form of higher rates as a result of increased costs resulting directly or indirectly from the transaction. We find these commitments to be in public interest and approve them without modification.

125 Public Counsel contends the financial commitments in the Joint Applicants/Staff Settlement are not in the public interest because they provide no assurance or remedy to what it perceives are the fundamental problems associated with Frontier's existing, and likely post-closing, financial condition. Public Counsel argues that the reporting

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[185] Commission Staff Post-hearing Brief at 35 and Joint Applicants' Post-hearing Brief at 28.

[186] Commission Staff Post-hearing Brief at 42.

[187] *Id.* at 37.

commitments lack effective or meaningful enforcement measures that would prevent a deterioration of Frontier's financial condition and provide little comfort that the Commission will be able address any problems should they arise. Regarding the commitment to use investment grade ratings for any post-closing rate proceeding, Public Counsel asserts this commitment is illusory at best since the actual financial performance of the company may actually be harmed through use of a hypothetical cost of capital. Public Counsel also opposes the requirement that Frontier file an AFOR within five years of closing, contending that this requirement may actually introduce additional risk to residential and business consumers in the form of higher rates.

126 To address its contentions that the Joint Applicants/Staff Settlement is not in the public interest, Public Counsel proposes a series of additional conditions that it believes, if adopted, would allow the transaction to meet our standard for approval.[188] Those additional conditions that can be characterized as financial conditions are summarized below:

- Condition approval of the transaction on a showing that Frontier does not finance the $3.3 billion special cash payment at an interest rate that exceeds 9.5 percent.

- Remove or modify the so-called "regulatory claw-back" provision of the Merger Agreement by making it inapplicable to any specific condition the Commission adopts that requires a contribution from or imposes additional costs on Verizon.

- Require Verizon to contribute approximately $72.4 million to Frontier, in the form of a direct cash transfer or as a reduction to the $3.3 billion special cash payment, to be directed toward future capital expenditures by Frontier in Washington.

[188] Public Counsel Post-hearing Brief at 46.

- Require Verizon to provide a monetary guarantee of $40 million to be placed in an interest-bearing account to ensure of the condition of Verizon NW's outside plant in Washington.

- Prohibit the payment of dividends in excess of earnings from Frontier NW to its parent, Frontier, Inc.

- Eliminate the AFOR plan filing requirement of Condition 2 of the Staff Settlement Agreement.

127 In response to Public Counsel, Staff and the Joint Applicants restate their position that the protective nature of many of the financial measures in their Settlement should be considered in the context of the entire portfolio of settlement commitments and that Public Counsel's proposed conditions are speculative and unreasonably onerous. They suggest that adoption of Public Counsel's recommendations would unnecessarily restrict Frontier's ability to effectively manage the business it is acquiring and move towards its objective of obtaining an investment grade rating. Staff argues the Joint Applicants have met their burden of demonstrating an absence of harm and by virtue of the commitments in the Settlement there is, arguably, a net benefit and the transaction should be approved.[189]

128 Having considered the parties' positions, we turn now to consideration of the remaining financial conditions in the Joint Applicants/Staff Settlement Agreement as well as the additional financial conditions advocated by Public Counsel. We start with discussion of the two remaining financial conditions of the Joint Applicants/Staff Settlement Agreement that, according to Public Counsel, do not adequately protect the public interest without modification.

129 Commitment 2 of the Joint Applicants/Staff Settlement Agreement requires an AFOR filing within five years that includes a full *pro forma* results of operations presentation using an investment grade cost of capital. Although it is not stated clearly in the Joint Applicants/Staff Settlement Agreement or testimony supporting the filing, taken together, we interpret this commitment to mean that Frontier will

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[189] Commission Staff Post-hearing Brief at 12.

submit to a full earnings review of the company's operations as part of or coincident to, the submission of an AFOR plan. As with previous telecommunications' acquisition transactions we have approved, we require earnings reviews to allow the Commission to consider and capture for Washington consumers the appropriate *pro rata* portion of any anticipated synergies associated with the transaction. During the settlement hearing, Frontier asserted that from an operational perspective the company envisions a leaner and more localized management structure. This, it contends, will produce synergies of $500 million which will improve Frontier's financial condition and contribute to its aspiration to achieve investment grade status.[190]

130 We are persuaded to adopt Public Counsel's proposal to eliminate the mandatory aspect of the AFOR filing requirement of Commitment 2. We share Public Counsel's concern that, because AFOR plans generally reflect movement away from traditional application of full rate of return regulation, such plans tend to result in higher local service rates for consumers.[191] While we acknowledge that changing market conditions make AFOR plans and other streamlined or reduced regulatory measures important means to transition from the *status quo*, the market conditions that would support such a transition have a temporal quality and will not be known until they occur. Because Frontier's competitive environment will dictate when an AFOR is appropriate, we do not believe it is necessary to impose an absolute AFOR requirement on Frontier as a condition of our approval.

131 Additionally, we note that Commitment 22 of the Joint Applicants/Staff Settlement Agreement requires Frontier to continue the imputation of yellow page revenue to the regulated operations of Frontier NW in accordance with our decision in a previous proceeding involving Verizon NW. The yellow page revenue imputation requirement runs through December 31, 2016. Although we are not required to approve any AFOR plan brought to us for approval, we are concerned about the interplay of a mandatory requirement to file an AFOR plan no later than 2015 and the continuing yellow page revenue imputation obligation that extends through the end of 2016. These revenues remain a direct and appropriate offset to the cost of providing local

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[190] Weinman, TR. at 272 and McCarthy, TR. at 381.

[191] Public Counsel Post-hearing Brief at 31 – 32.

exchange service in Washington and should not be put at risk through price changes resulting from an AFOR plan. We retain the requirement to submit, within the five year period following closing, a full earnings review that provides *pro forma* results of operations, uses a historical test period, and reflects a cost of capital presentation using investment debt and equity. We expect the earnings review to allow us to evaluate and address prospectively Washington's share of the synergies derived as a result of the transaction.

132 Turning to Commitment 9 of the Joint Applicants/Staff Settlement Agreement, we find merit in Public Counsel's proposed modification of the requirement to notify the Commission of any material change to the transaction's terms and conditions prior to closing. Although "material change" is not defined in Commitment 9, Staff contends that any debt issuance by Frontier that exceeds 9.5 percent to finance the special cash payment to Verizon would trigger this condition.[192] Public Counsel proposes we specifically condition approval of the transaction on a showing by Joint Applicants that, prior to closing, Frontier has not financed new debt at a rate greater than 9.5 percent.

133 We accept the proposed modification to require notice of revised financing conditions, but decline to adopt Public Counsel's proposal to condition approval of the transaction on the obtaining of 9.5 percent, or below, financing. Accordingly, we revise Commitment 9 by requiring Frontier to file, at least 15 days prior to closing, a notice with the Commission reflecting all of the final terms and conditions of the financing necessary to close the transaction and that the financing has been procured at 9.5 percent, or less.

134 As discussed below, except for one recommendation, we decline to adopt the remaining financial conditions advocated by Public Counsel. While we could adopt all of the proscriptive financial measures advocated by Public Counsel, we believe doing so puts at risk a number of the pro-consumer benefits we discuss elsewhere.

135 We reject as unnecessary Public Counsel's proposal to require Joint Applicants to reduce the purchase price or to have Verizon make a cash transfer to Frontier. Witnesses for Public Counsel did not produce meaningful evidence supporting their

[192] Commission Staff Post-hearing Brief at 21 – 22.

assertions regarding the value of the transaction. While we acknowledge there is an inherent incentive for Verizon to attempt to inflate the value of the property that has been offered to Frontier, there is simply no factual or evidentiary basis to assume that Frontier was incapable of representing its own interests in establishing an arms-length valuation for this transaction.[193]

136 We also reject Public Counsel's recommendation to require Verizon to set aside $40 million as security for the condition of Verizon NW's outside plant. Public Counsel asserted that over the past few years, Verizon has underinvested in the Washington network. However, this analysis excluded investment in Verizon's FiOS facilities which are part of the transfer to Frontier. When FiOS investments are included in the analysis, Public Counsel's assertion fails. That is, the record shows that between 2006 and 2009 Verizon capital investment levels have not declined as Public Counsel suggests; rather they have remained level or even increased, when measured on a total company and per access line basis, respectively.[194]

137 Finally, we reject Public Counsel's proposal to set a limitation on dividends between Frontier NW and its parent similar to the ring-fencing conditions proposed in other transactions involving transfer of property under RCW 80.12. While we have adopted ring-fencing provisions in previous transactions brought to us for approval, in this instance, ring-fencing is inapposite to the specific circumstances at issue here. This transaction is a merger in which, ultimately, Verizon NW will become a subsidiary of Frontier. As Staff observed, ring-fencing provisions in the form of dividend restrictions do not work effectively because of the highly integrated nature of telecommunications operating companies such as Verizon NW relative to their parents and affiliates.[195] According to Staff the only necessary ring-fencing provision that could steer earnings back into meaningful capital investments would have to be undertaken by the parent corporation, Frontier, Inc.; an entity over which we have no

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[193] We note that Frontier's purchase price will not be used as the basis for establishing rates in future proceedings. In transactions such as this, the Commission will use Verizon's book value for the properties in question, as modified by factors such as depreciation and capital improvements.

