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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of
Verizon Communications Inc. and Frontier
Communications Corporation for an Order
Declining to Assert Jurisdiction Over, or,
in the Alternative, Approving the Indirect
Transfer of Control of Verizon Northwest
Inc.

Docket No. No. UT-090842

CORRECTED

REBUTTAL TESTIMONY

OF

RON MAIN

ON BEHALF OF

BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON

November 19, 2009

1 **I. QUALIFICATIONS**

2
3 **Q. PLEASE STATE YOUR NAME AND POSITION.**

4 A. My name is Ron Main and I am appearing today in my capacity as the Executive Director
5 of the Broadband Communications Association of Washington (BCAW). My business
6 address is 216 First Avenue S., Seattle, Washington 98104.

7
8 **Q. HOW LONG HAVE YOU HELD THAT POSITION, AND WHAT ARE YOUR
9 DUTIES AND RESPONSIBILITIES?**

10 A. I have been the Executive Director of BCAW since 1995. In that position, I lead the
11 trade association that represents cable television companies doing business in
12 Washington State. It is my responsibility to develop and implement policy for the
13 association and represent the association before Washington State governments, primarily
14 the state legislature, on issues affecting the telecommunications industry. BCAW's
15 voting members are traditional cable TV companies. All of these members provide two-
16 way broadband services, offering their customers high-speed internet access and related
17 applications and services. Nearly all of the members provide voice communications
18 services via unregulated voice over internet protocol (VoIP) applications. Their VoIP
19 services compete with other unregulated service providers, such as Vonage, who also run
20 over our members' facilities, as well as with traditional phone companies, such as
21 Verizon, and cellular companies. One member, Comcast, provides some regulated voice
22 services.

23
24 **Q. PLEASE PROVIDE ADDITIONAL BACKGROUND DETAIL REGARDING
25 YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY
26 REPRESENTING THE BCAW.**

1 A. Over more than a decade I have been working with the BCAW, I have developed and
2 drafted legislation, as well as amendments to legislation, addressing a wide range of
3 telecommunications issues. These issues include, but are not limited to: municipal rights
4 of way regulation, public utility district provision of wholesale telecommunications
5 services, alternative forms of regulation for incumbent local exchange companies
6 (ILECs), pole attachment policy and pricing, telecommunications tax policy, and efforts
7 to obtain tax incentives for the deployment of broadband infrastructure in rural areas.
8 Additionally, I developed successful arguments to defeat efforts by Qwest to have the
9 legislature classify cable high-speed internet service as a telecommunications service and
10 to transfer authority to franchise cable television service from local governments to the
11 state.

12

13 **Q. PLEASE DESCRIBE SOME OF YOUR BACKGROUND AND EXPERIENCE**
14 **BEFORE YOU BECAME EXECUTIVE DIRECTOR OF BCAW.**

15 A. From 1981 to 1995, I was the Director of Intergovernmental Relations for the King
16 County Council. As such, I was the leader of the County's intergovernmental efforts with
17 local, state, and federal governments. I helped to lead efforts to develop and adopt
18 legislation addressing a wide variety of issues, including: growth management,
19 transportation, tax policy, local authority to address telecommunications issues, and local
20 authority to regulate solid waste disposal and recycling. Prior to that, I served as a Policy
21 Analyst to the King County Council from 1974 through 1981, performing policy and
22 budget analyses. I hold a B.A. in Regional Planning from Western Washington
23 University and have done course level work at the University of Puget Sound in the
24 Masters Of Public Administration program.

25

26 **Q. DO YOU HAVE ANY EXPERIENCE AS A WITNESS?**

1 A. Yes. I have made dozens of appearances before state legislative committees and task
2 forces dealing with telecommunications policy. I have done so both in my capacity as a
3 lobbyist and as a witness. I have not previously testified before the Commission.
4 However, I have worked with representatives of the Commission informally on policy
5 development in the telecommunications area on numerous occasions.

6

7 **Q. PLEASE TELL US GENERALLY WHAT FAMILIARITY YOU HAVE WITH**
8 **BROADBAND DEPLOYMENT AND SERVICES OFFERED BY CABLE**
9 **COMPANIES AND THEIR COMPETITORS.**

10 A. Over the past ten years cable companies in Washington State have invested over a billion
11 dollars in Washington State in upgrading their infrastructure in order to provide high-
12 speed internet service over fiber optic and coaxial cable lines, as well as to provide voice
13 services as part of a bundled “triple play” package of video, voice, and internet service. I
14 have visited cable head ends and network operation centers throughout the state and have
15 witnessed first-hand the deployment of these services. In addition, in working with
16 ILECs I have come to learn the extent of their deployment of digital subscriber line
17 (DSL) services throughout the state generally. The vast majority of people in the state
18 can choose from at least two wired providers of high-speed internet, typically cable and
19 DSL. In addition to wireline provision of these services, wireless service providers are
20 now common throughout the state. And in 2000, the legislature authorized public utility
21 districts (PUDs) to deploy high-speed internet infrastructure under legislation that gave
22 PUDs authority to act as a wholesaler of telecommunications services. Several PUDs
23 have installed fiber optic networks extensively within their service territories, and
24 connected those networks to a multi-state fiber network owned by Bonneville Power and
25 managed by NoaNet, an operating agency created by the PUDs.

