

**Exhibit No. \_\_\_\_ T (RTA-1T)**  
**Docket UT-090842**  
**Witness: Rick T. Applegate**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Joint Application of**

**DOCKET UT-090842**

**FRONTIER COMMUNICATION  
CORPORATION AND VERIZON  
COMMUNICATIONS, INC.**

**for Approval of Indirect Transfer of  
Control of Verizon Northwest, Inc.**

**TESTIMONY**

**OF**

**RICK T. APPLGATE**

**STAFF OF**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

**November 3, 2009**

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## **EXHIBIT LIST**

Exhibit No. \_\_\_\_ (RTA-2) Verizon Response to Comcast Data Request No. 19

1 I. INTRODUCTION

2

3 Q. Please state your name and business address.

4 A. My name is Rick Applegate. My business address is the Richard Hemstad Building,  
5 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504. My e-  
6 mail address is [rapplega@utc.wa.gov](mailto:rapplega@utc.wa.gov).

7

8 Q. By whom are you employed and in what capacity?

9 A. I am employed by the Washington Utilities and Transportation Commission  
10 (Commission) as a Regulatory Analyst in the Telecommunications Section.

11

12 Q. How long have you been employed by the Commission?

13 A. I have been employed with the Commission since August 2008.

14

15 Q. Please state your educational and professional background.

16 A. I graduated from the University of Montana in 2001 receiving a degree in Business  
17 Administration with an emphasis in Finance. In 2005, I received a J.D. from the  
18 Willamette University College of Law and an M.B.A. from the Atkinson Graduate  
19 School of Management.

20 My current responsibilities at the Commission include analysis of interconnection  
21 agreements, affiliated interest transactions, contracts, and other commercial filings.

22 I am also responsible for reviewing the Qwest performance assurance plan (QPAP)  
23 and providing analysis to Staff members for contested cases. I filed responsive

1 testimony in Docket UT-081393 (Formal complaint from Verizon Select Services,  
2 Inc.; MCIMetro Access Transmission Services, LLC; MCI Communications  
3 Services, Inc.; Teleconnect Long Distance Services and Systems Co., d/b/a Telecom  
4 USA; and TTI National, Inc. vs. United Telephone Company of the Northwest to  
5 reduce intrastate switched access charges) and participated as a Staff analyst in  
6 Docket UT-082119 (Joint application of Embarq Corporation and CenturyTel, Inc.,  
7 for approval of transfer of control of United Telephone Company of the Northwest  
8 d/b/a Embarq and Embarq Communications, Inc.).  
9 Prior to joining the Commission, I worked for various employers in the legal, real  
10 estate, and financial services industries.

## 11 12 II. SUMMARY OF TESTIMONY

13  
14 **Q. Please summarize your testimony.**

15 A. My testimony supplements Staff's overall policy recommendations as presented by  
16 Bill Weinman. In my testimony, I will present Staff's concerns related to the areas  
17 of interconnection and wholesale service quality, which result from the proposed sale  
18 of Verizon Northwest Inc. by Verizon Communications Inc. (Verizon) to Frontier  
19 Communications Inc. (Frontier). I will also recommend that if the Commission  
20 decides to approve the transfer, it should condition the sale on the continued  
21 availability of existing interconnection and wholesale terms as well as the  
22 establishment of a plan to assure wholesale service quality.

1 **III. DISCUSSION**

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**Q. Why is Staff presenting testimony related to interconnection and wholesale service quality?**

A. Interconnection and wholesale of incumbent local exchange carrier (ILEC) services represent critical components of a competitive telecommunications market. Accordingly, Staff believes that the “no harm” standard described in the testimony of Bill Weinman requires Frontier to offer the same or better interconnection and wholesale services without additional costs or burdens to competitive local exchange carriers (CLECs) and wholesale customers.

**Q. Are there any representations made by Frontier and Verizon in the Joint Application related to interconnection and wholesale service quality that cause Staff concerns?**

A. Yes. On page 17 of the Joint Application, Frontier states:  
Competition at the wholesale and retail levels will not be distorted or impaired by the Transaction. At the wholesale level, Verizon Northwest will honor all effective contracts, including interconnection agreements governed by the Communications Act of 1934, as amended, and commercial agreements. It will be governed by the same wholesale tariff provisions, and applicable Commission regulations governing wholesale relationships that govern it today.

**Q. Why does this cause concern?**

A. Staff has two concerns with this representation. First, it does not provide a plan for how Frontier will offer interconnection and wholesale services on a long-term basis. Second, it does not provide a mechanism to assure wholesale service quality.