[194] McCallion, Exh. No. TM-2HCT at 6 – 7.

[195] Weinman, TR. at 323 - 324.

regulatory authority. In their settlement, Staff and Joint Applicants include Commitment 1 to allow the Commission to monitor changes in intercompany payables, receivables, and dividends between the operating subsidiary and its parent. We find this commitment will support our monitoring of the company's intercompany transactions and the cash flows concurrently with its progress toward achieving other commitments in the Joint Applicant/Staff Settlement. When coupled with our specific authority to require Frontier to invest in facilities necessary to carry out its public service functions, we believe the settlement's provisions at issue here satisfy the public interest.[196]

138 Before turning to other major issues of the Joint Applicants/Staff Settlement Agreement, we address a final, albeit significant, recommendation made by Public Counsel. Specifically, in Sections 1.144 and 1.167 of the Merger Agreement, the terms "Required Payment Amount" and "Spinco Closing Equity Value," respectively, address a transactional arrangement between Verizon and Frontier that acts as an obstruction to our authority to impose conditions we believe may be necessary to approve the transaction as in the public interest. Together, these sections of the Merger Agreement were referred to by Public Counsel as the "regulatory claw-back" provisions, a term we adopt here as being descriptive of their intent. That intent, we believe, is to insulate Verizon from ultimate responsibility for the cost of any regulatory conditions imposed by a state commission or other entity having jurisdiction over some element of the transaction. Public Counsel contends the regulatory claw-back provisions are unacceptable as a matter of law, contrary to the public interest, and should otherwise be made inapplicable to any other condition we impose. Commission Staff does not necessarily disagree, but essentially argues the issue is not before us because these provisions have no application in this case.

139 We agree with Public Counsel that this provision is anathema to the regulatory process under which we exercise our full statutory authority to protect Washington's consumers and determine if a proposed transaction is in the public interest. As part of that authority, we have the option of imposing conditions, some of which could require the expenditure of money that, if accepted by the parties, could transform a transaction that would not pass our "no net harm" test into one that does. Under Verizon's view of such provisions, we would not have the option of imposing even a

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[196] RCW 80.36.140.

minor condition that would result in added costs to that company. The facts of this case are revealing in this regard. Here, the potential harm to the public interest is a successor company, Frontier that after the transaction, may not have adequate resources to provide service to the same degree as its predecessor, Verizon. However, if we were to impose a condition that would have the effect of transferring some resources from Verizon to Frontier, the provisions in question would "claw them back" to Verizon. That would result in limiting the Commission's flexibility to craft an order that could make an otherwise harmful proposal into one that truly serves the public interest.

140 So, in our view, these provisions are not themselves in the public interest. In this case, they exist only to protect the narrow interests of Verizon, the corporate entity that has chosen to abandon its wireline operations in Washington and a number of other states. While Joint Applicants assert that any modification to the "Required Payment Amount" and "Spinco Closing Equity Value" provisions would be bad public policy, in fact, the reverse is clearly true; it is the regulatory claw-back provisions themselves that are bad public policy. Such provisions frustrate the legitimate regulatory process for review and approval of a transaction such as this. Verizon's narrow corporate interests should not be allowed to usurp the broader interests of the Washington consumers through cleverly crafted legal provisions of a Merger Agreement.

141 On the other hand, as we noted above, Commission Staff observes that the regulatory claw-back provisions may not apply in this case, so we need not opine on their merits. While that observation may have been true when it was written, we are imposing a condition on Verizon in Section II.B.2 of this Order regarding post-closing OSS performance issues, which could, absent our objection, involve application of the regulatory clawback provisions. Consequently, we require that the condition we impose in Section II.B.2 of this Order is not subject to the regulatory clawback provisions contained in Sections 1.144 and 1.167 of the Merger Agreement. This means that if, in a subsequent proceeding, the Commission requires a refund by Verizon for any post-closing performance issues associated with the replicated OSS in Washington, that refund amount would not ultimately be borne by Frontier, as it would otherwise have been through application of the regulatory claw-back provisions of the Merger Agreement.

142 This is not to say that there are not risks to consumers as a result of Frontier's takeover of Verizon NW. However, on balance, we are satisfied that the proposed commitments, as modified, reasonably offset those risks and satisfy four of the six factors identified above, that we have traditionally applied to telecommunications merger transactions brought to us for approval. Collectively, they will provide sufficient scrutiny of Frontier prospectively and provide adequate notice to the Commission should Frontier begin to falter in its efforts to integrate and operate Verizon NW successfully. In essence, these measures provide a reasonable means to prevent harm or minimize risk by giving the Commission sufficient time to address any problems that arise. Additionally, the proposed commitments ensure continued compliance with our rules and regulations regarding transactions with affiliates, financial reporting, capital expenditures, and supplemental information reasonably necessary to monitor Frontier's progress towards the service improvements, capital investments, and financial performance objectives identified in the company's filings.

143 While there are limits to the effectiveness of these provisions and these limits present inherent risks to Washington consumers should Frontier struggle both financially and operationally after closing, we are persuaded the company has the overall fitness to acquire and operate Verizon NW, and that the company has the managerial and financial acumen to assume responsibility for Verizon NW's Washington operations. Our record shows the company has a capable management team in place and has a demonstrated history of acquiring and integrating other telephone properties in other states. Frontier's managers also address prospectively how any merger-related synergies will be evaluated and shared between customers and shareholders, provide near-term protection for consumers from the financial impacts of the proposed merger on cost of capital, capital structure, and access to financial markets, and insulate, and mitigate any impact of the merger on rates, terms, and conditions of service.[197] Accordingly, we approve Commitments 1 through 12 of the Joint Applicants/Staff Settlement subject to the modifications of Commitments 2 and 9 and changes to the regulatory claw-back provisions of the Merger Agreement discussed above.

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[197] *See* Docket UT-991358 (citation in n. 3) and *In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc.*, Docket UT-050814, Order 07 (December 23, 2005). *See also* Staff's Post-hearing Brief at 4.

2. Potential Risks of Back-Office and OSS Replication and Transition

144 Another major concern about the proposed transaction is the ability of Joint Applicants to successfully transfer Verizon's OSS and related data from Verizon to Frontier. This concern is based largely on the dreadful results observed with previous Verizon wireline transactions in Hawaii and New England which were fraught with tremendous OSS problems resulting in significant decline in the quality of retail and wholesale service delivery. The previous Verizon wireline transactions involved purchasers that were significantly smaller than Frontier is today and who had little or no experience in the telecommunications industry. Those acquirers attempted to create entirely new and relatively untested OSS systems that eventually proved ineffective in accepting and processing underlying back-office information including existing and new customer data.

145 Unlike the previous transactions, here we have an experienced provider of telecommunications services with a demonstrated history of acquiring other telecommunications properties and successfully integrating OSS systems. Although Frontier is significantly smaller than the Verizon operations it seeks to acquire, there is considerable evidence in the record concerning its ability to manage the integration of large telephone operations.[198]

146 Additionally, the Joint Applicants have adopted an OSS transition process that is distinguishable from the prior transactions. Specifically, the Merger Agreement includes provisions under which Verizon will replicate the existing OSS it uses to support the telephone properties in this transaction and convey ownership of the replicated OSS to Frontier for its use after closing. By doing so, the Joint Applicants intend to avoid the pitfalls of the previous transactions since the underlying back-office data will essentially run on the same OSS platform before and after closing.

