BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C) Verizon California Inc. (U 1002 C), Verizon Long Distance, LLC (U 5732 C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications	)	Application No. 15-03-005

JOINT APPLICANTS' REPLY TO PROTESTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CALIFORNIA PUBLIC UTILTIES COMMISSION DECISIONS

FCC DECISIONS

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATE RULES

CONSTITUTIONAL PROVISIONS

I. INTRODUCTION

Pursuant to Rule 2.6 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission"), Joint Applicants[1] hereby reply to the protests and responses addressing the Application seeking approval of the transfer of control of Verizon California, Inc. to Frontier Communications Corporation. Protests were submitted by the following parties: the Office of Ratepayer Advocates ("ORA"); The Utility Reform Network ("TURN"); The Greenlining Institute ("Greenlining"); The Center for Accessible Technology ("CforAT"); the Communications Workers of America ("CWA"); the California Association of Competitive Telecommunications Companies ("CALTEL"); Cox California Telcom, L.L.C., d/b/a Cox Communications (U 5684 C) ("Cox"); and O1 Communications, Inc. (U 6065 C) ("O1").

None of the protests presents any valid ground for rejection of the Application, nor does any response contradict the public interest benefits that will flow from consummation of the Transaction between Frontier and Verizon. At most, the responses point to a desire to collect further data through this proceeding. Joint Applicants embrace that process, and look forward to participating in the proceeding and submitting testimony that will leave no doubt about the public benefits of this Transaction.

As Joint Applicants' testimony will show, this Transaction will produce short-term and long-term economic benefits for California ratepayers. At closing, both retail and wholesale customers will receive substantially the same service on the same terms and conditions under existing contracts, agreements, and tariffs, and the transition will not cause customer disruption. Frontier is committed to honoring all of its regulatory, tariff, and contractual obligations for retail

[1] Joint Applicants are Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C) (collectively, "Frontier"), Verizon California Inc. (U 1002 C) ("Verizon California"), Verizon Long Distance, LLC (U 5732 C) ("Verizon LD") (collectively, "Verizon"), and Newco West Holdings LLC ("Newco").

and wholesale customers, including any applicable volume and term discounts. These commitments also include collective bargaining agreements and contractual provisions to address personnel needs in California. Economies of scale and scope will enhance corporate and operational efficiency. Frontier will provide operations support, customer service, and billing with the existing, proven, and tested systems that it currently uses across its 28 state service territory, including in other former Verizon properties. The Transaction will have no adverse effect on competition. Verizon California and Frontier have not been in competition with one another, and had no plans to be in competition with one another prior to this Transaction. The operations acquired by Frontier will continue to face competition from a wide variety of service providers, including cable operators, wireless carriers, long distance carriers, competitive local exchange carriers, satellite video and broadband providers, as well as other wireline carriers.

The Transaction also will advance service quality and service availability, and promote fairness to customers, shareholders, and employees. Joint Applicants will show that each of the Section 854 factors is satisfied as to the Transaction, and that the Transaction is, on balance, in the public interest.

While Joint Applicants are confident that evidence in this proceeding will show that the Transaction satisfies the applicable statutory standards, the Commission should resist attempts by some intervenors to expand the scope of this inquiry beyond the requirements in Section 854 or otherwise use this proceeding to address matters pending, or which should be resolved in, other dockets. For example, several intervenors ask the Commission to inject into this proceeding broader debates about competitive markets, service quality, broadband regulation, the terms and conditions of wholesale offerings, and a wide variety of other subjects. Many of these issues are being addressed in separate generic proceedings, and that is where those issues should remain.

In other instances, the issues are simply beyond the Commission's jurisdiction and/or statutory authority. The Commission should not use this proceeding as the mechanism through which to address broader industry issues, nor should it use this proceeding as the fulcrum to broaden its jurisdictional reach or revisit policy issues that have been addressed by prior Commission decisions on a full record. This proceeding should be limited to what the statute requires – the Commission should evaluate the incremental effects of the Transaction and the meaning of those effects under the law.

Applicants look forward to further demonstrating that the Transaction is in the public interest and explaining in detail why it should be approved under Public Utilities Code Section 854. In these comments, Joint Applicants: (1) clarify the standard of review applicable to this transaction; (2) identify issues raised in the responses that are beyond the scope of the proceeding; and (3) address certain procedural issues. The Commission should conclude that the Transaction is not adverse to the public interest and expeditiously approve it.

