Before The
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Applications filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control	))))	WC Docket No. 09-95

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

The National Association of State Utility Consumer Advocates ("NASUCA"), pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),[1] submits these reply comments on the applications of Verizon Communications, Inc. ("Verizon") and Frontier Communications ("Frontier") (jointly, "Applicants") for approval of a transaction in which approximately 4.8 million Verizon access lines in 14 states will be acquired by Frontier.[2]

NASUCA and its member the New Jersey Division of Rate Counsel ("Rate Counsel") (collectively, "State Advocates") submitted joint initial comments in response to the Public Notice. In those comments, State Advocates asserted that because of the risks inherent in this transaction, the Commission should deny the application. State Advocates also asserted that, if the transaction is to be approved, a number of significant, enforceable conditions would be required in order to ensure that the transaction will

[1] DA 09-1793 (rel. August 11, 2009).

[2] *Applications of Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95 (filed May 28, 2009) ("Application") The properties sought to be transferred are in Arizona, California, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, Wisconsin and West Virginia.

"serve the public interest, convenience, and necessity."[3] Those conditions are needed both in the territories that Frontier is acquiring from Verizon (and the current Frontier territory) and in the remaining Verizon territories.

The conditions include:

- Broadband deployment commitments in both Frontier and Verizon territories;
- Reporting commitments on broadband and other investments and service quality;
- An audit of the operational support systems ("OSS") in current Frontier territory, and in the Verizon territory to be acquired, before the transaction is closed and again one year after closing;
- A commitment regarding funding of Frontier's pensions; and
- A review of the financial aspects of the transaction in order to ensure that Frontier has adequate resources to sustain the combined company operations.

NASUCA continues to support the need for such conditions if this transaction is to be approved.

Only twelve comments other than State Advocates' were filed in response to the public notice.[4] Of those comments, only four could be construed as supporting the transaction: Those were the comments of the Independent Telephone and Telecommunications Alliance ("ITTA"), smaller carrriers who obviously would like to see their mergers subject to minimal scrutiny and conditons, and of ADTRAN, Arbor Networks and Calix, suppliers of the broadband facilites that the "New Frontier" has said it will deploy in the acquired territories.

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[3] 47 U.S.C. §§ 214(a) and 310(d).

[4] The small number of comments should not mislead the Commission as to the importance of its review of this transaction.

Some flat out oppose the transaction. For example, TW Telecom, et al.[5] in their Petition to Deny raise the possibility of substantial harms to the public interest on the wholesale level.[6] They also note that, "[d]espite the Applicants' claim that the proposed transaction will spur broadband deployments, it is more likely that it will have the opposite effect."[7] This enhances State Advocates' view that, if this transaction is to be approved, there need to be firm and enforceable conditions to ensure that the Applicants' vague quasi-promises come true.

EarthLink, Inc. and New Edge Network, Inc. ("EarthLink, et al"), on the other hand, state that the Commission should require "Frontier to implement the Verizon Operation Support System ('OSS') and associated Application Interface ('API') ('Verizon OSS/API') for its wholesale broadband service offerings and to continue Verizon's wholesale service offerings, including stand-alone DSL, at reasonable rates and terms."[8] Those concerns focus on West Virginia; NTELOS of West Virginia Inc. ("NTELOS") raises similar concerns, but states,

> The transfer of millions of Verizon lines to Frontier in states across the country is a proposal that cannot be approved by the FCC on the record before it. The situation is especially acute in West Virginia where Frontier would become the ILEC virtually the whole state.[9]

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5 TW Telecom Inc., One Communications Corp., Integra Telecom, Inc. and Cbeyond, Inc.

6 TW Telecom, et al. Petition to Deny at 17-36.

7 Id. at 36.

8 EarthLink, et al at 2.

9 NTELOS at 5.

And the Office of the Attorney General of the State of West Virginia ("WV AG") raises the following concerns: service issues[10]; capitalization and credit rating[11]; and jobs and labor issues.[12]

Free Press' concerns also focus on broadband. But Free Press also correctly notes, as did State Advocates, the similarity between this transaction and the FairPoint/Verizon transaction, identifying the similarities in the "descriptions and promises" of the smaller companies as they attempted to swallow the territories that Verizon no longer wanted:

> FairPoint: FairPoint Communications, Inc., is an experienced and respected provider of telecommunications services to rural and small urban areas, with a particular emphasis on the provision of broadband services.
> Frontier: Frontier is a wireline communications company dedicated primarily to serving rural areas and smaller cities, where it has a proven track record of success.
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> FairPoint: FairPoint's current broadband service is available, on average, to approximately 88 percent of access lines served by FairPoint's local exchange networks. FairPoint plans to increase broadband availability from current levels in Maine, New Hampshire, and Vermont within twelve months after the completion of the merger by expanding investment and offering quality broadband-based services.
> Frontier: Frontier has made broadband connections available to 92% of its customers in its existing service areas…Indeed, increasing broadband availability will be a business imperative for Frontier in order to retain customers and to reduce the access line loss Verizon has recently been experiencing in these areas.
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> FairPoint: Verizon's broadband facilities currently reach approximately 62 percent of its access lines in the three northern New England states.
> Frontier: Today, Verizon's subsidiaries offer broadband to only about 60 percent of the homes and businesses in the communities that Frontier is acquiring.

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10 WV AG at 1-2.

11 Id. at 2-3.

12 Id. at 3-5.

> FairPoint: Among other things, the transaction will provide FairPoint with improved access to and a lower cost of capital, making more cash available for discretionary capital expenditures as FairPoint upgrades its newly acquired facilities as well as its legacy properties.
> Frontier: The transaction will yield efficiencies in the form of annual operating expense savings of $500 million from the consolidation of various administrative functions and systems such as accounting and information systems and lower prices on capital expenditures as a result of Frontier's greater purchasing power due to its increased size.[13]

The Commuincations Workers of America and International Brotherhood of Electrical Workers ("CWA/IBEW") raise even more extensive comparisons between this transaction and the FairPoint/Verizon deal, and other recent Verizon divestitures.[14] More importantly, CWA/IBEW also review in detail the numerous and substantial risks involved in this transaction.[15] Those risks include the heavy debt that will burden Frontier[16]; the deteriorating nature of Frontier's unsustainable business plan[17]; the "softness" of Frontier's financial projections[18]; and the many operational challenges facing Frontier if this transaction is consummated.[19] And the ultimate risk to consumers is that of deterioration in quality of service, especially given the condition of the networks that Verizon is trying to get rid of.[20] (This despite Frontier's claims of a greater customer focus.) CWA/IBEW also note the lack of verifiable and enforceable

[13] Free Press at 8-9 (footnotes omitted, underlining added).

[14] CWA/IBEW at 12-16.

[15] State Advocates had quoted at length a CWA/IBEW submission in the Ohio merger review raising many of these points. State Advocates at 19-24.

[16] CWA/IBEW at 19-21.

[17] Id. at 21-27.

[18] Id. at 27-28.

[19] Id. at 29-35.

[20] Id. at 35-39.

commitments for the broadband expansion that the Applicants have touted as the main benefit of the merger.[21]

In conclusion, all of these concerns echo those expressed by State Advocates: This transaction presents a substantial risk of real harm to consumers and the public interest, and should be denied. If the transaction is to be approved, there will need to be verifiable and enforceable conditions placed on the merger, in order to ensure that the claimed benefits will actually occur.

Respectfully submitted,

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21 Id. at 39-47.