

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**TESTIMONY OF
MICHAEL D. PELCOVITS**

ON BEHALF OF

COMCAST PHONE OF WASHINGTON, LLC

***** PUBLIC VERSION *****

November 3, 2009

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1 **I. INTRODUCTION AND SUMMARY**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Michael D. Pelcovits. I am a principal with the economic consulting
4 firm of Microeconomic Consulting and Research Associates (MiCRA). My
5 business address is 1155 Connecticut Avenue, N.W., Washington, D.C. 20036.

6 **Q. Would you please summarize your experience and educational qualifications?**

7 A. I received my Ph.D. in Economics from the Massachusetts Institute of Technology
8 in 1976. After serving on the economics faculty of the University of Maryland and
9 as a Senior Economist at the Civil Aeronautics Board, I have spent my entire career
10 specializing in the economics of regulation and competition in the
11 telecommunications industry.

12 From 1979 to 1981, I was a Senior Economist at the Federal Communications
13 Commission, Office of Plans and Policy. From 1981 to 1988, I was a founding
14 member and principal of the consulting firm Cornell, Pelcovits and Brenner. In
15 1988, I joined MCI Communications Corporation and remained with the Company
16 following its merger with WorldCom, until 2002. I held positions of increased
17 responsibility at MCI, and was appointed Vice President and Chief Economist of
18 the corporation. In this position I was responsible for the economic analyses of
19 policy and regulatory matters provided and presented by the Corporation before
20 federal, state, foreign, and international government agencies, legislative bodies and
21 courts.

1 **Q. What are your professional responsibilities at MiCRA?**

2 A. I joined MiCRA in October 2002, immediately after leaving MCI, and am one of
3 six principals of the firm. MiCRA is an economic consulting firm based in
4 Washington, DC. The firm was founded in 1991 by a group of economists who
5 served in senior positions at the Antitrust Division of the U.S. Department of
6 Justice. MiCRA provides economic analysis, expert testimony, and economic
7 research to clients in a wide range of antitrust, regulatory, and other legal and public
8 policy settings. Since joining MiCRA, I have testified before several state
9 regulatory commissions on telecommunications policy and ratemaking issues.
10 These testimonies have focused on the importance of establishing the proper
11 foundation to facilitate competition in telecommunications markets. I have also
12 filed several declarations before the Federal Communications Commission on a
13 wide range of common carrier, wireless, and international telecommunications
14 policy issues. I have also consulted and provided testimony on telecommunications,
15 intellectual property and competition matters before several other Courts and
16 administrative bodies, including: Federal District Court; U.S. Copyright Royalty
17 Judges; and London Court of International Arbitration.

18 **Q. What is the purpose of your testimony?**

19 A. My testimony explains the concerns of Comcast Phone of Washington, LLC
20 (“Comcast”) that, without conditions tailored to protect and promote competition,
21 Frontier’s proposed acquisition of Verizon’s local wireline operations in
22 Washington would obstruct or impair existing and emerging communications

1 competition in Washington. I also explain the basis for each of the concerns that I
2 have identified. To address these concerns, I am recommending that multiple
3 conditions set forth in Exhibit MDP-2 be attached to any Washington Utilities and
4 Transportation Commission (“Commission”) approval of the proposed transaction.
5 At a minimum, these conditions are needed to mitigate the risk that the proposed
6 transaction would undermine existing competitors and obstruct emerging
7 competition in Washington. Comcast is not opposed to the transaction *per se*, and
8 has focused upon criteria that relates to its specific competitive and operational
9 interests.

10 **Q. How is your testimony organized?**

11 A. My testimony will present a review of the following: 1) the statutory standards to be
12 applied to this transaction; 2) the competitive landscape in Washington; 3)
13 comparable issues related to the purchase of Verizon assets in northern New
14 England and Hawaii by small and less-experienced incumbent local exchange
15 carriers (“ILECs”), the system failures and wholesale service degradations that
16 followed, and the implications of those experiences for review of the instant
17 transaction; and 4) the importance to competition of the availability of
18 interconnection, associated cost based rates, and tandem transit service. In addition,
19 I will propose and describe a series of conditions that the Commission should
20 impose on the transaction that will promote and protect competition.

1 **II. STATUTORY STANDARD APPLIED TO MERGER AND TRANSFER OF**
2 **CONTROL TRANSACTIONS IN WASHINGTON**

3 **Q. Have you reviewed the Joint Petition and applicable statutory criteria that the**
4 **Commission must apply in acting on the joint petition?**

5 A. Yes. On pages 2 and 3 of their Joint Petition, Verizon and Frontier state that the
6 proposed transfer of Verizon's businesses in Washington to Frontier will promote
7 substantial public interest benefits for the state and will not result in harming
8 competition. Further on in their Joint Petition, Verizon and Frontier refer to specific
9 Washington statutes that contain the public interest standard their Petition must
10 meet to be approved. I have familiarized myself with recent Commission orders in
11 which it has applied these statutory criteria to specific merger or transfer cases.

12 **Q. What factors have been examined by the Commission in reviewing**
13 **telecommunication merger transactions?**

14 A. In previous transactions involving telecommunication mergers or sales, the
15 Commission stated that it must determine if the transaction is in the public interest,
16 and held that this standard requires the petitioning parties to demonstrate that the
17 proposed transaction will do "no harm."¹ In its Verizon/MCI Merger Order, the
18 Commission specified that to determine if the proposed transaction meets the
19 Washington "no harm" standard; it reviews the following six factors:

¹ *In re Application of the Pacific Corp and Scottish Power*, Docket No. UE-981627, Third Supp. Order on Prehearing Conference (April 1999).

- 1 1. The impact on competition at the wholesale and retail level, including
- 2 whether the transaction might distort or impair the development of
- 3 competition;
- 4 2. Whether the surviving corporation has the technical, managerial and
- 5 financial capability to operate the operating subsidiary;
- 6 3. The potential impact on service quality, including the impact on
- 7 investment in Washington and neglect and abandonment of facilities;
- 8 4. How any benefits or synergies would be shared between customers and
- 9 shareholders;
- 10 5. The financial impacts of the proposed merger on cost of capital, capital
- 11 structure, and access to financial markets; and
- 12 6. The impact of the merger on rates, terms, and conditions of service.²

13 **Q. Why is this issue especially relevant to Comcast in the current transaction?**

14 A. Comcast is currently a competitor to Verizon in providing voice service to
15 residential and business customers. It intends to compete with Frontier if and when
16 Frontier is permitted to purchase Verizon's local telephone exchanges. For
17 Comcast and other providers to compete fairly by providing alternative services to
18 Washington consumers, there must be no deterioration in the quality of service that

² *In re Joint Application of Verizon Communications Inc. and MCI, Inc., For Approval of Agreement and Plan of Merger*, Docket UT-050814, Order No. 07 at 26 (Dec. 23, 2005).

1 the competitive providers receive from Frontier and an assurance that Frontier's
2 wholesale customers will receive stable rates, terms and conditions for the
3 wholesale services they currently obtain from Verizon. I will discuss these issues in
4 greater detail later in my testimony.

5 **Q. What standard should the Commission use to determine if the Verizon-**
6 **Frontier Petition is in the public interest?**

7 A, The standard for determining if the proposed transaction is in the public interest is
8 clear. As the Commission itself stated, it must review the six factors listed above to
9 "balance[e] the costs and the benefits [of the proposed transaction] for the public
10 and for affected customers. If the costs outweigh the benefits, the result is harm and
11 the Commission should deny or condition the approval so no net harms result."³

12 **Q. Has the Commission imposed conditions for approval of proposed mergers or**
13 **similar transactions in past cases?**

14 A. Yes. As part of its public interest review of previous merger or transfer
15 applications, the Commission has routinely imposed conditions to ensure that the
16 transactions did no harm.⁴ In my experience, it is very common for regulatory
17 agencies, including the Federal Communications Commission ("FCC") and state
18 commissions, to impose conditions upon merger and transfer of control
19 transactions. Conditions are needed, at times, in order to ensure that a proposed

³ *Id.*

1 merger satisfies relevant legal standards for approval, especially the requirement to
2 serve the public interest or public good.

