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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), 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 15-03-005
(Filed March 18, 2015)

RESPONSE OF THE CALIFORNIA ASSOCIATION OF COMPETITIVE TELECOMMUNICATIONS COMPANIES ON THE JOINT APPLICATION OF FRONTIER COMMUNICATIONS AND VERIZON CALIFORNIA FOR APPROVAL OF TRANSFER OF CONTROL AND RELATED APPROVAL OF TRANSFER OF ASSETS AND CERTIFICATIONS

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Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the California Association of Competitive Telecommunications Companies[1] ("CALTEL") files the following response to the Application of Frontier Communications Corporation (Frontier) and Verizon Communications Inc. (Verizon), which seek approval for the transfer of control of Verizon's ILEC assets and customers in California (Application), on behalf of its members.[2]

I. INTRODUCTION

As the Commission is aware, CALTEL members are wireline competitive local exchange carriers (CLECs) that primarily provide competitive voice and broadband retail services to California residential and business end user customers. In order to do so, many CALTEL members purchase wholesale inputs from Verizon California in urban, suburban and rural regions of the state. These inputs include Unbundled Network Elements (UNEs), special access services, loop-and-port combinations provided subject to commercial agreements, collocation arrangements, line sharing arrangements, interconnection arrangements, and Ethernet last-mile connections. Some CALTEL members also offer wholesale services to the Applicants, including interoffice circuits and Ethernet transport and last-mile connections. Consequently, CALTEL member companies are uniquely affected by the proposed transfer of control—they are at the same time competitors of the Applicants, wholesale customers of the Applicants, and wholesale suppliers to the Applicants. CALTEL therefore, acting on behalf of its

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1 CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice, broadband, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

2 *See* www.caltel.org for a list of CALTEL member companies.

members, is a key stakeholder in ensuring that any potential harm that could result from this Application are fully identified, addressed and, to the degree possible, mitigated prior to its approval.

Based on the information provided in the application filed with this Commission, and with the Federal Communications Commission (FCC), CALTEL is concerned that the proposed transfer of control may have a harmful effect on day-to-day operations as well as on the availability and terms and conditions under which CALTEL members receive wholesale inputs and services from the Applicants. Any disruption or constraint on access to wholesale inputs and services will have an adverse effect on CALTEL members' ability to compete, thus creating a domino effect on the state of competition in the business telecommunications and data market in California.

CALTEL is only in the beginning stages of reviewing the potential impact of the proposed transfers on its members. CALTEL filed comments at the FCC earlier this month,[3] and plans to actively participate in this proceeding. In order to inform its comments in this CPUC proceeding, CALTEL issued initial data requests to both companies in order to gather additional data. However, both Frontier and Verizon advised that they were unable to respond by the requested due dates, and CALTEL has as a result not received any responses to its data requests at this writing.

These data requests (Attachments A and B) identify areas of potential concern to CALTEL members. In the discussion that follows, CALTEL will briefly describe these concerns and explain why the Commission's Communications Division should gather

[3] Comments of CALTEL, *In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for the Partial Assignment or Transfer of Control of Certain Assets in California, Florida and Texas,* WC Docket No. 15-44, dated April 13, 2015.

similar information from Frontier and Verizon to ensure that the Applicants' public interest claims are thoroughly analyzed, evaluated and addressed.

II. DISCUSSION

As a preliminary matter, it is no secret to this Commission (or to the FCC) that CALTEL considers Verizon California to be an often uncooperative and indifferent-at-best wholesale supplier. In particular, Verizon's "kill-the-copper" policies, including *de facto* retirement of copper facilities by failing to properly maintain them, has resulted in increasing alarm and numerous CALTEL objections over the past seven years.[4] For that reason alone, CALTEL will not be sorry to see Verizon go, and welcomes acquisition of its assets and customers by a company that apparently values and plans to invest in the wireline telecommunications business.