II. THE PROTESTS RAISE ISSUES THAT WOULD EXCEED THE APPLICABLE STANDARD FOR REVIEWING THIS APPLICATION.

The Commission's review of the Transaction is governed by Public Utilities Code Section 854.[2] Some of the protests claim that other legal principles govern this Application as well. The Commission should reject these erroneous contentions.

The standard applied by the Commission under Section 854(a) is whether the Transaction will be "adverse to the public interest."[3] The Commission reaffirmed this standard in D. 09-10-056, when it approved Frontier's acquisition of a Verizon operating company as well as additional exchanges. As the Commission explained in that proceeding: "[w]e have noted in a

[2] Application at 12 (filed Mar. 18, 2015).

[3] Decision 07-05-061, 2007 Cal. PUC Lexis 227, at *34 (Sept. 22, 2006).

number of recent decisions approving transfers of control that, because California 'reaps enormous benefits' from public utility services, it is 'in the public interest to foster a business climate in California that is hospitable to utilities.'"[4] Accordingly, the Commission has found that Section 854(a) transactions "should be approved absent a compelling reason to the contrary."[5] The Application further demonstrates that Public Utilities Code Sections 854(b) and (c) apply to this Transaction.[6] In applying the public interest factors enumerated under Section 854(c), the Commission "need not find that each criterion is independently satisfied," but it must find that, "on balance . . . [the transaction] is in the public interest."[7]

None of the protests disputes these fundamental points. Insofar as they suggest that the Commission should broaden its review to consider other issues, the intervenors propose a standard of review that is incorrect and which should be rejected.

A. Applicants Need Not Re-Prove the Services at Issue are Competitive

Some intervenors suggest that this proceeding can be a forum to revisit the competitive status of telecommunications markets in general. This would far exceed the scope of the Commission's inquiry under Section 854, and would constitute a collateral attack on the Commission's decisions in the Uniform Regulatory Framework ("URF") proceeding.[8]

Under Section 854(b)(2), where the Commission exercises ratemaking authority, it must ensure that a proposed transaction "[e]quitably allocates" the transaction's short-term and long-

[4] Decision 09-10-056, 2009 Cal. PUC Lexis 546, at *21-22 (Nov. 4, 2009) (quoting and citing Decision 04-08-018, Cal. PUC Lexis 424 (Aug. 19, 2004) (SureWest reincorporation)).

[5] *Id*.; Decision 04-09-023, 2004 Cal. PUC Lexis 607 (Sept. 2, 2004) (Comm South/Arbros); Decision 05-05-014, 2005 Cal. PUC Lexis 176 (May 5, 2005) (Cal-Ore Telephone/Lynch Interactive); Decision 05-06-012, 2005 Cal. PUC Lexis 216 (June 16, 2005) (Supra Telecommunications); Decision 05-08-006, 2005 Cal. PUC Lexis 569 (Aug. 25, 2005) (Highspeed Communications/Northwest Telephone); and Decision 06-02-033, 2001 Cal. PUC Lexis 1070 (Dec. 11, 2001) (PacifiCorp).

[6] Application at 13-14.

[7] Decision 00-03-021, 5 CPUC 3d 156, 209 (Mar. 2, 2000).

[8] See, e.g., Decision 06-08-030, 2006 Cal. PUC Lexis 367 (Aug. 24, 2006).

term forecasted economic benefits between ratepayers and shareholders, with ratepayers receiving at least 50 percent of those benefits.[9] The implementation of this requirement here is controlled by two well-established propositions: (1) the Commission cannot allocate savings attributable to services that are not rate regulated through mandated rate reductions, and (2) Verizon California's services are not rate regulated.

First, it is clear based on Commission precedent that savings attributable to services that the Commission has deemed sufficiently competitive to warrant the removal of rate regulation may only be allocated to customers through the operation of market forces, and not through a rate adjustment mandated by the Commission[10] TURN erroneously asserts that the Commission's precedent does not apply to transactions between ILECs, or to transactions involving "a major provider" of services in California, or to transactions that would have an impact on the overall revenues or financial condition of the parties.[11] Yet the Commission has applied the same reasoning to a number of other large transactions involving major carriers.[12] In particular, the Commission applied this policy to the SBC-Pacific Telesis and the GTE-Bell Atlantic transactions, both of which involved ILECs that were major providers of services and for whom the transaction had a major financial impact. The Commission has never stated that its policy is limited in the way TURN suggests; on the contrary, as far as Applicants are aware, the Commission has consistently applied its policy under Section 854(b)(2) to all services that are not rate regulated, regardless of whether the provider is an ILEC.