3 **Q. Is the proposed transaction similar in size and scope to previous transactions**
4 **reviewed by the Commission?**

5 A. No. The proposed transaction is quite different from past transactions reviewed by
6 the Commission. In the present situation, a small ILEC serving primarily rural
7 areas and no Washington customers is proposing to obtain control of a large number
8 of access lines in Washington from a large ILEC as part of a multi-state transaction.
9 Moreover, the 578,000 access lines and 273,000 long distance lines⁵ Frontier seeks
10 to purchase in Washington are only a small portion of the 4.8 million access lines
11 Frontier is proposing to purchase in 14 states.⁶ Since the Washington access lines
12 Frontier intends to purchase are only 12 percent of its total purchase from Verizon it
13 is vitally important for the Commission to require the parties to demonstrate that
14 Verizon and Frontier are sufficiently focused on the state of Washington and the
15 transaction will do no harm to Washington retail and wholesale customers.

16 **Q. In your opinion, should the Commission impose conditions on Frontier as a**
17 **requirement for approving the proposed transaction?**

18 A. Yes. As I noted above, Frontier is a relatively rural ILEC that has never served any
19 Washington customers but will be expected to provide immediate service for

⁴ For example, the Commission imposed conditions on the Verizon/MCI merger discussed herein and the recent Embarq/CenturyTel merger in Docket No. UT-082119.

1 578,000 access lines and 273,000 long distance lines when and if the merger is
2 approved. From a competitive prospective, I am concerned that Frontier may not be
3 able to handle the large number of wholesale transactions that it will face upon
4 assuming control of Verizon's exchanges. For example, in its responses to
5 discovery Verizon stated that it currently has ***** BEGIN CONFIDENTIAL *****
6 ***** END CONFIDENTIAL ***** interconnection agreements with
7 CLECs and ***** BEGIN CONFIDENTIAL ***** ***** END**
8 **CONFIDENTIAL ***** interconnection agreements with wireless carriers.⁷ The
9 situation is similar for access service requests ("ASRs") and local service requests
10 ("LSRs"), which are the type of requests most commonly used by competitors to
11 obtain wholesale services, such as for number ports or interconnection facilities.
12 The number of requests handled by an incumbent carrier provides insight into the
13 volume of wholesale transactions that the carrier undertakes. In the Verizon
14 exchanges Frontier seeks to purchase, there were *****BEGIN CONFIDENTIAL**
15 ******* ***** END CONFIDENTIAL***** ASRs for tariffed services in 2008,⁸
16 and an additional ***** BEGIN CONFIDENTIAL ***** ***** END**
17 **CONFIDENTIAL ***** ASRs/LSRs for interconnection facilities. Thus, the
18 volume of wholesale transactions Verizon handled in 2008 and Frontier will have to
19 handle if and when the transaction is approved is significant. Moreover, since
20 Washington is only one of the 14 states involved in Frontier's multi-state purchase

⁵ Prefiled Direct Testimony of Timothy McCallion, page 9, line 7.

⁶ Prefiled Direct Testimony of Daniel McCarthy, page 14, lines 13-17, page 18, lines 15-21.

⁷ Exhibit MDP-3C (Verizon and Frontier Confidential Response to Comcast DR No. 7).

1 of Verizon's exchanges, I have significant concerns that, even with the best of
2 intentions, Frontier may not have the human resources and systems expertise to
3 successfully handle this extraordinary amount of wholesale transactions.

4 My concern with the effects of this proposed transaction on wholesale customers
5 was heightened when Frontier refused to specifically respond to a data request
6 seeking information regarding whether it would retain Verizon's current level of
7 staffing and training in Washington for its wholesale and CLEC support centers
8 after the transaction closes. Frontier's response that it intends to staff its wholesale
9 organization support centers to ensure that it provides the same level of service
10 provided by Verizon at the time of closing is too vague to be meaningful and fails
11 as a demonstration that wholesale competition, and thus competitor's service
12 offerings, will not be harmed by the transaction.⁹ In fact, as Mr. William Solis
13 details in his prefiled testimony, one major issue confronting the Commission is that
14 until now all of Frontier's discovery responses and prefiled direct testimony have
15 provided only vague assurances to wholesale customers concerned that Frontier's
16 wholesale operations, including staffing, systems and procedures will work
17 seamlessly after the transaction closes. In my opinion, Frontier's lack of specificity
18 further strengthens the need for the Commission to mandate conditions if it is to
19 approve this transaction.

⁸Exhibit MDP-4C (*Id.*, No. 56).

⁹Exhibit MDP-5 (*Id.*, No. 47).

1 **III. COMPETITIVE LANDSCAPE IN WASHINGTON**

2 **Q. What is the current state of competition in Washington?**

3 A. Washington, to date, has experienced limited forms of competition. According to
4 the latest FCC statistics, competitive local exchange carriers (“CLECs”) provided
5 approximately 16 percent of the end-user switched access lines in Washington as of
6 June 30, 2008.¹⁰ Moreover, since 2004, the CLEC share of end-user switched
7 access lines has only grown by 2 percent points.¹¹

8 **Q. What general concern arises out of the proposed transfer of Verizon’s ILEC**
9 **business to Frontier?**

10 A. It is only within the last 13 years, since passage of the Telecommunications Act of
11 1996, that major legal barriers to entry in voice services were removed. Even
12 though competition has begun to emerge in the many local voice service market, it
13 is not a foregone conclusion that competitive markets will continue to develop
14 smoothly regardless of the capabilities and behavior of the incumbent. Therefore, it
15 is important to examine how a major change in the ownership of the second largest
16 ILEC in Washington could prevent or disrupt the transition to a more competitive
17 marketplace.

¹⁰ Exhibit MDP-6 (FCC Local Telephone Competition Report: Status as of June 30, 2008 (July 2009), Table 8).

¹¹ *Id.*

1 **Q. Is it important for the Commission to consider in its evaluation of the proposed**
2 **transaction past attempts to bring competition to Washington residential**
3 **customers?**

4 A. Yes. It has been difficult to bring about even the modest level of competition that
5 currently exists in Washington. These difficulties should inform the Commission's
6 judgments on what is needed in the present case to avoid the proposed transaction
7 obstructing or impairing existing and prospective competition.

8 **A. UNDERLYING DIFFICULTIES OF BRINGING COMPETITION TO LOCAL**
9 **TELEPHONE MARKETS**

10 **Q. Why has it been difficult to bring competition to local telephone markets?**

11 A. Competition has been slow to develop in the local residential (and small business)
12 telephone market across the United States, not just in Washington. The main reason
13 for this is that it has been prohibitively expensive for any entrant, such as the
14 CLECs spawned by the Telecommunications Act of 1996, to construct outside
15 telephone wire or fiber optic cable that can come close to matching the ubiquity of
16 the ILECs' plant. Until recently, competitors in this market have relied on one of
17 three ways to get around the cost of building local wireline plant. First, competitors
18 obtained access to the ILECs' local facilities at wholesale rates or at UNE rates and
19 used these facilities (along with some self-provided capabilities) to provide local
20 telephone service. Second, some competitors have offered voice service directly to
21 customers over the public Internet – which is referred to as over-the-top Voice over

1 Internet Protocol (“VoIP”). In these cases, the customer must obtain a broadband
2 Internet connection from another provider, e.g. the ILEC or the cable company.

