

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Frontier Communications Corporation,)	
Verizon Communications Inc.,)	
Verizon North Inc., Verizon South Inc.,)	
New Communications of the Carolinas Inc.)	
)	Docket No. 09-0268
Joint Application for the approval of a)	
Reorganization pursuant to Section 7-204 of the)	
Public Utilities Act the Issuance of Certificates of)	
Exchange Service Authority Pursuant to Section)	
13-405 to New Communications of the Carolinas,)	
Inc.; the Discontinuance of Service for Verizon)	
South Inc. pursuant to Section 13-406; the)	
Issuance of an Order Approving Designation of)	
New Communications of the Carolinas, Inc. as an)	
Eligible Telecommunications Carrier Covering)	
the Service Area Consisting of the Exchanges to)	
be Acquired from Verizon South Inc. Upon the)	
Closing of the Proposed Transaction and the)	
Granting of All Other Necessary and Appropriate)	
Relief)	

JOINT APPLICANTS' REPLY BRIEF ON EXCEPTIONS

The Briefs on Exceptions filed by Staff and DoD/FEA (respectively, “Staff Exceptions” and “DoD/FEA Exceptions”) confirm that the transaction should promptly be approved. Joint Applicants agree with the exceptions stated by Staff and DoD/FEA and, as discussed herein, specifically request that the Commission adopt DoD/FEA’s recommendation that the condition it negotiated in relation to Section 7-204(b)(7) (along with all other conditions) be incorporated into the Commission’s final approval order. The parties filing exceptions all conclude that the Transaction, with the conditions, should be approved and, therefore, that the contrary findings of the Proposed Order should be rejected.

The filed exceptions confirm that it was unreasonable and arbitrary for the Proposed Order to ignore or dismiss the comprehensive protections that Joint Applicants negotiated to ensure compliance with all seven of the statutory criteria (only two of which are contested by IBEW). They also confirm that the Proposed Order erred in failing to consider the fact that approval of the Transaction will bring substantial benefits to Illinois, including a firm, enforceable commitment by Frontier to spend tens of millions of dollars to deploy broadband to more than 100,000 unserved and underserved Illinois households. The benefits of added broadband investment are beyond dispute. As the newly released Federal Communications Commission National Broadband Plan put it, “fueled by private sector investment and innovation,” “broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling entire new industries and unlocking vast new possibilities for existing ones. It is changing how we educate children, deliver health care, manage energy, ensure public safety, engage government and access, organize and disseminate knowledge.”¹

That is equally true in Illinois. As Governor Quinn recently noted, “[b]roadband technology is a key to improving employment, health care, public safety and education opportunities in our state.”² While other states (whose commissions have unanimously approved the Transaction) are poised to receive such benefits, Illinois will not receive them if the Commission fails to overturn the Proposed Order’s erroneous legal and factual findings.

¹ Federal Communications Commission, *Connecting America: The National Broadband Plan*, (March 16, 2010), at page xi.

² Press Release of the Illinois Department of Commerce and Economic Opportunity, *Governor Quinn Highlights Illinois Broadband Efforts* (released March 22, 2010).

DISCUSSION

I. JOINT APPLICANTS AGREE WITH STAFF'S AND DOD/FEA'S REQUESTS THAT THE FINAL ORDER EXPLICITLY INCORPORATE THE AGREED-TO CONDITIONS.

Joint Applicants have in good faith agreed to material conditions with Staff and with each of the intervenors (except IBEW) that address all their concerns. Staff and DoD/FEA both take exception to the Proposed Order's failure to give adequate weight to these conditions.³ Both Staff and DoD/FEA recommend modifications to the Proposed Order to make clear that the Transaction, with the agreed-to conditions, satisfies the criteria of Section 7-204(b)(1) and (4).⁴

Joint Applicants hereby confirm their agreement that each and every condition negotiated by Staff and DoD/FEA, as well as by every other party, should be incorporated into the Commission's final order approving the transaction. And, in response to DoD/FEA's second exception, Joint Applicants specifically agree that the final order approving the Transaction should acknowledge the terms and benefits of the "DoD/FEA Settlement" (regarding business rate caps) with respect to the Commission's finding regarding compliance with Section 7-204(b)(7), and that the conditions in the DoD/FEA Settlement should be incorporated as an integral part of the Commission's approval.⁵

II. THE UTILITIES GENERATE SUFFICIENT CASH FLOWS TO FUND THEIR OWN OPERATIONS.

The Proposed Order recites but then fails to consider the crucial fact that Verizon North and Verizon South "currently generate more cash than they require for capital expenditures."⁶

The Staff correctly takes exception to the Proposed Order's failure to recognize that that

³ Staff Exceptions at 7-10, 11-16; DoD/FEA Exceptions at 4-6.

⁴ *Id.*

⁵ DoD/FEA Exceptions at 7-8.

⁶ Proposed Order at 22.

undisputed fact – *coupled with the conditions ensuring that the utilities will re-invest sufficient funds in their operations* – eliminates concerns about the Transaction’s compliance with Section 7-204(b)(4) of the Act.⁷ Staff also notes that the Proposed Order “fails to recognize the strong incentive” that those same conditions provide Frontier to ensure that the service quality of Verizon North and Verizon South is “at levels that are in fact more stringent than the 83 Ill. Adm. Code 730 standards.”⁸ Because the Proposed Order’s concerns about Frontier’s “financial condition” are “misplaced,” Staff asks the Commission to revise the Proposed Order to (i) find that Section 7-204(b)(4) of the Act is met, and (ii) impose the “fence posting” and other conditions Staff negotiated to ensure the financial integrity of Verizon North and Verizon South.⁹ *IBEW does not contest* that Verizon North and Verizon South are financially capable of fully funding their own operations – a fact that, combined with the conditions ensuring the re-investment of sufficient funds, mandates a finding that Section 7-204(b)(4) is met.