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[9] Section 854(b)(2).

[10] Application at 20-23 (discussing Decision 97-03-067, 1997 Cal. PUC Lexis 629, at *28 (March 1, 1997)); see also Decision 00-03-021, 5 CPUC 3d 156, 163 (Mar. 2, 2000) (GTE-Bell Atlantic); Decision 05-11-028, 2005 Cal. PUC Lexis 516, at *36 (Nov. 18, 2005) (AT&T-SBC); Decision 05-11-029, 2005 Cal. PUC Lexis 517, at *32 (Nov. 18, 2005) (Verizon-MCI).

[11] TURN Protest at 9.

[12] *See supra* note 10.

Further, TURN incorrectly suggests that the Commission's precedent under Section 854(b)(2) is case-specific.[13] The Commission's decisions establish a clear rule that applies in this case: savings attributable to services that are not rate regulated are not subject to rate reductions mandated by the Commission. TURN improperly invokes the Commission's standard for granting an *exemption* from review under Section 853(b), but Applicants do not seek an exemption from Section 854(b)(2). The Application seeks approval *under* Section 854(b)(2), and the Commission has repeatedly concluded that this very section is satisfied by the allocation of economic benefits attributable to non-rate-regulated services through market forces.

Second, the services to which Transaction savings are attributable are not rate regulated. The Commission expressly determined in its 2006 URF Decision that Verizon California's and Frontier's ILECs are subject to sufficient competition to warrant removal of traditional rate regulation.[14] ORA, TURN and Greenlining are therefore incorrect in suggesting that Applicants must prove that the services at issue are competitive.[15] The Commission has already made that determination, and its conclusion cannot be collaterally attacked in this proceeding.[16] It would be wholly inappropriate to use this Application to attempt to relitigate the URF Decision.

B. The Commission Does Not Have Jurisdiction Over Broadband or VoIP

ORA argues that the Commission has jurisdiction to impose conditions on broadband and VoIP services in this transaction, claiming the Commission has the power to do so under Section 710 of the Public Utilities Code and Section 706 of the Federal Telecommunications Act

[13] TURN Protest at 8-9.

[14] Decision 06-08-030, 2006 Cal. PUC Lexis 367, at *174.

[15] TURN Protest at 7; ORA Protest at 3; Greenlining Protest at 3-5.

[16] Public Utilities Code § 1709 ("In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.").

("FTA").[17] While the Applicants recognize that ORA has previously advocated this position in multiple proceedings, this interpretation of the law is unsupported by any court decision. Moreover, as ORA acknowledges, the Commission has no authority to "declare a statute unconstitutional," nor can it "refuse to enforce a statute" absent a judicial determination that the statute is unconstitutional or unenforceable.[18]

Public Utilities Code Section 710 expressly prohibits the Commission from regulating broadband and IP-enabled services, and nothing in Section 706 of the Telecommunications Act or the *Title II Order* overrides the California legislature's explicit limitation upon this Commission. Though Section 710 of the California Code would permit regulation that is explicitly "required or expressly delegated by federal law,"[19] Section 706 provides no such express delegation to regulate broadband Internet access services or VoIP. Indeed, ORA's interpretation would have the exception swallow the whole by rendering all of Section 710's express limitation of Commission's jurisdiction meaningless. Under well-settled principles of California law, a statute cannot be construed to defeat its purpose or lead to absurd results.[20] Moreover, the FCC's recent order again confirmed that broadband Internet access services are inherently interstate services for regulatory purposes.[21] In short, the Commission does not have jurisdiction to regulate broadband or VoIP or to impose conditions related to broadband or VoIP in its consideration of this Transaction.

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[17] ORA Protest at 5-8.

[18] *Id.* at 7 (citing Cal. Const., art. 3, § 3.5.)

[19] Section 710(a).

[20] *See, e.g.*, Lopez v. Superior Court, 50 Cal. 4th 1055, 1063 (2010).

[21] *Protecting and Promoting the Open Internet*, 80 FR 19738-01, GN Docket No. 14-28, FCC 15-24, at ¶ 430 (Apr. 13, 2015).

III. THE INTERVENORS RAISE ISSUES BEYOND THE SCOPE OF THESE PROCEEDINGS

As confirmed in previous Commission precedent in similar cases, "[t]he Commission's task is to make a judgment about the proposed [transaction] by assessing the overall incremental effects of the [transaction]."[22] The Commission explained in the GTE-Bell Atlantic merger that transactions "will be examined from the viewpoint of how the [transaction] changes current conditions."[23] That standard remains applicable to this Application.