This willingness, of course, still needs to be tested. But more importantly, however willing it is in spirit, Frontier also has to prove that it can execute operationally on this proposed transfer in a way that does not disrupt or harm competition in both retail and wholesale markets. By Frontier's own admission, this is a huge transaction: acquisitions of Verizon ILEC subsidiaries in California (as well as simultaneous

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[4] *See, e.g. Declaration of Joseph Gillan, On Behalf of CALTEL,* California Public Utilities Commission Rulemaking R.08-01-005, *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services,* at ¶8 and Declaration of Dane Jasper, Attachment A, Response of the California Association of Competitive Telecommunications Companies to Emergency Motion of the Utility Reform Network (TURN) Urging the Commission to Take Immediate Action to Protect Verizon Customers and Prevent Further Deterioration of Verizon's Landline Network, R.11-12-001, dated April 15, 2014. *See also* Comments of CALTEL, *Petition for Forbearance of the United States Telecom Association,* WC Docket 12-161, dated April 6, 2012, Comments of CALTEL, *Telepacific et. al. Request to Refresh the Record,* WC Docket 10-188, et. al, filed March 5, 2013, and Comments of CALTEL, Notice of Proposed Rulemaking, *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* PS Docket No. 14-174 et al, filed February 5, 2015.

acquisitions proposed in Florida and Texas) will double the size of the company and of the assets it manages.[5] In California, the transfer would transform Frontier from a primarily rural mid-sized ILEC to the second largest ILEC in the state, serving significant portions of the second largest metropolitan statistical area (MSA) in the nation, and the thirteenth largest in the world.[6]

For a number of reasons, many CALTEL member companies have little or no experience dealing with Frontier on a wholesale basis, either in California or other states where Frontier operates. This is primarily the case because California is in itself such a large and relatively self-contained market, with five of the top 25 MSAs (ranked by GDP) in the nation located here, none of which Frontier currently serves.[7] As a result, many CALTEL member companies are regional carriers who only serve California end user customers in the AT&T and Verizon territories in California.

Even for those CLECs whose business plans are national or multi-regional in scope, Frontier is still not considered to be a major wholesale supplier due to its current operation in predominantly non-metro markets. For example, to CALTEL's knowledge, few if any CALTEL members currently have electronic ordering or trouble ticket

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[5] *See* Consolidated Application for the Partial Assignment and Transfer of Control of Domestic and International Section 214 Authorizations, *In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for the Partial Assignment or Transfer of Control of Certain Assets in California, Florida and Texas,* WC Docket No. 15-44 (FCC Application), which explains that Frontier currently operates approximately 4 million voice lines and 2.3 million broadband connections. Exhibit 1 to FCC Application at p. 4. The Application states that an additional 3.7 million voice lines and 2.2 million broadband connections would be transferred from Verizon in California, Florida and Texas as part of the proposed transfer-of-control. Exhibit 1 at p. 9.

[6] The Los Angeles-Long Beach-Santa Ana CA MSA is the second largest in the nation (ranked both by population and GDP), and the 13th largest in the world. http://en.wikipedia.org/wiki/Los_Angeles_metropolitan_area

[7] *See* http://en.wikipedia.org/wiki/List_of_U.S._metropolitan_areas_by_GDP .

interfaces with Frontier Operational Support Systems (OSS) or experience with Frontier legacy support systems.

<u>Areas of Concern</u>

CALTEL's areas of concern focus on the "top five" following areas.

1. <u>Section 251/252 Interconnection Agreements/Commercial Agreements</u>

CALTEL members currently obtain UNEs and other wholesale inputs and services pursuant to interconnection agreements that were negotiated and arbitrated under Sections 251 and 252 of the Federal Telecommunications Act. To CALTEL's knowledge, all of these agreements with Verizon are in evergreen status, and because most CALTEL members do not have similar ICAs with Frontier in other states (even those states where Frontier acquired former Verizon territories in 2010), Frontier's policies and actual practice with regards to honoring the terms of ICAs being assumed from Verizon California, and for noticing renegotiation of expired ICAs, need to be ascertained and evaluated.

CALTEL also needs to ascertain whether its members can anticipate continued access to loop-and-port combinations provided subject to wholesale commercial agreements. It is CALTEL's understanding that some of the agreements that Frontier assumed from Verizon in the 2010 acquisition have expired or will be expiring, and that it is unclear whether Frontier plans to continue offering the product, and if so, under what rates, terms and conditions.