III. THE EXCEPTIONS CONFIRM THAT FAILURE TO APPROVE THE TRANSACTION WOULD DENY SUBSTANTIAL BENEFITS TO ILLINOIS CONSUMERS.

In addition to obtaining conditions to ensure that the Transaction complies with the statutory criteria for approval (*i.e.*, that it would not have an adverse effect), the Staff, DoD/FEA, and AG/CUB also obtained conditions ensuring the Transaction would *advance* the public interest. As DoD/FEA (one of the largest customers in the state) noted in its exceptions, the Proposed Order failed to consider the “risks associated with not approving the transaction.”¹⁰ As DoD/FEA explained, “[i]t is difficult to believe that Verizon, if forced to retain the exchanges it

⁷ Staff Exceptions at 10-11. Staff Exceptions at 6-7.

⁸ Staff Exceptions at 6-7.

⁹ *Id.* at 11-16.

¹⁰ DoD/FEA Exceptions at 4 (emphasis in original).

is seeking to sell, would commit the financial and management resources that Frontier has already agreed to provide pursuant to the Staff's and AG/CUB's conditions."¹¹

DoD/FEA is correct. Frontier is ready, willing, and able to significantly increase investment in Illinois. In fact, deploying broadband to unserved and underserved communities is Frontier's specialty – a specialty that has resulted in a deployment rate to more than 90% of households in Frontier's existing service territory (30% higher than Verizon's deployment in the territories subject to the Transaction) and to 87% of the households in its existing service territory in Illinois.¹² Every one of Frontier's more than 100 central offices and switches in Illinois is equipped to provide broadband service.¹³ By contrast, Verizon has not deployed broadband in many of the Illinois communities it serves today and has made the decision to exit the local wireline business in this and certain other areas in order to focus on other aspects of its business (such as wireless and global enterprise).¹⁴ And even if that were not the case, Verizon has no plans to expand wireline broadband deployment in Illinois beyond current levels. Other state commissions have confirmed that Frontier's commitment to broadband represents an important benefit for customers and for those states' competitiveness.¹⁵ As the Ohio Commission stated in approving the transaction:

We are very pleased that Frontier North will undertake the commitment to provide broadband service to rural areas of Ohio. Without widespread availability of broadband, Ohio cannot realize the business potential that lies dormant in its nonurban areas. Nor

¹¹ *Id.*

¹² Transcript (01/20/10) at 421.

¹³ McCarthy Direct Testimony at 12. In Illinois, 100% of Frontier's 138 host and remote wire center are equipment and offer broadband service.

¹⁴ Erhart Direct Testimony at 5-7.

¹⁵ *See generally* Joint Applicants' Brief on Exceptions at 1-5, 15-17, 19-22.

can students and teachers fairly compete with their urban counterparts.¹⁶

Frontier's commitment in Ohio is the same 85% deployment commitment that Frontier agreed to here in Illinois. The IBEW (which, of course, does not represent the public) will likely criticize the benefits of the Transaction as insufficient, but the more than 100,000 unserved and underserved Illinois households that will directly benefit from Frontier's broadband commitment likely would disagree. Frontier will deploy broadband to more than 85% of households in the acquired territories (a 25% increase from current levels)¹⁷ – and even if the final cost turns out to be higher than the \$40 million that it has committed to expend, Frontier will expend the additional dollars to achieve 85% broadband availability¹⁸. That commitment is a substantial benefit for residents in the more rural portions of Verizon North and Verizon South.¹⁹ Similarly, Frontier's firm, enforceable commitments to cap all residential regulated rates and numerous wholesale and business rates (commitments that go far beyond what Verizon South or Verizon North are required to do) represent important benefits that the Proposed Order ignores.²⁰ While such commitments and associated public benefits are apparently not important to IBEW, they are very important to customers, as DoD/FEA made clear in its Exceptions Brief.

¹⁶ Opinion and Order, *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings Inc., and Verizon Communications Inc. for Consent and Approval of a Change in Control*, PUCO Case No. 09-454-TP-ACO (February 11, 2010), at 28.

¹⁷ See Hearing Tr. at 494.

¹⁸ See AG/CUB Condition No. 6.

¹⁹ The federal grants of \$60 million that Governor Quinn has recently announced are for increasing broadband deployment in the entire state. Press Release of the Illinois Department of Commerce and Economic Opportunity, *Governor Quinn Highlights Illinois Broadband Efforts* (released March 22, 2010). By contrast, Frontier's investment of at least \$40 million will be in the service territories of Verizon North and Verizon South, which represent only a portion of the state.

²⁰ See Joint Applicants' Brief on Exceptions at 19-22.

CONCLUSION

Joint Applicants respectfully request that the Commission correct the Proposed Order as set forth above in the exceptions filed by Staff, DoD/FEA, and Joint Applicants.

Dated: March 25, 2010

Respectfully submitted,

VERIZON COMMUNICATIONS INC.,
VERIZON NORTH INC., VERIZON SOUTH INC.
AND NEW COMMUNICATIONS OF THE
CAROLINAS INC.

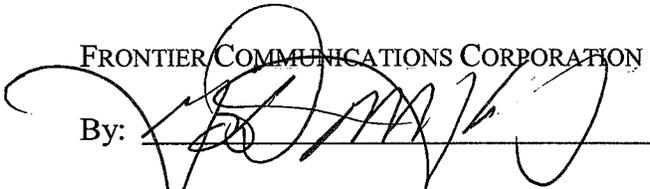
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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I caused a copy of Joint Applicants' Reply Brief on Exceptions to be served upon the service list in Docket No. 09-0268 via email on March 25, 2010.

/s/ John E. Rooney _____