3 Third, some customers have “cut the cord” and rely on wireless telephone service as
4 their only local phone service.

5 **Q. Has competition from these three sources been sufficient to obviate any reason**
6 **for concern over the future state of competition in the local market?**

7 A. No. For a variety of reasons, it is still vital to facilitate and foster facilities-based
8 wireline competition in the Washington voice services market. To begin with, the
9 largest source of competition until a few years ago was from the UNE-P (platform)
10 carriers. At their peak, UNE-P providers served 16 percent of residential lines
11 nationwide.¹² However, not only have the two major UNE-P providers (MCI and
12 AT&T) ceased to exist as independent CLECs, but that mode of competition
13 essentially was eliminated by the FCC in the UNE Remand proceeding in
14 December, 2004.¹³ Competition from over-the-top VoIP providers is a limited or
15 imperfect substitute for the ILEC for many customers, who are either not connected
16 to the Internet by broadband facilities or are unwilling to rely on a public Internet
17 connection for voice service. Despite considerable publicity, wireless telephone
18 service has also been an imperfect substitute for almost 80 percent of residential

¹² *Id.*, at Table 4

¹³ FCC, *Order on Remand*, WC Docket No. 04-314, December 15, 2004.

1 customers, who are unable or unwilling to cut the cord.¹⁴ Perhaps of greatest
2 significance is the fact that all of the competitors in the voice services market must
3 still rely on the incumbent for some vital services in order to serve their customers
4 effectively.

5 **B. CABLE'S UNIQUE CAPABILITY OF BRINGING COMPETITION TO THE MARKETS**

6 **Q. What is the potential benefit to consumers from the spread of competition**
7 **from cable telephony?**

8 A. In 2006 and 2007, I conducted studies of these benefits and concluded that the
9 overall benefits over the next five years in the residential and small business market
10 from cable voice service competition were on the order of \$111 billion.¹⁵ As shown
11 in the table below, these benefits are derived from a number of sources, including
12 the direct savings to cable voice service customers and the anticipated competitive
13 response by the ILECs.

Total Savings from Cable-Telco Competition (in millions)

<i>Category</i>	<i>Savings</i>
Cable, Residential Market	\$17,202
Cable, Small Business Market	\$811
OTP VoIP	\$6,110
ILEC Competitive Response, Residential Market	\$71,723
ILEC Competitive Response, Small Business Market	\$15,503
Total	\$111,348

14

¹⁴ Exhibit MDP-7 (Department of Health and Human Services, Centers for Disease Control and Prevention, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2008" (May 2009)).

1 Consumers in all markets will benefit from facilities-based voice services
2 competition by the cable companies.

3 **C. THE ILECS' RESPONSE TO COMPETITION**

4 **Q. How have the ILECs responded to competitive entry in the past?**

5 A. Not well. The pre-divestiture Bell System, the post-divestiture BOCs and
6 independent ILECs engaged in many acts to hinder competitive entry. The simple
7 reason for this is that competition will reduce the incumbent's profits. Even if the
8 incumbents' profits are constrained by regulation, they will still have a powerful
9 incentive to prevent or hinder entry in order to preserve long-term profits and also
10 raise profits by various means that sidestep regulatory controls. For example, by
11 maintaining control over a customer's local telephone service, an ILEC is more
12 likely to be able to sell other bundled services, such as long distance, calling
13 features, Internet access and video service.

14 **Q. Aren't the ILECs the same as any other dominant firm that wants to hold on**
15 **to its customers as long as possible?**

16 A. No. The ILECs are different than dominant firms in many other markets because
17 they continue to provide essential services to their competitors, even after the
18 competitors have successfully entered the market. For example, so long as the
19 ILECs continue to serve the vast majority of local telephone customers, entrants

¹⁵ Exhibit MDP-8 (MiCRA, "Consumer Benefits from Cable-Telco Competition, 2006, Updated

1 will need to interconnect with the ILEC in order to provide their customers with
2 universal connectivity. The entrants will also depend on the ILEC to cooperate in
3 switching customers from their old ILEC service to their new competitive service. I
4 will explain this and other issues of dependence in much greater detail below.

5 The key point to keep in mind is that the ILECs will have both the incentive and the
6 ability to raise their rivals' cost. By doing so, they can retain their dominance and
7 forestall the need to respond as fully to competitive pricing. Moreover, the
8 regulator's job of preventing these cost raising strategies is not easy. It will often
9 be difficult to sort out a benign failing by the ILEC to cooperate with the competitor
10 from a purposeful effort to raise the competitor's costs. Indeed, the ILEC can
11 impose costs, harm competitors, and help its own competitive position simply by
12 exerting a little less effort and manifesting a little less competence in serving the
13 competitor's needs than it does in meeting its own retail customers' needs.

14 **D. PRACTICAL PROBLEMS RAISED BY THE PROPOSED TRANSFER**

15 **Q. Please explain what you mean about the possible disruption of competitive**
16 **markets that could be caused by the Frontier acquisition.**

17 A. Based upon the Joint Petition, pre-filed testimony and data responses received to
18 date, Frontier has not demonstrated that after the transaction closes that it will be
19 able to provide the functions needed by competitors so that the citizens of
20 Washington will have the same competitive choices for the types of services that

November 2007").

1 Verizon provides today. Nor has it established its technical proficiency to perform
2 cutover activity for so many new customers or that its systems supposedly “cloned”
3 from those of Verizon are likely to operate in as an efficient and reliable manner at
4 the transaction closing. As explained below, the currently proposed transaction
5 could create serious impediments to existing and prospective competition in
6 Washington.

7 **IV. SPECIFIC COMPETITIVE OBSTRUCTIONS AND IMPAIRMENTS.**

8 **Q. How could the proposed transaction obstruct and impair competition in**
9 **Washington?**

10 A. The ability of Comcast to offer competitive services in Washington on a widespread
11 basis, as it has already done in other states, depends, in part, upon its ability to
12 retain and obtain reasonable interconnection rates, terms and conditions from the
13 ILEC – now Verizon – pursuant to Section 251(c) of the federal
14 Telecommunications Act of 1996. If Frontier were to fall short of fulfilling (or seek
15 exemptions or waivers from) the interconnection obligations now placed on
16 Verizon under Section 251(c), the proposed transaction would obstruct and impair
17 competition in Washington. I discuss this issue later in my testimony, where I
18 recommend the specific conditions that should be placed upon any approval of this
19 proposed transaction.

20 Additionally, the proposed transaction will result in Frontier incurring substantial
21 costs, including the costs associated with the transaction itself, the costs of

1 replicating, procuring, testing and debugging the duplicated Verizon systems that
2 Frontier initially intends to rely upon to provide retail and wholesale services, and
3 the costs of the subsequent cutover to its own systems.

4 **Q. How should the Commission deal with the costs incurred by Frontier with**
5 **regard to: 1) this transaction; 2) the replication and implementation of**
6 **Verizon's systems; and 3) the cutover to its own systems?**

7 A. Any approval of the proposed transaction should be conditioned upon Frontier's
8 agreement not to pass through or charge any of these costs to retail and wholesale
9 ratepayers or to attaching entities. For the cost of the transaction itself, this
10 condition appears to be consistent with Frontier's representation in its data
11 responses. Frontier stated in response to a data request that it will not pass on costs
12 related to this transaction to CLEC wholesale customers.¹⁶ However, Frontier has
13 not indicated in its direct testimony or in its data responses whether it plans on
14 passing through any of the costs of replicating, testing and implementing Verizon's
15 systems at the closing date of the transaction. Nor does Frontier state whether it
16 will pass through the costs of the cutover of these replicated Verizon systems to its
17 own company-wide systems. This is a significant problem. Frontier has given no
18 indication that it plans on using the Verizon systems longer than one year. While
19 Frontier's chief operating officer, Mr. Daniel McCarthy does not indicate if or when
20 Frontier will move customers to its own systems in Washington, it must be pointed

¹⁶ Exhibit MDP-9 (Verizon and Frontier Response to Comcast DR No.2).