There are also unique conditions that affect the viability of Verizon's Section 251/252 ICAs in California. The most critical is the result of the Commission's failure to complete the collocation phase of the generic arbitration proceeding, leaving collocation arrangements effectively undocumented and reliant on a hodgepodge of Verizon industry letters, Memorandums of Understanding (MOUs), and emails. Similarly, although Verizon is subject to a set of wholesale performance measurements, the Commission never adopted a remedy plan as it committed to do,[8] and Verizon has been free to degrade wholesale performance, including maintenance of last-mile copper facilities, with impunity.

2. <u>Special Access</u>

Many CALTEL members currently have special access contracts with Verizon that include locations in the state of California. Frontier's plans need to be ascertained and evaluated, specifically with regards to offering the same term-and-volume discounts that are currently available from Verizon, as well as both companies' commitments to making pro-rata adjustments to current contracts in a way that does not disadvantage CLECs and other special access customers.

3. <u>Wholesale OSS, Business Processes and Resources/Staffing</u>

The Application states that Frontier plans to flash cut customers over to Frontier legacy systems immediately after the transaction is approved:

> Frontier will immediately transition Verizon California's operations to Frontier's existing billing systems and operations support systems ("OSS"), which will avoid a lengthy transition period for customers.[9]

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[8] *Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company,* D.02-03-02, R.97-10-016 and I.97-10-017, at pp. 78-79: "While we have intended to adopt simultaneously the same plan for Verizon as we adopt for Pacific, as Verizon notes in its comments on the DD, most of our analyses in this decision have been performed for Pacific. We could delay adoption of a plan for Pacific while we perform additional analyses for Verizon, but do not wish to delay Pacific further…so to prevent undue delay to Pacific, we will adopt this performance incentives plan only for Pacific at this time. We intend to adopt this plan for Verizon, by means of a separate decision, within the next few weeks pending further analyses."

[9] Application at p. 3.

> The FCC Application clarifies that this is the plan for both retail and wholesale customers:
>
> Frontier and Verizon also have in place a plan for the transition of customers, OSS, and billing systems so that neither retail nor wholesale customers will experience service, ordering, or billing disruptions. Post-closing, the operations of the Transferring Companies will be converted to Frontier's existing OSS and billing systems, which will allow Frontier to go to market promptly in the acquired areas.[10]

CALTEL assumes that the Commission and the FCC will want to gather more information about these plans with regards to the transitioning of retail customers given the problems that Frontier reportedly encountered in its most recent acquisition in Connecticut.[11] But, for wholesale customers, this proposal is problematic in that, as mentioned previously, to CALTEL's knowledge, Frontier does not offer machine-to-machine EDI (Electronic Data Interchange) electronic ordering or EB (Electronic Bonding) trouble report interfaces in California, and few if any of its members have those interfaces with Frontier in other states. CALTEL will be discussing this critical issue, as well as other operational issues that impact day-to-day wholesale operations, with Frontier in the weeks to come.

Resources and staffing levels are also a key concern. Verizon has systematically reduced resources assigned to support wireline services over the past decade to levels that chronically result in poor retail as well as wholesale performance. To make matters worse, differences in Verizon and Frontier retirement plans are rumored to already be causing accelerated early-retirements of seasoned Verizon personnel.

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[10] Exhibit 1 to FCC Application at p. 21.

[11] *See, e.g., http://www.nbcconnecticut.com/news/local/State-Stepping-in-to-Handle-Frontier-Complaints-282629031.html and http://www.courant.com/consumer/bottom-line/hc-bottom-line-frontier-att-takeover-20141204-column.html*

Therefore, in addition to analyzing and accounting for Verizon's current retail service quality problems, which are discussed further below, the Commission should review Verizon's wholesale performance measurements in order to verify current levels and to ascertain what commitments Frontier plans to rehabilitate wireline infrastructure and wholesale customer support.