The Commission's focus on transaction-specific, incremental effects is consistent with established principles of regulatory review of transfers of control. As the FCC has ruled, it will not "impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction" submitted for approval.[24] Likewise, "[a]n application for a transfer of control of [FCC] licenses is not an opportunity to correct any and all perceived imbalances in the industry. Those issues are best left to broader industry-wide proceedings."[25] The proper venues in which to raise issues regarding industry operating practices are generic, industry-wide proceedings, not

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[22] Scoping Memo, GTE-Bell Atlantic, D.00-03-021 (Feb. 16, 1999).

[23] *Id.*; *see also* D. 97-03-067, 1997 Cal. PUC LEXIS 629, at *73-74 ("Thus, whatever market power Pacific possesses in the various relevant markets discussed below, our inquiry focuses on specific evidence as to whether this merger increases or otherwise enhances that market power. Several of intervenors' arguments regarding alleged barriers to entry, as more fully discussed below, would exist with or without the merger. . . . [W]e do not find, in the absence of specific evidence, that a merger in itself adversely affects competition simply by making a larger and strong company larger and stronger."). In GTE-Bell Atlantic, the scoping memo encouraged parties "to present current conditions (i.e., the baseline), from which the effect of the [transaction] will be assessed, in factual, nonjudgmental terms." Scoping Memo, GTE-Bell Atlantic, D.00-03-021 (Feb. 16, 1999).

[24] *Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corp., and Clearwire Corp; For Consent to Transfer Control of Licenses and Authorizations*, 28 FCC Rcd 9642, 9676 ¶ 85 (2013); *see also, e.g., Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign and Transfer Licenses,* Memorandum Opinion and Order, 27 FCC Rcd 16459, 16474 ¶ 39 (2012); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18445 ¶ 19 (2005) ("*Verizon/MCI Order*"); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18302-03 ¶ 19 (2005).

[25] *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 534 ¶ 131 (2004).

this Application proceeding. Indeed, the Commission has a number of pending proceedings that address issues overlapping with concerns raised by some of the protests, such as service quality, LifeLine, and basic service.[26] The Transaction in no way affects the Commission's jurisdiction to continue to investigate these matters on an industry-wide basis, and whatever decisions the Commission makes in those proceedings will apply to Verizon California before and after the Transaction closes.

Accordingly, protesters' claims regarding existing conditions are outside the proper scope of this proceeding[27] and should not be included in this review or provide the basis for any transaction-related conditions on Applicants. As the Commission has previously established:

> this proceeding will neither focus on the merits of, nor remedies for, the current situation. The issue is not the applicants' past or present conduct, except to the extent that past or present conduct relates to the incremental effect on California of the proposed merger. Rather, the issue is the incremental effect on California operations as a result of the proposed merger…[28]

Several issues raised by the protests are beyond the scope of this proceeding, including those involving generic competition issues, service quality issues beyond whether the transaction will "maintain and improve" service quality, affordability, wholesale pricing and collocation disputes, and the regulation of IP-enabled services.[29]

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[26] *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules,* R. 11-12-001 (Dec. 1, 2011); *Order Instituting Rulemaking Regarding Revisions to the California Universal Telephone Service (LifeLine) Program*, R. 11-03-013 (Mar. 24, 2011); *Order Instituting Rulemaking on Reforms to the California High Cost Fund B Program*, R. 09-06-019 (June 18, 2009).

[27] Scoping Memo, GTE-Bell Atlantic, D.00-03-021 (Feb. 16, 1999).

[28] *Id.*

[29] Applicants reserve the right to identify other issues that are beyond the scope of these proceedings or otherwise inappropriate for review.

A. The Level of Competition

ORA, TURN and Greenlining contend that the Commission must consider the level of competition that exists in California's marketplace in evaluating this Application.[30] This contention is misplaced for two reasons. First, as noted above, the Commission has already determined in the URF decision that the market is sufficiently competitive to warrant the removal of rate regulation, and that determination cannot be relitigated in this proceeding. Second, the relevant analytical question in this case is not the absolute level of competition, but whether the incremental effect of this transaction will "adversely affect competition" in California.[31] As explained in the Application, it will not.[32] TURN notes that it recently filed a complaint regarding the level of competition in California against AT&T California.[33] The present proceeding will not divest the Commission of jurisdiction over that proceeding, nor will it foreclose other proceedings on that subject matter, should the Commission deem them appropriate. Generic investigations of competition, however, are beyond the scope of this proceeding.