1 that in all its previous transactions, Frontier has integrated the various operating
2 systems so that all of its operating companies today utilize the same customer
3 service and billing system platform.¹⁷ It would adversely affect competition for the
4 Commission to approve this transaction believing that customers are protected from
5 paying the costs of replicating and implementing the Verizon systems, to find a
6 short time later that Frontier is passing through the costs of cutting over to its own
7 systems platform. Thus, it is important that conditions be imposed on Frontier's
8 cost recovery in order to ensure that all ratepayers are not disadvantaged
9 economically by this transaction and will pay no more than they would have paid if
10 no transaction had occurred.

11 **Q. In what other respects does the proposed transaction threaten to obstruct and**
12 **impair competition?**

13 A. The tasks of replicating and provisioning Verizon's numerous operating support
14 systems, and then assuming operational control of the replicated systems to provide
15 telephone service to hundreds of thousands of Washington customers as Frontier
16 has proposed is a daunting task that poses many risks for consumers and
17 Washington as a whole. These risks are not theoretical, as experience with two
18 other acquisitions of Verizon's local exchange operations have shown. Anytime a
19 smaller ILEC with less wholesale experience takes over another carrier's systems

¹⁷ Prefiled Direct Testimony of Daniel McCarthy, page 44, lines 5-22.

1 and subsequently moves to its own operating support systems (“OSS”), there is a
2 serious threat to existing and expected competition.

3 **A. EVIDENCE FROM NEW ENGLAND**

4 **Q. What recent experience with a Verizon sale of operations causes these**
5 **concerns?**

6 A. The most recent example of the seriousness of the risks arising out of a Verizon
7 asset sale to an entity with less scope and wholesale experience and fewer resources
8 is Verizon’s sale of local exchange assets to FairPoint Communications
9 (“FairPoint”) in three states in New England in 2008. In those transactions,
10 FairPoint acquired Verizon’s landline systems in Vermont, New Hampshire and
11 Maine in early 2008. At that time, FairPoint obtained ownership of the
12 telecommunications network and became the service provider, but Verizon, through
13 a Transition Service Agreement (“TSA”), continued to provide the operating
14 support systems used for functions such as ordering, provisioning and billing until
15 FairPoint’s own systems were ready to assume the responsibility. In response to the
16 concerns of both retail and wholesale customers, the public utility commissions in
17 all three states mandated several conditions to assure that the cutover to the new
18 systems would not occur until FairPoint’s systems were fully functional and would
19 provide necessary services to both retail and wholesale customers. One of the

1 conditions required FairPoint to develop a Cutover Readiness Verification Plan.¹⁸

2 The plan specified that FairPoint must demonstrate readiness in five different areas:

- 3 • Tests of FairPoint’s new operational support systems, which will
4 replace the Verizon systems;
- 5 • Tests of FairPoint’s ability to (a) correctly accept the data extracted
6 from Verizon’s systems as will be necessary to operate FairPoint’s
7 business, and (b) to convert that data into a form that can be used by
8 the new operational support systems;
- 9 • Demonstration of the existence and documentation of the key business
10 processes that must operate successfully at cutover;
- 11 • Demonstration that key staff positions that are necessary at cutover are
12 filled; and
- 13 • Demonstration that training of the FairPoint staff in the new systems
14 and processes will be successfully completed by cutover.

15 In addition, the three state commissions approved a plan whereby the Liberty
16 Consulting Group (“Liberty”) was retained (with approval of the commissions) to
17 independently monitor the preparations for and execution of the cutover and the

¹⁸ Exhibit MDP-10 (Vermont Public Service Board Docket No. 7270, Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, certain affiliates thereof, and FairPoint Communications Inc. for approval of an asset transfer, acquisition of control by merger and associated transaction, Order Re: Cutover Readiness (Nov. 26, 2008)).

1 resulting operations since the cutover.¹⁹ After utilizing the Verizon systems for
2 close to one year, on January 30, 2009, FairPoint initiated a cutover from the
3 Verizon systems and processes to its own systems. After completion of the cutover
4 process, FairPoint began fully operating its systems on February 9, 2009. Liberty
5 signed off on the cutover, concluding that FairPoint had sufficiently satisfied the
6 criteria for cutover readiness. However, multiple problems became apparent
7 immediately. Liberty in an April 1, 2009 Post-Cutover Status Report reported that:

8 “...It is well known at this point that both retail and wholesale
9 customers have experienced a number of problems after the
10 cutover. As FairPoint has noted, the scale of this systems
11 implementation is unprecedented in the telecommunications
12 industry. Verizon operated in northern New England using
13 approximately 600 systems, which were developed and
14 integrated over many decades. FairPoint is now performing the
15 same functions with a much smaller number of newly designed
16 systems using a very different architecture. These systems
17 represent the full range of systems necessary for both retail and
18 wholesale services: pre-ordering, ordering, provisioning,
19 maintenance and repair, network management, billing,
20 equipment inventory, force management, engineering and
21 construction, customer service records, call center support,

¹⁹ *Id.*, at 2

1 accounting and finance, marketing and sales and human
2 resources”²⁰

3 Liberty emphasized that the cutover was especially difficult for FairPoint’s
4 wholesale customers:

5 “Compounding the difficulty of the cutover has been the
6 complexity of the transition on wholesale customers. To
7 Liberty’s knowledge, this transition is the first of its kind in a
8 former Regional Bell Operating Company (RBOC) territory,
9 which has necessitated special attention to the market opening
10 requirements of the Telecommunications Act of 1996 for
11 RBOCs. FairPoint has had to replicate a set of specialized
12 interface systems and processes for providing service to
13 Competitive Local Exchange Carriers (CLECs) and other
14 wholesale customers, which Verizon developed and has been
15 enhancing for well over a decade. Simply understanding the
16 detailed requirements for these systems and processes has been
17 a monumental task.”²¹

18 **Q. What are the types of problems encountered by FairPoint’s retail and**
19 **wholesale customers in New England since the cutover occurred?**

²⁰ Exhibit MDP-11 (Liberty Consulting Group’s FairPoint Post-Cutover Status Report, at 1).

²¹ *Id.*, at 2.

1 A. Comcast's other witness, Mr. Solis, discusses the types of problems that Comcast
2 has encountered with FairPoint since the cutover occurred. Therefore, I will simply
3 provide a more general overview of the problems that I have observed. Since the
4 cutover, FairPoint's customers have been plagued with a variety of ongoing
5 customer service and systems issues. For example, the New England press has
6 reported that when the company made the switch, some customers lost service,
7 others could not access their e-mail, and there were numerous billing errors, long
8 waits on customer service lines, service delays and systems errors. Customers have
9 continued to receive bills from FairPoint even after they have cancelled service.
10 Wholesale and business customers have been extremely hard hit. Some lost service
11 during business hours on multiple days because of problems FairPoint has had
12 processing "migration" orders. In July, the Maine Public Utility Commission
13 imposed on FairPoint \$400,000 in penalties because of the poor service it provided
14 to other local exchange carriers. In Exhibit MDP-12, I provide copies of some of
15 the articles describing the numerous problems faced by Frontier's customers.²²

16 Q. **What happened after these multiple system problems occurred?**

17 A. FairPoint has faced fines and penalties from the three state commissions because of
18 its poor performance.²³ More importantly, the company has faced financial
19 difficulty because of the increased costs it incurred to "fix" its systems and because

²² Exhibit MDP-12 ("FairPoint Customers Blanked," Rutland Herald Online, June 9, 2009, "Searching for a New Ride?" Concord Monitor, August 15, 2009. "FairPoint tries to tackle New Hampshire billing issues", Fierce Telecom, August 3, 2009).