26

1 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THE PURPOSE OF YOUR**
2 **TESTIMONY.**

3 A. The purpose of my testimony is to address potential concerns of wholesale customers—
4 which also have implications for the broader public interest—that are raised by two
5 similar conditions recommended by Staff and Public Counsel. The troubling conditions
6 are that if the transaction is approved Frontier should be required to deploy DSL service
7 (or FiOS) throughout its territory (or a greater part of its territory) and that Frontier
8 should not be allowed to raise prices for some time after the transaction closes. These
9 recommendations are contained in the testimony of Ms. Liu, and Mr. Roycroft.

10

11 **Q. WHAT IS YOUR POSITION ON WHETHER THE COMMISSION SHOULD**
12 **APPROVE THE TRANSACTION?**

13 A. My testimony is not intended to either support or oppose the transaction, but rather to
14 address the troublesome proposed conditions identified in my prior answer.

15

16 **Q. PLEASE EXPLAIN YOUR CONCERNS ABOUT THE RECOMMENDATIONS**
17 **OF STAFF AND PUBLIC COUNSEL THAT WOULD REQUIRE FRONTIER, IF**
18 **THE TRANSACTION IS APPROVED, TO MEET CERTAIN EXPANSION**
19 **REQUIREMENTS OF EITHER ITS FIOS OR DSL SERVICE.**

20 A. I have seen no specific evidence that Staff knows if the areas in question are already
21 served with high-speed internet by cable, a PUD, or a ground-based wireless provider.
22 And of course satellite coverage is everywhere. I know that at least some of the areas
23 within the current Verizon service territory have a number of broadband providers. In the
24 more rural service areas of Verizon we are aware that public utility districts have
25 deployed fiber to the home in some cases and have widespread fiber deployment
26 throughout those service areas. Thus, if the purpose of the recommended condition was

1 to ensure that more Washingtonians have some broadband access then the need for the
2 condition does not appear clear. If on the other hand the purpose was to just to create an
3 ILEC alternative to an existing broadband provider, then it raises the question of whether
4 the Commission should be leveraging its regulation of traditional phone services to force
5 competition in unregulated services. Harking back to the case of *Cole v. Washington*
6 *Utilities & Transp. Comm.*, 79 Wn.2d 302, (1971), it would be as if the Commission in
7 *Cole* had required the gas company to compete in the sale of fuel oil, too, even though the
8 Commission did not have jurisdiction over the sale of fuel oil.

9
10 **Q. IN ORDER NO. 02, BCAW'S PARTICIPATION IN THIS DOCKET WAS**
11 **LIMITED TO ITS REPRESENTATION OF CABLE COMPANIES' INTERESTS**
12 **AS WHOLESALE CUSTOMERS OF VERIZON. DO THE CONCERNS YOU**
13 **HAVE JUST IDENTIFIED HAVE ANY POTENTIAL IMPACT ON BCAW'S**
14 **MEMBERS AS WHOLESALE CUSTOMERS OF FRONTIER, IF THE**
15 **TRANSACTION IS APPROVED?**

16 A. Most definitely. We have noted that both the Staff and Public Counsel have expressed a
17 great deal of concern about the financial viability of this transaction, noting the
18 bankruptcy of other companies that have purchased ILEC operations from Verizon in the
19 past. While we take no position on whether those concerns justify rejection of the
20 application, they do cause us some concern as wholesale customers. Given the financial
21 concerns, we are surprised that the Staff and Public Counsel would impose a requirement
22 that would appear to create an additional financial strains on Frontier after closing the
23 transaction.

24
25 **Q. PLEASE EXPLAIN YOUR CONCERN ABOUT STAFF AND PUBLIC**
26 **COUNSEL'S RECOMMENDATIONS TO REGULATE THE PRICES OF**

1 **FRONTIER'S BROADBAND SERVICES AFTER THE CLOSING OF THE**
2 **TRANSACTION, ASSUMING IT IS APPROVED.**

3 A. Again, Staff and Public Counsel have expressed great concern about the financial
4 viability and the strength of Frontier. Suppressing Frontier's prices in a competitive
5 market could lead to lower revenues of Frontier and could exacerbate the very financial
6 difficulties Staff and Public Counsel fear. Moreover, the recommendation would
7 decrease or delay Frontier's motivation to expand broadband coverage contrary to the
8 goal of the other recommendation.