4. Service Quality

As noted previously, CALTEL has been very vocal in its criticism of Verizon's alarming copper maintenance and retirement policies. These policies have resulted in a recent Communications Division staff report citing AT&T and Verizon's chronically poor retail service quality and containing a proposal to impose customer credits and fines in order to try to incent significant improvements:

> AT&T and Verizon did not meet the minimum standard for the Out-of-Service measure in any of the months from 2010 through 2013...AT&T and Verizon's corrective action reports reiterated the same proposed actions that would be undertaken to improve service restoral times and that the actions cited did not result in improvements that were significant enough to meet the minimum standard for the OOS repair interval measure. Given this history, staff found that reliance on carriers' corrective actions has not been an effective means to improve service quality performance. Even if the carriers detected and disclosed their failure to meet the service quality standards under the G.O. 133-rules, some of the carriers did not rectify failures to provide "adequate, efficient, just, and reasonable" service to their customers.[12]

As discussed in CALTEL's comments on the FCC's Emerging Networks and Services NPRM, Verizon's service quality in this regard can be differentiated from AT&T's both quantitatively and strategically:

> AT&T's repair time results trended positively—from a dismal 50% in 2010, to 67%, 71% and 67% in the following three years. Verizon's results however trended steadily downwards—from 76% in 2010, to 73%, 72% and 70%. These

[12] Assigned Administrative Law Judge's Ruling Setting Dates for Comments and Reply Comments on Staff Proposal, Attachment A, Communications Division Staff Report "Proposal for Modifications to G.O. 133-C", R.11-12-001, dated February 2, 2015, at pp. A-2 and A-4.

> trends may be indicative of the two different business plans and strategies noted in the NPRM for these two companies with regards to fiber deployment and continued reliance on copper plant: AT&T has indicated that it intends to maintain its copper for some of its services, such as its fiber to the node (FTTN) - based U-verse service and other DSL and Ethernet over Copper (EOC) services. …Where Verizon has deployed its fiber network, it generally seeks to transition customers from the legacy copper network to the fiber network... (This) fiber migration initiative includes a deliberate refusal to repair 'chronic' copper loops in targeted wire centers which certainly qualifies as intentional retirement of copper, which should be disclosed as such at the onset--before customers have been enticed or evicted onto fiber. [13]

The Application does not acknowledge or discuss these concerns, other than to include a representation by Frontier that it will "devote substantial resources to the acquired properties and its customers, making it an operational priority to maintain and improve service quality in local markets."[14] Frontier also did not acknowledge these concerns in its FCC Application. Moreover, Frontier recently argued in comments on the CPUC Communications Division Staff Report that this Commission should eliminate all service quality measurements and rely on competition to protect consumers and network reliability.[15]

5. <u>Roles and Arrangements Between Transferring and Non-Transferring Verizon Entities</u>

Finally, CALTEL notes that the Commission's online database of certificated entities shows that in addition to its ILEC franchise, Verizon currently holds registrations for 10 wireless and 6 inter-exchange (IXC) entities, as well as 5 CLEC certificates in

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[13] Comments of CALTEL, Notice of Proposed Rulemaking, *In the Matter of Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* PS Docket No. 14-174 et al, filed February 5, 2015 at pp. 12-13.

[14] Application at p. 35.

[15] Comments by Citizens Telecommunications Company of California Inc. (U-1024-C) and Frontier Communications of the Southwest Inc. (U-1026-C) to Assigned Administrative Law Judge's Ruling for Comments on Staff Proposal for Modifications to General Order 133-C, R.11-12-001, filed March 30, 2015.

California. Although the Application filed with the Commission does not discuss Verizon's post-transaction role in California markets, the FCC Application appears to indicate that although some of the wireless registrations may be transferring to Frontier, all mobile wireless service will continue to be offered by Verizon Wireless following close of the transaction. The California Application seems to indicate that at least one of the IXC registrations will be transferred from Verizon to Frontier.