1 customers have left the company at a faster rate than forecasted. In fact, since July
2 1, 2008, more than 40,000 customers have left the company's system in northern
3 New England.²⁴

4 Things have gotten so bad that on October 26, 2009, the company announced it had
5 filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy
6 Code.²⁵

7 The Vermont, Maine and New Hampshire commissions have held numerous
8 individual meetings with FairPoint, opened multiple dockets and have spent untold
9 resources addressing FairPoint's operational problems. On September 9, 2009, for
10 the first time, they questioned FairPoint together. At that meeting, FairPoint told
11 the regulators it would be another two months before it had a clear plan to resolve
12 its customer service, billing and other problems²⁶ The Vermont Public Service
13 Board has become so disgruntled with FairPoint's service that it has scheduled a
14 "show cause" hearing that could result in FairPoint losing its license to operate in
15 Vermont.²⁷

²³ Exhibit MDP-13 ("FairPoint asks state regulators to reduce penalties," New Hampshire Union Leader, August 14, 2009).

²⁴ *Id.*, at page 2.

²⁵ Exhibit MDP-14 ((FairPoint Communications press release, FairPoint Reaches Agreement with Bank Lenders – Initiates Voluntary Chapter 11 Proceeding, October 26, 2009).

²⁶ Exhibit MDP-15 ("Northern New England states question FairPoint," Associated Press, September 9, 2009).

²⁷ Exhibit MDP-16 (Investigation into Possible Revocation of FairPoint Communication's Certificate of Public Good, Vermont Public Service Board, Docket No. 7540).

1 **Q. Do you see any parallels between FairPoint’s acquisition of Verizon’s**
2 **exchanges in three New England states and Frontier’s acquisition of Verizon’s**
3 **exchanges in Washington and 13 other states?**

4 A. In the present case, as in the FairPoint example, Verizon has entered into a
5 transition services agreement with a less-experienced, much smaller entity, and that
6 entity, Frontier, has stated its intention to migrate from Verizon’s systems
7 (supposedly replicated) to systems of its own. Interested parties, such as Comcast
8 who necessarily rely on those systems to port customers and purchase certain
9 wholesale services, have been provided with insufficient detail on existing Verizon
10 systems and practices or the Frontier systems that will eventually serve the retail
11 and wholesale customers of Washington. There are no concrete assurances that
12 Frontier is capable of carrying out a cutover to new systems in a manner that would
13 not disrupt retail customers or wholesale competitors. Moreover, even if an eventual
14 cutover to Frontier’s systems is successful, there is no evidence that Frontier’s
15 systems can provide the same level of functionality as Verizon’s systems. In sum,
16 there are no safeguards against the type of experience that occurred in New England
17 that exist today in Washington.

18 Even more alarming is the fact that the conditions imposed on the FairPoint
19 transaction by the New England state commissions to ensure a smooth cutover
20 proved inadequate to avoid significant harm to consumers and wholesale carriers.
21 The situation that occurred in New England should alert the Commission to the
22 complexity of system changes, the need to exert control and oversight over new

1 systems to be implemented by Frontier, the need for proper testing of system
2 changes prior to implementation, and the need to ensure continuity in the use of
3 existing or cloned Verizon systems until such time as new Frontier systems have
4 proved to operate as least as effectively and efficiently as the systems they are
5 replacing. Tight controls and conditions over any transition from Verizon to
6 Frontier, such as those recommended by this testimony and that of Mr. Solis, are
7 needed. Even parties with the best of intentions can cause harm to the public good.

8 **Q. Will the problems that occurred in New England occur in Washington?**

9 A. Not necessarily, but we do not have sufficient information at this point to know
10 whether and to what extent these or other problems will arise. As I stated above, at
11 this stage, the Commission and the parties have been provided with few details on
12 the system changes contemplated by Frontier or any process by which system
13 failures upon cutover to the replicated Verizon systems or Frontier's own systems
14 may be avoided. Throughout the discovery phase of this case, Comcast has
15 attempted to learn how Frontier will replicate the Verizon systems, what systems of
16 its own Frontier intends to implement, and what steps will be taken to ensure that
17 the problems that arose in New England will not occur in Washington. Frontier
18 simply has either not been in a position to provide answers to many of these critical
19 questions or has chose to provide only general answers. As discussed later in my
20 testimony, the Commission must adopt stringent conditions upon any merger or
21 transfer approval that go beyond the general promises of Frontier that it intends to

1 cooperate with wholesale carriers with sufficient time to assure that its cutover runs
2 smoothly.

3 Finally, it is important to recognize that the instant transaction is much larger than
4 the Verizon's property sale in New England where only 1.5 million lines were
5 transferred to FairPoint. In this transaction, Frontier is acquiring 4.8 million
6 Verizon lines in 14 states (of which 578,000 are in Washington).

7 **B. EVIDENCE FROM HAWAII**

8 **Q. Is the experience in New England unusual when Verizon local exchanges**
9 **transfer to other less experienced companies?**

10 A. No. Another example of serious problems that arose when Verizon sold its local
11 exchanges to a less experienced company occurred in Hawaii. In that transaction,
12 Verizon sold its local exchange assets to the Carlyle Group in 2005. The parties
13 entered into a Transaction Services Agreement and the buyer retained an outside
14 consulting group to assist it in developing new systems to replace Verizon's
15 systems. A detailed cutover plan was put in place, with testing protocols to ensure
16 that the new systems would perform properly to serve both retail and wholesale
17 customers. Conditions were imposed to ensure that the risks related to
18 implementation of new systems would be minimized. Unfortunately, when the
19 cutover to the new systems occurred on April 1, 2006, multiple problems became
20 apparent immediately. Telecommunications consumers in Hawaii have experienced
21 significant delays, service and billing problems and outages. In addition,

1 competitors in Hawaii have had to spend significant time and resources dealing
2 with these systems deficiencies.

3 **Q. What happened after these multiple systems problems occurred?**

4 A. The Hawaii Commission began an investigation into the retail and wholesale
5 quality and performance standards of Hawaiian Telecom (the buyer).²⁸ That
6 investigation continues to this day. More importantly, Hawaiian Telecom's
7 customer service problems caused it to lose many more wireline customers than it
8 had forecasted. The Carlyle Group reinvested \$100 million in cash in the company
9 and brought in management turnaround experts to help salvage the company, but it
10 did not work. On December 1, 2008, Hawaiian Telecom filed for bankruptcy
11 protection.²⁹

12 **Q. Based on the experiences in New England and Hawaii, what should the**
13 **Commission do to protect wholesale competition?**

14 A. Mr. Solis, in his prefiled testimony, proposes conditions relating to the transition,
15 pre-cutover and post-cutover periods for the implementation and cutover of new
16 systems. I recommend that the Commission adopt those conditions in full.

²⁸ Public Utilities Commission of the State of Hawaii, Order No. 22928, released October 6, 2006.

²⁹ Exhibit MDP-17 ("Carlyle Takes Another Hit As Telecom Firm Goes Under," Washington Post, December 2, 2008).

1 **V. EFFICIENT AND COST-BASED INTERCONNECTION IS VITAL FOR**
2 **COMPETITION AND COULD BE THREATENED BY THE FRONTIER**
3 **ACQUISITION.**

4 **Q. What is interconnection, and why is it so important to a competitor?**

5 A. Interconnection is the ability to exchange traffic between a competitor's customers
6 and the customers of the ILECs as well as other providers of wireline and wireless
7 telecommunications service. Unless a carrier obtains interconnection from other
8 carriers, a local carrier's customer will only be able to communicate with another
9 customer of the same local carrier. All carriers need interconnection to provide
10 universal connectivity. When competition emerges and market shares are very
11 uneven, however, interconnection is much more valuable to the newer entrant than
12 it is to the ILEC. The reason is that an ILEC with a very large share of the market
13 could conceivably offer telephone service which does not connect to the
14 competitor's customers. On the other hand, the competitors would be out of
15 business if they could not obtain interconnection with the ILEC. This creates a
16 situation of uneven bargaining power, which an ILEC could exploit to hinder or
17 even destroy its competitors.