1 **Q. Why is it a problem that Frontier does not provide a plan for how it will offer**  
2 **interconnection and wholesale services on a long-term basis?**

3 A. Washington’s telecommunication market produces efficient results when all market  
4 participants have good market information and when they face minimal transaction  
5 costs. Frontier’s failure to present a long-term plan for how it will provide  
6 interconnection and wholesale services creates uncertainty for CLECs.

7 Many CLECs operating in Verizon Northwest’s service territory currently  
8 receive interconnection and wholesale services on an “evergreen” basis. This means  
9 that the interconnection and wholesale agreements between these CLECs and  
10 Verizon have expired. The parties continue mutual performance of the terms and  
11 conditions of those agreements even though the initial performance period has  
12 passed. Frontier could provide notice of termination of these arrangements on the  
13 day after the merger closing and still comply with the representation that it “will  
14 honor all effective contracts, including interconnection agreements.” This action  
15 would give CLECs a window of approximately 90 days to notify Frontier that they  
16 desire to negotiate new interconnection agreements. The agreements would then  
17 terminate in one year if Frontier and the CLECs are unable to negotiate replacement  
18 agreements.

19 Because Frontier has not provided specific commitments as to its long-term  
20 interconnection and wholesale service offerings, Frontier may seek to change the  
21 terms of interconnection and wholesale gradually over time to best suit its evolving  
22 business. In the Joint Application and discovery, Frontier has outlined several  
23 organizational and operational changes that will occur before and after the close of

1 the transaction. For example, Frontier will have to integrate acquired systems and  
2 business practices with those already in existence in order to realize synergy benefits,  
3 which is likely to be a multiyear process. If corresponding interconnection and  
4 wholesale changes are fair, reasonable, and provide CLECs with opportunities to  
5 address concerns through negotiation, arbitration, or the filing of complaints with the  
6 Commission, then Staff would view these changes as being consistent with the  
7 public interest. Absent some additional protections however, the Commission  
8 cannot be sure that Frontier would not use negotiation timelines to seek unfair terms  
9 in its future interconnection and wholesale agreements.

10  
11 **Q. What recommendations does Staff have to address these concerns?**

12 A. Staff recommends that the current interconnection and wholesale service offerings of  
13 Verizon should continue beyond the transaction's closing for a period that allows  
14 CLECs and wholesale customers to receive services with minimal disruption. Three  
15 years represents a reasonable period for a number of reasons. Staff believes that  
16 significant changes at Frontier will likely take approximately three years to  
17 complete. Leaving current interconnection and wholesale service arrangements in  
18 place during this period will provide stability.

19  
20 **Q. Should there be any exceptions to this three-year condition?**

21 A. Yes. CLECs should always remain free to voluntarily negotiate and arbitrate new  
22 interconnection and wholesale agreements with Frontier. Also, interconnection and  
23 wholesale agreement terms should remain subject to alteration under their change of



1 law provisions. Finally, if Frontier can demonstrate that a particular term or  
2 condition in existing interconnection or wholesale agreements presents an  
3 unreasonable burden on the company, it should be permitted to amend that particular  
4 term or condition with the CLEC or the Commission's approval.

5 Staff understands that CLECs participating in this case will propose a  
6 significant number of specific conditions that further implement and clarify this  
7 three-year condition. As a general proposition, Staff endorses these additional  
8 conditions.

9  
10 **Q. Why is it a problem that the proposed merger does not present a mechanism to**  
11 **assure wholesale service quality?**

12 A. In order to complete this transaction, Frontier and Verizon will have to significantly  
13 modify the operations support systems (OSS) that provide wholesale services.  
14 Unless Frontier has financial incentives to maintain good wholesale service quality  
15 during its systems transitions, then it may not exercise adequate care to avoid  
16 negative impacts on wholesale service quality.

17  
18 **Q. Please describe these modifications and why they could harm wholesale**  
19 **customers?**

20 A. Verizon's wholesale service systems will likely undergo two major modifications as  
21 the result of this transaction. The first modification will occur on April 1, 2010,  
22 when Verizon begins operations on replicated systems. The second set of  
23 modifications will occur at an unspecified time within five years of closing and entail

1 transition from replicated Verizon systems to Frontier systems. Both modifications  
2 are described in the testimony of Bob Williamson.

3 As a result of the first modification, it is conceivable that the replicated  
4 systems will not provide the same level of wholesale service quality. Under the  
5 current merger plan, Verizon will operate the system for 60 days prior to closing and  
6 will presumably address any system problems arising during that time. Frontier's  
7 OSS licensing agreement will require Verizon to provide some measure of support  
8 for these systems. This will last for one to five years at an annual cost of \$94  
9 million, which can vary depending on the extent to which Frontier migrates away  
10 from the replicated OSS. These actions do not necessarily assure that the OSS will  
11 adequately serve wholesale customers following creation of the new systems.