What is not clear from either the Application filed with this Commission, or the one filed with the FCC, is what will happen to the 5 CLEC entities. These entities are registered as MCI Communications Services dba Verizon Business (U-4386-C), MCI Metro Access Transmission Services dba Verizon Access Transmission Services (U-4438-C and U-5253-C), Verizon California (U-4439-C), and Verizon Select Services, Inc. (U-5494-C). Because the applications do not distinguish what retail and wholesale services are currently provided by the certificated entities managed by Verizon in California, and which are included in the proposed transfers, CALTEL sought clarifying information from Frontier. Based on that preliminary information, it appears that that Verizon's CLEC entities in California will <u>not</u> be transferring to Frontier.

This is important because over the past decade Verizon has been transitioning almost all of its retail business services offers, and much of its unregulated wholesale product offerings like last-mile Ethernet services, to its CLEC entities. As a result, the FCC Application[16] makes vague references to services that have been contracted by one Verizon entity on behalf of another:

> Where there are shared customer contracts between other Verizon entities and a Transferring Company, Frontier and Verizon have agreed to work in good faith to

[16] The California Application does not address these issues at all.

> separate that portion of the shared contract that applies to the Transferring Company. Frontier has also agreed to honor and assume the Transferring Companies' obligations under that portion of the contract.[17]
>
> To the extent that a wholesale arrangement involves services both within and outside the acquired territories, *or involves Verizon entities in addition to the Transferring Companies*, Frontier plans to assume Verizon's rights and obligations under those arrangements solely as they relate to the acquired territories and the Transferring Companies, and Verizon will retain those rights and obligations that apply outside the acquired territories *or the Transferring Companies.* In such cases, the division and reallocation will be accomplished after notice to and discussion with the affected parties, and in some cases after amendment to the relevant contracts. Frontier stands ready to retain existing agreements or put in place new agreements on substantially the same terms and conditions, when necessary, so as not to disrupt existing arrangements.[18]
>
> The transaction contemplates a routine division of assets where some of the assets used by other Verizon entities will be retained by Verizon.[19]

CALTEL has many questions about how this proposed separations process will work, and how it will impact retail business and wholesale customers. Two things are clear, however: first, Verizon will continue to be a major provider of wireline services in California -- information which needs to be better understood and then factored in to the Commission's evaluation of the competitive impact of the proposed transfers on the business services and wholesale markets.

Second, this raises a host of questions about the current business arrangements between the Verizon ILEC and CLEC entities, including how they are documented and how they will change after Frontier acquires the ILEC entity and all of its "network facilities, equipment, customers, employees, real estate and the like."[20] If Verizon Business is the wholesale customer whose "existing arrangements" Frontier is committed to not disrupting, the Commission will want to first ensure that those arrangements are

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[17] Exhibit 1 to the FCC Application at p. 3.
[18] *Id.* at pp. 20-21 (emphasis added).
[19] *Id.* at p. 21.
[20] *Id.* at p. 22.

documented and are being offered to other CLECs on a non-discriminatory basis. For example, what are the interconnection arrangements for both TDM and IP-to-IP traffic that Verizon's ILEC entity has entered into with Verizon Business? CALTEL has asked both Applicants to respond to data requests in this regard, but at the very least the Commission will also want to better understand the inter-relationships between the Transferring and Non-Transferring Verizon entities, and how the Applicants propose to ensure that post-transaction arrangements do not advantage Verizon unfairly.

III. CATEGORIZATION AND SCHEDULE

CALTEL does not object to the proceeding being categorized as "ratesetting" as recommended by the Joint Applicants and as preliminarily determined by the Commission's Executive Director.[21]

CALTEL agrees with the preliminary determination in Resolution ALJ 176-3354 that evidentiary hearings will likely be needed in this proceeding. As a result, the schedule proposed in the Application will need to be adjusted accordingly.

IV. CONCLUSION

CALTEL welcomes this opportunity to provide comments on the Application and to summarize at a high level its top five areas of concern. CALTEL has attached copies of the initial data requests it has issued to the Applicants, and recommends that the Commission's Communication Division make similar requests to inform its analysis.

CALTEL looks forward to providing additional comments and recommendations before this Commission and the FCC.

Respectfully submitted,

[21] Resolution ALJ 176-3354 dated March 26, 2015.

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