147 Recognizing however, that there are valid criticisms and concerns arising from the previous experience and the fact that this is the first transaction using a replicated

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[198] Over the past five years Frontier has successfully integrated five billing systems serving approximately 1.7 million access lines. McCarthy, Exh. No. DM-1T at 40 – 45.

OSS system approach, Joint Applicants agreed to a number of specific commitments in their settlements with Staff, Comcast, and the Joint CLECs that are intended to assuage concerns about the contemplated OSS transition. These measures, some of which we understand are already underway, consist of a series of pre-closing and post-closing testing, validation, and reporting procedures. Notably, the commitments also cover any post-closing effort by Frontier to consolidate the replicated Verizon systems with its existing OSS in order to have a single common OSS platform across its nationwide service area.

148 Commitment 27 of the Joint Applicants/Staff Settlement requires Verizon to use the replicated OSS systems in actual production mode for at least a 60-day period prior to closing. Verizon will also engage a neutral third -party reviewer to review, validate, and report to Staff the results of all pre-production functionality tests prior to the replicated systems being put into actual production mode. In Commitment 28, the Joint Applicants are prohibited from closing until each company has validated that OSS systems are fully functional. Verizon is specifically required to complete all systems testing and submit a report validating that the OSS systems are completely operational to Staff at least five days prior to closing. The report must include at least 60 days' operating results according to four service quality metrics. In Commitments 29 and 30, Frontier agreed to submit any plans to transition from Verizon retail or wholesale OSS to Frontier's legacy OSS for the three year period following closing. During this period, it will provide 180 days' notification to Staff of any OSS changes by submitting a detailed operations support integration plan that will describe the system being replaced, the surviving system, and the reason for the transition.

149 Commitment 31 requires Frontier to maintain functionality performance and e-bonding capabilities at the same level that Verizon is presently providing.

150 Comcast and the Joint CLECs also reached agreement with Joint Applicants pertaining to transitional OSS issues. The Joint Applicants/Comcast Settlement is unique in that Comcast was able to secure a Comcast-specific testing regimen for the replicated OSS prior to Verizon placing the system into production and before they are transferred to Frontier at closing. The remainder of the Joint Applicants/Comcast Settlement and the OSS provisions of the Joint Applicants/Joint CLECs Settlement have common settlement provisions, however the numbering conventions differ. For

brevity's sake we summarize the commitments without specific reference to their numerical placement within each agreement.

151 The OSS section of the Joint Applicants/Comcast Settlement allows Comcast to use the replicated OSS to perform system testing of its wholesale service orders. These tests were scheduled between February 15, 2010, and March 12, 2010, during which time Comcast was allowed to place test directory listing and number portability orders and assess the replicated OSS' performance.

152 As with the Joint Applicants/Staff Settlement, the Joint Applicants/Comcast and Joint CLECs Settlements require Verizon to use the replicated OSS in actual production mode for a 60 day period prior to closing. During this period, Frontier is required to validate the functionality of the replicated OSS and work with Verizon on resolution of any problems that arise, including those specifically brought to their attention by Comcast. Furthermore, for any wholesale service order problems that do arise, Frontier and Verizon are required to make all necessary modifications to the replicated OSS prior to transferring the systems to Frontier at closing. Joint Applicants are also required to provide Comcast and the Joint CLECs with written notice, prior to closing, that replication of the OSS has been successfully completed. Thereafter, Comcast and the Joint CLECs have five business days to notify Joint Applicants of any concerns they have regarding the success of replication and the Joint Applicants are required to address such concerns prior to closing.

153 After closing, a series of additional commitments address any post-closing effort by Frontier to transition from the replicated OSS to legacy Frontier OSS or replacement systems. Specifically, Frontier is prevented from migrating off the replicated OSS for one year following closing. Thereafter, Frontier must provide Comcast and the Joint CLECs with 180 days' advance notice of any intent to migrate from any replicated OSS to another platform and must ensure, at a minimum, that the replacement systems maintain functionality that is comparable to the replicated OSS.

154 Focusing solely on the OSS provisions of the Joint Applicants/Staff Settlement, Public Counsel asserts they are inadequate and present a risk because of the shortened timeframe for testing and use in actual production before being turned over the Frontier. Public Counsel also claims the language of Commitment 28 is vague regarding the report Verizon is required to file to validate the functional and operational status of the replicated OSS prior to closing.[199]

155 Public Counsel also asserts the role of the third-party reviewer is unnecessarily limited to "severity level 1" failures. Public Counsel recommends that the third-party reviewer be required to report on all issues that affect the operability of the replicated OSS and not be limited to severity level 1 failures.[200] Public Counsel asserts Verizon should be subject to penalties of up to $7.7 million per year to ensure the replicated OSS function properly.[201] Finally, Public Counsel asserts that the five-day period in Commitment 28 is simply too short a time period for Staff and the Commission to react to any adverse results arising from the post-production report.[202]

156 Collectively, the OSS commitments address the pre-production and actual production procedures under which the replicated OSS will be tested, require Verizon to develop and share with its competitors and Staff a Program Test Strategy, engage an unbiased third-party reviewer to validate system tests, and submit a report to the Commission confirming that OSS tests are complete and the systems are fully functional. Post-closing, Verizon is obligated to provide maintenance services to Frontier for at least one year, which may be extended by Frontier for up to five years. Additionally, should Frontier intend to transition from any of the replicated OSS to another platform the company must provide advance notice and submit a detailed operations support plan to Staff.

157 As discussed in the following, we approve the OSS provisions of the Joint Applicants and Staff, Comcast and Joint CLECs Settlements subject to two modifications and one additional condition. We are mindful that Joint Applicants specifically developed the replicated OSS approach to avoid the problems observed during previous Verizon wireline dispositions. Additionally, we place great weight on the fact that Staff and a large group of competitors have negotiated a series of pre-production and real-time

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[199] Public Counsel Post-hearing Brief at 44.

[200] *Id.*

[201] *Id.* at 54.

[202] *Id.* at 45.

production procedures they believe are sufficient to validate and report on the replicated retail and wholesale service OSS systems performance. However, although we recognize the steps taken by Joint Applicants to avoid the pitfalls of the OSS transition problems that arose in the previous transactions, we share Public Counsel's concerns that the OSS replication process incorporates considerable risk to Washington consumers and we are not satisfied the settling parties have proposed adequate conditions to address any post-closing problems should they arise. While we find these provisions a reasonable approach to test and transfer the OSS, we are persuaded to modify and add an additional condition to the OSS conditions of the Joint Applicants/Staff Settlement.

158 First, for Commitment 28, we agree with Public Counsel that the five-day timeframe between the submission of the Verizon system testing and validation report and closing is simply too short for any meaningful review by Staff. We increase the filing interval to 15 days prior to closing.

159 Second, Commitments 27 through 29 require Verizon or Frontier, in varying degree, to consult with or make specific submissions to Staff regarding OSS transitional issues. During our hearing, Public Counsel specifically asked if other parties, particularly representatives of Public Counsel, are barred from participating in OSS transition discussions or receiving materials submitted to Staff. We modify each of these commitments to require Joint Applicants to include Public Counsel's representatives in any discussions, filings or sharing of materials pertaining to the OSS transition process.

160 Finally, Public Counsel proposes we condition our approval of the transaction by requiring Verizon to be subject to monetary penalties if its replicated OSS systems fail to perform after closing as represented in §7.24 of the Merger Agreement. Verizon represents that its replicated OSS systems will provide the same functionality as, or functionality that is substantially similar to, the performance of the OSS systems supporting the operations of Verizon NW prior to closing. If the replicated OSS systems fail to perform, Public Counsel recommends that parties be able to seek relief from the Commission. Public Counsel also proposes the maximum penalty amount for violation of §7.24 should be $7.7 million per year. This figure represents Washington's *pro rata* share of the annual $94 million payment that Frontier will make to Verizon, as specified in the Software License Agreement.[203] According to Public Counsel, this penalty, if collected, would be used to compensate Washington ratepayers for any consequences of system failures associated with improperly replicated systems, including disruptions in service, improper transfer of customer records, and/or decreased performance in Commission service quality metrics attributable to the replicated systems.