12 The second modification will occur later. "[O]ver time Frontier expects to  
13 migrate customers from [replicated] systems onto a single integrated platform."<sup>1</sup>  
14 From Frontier's perspective, these modifications are desirable because they would  
15 allow the company to escape the \$94 million annual OSS licensing and maintenance  
16 charge. However, these OSS changes create risk because they will occur outside of  
17 the support of Verizon and because they follow the "cutover" type modifications that  
18 caused so many difficulties with FairPoint Communications after it purchased access  
19 lines from Verizon.

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<sup>1</sup>Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority, Exhibit 1, Description of the Transaction and Public Interest Statement (filed May 29, 2009); see also Applications Filed By Frontier Communications Corporation and Verizon Communications Inc. For Assignment Or Transfer Of Control, Public Notice, DA 09-1793, WC Dkt. No. 09-95 (rel. Aug. 11, 2009).

1 **Q. Could outside testing of the OSS changes mitigate potential harms to wholesale**  
2 **customers?**

3 A. Yes, potentially. Staff’s position with respect to the desirability of third party testing  
4 appears in the testimony of Bob Williamson. Under the merger plan, Verizon and  
5 Frontier do not plan to involve CLECs, wholesale customers, or any other competent  
6 third party in the testing of new OSS systems.<sup>2</sup> Neither Verizon nor Frontier have  
7 major and direct incentives to ensure that the new systems will adequately serve  
8 wholesale customers. Furthermore, with its background in predominantly rural  
9 markets, it remains unclear whether Frontier has the organizational competence to  
10 develop and operate wholesale systems in dense and competitive markets, such as  
11 those found in King and Snohomish counties.

12  
13 **Q. What recommendations does Staff have to address these concerns?**

14 A. Verizon produces wholesale service quality reports under the California Joint Partial  
15 Settlement Agreement (JPSA) as it was adopted by this Commission in Order No. 7  
16 in Docket UT-050814. The JPSA measures service quality on several metrics. In  
17 adopting the JPSA however, the Commission did not require self-executing remedies  
18 for failure to meet performance standards.

19 Standards are important because they provide a threshold for action when  
20 service quality falls below certain levels. Without standards it is unclear whether  
21 adequate levels of wholesale service quality are being provided. In this case,  
22 standards could reasonably be set at levels to ensure that Frontier wholesale service

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<sup>2</sup> Exhibit No. \_\_\_\_ (RTA-2).

1 quality does not: (1) decline following the merger, and (2) discriminate against  
2 competitive providers.

3 Self-executing remedies require credits or cash payments to the state or to  
4 wholesale customers if service quality levels fall below those standards. The  
5 Commission should structure self-executing payments when Frontier’s performance  
6 falls below the pre-determined standards. This would provide financial incentives  
7 for Frontier to maintain acceptable levels of wholesale quality.

8 Staff therefore recommends that, if the Commission approves this  
9 transaction, it should require Frontier, as a condition of approval, to participate in  
10 and comply with the results of proceeding to set wholesale service quality standards  
11 for the various metrics contained in the JPSA, add or modify metrics as needed, and  
12 investigate the merits of setting self-executing remedies.

13  
14 **Q. How does wholesale service quality relate to an alternative form of regulation**  
15 **(AFOR)?**

16 A. This Commission has previously conditioned the merger of public service companies  
17 on the requirement that the companies file an AFOR prior to a time certain.<sup>3</sup> Given  
18 this precedent and the AFOR policy advocated in the testimony of Bill Weinman,  
19 Staff believes that Frontier will eventually be subject to an AFOR.

20 In requiring that Qwest maintain its performance assurance plan (“QPAP”)  
21 throughout the duration of its AFOR, this Commission stated:

22 RCW 80.36.135(3) provides that an AFOR “. . . must also contain a proposal  
23 for ensuring adequate carrier-to-carrier service quality, including service  
24 quality standards or performance measures for interconnection, and

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<sup>3</sup> UT-082119, Order 05, Appendix 1 Settlement Agreement, Condition 4.

1 appropriate enforcement or remedial provisions in the event the company  
2 fails to met service quality standards or performance measures.” (Emphasis  
3 supplied).<sup>4</sup>  
4

5 If this Commission approves the sale on the condition that Frontier eventually  
6 file an AFOR, then Frontier will have to offer a plan to assure wholesale service  
7 quality that includes standards and remedies.  
8

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

10 A. Yes.

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<sup>4</sup> UT-061625, Order No. 6.