

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

4-27-15  
02:43 PM

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

**PROTEST OF THE GREENLINING INSTITUTE TO THE JOINT APPLICATION FOR  
TRANSFER OF CONTROL OVER VERIZON CALIFORNIA INC. AND RELATED  
APPROVAL OF TRANSFER OF ASSETS AND CERTIFICATIONS**

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April 27, 2015

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Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“the Commission”) Rules of Practice and Procedure, The Greenlining Institute (“Greenlining”) protests the above-captioned joint application of Frontier Communications of America, Inc. (“Frontier”), Verizon California Inc. (“Verizon California”), Verizon Long Distance, LLC (“Verizon Long Distance”),<sup>1</sup> and Newco West Holding LLC (“Newco”) (“Applicants”) to authorize the sale and transfer of assets and customer accounts from Verizon California to Frontier. The application was filed on March 18, 2015, and first appeared on the Commission’s Daily Calendar on March 26, 2015. Pursuant to Rule 2.6(a), this protest is timely filed.

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<sup>1</sup> This Protest will jointly refer to Verizon California and Verizon Long Distance as “Verizon.”

## **I. SUMMARY**

Greenlining files this petition to deny on the information that is currently available. However, Greenlining is currently investigating this transaction, and Greenlining's current position in this proceeding may not be its ultimate position. In an effort to learn more about this transaction, Greenlining is undertaking a review of the documents that Applicants have submitted to the Commission. Greenlining hopes to gain greater clarity about this transaction after a comprehensive review of the documents and discussions with Applicants. Greenlining hopes that a mutual and reciprocated effort to learn about the interests involved in this matter will help open the possibility of settlement or other resolution.

While Applicants have asserted that the proposed transaction will result in concrete economic benefits that will be passed through to consumers, there is not sufficient evidence in the record for the Commission to make a finding that the proposed transaction is in the public interest. Additionally, the Commission should determine the extent to which the proposed transaction would harm the public interest by creating an expanded Frontier without the resources or capacity to integrate the Verizon networks without disrupting customers' service, eliminate a provider with a demonstrated commitment to supplier diversity, and reduce access to limited English proficiency (LEP) customers. These harms could be sufficiently severe that they are not outweighed by the purported benefits of the proposed transaction. If this is so, the Commission should deny the applications. If the Commission approves the applications, it should impose conditions sufficient to ensure that the proposed transaction is in the public interest.

## II. IDENTIFIED ISSUES

Greenlining is currently reviewing the Joint Application. This protest and the identified issues discussed below are based on an initial and limited review of the filing. Greenlining may identify and develop other issues as further discovery and analysis is completed. In conducting a public interest evaluation of the proposed transfer, the Commission should specifically ensure that communities of color receive the benefits of the transaction. This may require that the Commission craft targeted mitigation measures to prevent adverse consequences that would specifically affect communities of color.

### A. Standard of Review

Under Public Utilities Code section 854(a), acquisitions of public utilities must be approved by the Commission.<sup>2</sup> “The Commission has broad discretion to determine if it is in the public interest to authorize a proposed transaction pursuant to Public Utilities Code section 854, subdivision (a).”<sup>3</sup> Additionally, if a transaction involves a utility with gross annual California revenues in excess of \$500 million, the transaction is subject to review under section 854, subdivisions (b) and (c).<sup>4</sup>

### B. Applicants Must Meet Their Burden of Proof Regarding the Economic Benefits of the Transaction.

Section 854(b)(1) requires that the Commission determine that the proposed transaction “[p]rovides short-term and long-term economic benefits to ratepayers.”<sup>5</sup> Similarly, under section 854(b)(6), the proposed transaction must “[b]e beneficial on an overall basis to state and local

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<sup>2</sup> *Decision Granting Conditional Approval of the Acquisition of PacificCorp by MidAmerican Energy Holdings Company* 23, D.06-02-003 (Feb. 16, 2006).

<sup>3</sup> *Id.*

<sup>4</sup> Pub. Util. Code § 854.

<sup>5</sup> Pub. Util. Code § 845, subd. (c)(5).

economies, and to the communities in the area served by the resulting public utility.”<sup>6</sup>

Applicants state that the proposed transaction will provide economic benefits through a combination of operating efficiencies,<sup>7</sup> broadband expansion,<sup>8</sup> the expansion of Frontier’s “local engagement model,”<sup>9</sup> and rate stability.<sup>10</sup> While Greenlining feels that these claimed benefits have the potential to deliver economic benefits to state and local economies and served communities, Applicants have not provided enough information for the Commission to verify those benefits.<sup>11</sup>

**C. Applicants Must Meet Their Burden of Proof That the Economic Benefits of the Transaction Will Pass Through to Consumers.**

The Commission must also determine that the proposed transaction “[e]quitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.”<sup>12</sup> Applicants argue that the commission should trust “market forces” to deliver the purported benefits of the proposed transaction to customers.<sup>13</sup> Applicants

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<sup>6</sup> Pub. Util. Code § 845, subd. (c)(6).