161 Despite Joint Applicant's assurances and the conditions of the various settlements before us, we agree with Public Counsel that the OSS transition process established by the Joint Applicants poses undesirable risk to Washington consumers. In order to offset this potential harm, we adopt more meaningful measures designed to prevent the problems that may occur after closing and to address such problems if nonetheless, they should occur. Although Verizon and Frontier have agreed to an OSS transition process that differs materially from the approach taken in the previous wireline dispositions, the fact remains that the process adopted here is both untried and unproven. Consequently, it would not be prudent on our part to approve the transaction without having in place sufficient OSS transition conditions applying to both the buyer and, more particularly, the seller, to ensure a seamless effect on customers of Verizon NW after closing.

162 Accordingly, we recognize the purpose behind Public Counsel's proposed financial penalty recommendation. However, rather than a penalty for failure of the OSS transition process to work as planned we believe a better model is that of a refund to Frontier that would be passed on to its customers as service credits to compensate customers for the decline in service. Because we agree with Public Counsel that Verizon should bear an ongoing, post-closing responsibility to assure the replicated OSS transition goes smoothly and imposes no deterioration in service quality, we adopt a refund obligation on Verizon that may be applied to any payments made by Frontier to Verizon for post-closing Back-Office Support Services, as reflected on the term sheet that was attached as Exhibit E to the Merger Agreement.

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[203] Roycroft, Exh. No. TRR-1T at 95. *See also* Merger Agreement, Exhibit F, "Verizon Software License Agreement, § 7.3.

163 Therefore, we require the following condition:

> Verizon and Frontier agree that if, within five years of closing, the replicated OSS experiences a significant operational or functional problem, caused in whole or in part by Verizon or the OSS Verizon provided Frontier and the problem results in significant harm to Frontier's customers, Verizon agrees to make all reasonable efforts to assist in correcting the problem. If, in a proper proceeding, the Commission finds that Verizon bears some responsibility for the problem, the Commission may require Verizon to make a refund payment to Frontier of up to $3.85 million per year for the five years after closing, which Frontier will credit to its customers in the manner we proscribe. In that proceeding, to the extent necessary, the Commission will consider all relevant facts and circumstances, including the nature of the problem, Verizon's responsibility for the problem and its efforts to address the problem, the time it takes to correct the problem, the customer impact, the need for a refund payment, the amount of that payment, and the manner in which Frontier will distribute the refund payment funds to its customers. This condition is not subject to the regulatory clawback provision of the Merger Agreement, Sections 1.144 and 1.167.

164 We adopt this additional condition to provide a specific incentive to Verizon. Finally, we require that, at least 10 days prior to closing, Verizon must file a sworn statement with the Commission agreeing to fully participate in that proceeding, should one occur, and to be bound by all other terms contained in this condition.

165 Subject to the discussion above, we adopt the OSS provisions of the multiparty settlement agreements between Joint Applicants and Staff, Comcast, and Joint CLECs, respectively. With these modifications, we are satisfied that, collectively, these measures will act to prevent harm to consumers through the pre-production, testing, and post-closing aspects of the OSS transition required by the transaction.

3. Retail Service Issues

a. Rates

166 Joint Applicants state that the structure of the transaction means that Verizon NW remains the regulated entity whose tariffs and price catalogs are unchanged after closing and any future changes would be subject to the normal rate and tariff procedures of the Commission's rules.[204] They claim that the only immediate change regarding Verizon NW will be a name change resulting from its transfer, at the parent level, to Frontier.

167 Despite such claims, the Joint Applicants' settlements with Staff and DoD/FEA contain commitments that are specifically designed to prevent post-closing harm to residential and business consumers of Verizon NW's regulated services. Specifically, Frontier is prevented from increasing rates for retail flat and measured residential services for at least three years following closing. Frontier is also required to continue the availability of all grandfathered service offerings for six months following closing or until it receives approval from the Commission for a replacement offering. The Company must allow consumers to switch long distance carriers at no charge for a 90 day period following closing. Finally, Frontier is required to maintain all bundled service offerings, without change, for 12 months following closing.[205]

168 The Joint Applicants/DoD/FEA Settlement builds on the retail rate cap for residential consumers by extending the rate cap provision to all retail flat, measured, PBX, Centrex, and interstate and intrastate special access services at the price levels in place at closing.

[204] Joint Application at 17.

[205] We interpret Commitment 26 to mean there will be no discernable changes to any rate, term or condition of a bundled service offering during the life of the commitment.

169 Public Counsel argues the rate cap provisions of the Joint Applicants/Staff Settlement do not adequately protect Washington consumers in several areas. First, it suggests the 12-month pricing restriction on bundled service offerings is inadequate and offers no protection concerning DSL price increases which may occur after closing.[206] It proposes extending the 12-month pricing restriction to 24 months.[207] Second, although not a pricing issue, Public Counsel proposes we eliminate Frontier's existing download cap on broadband offerings.[208]

170 Finally, Public Counsel suggests that providing consumers a 90-day period to switch long distance carriers at no charge while appropriate, does not go far enough in providing protection to customers presently purchasing services pursuant to a term contract. Without specifying a timeframe or process, it suggests the Commission modify the condition to give all contract customers a "fresh look" opportunity to terminate any service purchased pursuant to contract without application of an early termination fee or penalty.[209]

171 A significant factor we use in evaluating telecommunications transactions is the potential adverse effect, if any, on the rates, terms, and conditions of services provided to Washington consumers by the regulated entity subject to the contemplated transaction. Here, although Joint Applicants' initial position was that the transaction had no direct effect on consumers since all tariffs and price catalogs would be fully assumed and be unchanged by Frontier, they subsequently agreed to specific caps on retail residential and business rates for a three year period following closing. We find that this commitment, coupled with the earnings review we require of the company pursuant to our modification of Commitment 2 of the Joint Applicants/Staff Settlement Agreement, provides reasonable level of protection to Washington consumers against adverse price changes after Frontier acquires Verizon NW.

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[206] Public Counsel Post-hearing Brief at 41.

[207] *Id.* at 55.

[208] *Id.* at 42.

[209] *Id.*

172 Frontier asserts the company will have a leaner, more localized management structure than Verizon NW, and it expects to derive significant synergies and cost savings over the next few years.[210] Overall, we are satisfied that the three-year pricing cap on retail residential and business rates will provide a reasonable cushion against potential pricing changes until the earnings review contemplated in the Joint Applicants/Staff Settlement begins.

173 Accordingly, we approve the retail rate provisions of the Joint Applicants and Staff and DOD/FEA Settlements subject to one modification. Specifically, we accept Public Counsel's recommendation to eliminate Frontier's download cap on its broadband service offerings in Washington. During our hearing, the company essentially acquiesced to Public Counsel's suggestion and we hereby incorporate that result as an additional condition of our approval of the transaction.

174 We decline to adopt Public Counsel's recommendation that we extend to two years, the one year price change restriction on bundled service offerings. We note that we recently granted most incumbent telephone companies, including Verizon, pricing flexibility for their bundled service offerings pursuant RCW 80.36.332. This statute allows the Commission to reduce or streamline regulation of certain service offerings, including bundles, for telephone companies not competitively-classified under RCW 80.36.330.[211] Bundled service offerings, including Verizon's, are now subject to minimal regulation, in part, because of competitive alternatives in the marketplace. We see no reason to reverse course here and extend the bundled service condition beyond the 12 month timeframe contemplated in the Settlement.

175 Finally, we reject as vague, Public Counsel's proposal to provide contract customers with a "fresh look" opportunity for any service purchased pursuant to a contract. In testimony and on brief, Public Counsel failed to identify to which services and contracts its recommendation would apply. Without specific facts or a better understanding the circumstances to which its recommendation pertains, we are

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[210]We expect such savings will be reflected in the forthcoming earnings review.