9
10 **Q. DO YOU BELIEVE THE STAFF AND PUBLIC COUNSEL'S**
11 **RECOMMENDATIONS YOU HAVE DISCUSSED ARE IN THE PUBLIC**
12 **INTEREST?**

13 A. I believe they have the potential to harm the public interest by increasing the potential for
14 Frontier to get into financial trouble and making the transaction more risky, not less risky.
15 If Frontier comes into this state, it should be able to deploy competitive services when
16 and as it sees fit, taking into account demand, competitive considerations, and its own
17 financial constraints or abilities.

18
19 **Q. DO THE RECOMMENDATIONS HAVE A POTENTIAL ADVERSE IMPACT**
20 **ON WHOLESALE CUSTOMERS OF FRONTIER, SUCH AS THE MEMBERS**
21 **OF BCAW, AS WELL?**

22 A. Yes.

23
24 **Q. PLEASE EXPLAIN.**

25 A. The recommendations also put wholesale customers at greater risks for a couple of
26 reasons. If suppressed prices and greater costs of expanded broadband cause a revenue

1 shortfall for the new entity, Frontier may be forced to seek rate increases to cover its
2 costs, particularly if losses of analog phone lines continue. Wholesale services are likely
3 to be targeted as a part of that effort. Also, if Frontier finds itself needing to slash costs
4 to make ends meet there is a much stronger incentive to cut corners on wholesale
5 provisioning and services first and foremost rather than on the retail side, where Frontier
6 will face significant competition.

7
8 **Q. WHAT ABOUT THE CONDITIONS MANY PARTIES HAVE RECOMMENDED**
9 **TO PROTECT WHOLESALE CUSTOMERS FROM HARM IF THE SALE IS**
10 **APPROVED?**

11 A. Even if they were approved, they would not eliminate my concerns. The Commission
12 can issue compliance orders, but it cannot supply working capital to implement those
13 orders if Frontier gets into the kind of severe financial trouble that seems to concern Staff
14 and Public Counsel. And due to the costs and delay inherent in enforcement proceedings,
15 Commission oversight, while helpful, is no substitute for having a financially strong
16 ILEC that is fully capable of meeting its wholesale service commitments and obligations.

17
18 **Q. WHAT IS YOUR VIEW ABOUT DR. ROYCROFT'S RECOMMENDATION ON**
19 **MINIMUM BROADBAND SPEEDS THAT FRONTIER SHOULD BE**
20 **REQUIRED TO OFFER?**

21 A. Again, Public Counsel offers no evidence how much it might cost Frontier to comply
22 with those conditions compared to the increased revenues that might result, if the
23 conditions were adopted. The financial strain if such requirements are put on Frontier
24 could be considerable and could put wholesale and retail phone customers at risk. If
25 Frontier can earn additional net income from increasing the speed of its offerings, then
26 competition will give it the incentives to do so. An artificial regulatory requirement, on

1 the other hand, runs the risk of forcing investments and operating expenses that may not
2 be recoverable in the competitive market.

3
4 **Q. WHAT IS YOUR CONCLUSION WITH REGARD TO THE RECOMMENDED**
5 **CONDITIONS OF STAFF AND PUBLIC COUNSEL RELATING TO**
6 **EXPANSION OF BROADBAND SERVICE AND REGULATION OF PRICES**
7 **FOR UNREGULATED SERVICES?**

8 A. As a part of the application and its supporting testimony Frontier has touted the fact that
9 should this transaction be approved that it will lead to increased deployment of
10 broadband as a major benefit coming out of this transaction. The Staff and Public
11 Counsel recommendations would impose inflexible and potentially arbitrary measures of
12 such deployment that could add risk to the transaction. Presumably, if the Commission
13 should approve this transaction given that the companies have touted the expansion of
14 broadband, then the Commission will have accepted that that is Frontier's intent. If so,
15 then the Commission should allow Frontier to do so without imposing arbitrary
16 requirements. We have a competitive environment in broadband and a growing market,
17 while traditional phone service is declining. There is no demonstrated need for a
18 questionable attempt to regulate competition in an area where the Commission lacks
19 jurisdiction. The Commission should let the competitive market work, not skew it to the
20 potential detriment of wholesale and retail phone customers, who still rely on the
21 existence of a financially strong and capable regulated ILEC in Verizon's service areas.

22
23 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

24 A. Yes.