18 This concern was recognized in the Telecommunications Act of 1996, which
19 imposed interconnection requirements on all telecommunications carriers, but

1 established specific interconnection duties only for the ILECs.³⁰ Specifically, the
2 incumbent local exchange carriers must adhere to the Section 251(c) (2)
3 requirement to provide:

4 “for the facilities and equipment of any requesting telecommunications
5 carrier, interconnection with the local exchange carrier’s network—

6 (A) for the transmission and routing of telephone exchange service and
7 exchange access;

8 (B) at any technically feasible point within the carrier’s network;

9 (C) that is at least equal in quality to that provided by the local exchange
10 carrier to itself or to any subsidiary, affiliate, or any other party to which
11 the carrier provides interconnection; and

12 (D) on rates, terms, and conditions that are just, reasonable and
13 nondiscriminatory, in accordance with the terms and conditions of the
14 agreement and the requirements of this section and section 252.

15 In 1996 the FCC adopted rules for states to apply in implementing these mandates
16 of Section 251 in their arbitration of interconnection disputes, as well as their

³⁰ 47 U.S.C. § 251.

1 review of arbitrated arrangements, or an ILEC's statement of general available
2 terms.³¹

3 Implementation of these rules, however, is not a one-time event. Rather, regulation
4 of the terms and conditions of interconnection is an ongoing process. Negotiated
5 agreements expire, tariffs can be refiled, and the facilities joining two networks are
6 constantly being modified. Thus, even though the Telecommunications Act and the
7 FCC rules have been in place for over 13 years, and while Comcast strongly favors
8 deregulatory approaches whenever market conditions permit, the current state of
9 local competition in Washington's residential telecommunications markets attests to
10 the need for ongoing active regulation of these vital prerequisites to local
11 competition.

³¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15616-775 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*Iowa Utils. Bd.*), *on remand, Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *reversed in part sub nom. Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002) (*Verizon*), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), further reconsideration pending.

1 **Q. What concerns does the proposed transaction raise regarding interconnection**
2 **arrangements?**

3 A. Verizon is an ILEC and therefore is obligated to interconnect with competitors
4 under Sections 251 and 252 of the Telecommunications Act even though many of
5 the areas it serves in Washington are rural areas. Frontier has not stated with any
6 degree of certainty whether the entities succeeding Verizon as a result of the
7 proposed transaction would qualify as rural telephone companies and be exempt
8 from Section 251(c) ILEC interconnection obligations under Section 251(f)(1) of
9 the Telecommunications Act or would petition to suspend or modify Section 251(b)
10 and (c) obligations under Section 251(f)(2). In response to discovery, Frontier stated
11 that it will not claim or petition the Commission to designate Verizon as a rural
12 telephone company entitled to exemption from Section 251(b) and (c) obligations.³²
13 On the one hand, this is reassuring. On the other hand, Frontier could reverse its
14 decision at any time in the future, thereby exposing competitors to the risk of being
15 precluded from serving in a territory which is currently open to competition without
16 restrictions. It is important to remember that as long as Verizon is the incumbent,
17 the rural exemption is inapplicable, so even the possibility that Frontier could assert
18 the rural exemption leaves competitors worse off than they would be if no
19 transaction were to occur.

³² Exhibit MDP-18 (Verizon and Frontier Response to Comcast DR No. 5).

1 **Q. What negative impacts on competition would occur if Frontier could claim**
2 **rural telephone company status or if it had the ability to file for waivers from**
3 **section 251(c) obligations now imposed on Verizon and for which Verizon**
4 **could not seek waivers?**

5 A. If Frontier were permitted under the law to seek exemptions from or suspension of
6 Section 251(c) interconnection obligations now imposed on Verizon, the
7 Commission may be forced to conduct costly and time-consuming proceedings in
8 which CLECs would need to fight to maintain existing interconnection rights. The
9 costs and uncertainty of such potential litigation alone might well lead to a
10 contraction of competitive presence in Washington, without regard to the ultimate
11 resolution of the litigation by the Commission. Smaller CLECs might not be able to
12 contest waiver requests by Frontier and would then be disadvantaged if their
13 existing interconnection arrangements eroded as a result of waivers.

14 **Q. What is the best way to reassure competitors that Frontier will not seek rural**
15 **carrier status or waivers from interconnection obligations in the future?**

16 A. The most effective way would be to condition the proposed transfer on Frontier's
17 agreement in perpetuity to remain subject to 251 (b) and (c) ILEC interconnection
18 obligations and to not assert any exemption from those obligations as a rural
19 telephone company, under Section 251 (f)(1) or to seek any exemption under
20 Section 251(f)(2).

1 **Q. What other areas should the Commission be concerned with regarding**
2 **interconnection policy?**

3 A. In the subsequent sections of my testimony, I will explain two major categories of
4 interconnection policy that the Commission must ensure are not compromised by
5 the proposed transfer: (1) interconnection rates must remain at or below current
6 levels; (2) transit service, which enables competitors (and wireless providers) to
7 connect with all other voice service providers in the State, must continue to be
8 provided at or below current rates

9 **Q. Why is this issue important for consumers in Washington?**

10 A. Interconnection costs are unavoidable for competitors. Therefore, any increase in
11 these costs, either as a result of excessive pricing or inefficient provisioning, will
12 increase their entire cost base for serving the Washington market. It is a well-
13 accepted principle of economics that higher costs are passed on to consumers in
14 competitive markets.

15 **A. INTERCONNECTION RATES MUST REMAIN AT OR BELOW CURRENT LEVELS.**

16 **Q. What governs the current interconnection rates between Comcast and Verizon**
17 **in Washington?**

18 A. Pursuant to an adoption letter dated November 19, 2002, Comcast's predecessor in
19 interest, AT&T Broadband Phone of Washington, LLC, adopted in the State of
20 Washington, the terms of the interconnection agreement between AT&T
21 Communications of the Pacific Northwest Inc and Verizon.

1 **Q. What is transport and termination and what are rates applied to this service?**

2 A. Transport and termination refers to the transmission and switching necessary for the
3 terminating carrier to deliver a call to the end user premise, enabling call
4 completion.³³ Reciprocal compensation is the compensation arrangement between
5 two carriers for the transport and termination on each carrier's network facilities for
6 traffic originated by the other carrier's end users. Reciprocal compensation is
7 required by all local exchange carriers under Section 251(b)(2) of the
8 Telecommunications Act.

9 **Q. What standard dictates the basis for setting reciprocal compensation rates?**

10 A. Transport and termination rates typically are established by the state commission on
11 the basis of the forward-looking costs of the ILEC.³⁴ If the local traffic exchanged
12 between the companies is roughly in balance, the carriers may agree to exchange
13 such traffic on a bill and keep basis in which neither party bills the other for the
14 transport and termination of local traffic. This is the case with the agreement
15 between Comcast and Verizon in Washington. Alternatively, the ILEC has the
16 option to adopt the rate cap for ISP-bound traffic, which was established in 2001 by
17 the FCC. This is referred to as the "mirroring" rule, which was adopted by the FCC
18 to prevent the ILECs from picking and choosing among inter-carrier compensation
19 regimes, because of the Commission's concern about the "superior bargaining

³³ See 47 C.F.R. § 51.701.

³⁴ State commissions also may set rates on the basis of a bill-and-keep arrangement or default proxies.
See 47 C.F.R. § 51.705.

1 power of the incumbent LECs.”³⁵ The rate for ISP-bound traffic is capped at
2 \$0.0007 per minute of use, but BOCs must offer to exchange all local traffic at the
3 mirroring rate if they wish to exchange ISP-bound traffic at that rate.