[211] *In the Matter of the Petition of Verizon Northwest, Inc. for Minimal Regulation of Bundled Telecommunications Service,* Docket UT-071574, Order 01 (September 18, 2007).

hesitant to disturb any of the essential terms and conditions of mutually determined contractual relationships.

b. Service Quality

176 Another potential harm of the proposed transaction is the effect it may have on the quality of services provided to consumers. The Joint Applicants have agreed to a series of commitments in their settlements with Staff and DoD/FEA that are intended to provide assurance that key service quality metrics of Verizon NW will not deteriorate following the transaction. Joint Applicants, Staff, and DoD/FEA assert these commitments supplement our existing service quality rules and will provide Washington consumers a positive benefit in the form of improved service quality incentives for Frontier.[212]

177 Commitment 19 of the Joint Applicants/Staff Settlement Agreement requires Frontier to adopt Verizon's existing Service Performance Guarantee (SPG) subject to three pro-consumer modifications, each of which, are incremental to the existing SPG. First, the existing monetary credit of the SPG for any missed service installation or repair appointment is increased from $25 to $35. Second, for any instance where Frontier fails to provide basic service according to normal intervals, it is required to offer a customer an alternative service until basic service can be provided. Finally, Frontier is required to offer a $5 credit to a consumer for any out-of-service condition that exceeds two days. Frontier agrees to maintain the SPG unchanged for 24 months following closing. Thereafter, the SPG may only be changed upon petition by the company and Commission approval.

178 Commitment 20 of the Joint Applicants/Staff Settlement Agreement establishes six service quality metrics that Frontier must track and report on quarterly for three years following closing. Several of the metrics are more stringent than existing Commission requirements. Frontier's service performance will be measured against the metrics and be subject to a series of escalating penalty amounts for any failure to meet the requirements. Penalties, if any, will be accumulated and returned to consumers in the form of annual credits on their telephone bill. Over three years, up

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[212] Commission Staff Post-hearing Brief at 48.

to $3.6 million in penalties may be assessed for a significant deterioration in service quality.

179 Commitment 1 of the Settlement with DoD/FEA builds on this commitment by requiring that, for any service quality metric where the company's performance misses or falls short of the service quality objective, Frontier is required, within 60 days of filing a quarterly report, to make a second filing that identifies the specific steps taken and monies budgeted to address the service quality condition. To the extent the company's quarterly service performance fails to improve to satisfactory levels, Frontier is required to submit a remedial plan and budget to rectify the situation.

180 Commitment 21 of the Joint Applicants/Staff Settlement requires Frontier to provide an annual report card on its performance relative to the benchmarks of Commitment 20. Frontier must provide a service quality improvement plan for any annual metrics it missed.

181 Public Counsel objects to the service quality provisions of the Joint Applicants/Staff Settlement contending they are inadequate and could allow Verizon's current service quality performance level to decline which may result in harm to Washington consumers.[213] Public Counsel contends the settlement service metrics will not address existing concerns about Verizon and Frontier's repair and installation performance.[214] It also disputes the utility of the per-credit element and contends it is insufficient to address any systemic quality of service degradation should it arise. Finally, Public Counsel argues the total potential penalty applicable to Frontier over three years following closing pales in comparison to the company's total Washington revenue stream over that same period.[215]

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[213] Public Counsel Post-hearing Brief at 38.

[214] *Id.* at 39.

[215] *Id.*

182 To cure its perceived defects, Public Counsel proposes four modifications to the service quality commitments in the Settlement. First, it suggests including a condition that any petition by Frontier to alter or eliminate the SPG demonstrate improvement over Verizon's missed appointments performance level.[216] Second, it contends the $5 service credit for out-of-service conditions more than two days should be increased, albeit to an unspecified level, for outages of longer duration.[217] Third, Public Counsel recommends the annual penalties associated with missed service quality metrics should be raised to a maximum of $9.2 million.[218] Finally, it recommends the entire service quality reporting and penalties provisions of Commitment 20 remain in place for three years or until Frontier completes integration of all replicated Verizon OSS into its legacy systems, whichever comes later.[219]

183 We approve the service quality provisions of the Joint Applicants and Staff and DoD/FEA Settlements without modification. In doing so we note that Verizon NW has a history of satisfactory service quality performance and there is nothing in the record, other than pure conjecture, that suggests that service quality will decline following closure of the transaction. Should that happen, the Joint Applicant/Staff Settlement Agreement adds a specific enforcement mechanism that would not be present but for the settlement and the effect of this Order.

184 The Joint Applicants and Staff agreed to a series of commitments that provide specific and measurable benefits to consumers or, at least, provide material incentive to Frontier to maintain existing service quality. The Joint Applicants/Staff Settlement Agreement improves the existing SPG by increasing the size of the credit, adding a new credit, and providing alternative arrangements when basis service is not delivered on a timely basis. The service quality conditions also include a specific set of performance metrics the company must meet on a monthly basis for three years or Frontier will be subjected to escalating financial penalties that will be returned to Washington consumers in the form of billing credits. Finally, Frontier is obligated to

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[216] *Id.* at 54.

[217] *Id.* at 55.

[218] *Id.*

[219] *Id.*

provide quarterly reports on its performance relative to the service quality metrics and whenever any metric is missed Frontier must submit a service quality improvement plan that may include a specific budget amount to be set aside and used exclusively to resolve the situation. Each of these provisions will be applied to Frontier for three years following closing and they are incremental to the service quality requirements we currently apply to all incumbent telephone companies in Washington.

185 We are mindful of and appreciate Public Counsel's concern regarding the size and scope of the service quality commitments of the Joint Applicants/Staff Settlement. Nevertheless, we are satisfied that, on balance, Frontier has demonstrated it has the requisite managerial and operational experience to meet or exceed these commitments and our service quality rules. The company currently serves more than two million access lines and witnesses for both Staff and Frontier testified to the company's excellent service quality and reputation across the 24 states where it presently operates.

186 At this time we see no reason to adopt the more rigid or punitive measures Public Counsel advocates on the off chance that Frontier fails to deliver on its promises and commitments. Staff and DoD/FEA have negotiated with the company a set of self-executing measures that either meet or exceed our existing service quality rules, provide incremental benefits to consumers, and establish a proper incentive to Frontier, in the form of up to $3.6 million in service credits to consumers to avoid deteriorating service quality performance. We are satisfied these commitments provide the necessary incentive to the company to preserve the level of service quality currently available to consumers of Verizon NW and thereby mitigate any potential harmful effects of the transaction.

187 The service quality commitments address directly one of the factors we consider when reviewing telecommunications transactions and will provide sufficient backstop for consumers in the form of a material financial incentive to Frontier to address any deterioration in service quality following closing. We take seriously our responsibility to maintain high levels of service quality from the companies subject to our authority today, and in the future. Moreover, for Frontier, as with any company subject to our authority, we retain the ability to act quickly and forcefully should these measures ultimately prove inadequate.

c. WTAP

188 Recognizing the importance of telecommunications services in the daily lives of Washington residents, including those residents who require economic assistance, the Washington Legislature established the WTAP program to aid economically-challenged residents in obtaining and retaining such services.[220] WTAP is a vital social program that provides assistance to thousands of Washington residents every month and we take seriously our role in ensuring the entities we regulate provide proper information to eligible consumers and bill correctly for services rendered under the program. In testimony, Staff discussed Verizon NW's historical pattern of rather halfhearted or careless compliance with the Commission rules and policies that are specifically designed to inform and protect low-income consumers in its service area.

189 Staff's compliance investigation section has investigated Verizon NW three times since 2005 for alleged WTAP administrative and billing problems associated with its handling of WTAP applicants. These investigations showed a continuing pattern of complaints about long hold times, failure to respond timely to direct customer complaints and commission-referred complaints, and failure to properly process WTAP applications and failure to bill WTAP customers at the proper rates. Even when the customer had completed the WTAP request process, Verizon NW failed to properly credit installation charges, or failed to properly bill the customer the discounted WTAP rates established by the Commission under RCW 80.36.420(3)(a). Moreover, when billing problems were brought to the company's attention, Staff found that company representatives failed to investigate complaints or provide refunds to customers who live in the county and were improperly billed for city taxes. At one point in time Staff's investigation found that one-third of all complaints against Verizon NW were WTAP related.[221]

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[220] RCW 80.36.420 and RCW 80.36.470.

[221] Stillwell, SLS-1T at 2 – 5.