B. Service Quality Issues Beyond the Standard in Section 854(c)(2)

Several protests raise questions relating to the history and appropriate levels of service quality.[34] These issues, however, are not relevant to this proceeding. Indeed, the Commission is currently looking at these types of issues – including a review of the existing service quality standards and requirements and whether they should be changed or eliminated – in a pending

[30] ORA Protest at 3; TURN Protest at 7; Greenlining Protest at 3-5.

[31] Section 854(b)(3).

[32] Application at 24-25.

[33] TURN Protest at 11 (citing *TURN v. AT&T California*, C. 13-12-005).

[34] TURN Protest at 5-6; ORA Protest at 14-15; CWA Protest at 8; CALTEL Protest at 8-9; CforAT Protest at 2-3.

rulemaking.[35] The statute applicable to this proceeding makes clear that, in reviewing the Transaction, the Commission considers as one factor whether the Transaction "will maintain or improve the quality of service" currently being provided.[36] That is, service quality is relevant to this proceeding only to the extent that the transaction might have an incremental effect on the quality of service provided to consumers. Again, this limited focus will not divest the Commission of its jurisdiction over pending proceedings, nor will it divest the jurisdiction over other proceedings that may be brought regarding service quality in California. The record will demonstrate that Frontier is committed to investing and providing high-quality and enhanced wireline service in the areas it is acquiring, and that the Transaction will maintain or improve the quality of service being provided.

C. Affordability of Existing Services

CforAT raises concerns regarding the affordability of services for customers with special needs.[37] The affordability of existing services is not within the scope of this proceeding, but rather is an industry-wide question that falls within the scope of other pending proceedings.[38] Affordability of services is relevant only insofar as this transaction will have an incremental effect on said affordability. As explained in the Application, the Transaction will maintain or improve the affordability of existing services.[39]

D. Collocation Docket and Wholesale Performance

CALTEL asserts that the Commission has not completed the collocation phase of the generic arbitration proceeding regarding Verizon's Section 251/252 ICAs and has not adopted a

[35] See *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules*, Rulemaking 11-12-001 (filed Dec. 1, 2011).

[36] Section 854(c)(2).

[37] CforAT Protest at 3.

[38] *See, e.g.*, R. 11-03-013.

[39] Application at 20-23.

remedial plan applicable to Verizon's wholesale performance.[40] These complaints are not relevant to the incremental effects of this Transaction.

CALTEL also seeks clarification on whether any CLEC affiliates of Verizon California are being transferred to Frontier.[41] The Joint Applicants confirm that no CLEC affiliate of Verizon California or any other affiliates are being transferred to Frontier in this transaction. As discussed in the Joint Application, Verizon California itself operates as a CLEC in a limited number of exchanges, and these operations are transferring to Frontier.

E. Other Issues

The Protests raise other issues that will be addressed in the evidentiary record during the course of the proceeding. Applicants will serve testimony on or about May 11, 2015, which will establish an evidentiary foundation demonstrating that the proposed transaction is in the public interest. Applicants are confident that the record will demonstrate that the transaction meets the criteria of Section 854 and should be approved. All parties should be allowed to participate in the development of the record on the Section 854 issues raised by the Application.

IV. PROCEDURAL MATTERS

ORA's Protest sets forth a proposed schedule for this proceeding that Joint Applicants support.[42] TURN does not offer a different schedule, but suggests that the Commission open a "companion investigation to build a sufficient record."[43] TURN does not explain this suggestion. The Commission should conduct, in this proceeding, all fact-finding necessary to determine whether the Transaction meets the standard under Section 854. The Commission retains the jurisdiction to independently pursue any other industry-wide investigation that may be

[40] CALTEL Protest at 5-6.

[41] *Id.* at 9-10.

[42] ORA Protest at 18-19.

[43] TURN Protest at 15.

appropriate, but no "companion" investigation is appropriate here. The Commission should not delay the resolution of this proceeding pending the outcome of any generic proceeding, nor should it open new proceedings that might delay consideration of the matters at hand here.

Applicants believe that the anticipated testimony alone will be sufficient to create a record for the Commission to decide this matter without evidentiary hearings. However, the Commission should evaluate the need for hearings based on the record after testimony is served.

V. CONCLUSION

Applicants look forward to the development of the record on issues framed by Section 854, which will demonstrate that the Transaction is in the public interest and that it should be approved. Applicants request that the Commission adopt the schedule proposed by ORA and to issue a scoping memo that defines the scope of the proceeding in accordance with the discussion herein.

Respectfully submitted,

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