4 **Q. Are all ILECs bound to establish reciprocal compensation arrangements for**
5 **the exchange of traffic with CLECs?**

6 A. Not necessarily. The Telecommunications Act creates an exemption for rural
7 carriers, which are defined as a “local exchange carrier with fewer than 2 percent of
8 the Nation’s subscriber lines installed in the aggregate nationwide.”³⁶ Under the
9 aforementioned rural exemption, a rural carrier may petition a state commission for
10 suspension or modification of the interconnection requirements particular to ILECs,
11 including those requirements that apply to all local exchange carriers. As I have
12 previously testified, however, after this transaction closes, Frontier will have well
13 over 2 percent of the nation’s subscriber lines at a holding company level, so none
14 of Frontier’s territories qualify for rural status under Section 251(f)(2).

15 **Q. What effect could the proposed Verizon-Frontier transaction have on rates**
16 **under the agreement between Verizon and Comcast?**

17 A. The transaction could expose competitors to an uncertain future for at least two
18 reasons. First, competitors face the risk that when the interconnection agreements
19 expire they will not be renewed at current terms. Further, competitors may face

³⁵ *ISP Remand Order, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99.68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9161-62, remanded, *WorldCom v. FCC*, 288 F. 3d

1 higher interconnection costs, depending on whether Frontier attempts to justify
2 higher “cost-based” rates. Such rates would not only include reciprocal
3 compensation, but also charges for facilities used to connect the networks. Second,
4 while Frontier has indicated that it will not take the position that the acquired
5 Verizon operations are entitled to exemption from 251(c) requirements under
6 251(f),³⁷ there is currently no certainty that it will not change its position.

7 As such, Frontier may attempt to assert the rural exemption which would
8 necessitate further proceedings before the Commission and delay or undermine
9 competition.

10 **Q. Please explain the situation that faces Comcast with respect to expiration of the**
11 **current interconnection agreement?**

12 A. Pursuant to Section 2 (Term of Agreement) of the Interconnection Agreement:

13 This Agreement shall become effective in accordance with Section 23.8
14 (the “Effective Date”), and shall remain effective for a period of three (3)
15 years. This Agreement shall continue in effect for consecutive one (1) year
16 terms thereafter unless either Party gives the other Party at least ninety
17 (90) calendar days written notice of termination, which termination shall
18 be effective at the end of the initial term.³⁸

429 (D.C. Circuit 2002), *cert. denied*, 538 U.S. 1012 (2003).

³⁶ 47 U.S.C. § 251(f)(2).

³⁷ Exhibit MDP-18 (Frontier and Verizon Response to Comcast DR No. 5).

³⁸ Interconnection, Resale and Unbundling Agreement at Section 2.

1 Since the initial three year period has expired, Frontier could conceivably provide
2 Comcast a ninety-day notice of termination at its first opportunity. Thus, absent
3 Commission action, Comcast would enter into the post-Transaction period with
4 virtually no certainty regarding the future rates, terms and conditions surrounding
5 its interconnection with Frontier.

6 **Q. Has Frontier addressed Comcast's other concerns about interconnection terms**
7 **and conditions?**

8 A. No. Frontier provides no guarantee that it will extend the existing Verizon
9 interconnection agreements past their expiration date following the closing of the
10 transaction even if parties are currently operating under those agreements.³⁹ In fact,
11 Frontier failed to directly respond to a specific request to ensure that it would not
12 seek to increase rates for any wholesale service provided in Washington, including
13 interconnection and the related service and facilities for a period of three years,
14 after the transaction is complete.⁴⁰ Although, it claims it will honor all existing
15 agreements, Frontier could request termination of the existing interconnection
16 agreement at any time, which would then force Comcast to request negotiations
17 with Frontier. As a result, arbitration might be needed, which is a costly and time-
18 consuming process. In addition, Frontier has provided no information regarding the
19 level of resources it will commit to interconnection negotiation and arbitration,
20 which is of concern, given the volume of interconnection agreements that Frontier

³⁹ Exhibit MDP-19 (Verizon and Frontier Response to Comcast DR No. 10).

⁴⁰ Exhibit MDP-20 (*Id.*, No. 3).

1 will be acquiring. Simply put, for some time after the transaction is completed,
2 Frontier should be focusing its resources on integration of Verizon's systems,
3 processes and people, and not renegotiation of existing interconnection agreements.
4 Moreover, renegotiating agreements during this integration period would
5 unnecessarily bring an additional layer of operational uncertainty to CLECs. The
6 integration process necessarily brings certain unavoidable operational changes and
7 disruptions, which CLECs and Frontier will need to address. What CLECs need
8 during this time is the certainty that comes with their existing interconnection
9 agreements, not to spend resources negotiating and implementing revised
10 agreements.

11 **Q. In light of Frontier's data request responses and Comcast's experience, what**
12 **steps should the Commission take to ensure interconnection stability and a**
13 **smooth transition period for competitors and their customers?**

14 A. The Commission should condition any transfer approval upon Frontier's acceptance
15 of several conditions regarding interconnection agreements:

16 (1) CLECs must be permitted to extend their existing interconnection agreements
17 for a period of time ending three years after the date of the closing. This condition is
18 similar to a condition required by the New Hampshire Public Utility Commission in
19 its approval of the sale of Verizon local exchanges to FairPoint.⁴¹ Such a condition

⁴¹ New Hampshire Docket No. DT 07-011 – Verizon New England Inc., Bell Atlantic Communications Inc., NYNEX Long Distance Company, Verizon Select Services Inc. and FairPoint Communications, Inc. Joint Application for Approvals Related to Verizon's Transfer of Property and Customer Relations to

1 is needed to provide a level of stability for all parties, in light of Frontier's and
2 CLECs' need to dedicate resources to deal with the definition, testing and
3 implementation of new or modified systems during the replication of Verizon's
4 systems, their implementation and the cutover to Frontier's systems.

5 (2) Any such amendments to extend existing interconnection agreements should, at
6 the CLEC's request, include provisions allowing the agreement to remain in effect
7 ("evergreen") for successive months until one party provides 90 day notice to the
8 other to terminate or renegotiate.

9 (3) Frontier must allow CLECs to terminate existing interconnection agreements
10 and adopt another agreement at any time pursuant to section 252(i) of the 1996
11 Telecommunications Act. Section 252(i) permits a CLEC to adopt any preexisting
12 interconnection agreement approved by the Commission.

13 (4) Frontier and Verizon must make publicly available and subject to section 252(i)
14 adoption any agreements between Frontier and Verizon, regarding any obligation
15 arising from section 251, including but not limited to interconnection, number
16 portability, dialing parity, reciprocal compensation, access to right-of-ways, access
17 to unbundled elements, resale or collocation.

18 (5) Frontier should not be permitted to refuse a CLEC request to adopt an
19 agreement on the grounds that the agreement has not been amended to reflect

Company to be Merged with and into FairPoint Communications, Inc., Verizon and FairPoint Settlement Agreement with Staff of the New Hampshire Public Utilities Commission, filed January 23, 2008, Exhibit

1 changes of law, provided the CLEC agrees to negotiate in good faith an amendment
2 regarding such change of law immediately after it has opted into the agreement.

3 (6) Frontier must allow a requesting CLEC to use its preexisting interconnection
4 agreement as the starting point for negotiating a new agreement. This serves to help
5 level the playing field during negotiations. Otherwise, Frontier has a significant
6 negotiation advantage requiring CLECs to start negotiation from its template, which
7 is undoubtedly a document it drafted over months or years, to which CLECs have a
8 limited amount of time to review and edit.

9 Of course all of these conditions are prefaced by the fact that Frontier must agree to
10 remain under the regulatory authority of the Commission for the three years
11 following the closing date of the transaction to ensure that these conditions can be
12 enforced.