190 The Joint Applicants/Staff Settlement includes four commitments designed to improve compliance with WTAP requirements. First, Frontier will provide a one-time $75 credit to any WTAP-qualified customer for whom a WTAP discount, credit or waiver is not processed within the first bill cycle of application. Verizon NW does not offer this credit, so this commitment represents an improvement over current service. Moreover, this credit should motivate Frontier to ensure that applicable discounts, credits, or waivers are processed in a timely manner. Frontier also commits to providing to the Commission detailed monthly reports regarding its performance processing WTAP applications. Frontier does not have experience with Washington's WTAP program so this reporting requirement will enable the Commission to monitor Frontier's performance and intervene, as necessary, to ensure compliance with the requirements for processing applications.

191 Because WTAP rates are not available for all telecommunications services offered by local exchange carriers, [222] Frontier has committed to providing its customer service and sale representatives with clear scripts to inform customers that WTAP rates are not available for bundled service offerings. Clear and consistent communication with consumers is key to ensuring that customers are not misinformed about the availability of services and the rates for those services. Finally, Frontier agrees to verify customer eligibility for the program by initiating three-way calls between the consumer, the company, and DSHS during the agency's business hours. This conference calling commitment should ensure that eligibility is accurately and expeditiously verified.

192 Although Verizon NW now administers WTAP applications and procedures according to a series of conditions it agreed to in settlements of previous Commission proceedings, we find it prudent to approve settlement conditions that are designed to maintain or improve WTAP compliance after Frontier acquires Verizon NW. None of the WTAP commitments in the Joint Applicants and Staff Settlement were opposed by any party. We find these commitments to be reasonable measures to ensure continued compliance and will act to prevent harm to Washington consumers. We adopt them without modification.

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[222] RCW 80.36.420.

4. Broadband/DSL Objectives, Deployment, and Feasibility

193 It is evident that broadband service is rapidly becoming an essential service for Washington households and businesses. Increasingly, residents and businesses in this state use broadband connections to access the internet, as a means to expeditiously communicate, obtain access to information and applications, and to conduct transactions, among other activities. While we have no jurisdiction over broadband services, parties may, as they have here, voluntarily include broadband expansion as part of a settlement presented to the Commission for approval. In considering such voluntary settlement provisions, we are mindful of ongoing federal and state efforts to effectively and efficiently extend broadband access to Washington residents and businesses and to facilitate broadband adoption in ways that stimulate our economy. We are also aware that despite these efforts, many rural areas and some demographic groups in Washington continue to lack meaningful or affordable access to broadband service.

194 Previous Commission-approved settlements have included measures designed to expand the availability of broadband services across Washington. For example, we adopted a broadband deployment plan as part of our approval of an AFOR for Qwest Corporation.[223] In that case, Qwest committed to spend at least $4 million to increase the availability of advanced telecommunications services in underserved areas and among underserved customer classes in its Washington service area.[224] We also addressed broadband availability in a settlement in the merger proceeding between Embarq Corporation and CenturyTel, Inc. There, the surviving company now known as CenturyLink agreed to expand the availability of broadband service to 2,200

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[223] *In the Matter of the Petition of Qwest Corporation for an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-061625, Order 06 (July 24, 2007).

[224] *In the Matter of the Petition of Qwest Corporation For an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-061625, Order 06 (July 24, 2007). The effect of this AFOR commitment is to raise broadband availability across Qwest's Washington service area to 83 percent of its consumers by approximately 2012.

residential lines which were previously not broadband capable within three years after the close of the merger.[225]

195 Similarly, the Joint Applicants/Staff Settlement in this case proposes to expand the availability of broadband service to consumers and businesses within Verizon NW's existing service area in this state, an area which currently lags appreciably behind other ILEC services areas in Washington. Thus, a significant feature of the proposed transaction is Frontier's specific plan to deploy broadband to a greater number of consumers and businesses in the unserved and underserved areas across Verizon NW's existing service area.

196 In the Joint Application and through its testimony, Frontier has clearly shown that it is a full service communications service provider that specializes in the delivery of telephone, television, broadband, and other ancillary services across 24 states in small and medium-sized rural markets and some mid-sized metropolitan urban and suburban areas.[226] Moreover, across its current service area, Frontier has invested heavily in broadband deployment and presently has the ability to provide broadband service to more than 90 percent of its local exchange customers.[227] As Frontier's witnesses make clear, the company's strategic focus on extending broadband availability in Washington will enable it to increase the operating company's overall revenues and will act as a means to stem access line losses caused by competitive market conditions.

197 Although we are not required to consider the "net benefits" of a proposed transaction we believe we should take into account actions with significant customer benefits that, but for the transaction itself, would unlikely materialize. By approving the transaction we have an entity, Frontier, which intends to aggressively roll-out broadband service to a significant portion of the existing subscriber base of Verizon NW. In contrast, if we denied the transaction, although Verizon NW would remain

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[225] *In the Matter of the Joint Application of Embarq Corporation and CenturyTel, Inc., for Approval of Transfer of Control of United Telephone Company of the Northwest d/b/a Embarq and Embarq Communications, Inc.,* Docket .UT-082119, Order 05 (May 28, 2009).

[226] Joint Application at 12.

[227] McCarthy, Exh. No. DM-1T at 7.

part of the larger Verizon corporate family, it would belong to an organization that apparently has no plans to continue to invest in additional broadband infrastructure in Washington except for certain franchise areas where it is required to complete its existing FiOS buildout obligations.[228] Accordingly, as discussed in more detail below, we believe Frontier's objective to increase broadband coverage in Verizon NW's service area is a material component of the transaction to which substantive weight should be afforded. Certainly, it is one factor that helps offset the harms caused by the financial risks to be assumed by Frontier, and which in turn impose risks to customers, under the transaction.

198 There are a series of specific broadband deployment and service commitments in the Joint Applicants/Staff Settlement. Prospectively, the commitments address broadband investment levels, service deployment timing, and service performance metrics. Frontier agrees to spend at least $40 million on broadband deployment in Washington via funds deposited in a Commission approved irrevocable escrow account with a third party escrow agent authorized to only release funds upon written instruction from the Commission. These funds would be used by Frontier to deploy broadband service to no less than 95 percent of Washington wire centers within two years of closing and to approximately 89 percent of the households within the existing footprint of the Verizon NW service area by December 31, 2014. Frontier commits to improve broadband speeds to at least 1.5 Mbps for downloading and 381 kilobits per second (kbps) for 75 percent of households in its Washington service area by the end of 2011 and to 3 Mbps for downloading to 80 percent of households by the end of 2014.

199 Frontier will file an initial broadband deployment plan within 90 days of closing and annual progress reports that document achievement of certain metrics. These reports will serve as the basis for determining Frontier's collective progress towards achieving all of the broadband deployment commitments in the Joint Applicants/Staff Settlement.

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[228] We also note here the irony that although Verizon NW is part of one of the largest telecommunications companies in the nation, among all the incumbent telephone companies operating in Washington it has by far the lowest broadband deployment metrics of any of these entities. Liu, JL-1HCT at 8.

200 Public Counsel contends Frontier is unlikely to achieve its objective to stem access line losses by extending and promoting broadband availability throughout Verizon NW's service area. Asserting the broadband provisions of the Joint Applicants/Staff Settlement Agreement are deficient or inadequate, Public Counsel proposes modifications it contends are necessary to make the company's broadband service and coverage more effective in controlling such losses. Specifically, Public Counsel proposes we modify the commitments to require Frontier to make broadband service available to 100 percent of the wire centers and to 90 percent of Washington consumers by the end of 2013.[229] Public Counsel also proposes revising the download speed capabilities of its offerings such that 90 percent of consumers can download at 3 Mbps, 75 percent of consumers can download at 6 Mbps, and 50 percent of consumers can download at 10 Mbps.[230]

201 Based on its assessment of the Washington portion of synergies associated with the transaction, Public Counsel also suggests we require Frontier to spend an additional $49 million on broadband deployment between closing and the end of 2013 to achieve the deployment and service capabilities proposed above. This amount would be in addition to the $40 million escrow amount contained in the Joint Applicants/Staff Settlement and any broadband stimulus monies the company receives pursuant to the ARRA.[231] Finally, Public Counsel proposes we extend the stand-alone DSL commitment to twenty-four months. [232]

202 We reject Public Counsel's proposals. The broadband conditions contained in the Joint Applicants/Staff Settlement are far from insufficient. They will improve dramatically broadband coverage within Verizon NW's existing Washington service area, particularly given that Verizon NW ranks lowest in terms of broadband deployment of incumbent local exchange carriers in the state.[233]

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[229] Public Counsel Post-hearing Brief at 54.

[230] *Id.*

[231] The American Recovery and Reinvestment Act of 2009, PL 111-5 (2009).

[232] Public Counsel Post-hearing Brief at 54.

[233] Liu, Exh. No. JL-1HCT at 8.

203 We find the broadband provisions of the Joint Applicants/Staff Settlement Agreement to be a reasonable and measured step forward for the deployment of broadband service in areas which heretofore had little or no broadband capability. As discussed above, when achieved, these commitments will mark a significant turning point for thousands of consumers and businesses located within Verizon NW's service area.

204 At the federal level, efforts are underway at the FCC and elsewhere that are aimed at promoting broadband deployment and availability across the nation. We are following these developments closely and anticipate there will be specific mechanisms put in place that carriers such as Frontier may use to support broadband expansion even further. Here, Frontier has agreed to a number of commitments that we believe represent a marked improvement to broadband service availability in Verizon NW's service area. Accordingly, subject to two modifications discussed below, we approve the broadband commitments of the Joint Applicants/Staff Settlement.

205 Our modifications are procedural and pertain to the $40 million escrow arrangement for the broadband investment fund. First, in response to Commissioner inquiry during hearing, Staff stated that Commitment 13 requires the company to deposit $40 million into an escrow account under an arrangement that would be approved by the Commission prior to closing.[234] Frontier concurred and stated the arrangement would be an irrevocable escrow arrangement through which specific instructions would be provided to a third party escrow agent and funds would only be disbursed to Frontier upon written instructions by the Commission. Consistent with Frontier's testimony, and because Commitment 13 does not contain the term "irrevocability" we modify this commitment to add that term.

206 Second, we are also concerned about what may befall the escrowed funds should Frontier falter post-closing and experience an adverse financial event such as bankruptcy. While we believe such an adverse event to be remote, these funds have been specifically pledged and are irrevocably tied to deployment of broadband infrastructure in Washington and we need to assure the settlement commitments will survive should such an event occur. Accordingly, we require the company to obtain an opinion letter from outside legal counsel that verifies that the funds, once deposited

[234] Weinman, TR 334 – 340 and McCarthy, TR. 385 - 386.

with the third party escrow agent, will remain subject to the requirements of the settlement, this Order, and our authority, and such escrowed funds are otherwise protected from creditors or similar entities, regardless of a Frontier bankruptcy, default, or other adverse financial event. The opinion letter must be filed with us no later than 15 days prior to closing.

207 Finally, Public Counsel proposes we extend the time frame in Commitment 18 from 12 to 24 months, during which Frontier will continue to offer stand-alone DSL services at Verizon NW's existing rates, terms and conditions. We agree that stand-alone DSL offerings may provide a meaningful alternative and value to consumers who do not want or need traditional voice services. In a telecommunications marketplace that is characterized, in varying degree, by multiple providers of voice services using different platforms and technologies, we see no reason to require consumers to be tied to voice offerings they don't need in order to purchase DSL. Accordingly, we modify Commitment 18 of the Joint Applicants/Staff Settlement to extend the timeframe from 12 to 24 months for the availability of stand-alone DSL at Verizon NW's existing rates, terms and conditions.[235]

5. Wholesale Service Issues.

208 We are presented with three separate settlement agreements between Joint Applicants and Comcast, Joint CLECs, and Level 3 which, in varying degree, address wholesale service quality, OSS testing and operational matters, as well as the post-closing terms and conditions applying to existing and future interconnection agreements between Frontier and its competitors. Through these settlement agreements, the competitors have been able to resolve their concerns regarding the testing and production of the replicated OSS to be transferred from Verizon to Frontier. The competitors were also able to address a number of issues surrounding potential adverse effects of the transaction on the post-closing rates, terms and conditions of Frontier's wholesale service offerings. Finally, the settlement agreements ensure that Frontier will continue to abide by all of the existing interconnection agreements, wholesale

[235] We interpret existing rates, terms, and conditions to be those as of the date of hearing, or February 4, 2010.

commercial agreements, and wholesale tariffs governing the relationship between Verizon NW and competitors.

209 Public Counsel does not oppose the agreements.

210 We previously addressed the OSS provisions of these agreements in Section II.B.2 above. Here, we approve the remaining conditions of each settlement agreement subject to one modification. We find the wholesale service and interconnection settlement conditions to be in the public interest. In prior telecommunications transactions we specifically assess the impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition. In this proceeding, a major group of Frontier's competitors have resolved their initial concerns with the effect of the transaction on their ability to operate and compete prospective, and now urge us to approve the transaction. We place considerable weight on the fact the competitors were able to reach agreement with Joint Applicants on a wide variety of wholesale and interconnection matters and believe the various commitments in the settlements will prevent harm to competitive circumstances within Verizon NW's service area.

211 We make one modification however to the Joint Applicants/Joint CLECs Settlement Agreement. Although this agreement is an accord between Joint Applicants and group of competitors, Commitment 4 of the agreement appears to impose an obligation on the Commission. Specifically, it concerns opening a docket that would monitor Frontier's wholesale service quality after closing and establish wholesale service quality benchmarks. While we understand Joint CLEC's objective with regard to Frontier's post-closing performance, we object, as a general matter, to settlement provisions that are hinged on, or seek to require, prospective action by the Commission as a condition of resolution of the parties' disputed condition. Proposed conditions that involve or imply prospective action by the Commission, are simply not appropriate in agreements brought to us for approval.

212 As with any competitor of Frontier, Joint CLECs can petition the Commission, at any time after closing, to initiate a proceeding to address wholesale service quality. We expect such petitions to include specific facts and proposals to address such matters. Here, we are unwilling, from the outset, to initiate a wholesale service proceeding without a specific factual foundation and set of proposed remedies. The Commission retains discretion to initiate, but is not required to initiate, on its own motion, a proceeding to address the quality of Frontier's wholesale services and/or to establish wholesale service quality benchmarks. Despite this, we modify Commitment 4 of the Joint Applicants/Joint CLEC Settlement Agreement by eliminating the requirement that the Commission to open a wholesale service quality docket after closing.

6. Modifications to Settlement Provisions and Additional Conditions.

213 As more fully discussed and described above, we believe that modifications to and additional conditions on our acceptance of the multiparty settlements are reasonably necessary to further regulatory efficiency and protect the public interest. Our approval of this transaction is specifically conditioned on the following :

- Written acceptance by Verizon and Frontier, as applicable, within 10 days of the date of this Order, of each of the following modifications of the multiparty settlement agreements, or additional conditions, imposed in this Order;

- Frontier must file with the Commission, prior to closing, a notice that contains all relevant and final details of the financing necessary to complete the acquisition;

- Frontier may, but is not required to, file a petition for an AFOR within five years of closing;

- Frontier must file, within five years of closing, a full earnings review that provides *pro forma* results of operations, uses an historical test period, and reflects a cost of capital presentation using investment grade debt and equity of its operations;

- Verizon must, at least 15 days prior to closing, complete all system testing and submit a report to the Commission validating that the OSS are fully operational and provide Commission Staff and Public Counsel 60 days of retail service quality reports;

- Prior to going into production mode on the replicated systems, Verizon must share with Commission Staff and Public Counsel, all information required in Commitment 27(a) and (b) of the Joint Applicants/Staff Settlement;

- Prior to transitioning from the Verizon OSS within three years of closing, Frontier must provide to Commission Staff and Public Counsel all information required in Commitment 29 of the Joint Applicants/Staff Settlement;

- Verizon may be subject to a refund payment to Frontier of up to $3.85 million per year for the five years after closing for responsibility it bears for significant problems with the replicated OSS ,and any such refund amounts are not subject to the regulatory claw-back provisions of the Merger Agreement;

- Within 30 days of closing, Frontier must deposit in an irrevocable escrow account $40 million to fulfill the broadband commitments embodied in Commitments 13 – 18 of the Joint Applicants/Staff Settlement;

- Frontier must obtain and file with the Commission no later than 15 days prior to closing, an opinion letter from outside counsel verifying that the $40 million, once placed in the irrevocable escrow account, is shielded from any subsequent financial proceedings or circumstances that seek to require its release for purposes other than broadband expansion in Washington;

- Frontier NW must make a stand-alone DSL offering available to consumers and continue to offer stand-alone DSL services at the current Verizon NW rates, terms, and conditions for 24 months after closing;

- Frontier must eliminate its "download cap" on its broadband service offerings in Washington; and

- The Commission will not initiate at this juncture a proceeding on its own motion to address wholesale service quality performance and to establish wholesale service quality benchmarks.