13 **Q. Those conditions will effectively deal with rates, term, and conditions in**
14 **interconnection agreements. Will this cover all traffic exchanged by a**
15 **competitor and Verizon/Frontier within the State of Washington?**

16 A. No. Calling from one local calling area to another is not covered under the
17 reciprocal compensation rules. Termination of traffic that originates in one local
18 calling area and terminates in another local calling area is subject to intrastate
19 terminating switched access rates. Verizon provides intrastate access service under

2, pp. 5-7.

Confidential Information Redacted

1 tariff – WN U-16. The rate for end office switching is \$0.0014151 for premium
2 terminating minutes.

3 **Q. How will intrastate access rates be affected by the transaction?**

4 A. Frontier states that it will initially concur in or adopt Verizon’s intrastate access
5 tariffs.⁴² However, as I discussed, it is unwilling to commit not to raise these
6 wholesale rates for three years following the transaction. The absence of any long-
7 term commitment and the wide open nature of what might affect rates in the future
8 exposes competitors to the risk of bearing additional costs as a result of the
9 transaction.

10 **Q. What remedy do you propose to mitigate this risk from the transaction?**

11 A. As a condition of the transaction, Frontier should be required to commit not to
12 increase intrastate access rates for at least three years from the closing date of the
13 transaction.

14 **B. TRANSIT, ACCESS AND TRANSPORT AND TERMINATION MUST CONTINUE TO BE**
15 **PROVIDED AT CURRENT RATES.**

16 **Q. What is transit service and why is it so important to competitors?**

17 A. Transit service is provided by Verizon to CLECs to enable interconnection with
18 other local telephone carriers, including smaller ILECs, wireless carriers and other
19 competitors. Typically, the competitor will interconnect with a Verizon tandem

1 office, and then Verizon will route the traffic over its own network to other carriers.
2 Transit service enables a competitor to offer universal connectivity to its own
3 customers, which means that its customers can make and receive local calls from
4 any other telephone subscriber. A tandem transit fee is assessed on the originating
5 carrier by the ILEC for calls between wireline providers that originate and terminate
6 in the same local calling area and to calls between wireline and wireless providers
7 that originate and terminate in the same Major Trading Area (“MTA”), when the
8 originating and terminating carrier are indirectly interconnected through the ILEC
9 tandem.

10 **Q. Are the competitors dependent on Verizon for transit service?**

11 A. Yes. Verizon already interconnects with all other local providers in Washington,
12 and by virtue of its incumbent position, it is the only entity that is able to provide
13 transit service capable of enabling indirect interconnection and universal
14 connectivity between and among all competitive carriers in the state. There are no
15 competitive transit providers that can provide this service ubiquitously. The
16 reasons for this are two-fold. First, the very few competitive transit providers in
17 existence cannot compel any other carrier to use their service. In particular, they
18 have been unable to compel BOC affiliates such as Verizon Wireless to
19 interconnect with their transit networks.⁴³ The second reason is the large scale and

⁴² Exhibit MDP-20 (Verizon and Frontier Response to Comcast DR No. 3).

⁴³ See In the Matter of Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless, Inc. Pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as Amended, Petition for Declaratory Ruling, pending in WC Docket No. 06-159.

1 scope economies that characterize telecommunications networks – at least until they
2 provide a large volume of traffic among various points on the network.

3 Interconnection trunking facilities cannot be built efficiently between each and
4 every one of the local service providers in the state. A certain amount of traffic
5 aggregation is necessary, and this can only occur if there are a small number of
6 physical locations where each carrier can hand-off traffic to many other carriers.

7 For now, due to its historic monopoly position, Verizon is certainly the only game
8 in town and the only provider that can efficiently connect all the local providers in
9 Washington.

10 **Q. How are transit rates set?**

11 A. The rate Verizon charges Comcast for transit service is contained in the
12 interconnection agreement between the companies. This is the same agreement that
13 governs the rates for call transport and termination. Pursuant to the Parties'
14 Interconnection Agreement, tandem transit service is available at a rate of
15 \$0.00181967per minute of use.⁴⁴

16 **Q. How will the transaction affect the pricing and availability of transit services?**

17 A. It is hard to say. Frontier declares that it will assume the obligations of Verizon
18 under interconnection agreements and wholesale tariffs in Washington.
19 Nevertheless, as I continue to stress, in direct response to a discovery request asking
20 whether Frontier was committed to continue to offer the current Verizon wholesale

1 rates, including transit rates, for three years after the transaction closes, Verizon
2 responded only that the current rates will be honored.⁴⁵ This provides little
3 assurance that Frontier will not increase transit rates.

4 **Q. Since Frontier has failed to commit to not increasing reciprocal compensation,**
5 **intrastate access or tandem transit rates after the transaction closes, how**
6 **should the Commission assure competitors that they will have stable rates and**
7 **a fair chance to compete with Frontier after the transaction closes?**

8 A. As I mentioned earlier, existing interconnection agreements must be permitted to
9 remain in effect for three years following the transaction closing date. However,
10 the Commission must do more to protect competition, including the following:

11 (1) Require Frontier to honor any currently offered volume or term discount plan
12 for three years after the transaction closing date.

13 (2) Require Frontier to honor any individually-based contract for the life of that
14 contract.

15 (3) Require Frontier to offer tandem transit services to competitors in any new
16 section 251 interconnection agreements at rates equal to the cost-based rate ordered
17 by the Commission, or the current transit rate, whichever is lower for a period of
18 three years following the transaction closing date.

⁴⁴ Interconnection, Resale and Unbundling Agreement at Appendix 1.

⁴⁵ Exhibit MDP-20 (Verizon and Frontier Response to Comcast DR No. 3).

1 (4) Require Frontier to modify existing interconnection agreements to implement
2 any reduction to reciprocal compensation, or transit rates ordered by the FCC or this
3 Commission.

4 **Q Are there any other issues the Commission should focus on?**

5 A. Yes. It is important for Frontier's retail and wholesale customers to have
6 confidence in its continued performance after the transaction closing date. That is
7 why I recommend that the Commission make clear that Frontier would be
8 responsible in the legacy Verizon territories for all regulatory duties, obligations
9 and responsibility imposed on Verizon by the Telecommunications Act and all
10 applicable state laws and regulations, including operating support systems
11 performance measures and incentives obligations. This would include any carrier-
12 to-carrier obligations and performance assurance plans.

13 **V. REMEDIES**

14 **Q. DO YOU BELIEVE THAT THE JOINT APPLICATION SHOULD BE APPROVED AS FILED?**

15 A. As I have previously stated, Comcast does not oppose the transaction. Instead,
16 Comcast has proposed a set of conditions it believes are appropriate to ensure
17 competition can continue to develop following the proposed transaction, allowing
18 carriers as Comcast to continue to bring competitive and innovative services to
19 consumers in Washington. Without such conditions, the Commission risks
20 obstructing or impairing competition in Washington, not only with respect to voice
21 services, but also with respect to the rapid, widespread competitive deployment of

1 advanced high-speed Internet access services and other services of benefit to
2 Washington residents and businesses.

3 Finally, it is important to emphasize the potential for problems once Frontier cuts
4 over to its own system. As the FairPoint experience in New England and the
5 Hawaiian Telecom situation demonstrate, once systems cutovers occur, and
6 problems develop, fixes are very difficult to find. That is why the Commission
7 must carefully craft a plan that will ensure that all systems are tested thoroughly
8 before any cutover proceeds, and will ensure that Frontier's service does not
9 degrade in any way after the cutover. Such a plan must include appropriate
10 performance measures and meaningful penalties.

11 **Q. What mechanism would you propose for addressing disputes regarding**
12 **Frontier's compliance with the merger conditions?**

13 A. Section 480-07-650 of the Washington Administrative Code sets forth an expedited
14 process for resolving interconnection disputes in as little as seventy-five (75) days
15 after a petition has been filed. This section should apply to any disputes between
16 Frontier and other carriers regarding Frontier's compliance with the merger
17 conditions.

18 **Q. Does this conclude your testimony?**

19 A. Yes.