CONCLUSION

214 In conclusion, we return to the evaluative criteria established in previous merger and acquisition cases before us in order to determine whether the transaction, if approved, would harm the public interest and thus be contrary to law.

215 At the forefront of the commitments the parties have agreed to in the five multiparty settlements are those related to testing the replicated OSS that will provide service to retail and wholesale consumers. If the OSS are not functioning properly, service ordering, provisioning, maintaining, and repairing functions will be adversely impacted and consumers will be harmed. Stated differently, absent a smooth transition to the replicated systems, consumers in Washington likely could face the perils recently seen in the Hawaiian Telecom and FairPoint acquisitions. We are confident that the measures agreed to by the parties will ensure that the replication and transition process, including adequate testing of these systems both before and after production, will obviate problems when those systems are transferred to Frontier upon closing.

216 We are convinced that Frontier has the managerial and financial capability to operate the acquired property. Frontier has extensive experience operating telecommunications systems in rural, suburban, and small urban areas; areas comparable to those being acquired in this transaction. Frontier's experience acquiring telecommunications properties included incorporating such systems into its operations. Its managerial and financial capability, combined with the technical expertise in operating the replicated systems possessed by current Verizon NW employees, should ensure that service quality remains at, or exceeds, its current level. Moreover, as a result of this transaction, Frontier should emerge a financially stronger company with greater access to financial markets and the resulting ability to obtain capital at lower rates.

217 The multiparty settlements include commitments that protect retail and wholesale consumers from rate increases that otherwise might result from the transaction, including a three-year rate freeze for retail consumers and commitments to abide by the current terms and conditions of existing interconnection agreements and wholesale tariffs. Frontier pledges to share the benefits of the synergies of this transaction with consumers. These rate provisions include enhancing the process supporting assistance for low-income consumers through the WTAP.

218 Competition at the wholesale and retail level should not be impaired. Frontier does not currently provide service in any of the areas to be acquired. Moreover, Frontier will honor the interconnection terms and conditions reached by Verizon NW with the competitive carriers in the acquired service area.

219 Among the commitments in the multiparty settlements are ones that protect our regulatory authority, including access to the information necessary to implement applicable provisions of our governing statutes and rules. These commitments not only ensure compliance with applicable law, but enhance our oversight authority of Frontier's operations as it begins providing service in Washington.

220 In addition to the foregoing, this transaction will provide significant improvement to the broadband service in the acquired service areas. The multiparty agreements provide important commitments to promote broadband expansion into unserved and underserved areas in Washington. These commitments will not only provide broadband to Washington consumers who heretofore have not had access to these services, but specify that the service will be at increased broadband speeds.

221 In sum, we conclude that the proposed transaction, as modified by the commitments in the five multiparty settlements and the additional conditions imposed in this Order, does not harm the public interest and therefore should be approved.

FINDINGS OF FACT

222 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

223 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate rates, rules, regulations, practices, and account of public service companies, including telecommunications companies.

224 (2) Verizon Communications Inc. (Verizon) is a "public service company" and a "telecommunications company" as those terms are defined in RCW 80.04.010 and as those terms are otherwise used in Title 80 RCW. Verizon Northwest, Inc., (Verizon NW) is a subsidiary of Verizon. Verizon NW is engaged in Washington in the business of providing telecommunications utility services to the public for compensation.

225 (3) Frontier Communications Corporation (Frontier) is a publicly traded Delaware company providing telecommunications service in 24 states.

226 (4) Verizon and Frontier , on May 29, 2009, filed a joint application requesting approval for the indirect transfer of control of Verizon NW to Frontier through a stock exchange.

227 (5) Frontier will, through the stock exchange, acquire control of approximately 4.8 million access lines in 14 states, including Washington.

228 (6) On December 22, 2009, Verizon and Frontier filed three separate multiparty Settlement Agreements entered into between Comcast Phone of Washington, the Joint CLECs and 360networks, and Level 3 which they propose the Commission approve and adopt in this proceeding.

229 (7) On December 24, 2009, Verizon, Frontier, and Commission Staff filed a multiparty Settlement Agreement which they propose the Commission approve and adopt in this proceeding.

230 (8) Verizon, Frontier, and the Department of Defense and all other Federal Executive Agencies filed, on January 29, 2010, a multiparty settlement agreement which they propose the Commission approve and adopt in this proceeding.

231 (9) In the five multiparty settlement agreements filed in this case, Frontier and Verizon agree to a number of commitments, in addition to those in the original Merger Agreement, including:

- Financial commitments to preserve the financial integrity of Frontier.
- Financial commitments to ensure that retail and wholesale rates and service offerings to consumers remain stable.
- Reporting commitments that allow the Commission to watch over Frontier’s operations.
- Capital commitments to deploy broadband service.
- Quality of service commitments.
- Low-income assistance commitments.
- Service and testing commitments for the Verizon operations support systems that will be replicated.

- Service and testing commitments for replacement of the replicated systems.

232 (10) Frontier's acquisition of Verizon Northwest on the terms provided by the joint application as modified by the five Settlement Agreements attached to and made a part of this Order by prior reference, and the additional conditions imposed in this Order, is consistent with the public interest.

CONCLUSIONS OF LAW

233 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

234 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding. *Title 80 RCW.*

235 (2) RCW 80.12 requires public service companies, including Verizon, to secure Commission approval before they can lawfully sell or otherwise dispose of the whole or any part of their franchises, properties or facilities that are necessary or useful in the performance of their duties to the public. Any sale or disposition made without Commission authority is void.

236 (3) Under WAC 480-143-170, which identifies the standard of review the Commission must apply in transfers of property, requires that the Commission find the transaction is consistent with the public interest. To be consistent with the public interest, the transaction must not harm the public interest.

237 (4) The commitments in the five multiparty Settlement Agreements, as further conditioned by this Order, are sufficient to protect Verizon's customers and the public interest from risks of harm associated with this change of control transaction.

238 (5) The Commission should authorize, as consistent with the public interest, Frontier's acquisition of Verizon NW on the terms provided by the joint application, as conditioned by the terms of the five multiparty settlement agreements attached to and made a part of this Order by prior reference and as further conditioned by this Order.

239 (6) The Joint Applicants should be authorized and required to make any compliance filing necessary to effectuate the terms of this Order.

240 (7) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.

241 (8) The Commission should retain jurisdiction over the subject matter and the parties to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

242 (1) Frontier Communications Corporation's acquisition of a controlling interest in Verizon Northwest Inc on the terms provided by the joint application as conditioned by the terms of the five multiparty settlement agreements attached to and made part of this Order by prior reference, and the additional conditions in this Order, is approved.

243 (2) Frontier Communications Corporation is authorized and required to make any compliance filing and any other filing necessary to effectuate the terms of, or required by, this Order.

244 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, all filings or submission that comply with the requirements of this Order.

245 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective April 16, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

APPENDICES A - E

Multiparty Settlement Agreements

GLOSSARY TERMS

AFOR	Alternative Form of Regulation authorized by RCW 80.36.135.
Act	The Telecommunications Act of 1996. 47 U.S.C. Section 101, *et. seq*.
CLEC	Competitive local exchange company. Not an ILEC, and generally subject to very limited regulation.
DSL	Digital Subscriber Line – A feature that allows existing telephone circuits to carry additional signals including relatively high bandwidth. These frequencies enable a customer to access the internet or send and receive information or data.
FCC	Federal Communications Commission.
ILEC	Incumbent local exchange company; a company in operation at the time the Act was enacted (August 1996).
Interconnection	Connection between facilities or equipment of a telecommunications carrier with a local exchange carrier's network under Section 251(c)(2).
OSS	Operations Support Systems – the computerized information systems used to provision, maintain, repair, and bill for telecommunications services
SPG	Service Performance Guarantee
WTAP	Washington Telephone Assistance Program.