<sup>7</sup> Application at 14-15.

<sup>8</sup> *Id.* at 16-18.

<sup>9</sup> *Id.* at 18-19.

<sup>10</sup> *Id.* at 19-20.

<sup>11</sup> The Commission does not consider the purported benefits of a transaction if those purported benefits are “vague, speculative, or otherwise cannot be verified by reasonable means.” U.S. Dept. of Just. And Fed. Trade Comm’n, Horizontal Merger Guidelines 30 (2010), *available at* <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf> (last accessed April 27, 2015).

<sup>12</sup> Cal. Pub. Util. Code § 845, subd. (b)(2).

<sup>13</sup> Application at 20.

further cite to previous commission rulings that found that market forces were sufficient to deliver such benefits,<sup>14</sup> and claims regarding the current competitive state of the market.<sup>15</sup>

Applicants have not yet provided sufficient proof that in **this proceeding**, market forces will **actually** deliver 50 percent of the economic benefits to consumers. The Commission should require Applicants to provide data and analysis sufficient to demonstrate that consumers will receive 50 percent of the economic benefits from the proposed transaction. Additionally, in order to ensure that every consumer within the expanded Frontier’s service territory receives the economic benefits of the proposed transaction, the Commission should require that Applicants show that communities of color and low-income communities share in any merger benefits proportionally. If Applicants cannot make these showings, the Commission must deny the proposed transaction pursuant to Section 845, subdivision (b).

**D. The Size of the Transaction Raises Serious Concerns Regarding the Expanded Frontier’s Ability to Integrate the Verizon Systems Without Harming Customers.**

Public Utilities Code section 854, subdivision (c), requires that the Commission consider whether the proposed transaction will “[m]aintain or improve the financial condition of the resulting public utility doing business in the state,”<sup>16</sup> and “[m]aintain or improve the quality of service to public utility ratepayers in the state.”<sup>17</sup> Greenlining is concerned that Applicants have not provided the Commission with sufficient evidence that the proposed transaction will maintain or improve the expanded Frontier’s financial condition or maintain or improve the quality of the expanded Frontier’s service.

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<sup>14</sup> *Id.* at 21-23.

<sup>15</sup> *Id.* at 23.

<sup>16</sup> Pub. Util. Code § 854(c), subd. (1).

<sup>17</sup> *Id.*

Applicants state that Frontier operates 62 exchanges serving approximately 100,000 customers, while Verizon 266 exchanges with approximately 2 million lines in service.<sup>18</sup> Accordingly, the proposed transaction would result in Frontier taking over responsibility for **over four times** the exchanges that it currently operates. Applicants state that “Frontier has a proven track record of acquiring, operating, and investing in wireline telecommunications operations.”<sup>19</sup> However, Applicants do not provide specific integration plans or other data demonstrating Frontier’s ability to integrate the new systems without disruption to customers. If Applicants do not provide sufficient data to meet their burden of proof, section 854 requires that the Commission deny the proposed transaction.

#### **E. The Proposed Transaction Threatens to Harm Diversity.**

##### **1. The Proposed Transaction Threatens to Harm Internal Diversity.**

Applicants describe Frontier’s “unique local engagement management model,” which is a policy of “intensive regional and local engagement in its operating territories.”<sup>20</sup> This policy has apparently resulted in local hiring of Frontier’s general managers and employees.<sup>21</sup> Greenlining lauds this policy. However, it is unclear whether this policy has led to increased hiring of people of color or women within Frontier. The Application does not provide any data regarding the percentage of Frontier’s employees who are women or from a community of color. The proposed transaction has the potential to reduce the net number of women and people of color who work at Verizon and Frontier, harming diversity and the public interest. Greenlining respectfully requests that the Commission require Applicants to provide data regarding their respective internal diversity numbers.

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<sup>18</sup> Application at 7-8.

<sup>19</sup> Application at 6.

<sup>20</sup> *Id.* at 18.

<sup>21</sup> *Id.*



## **2. The Proposed Transaction Threatens to Harm Supplier Diversity.**

The Application does not appear to contain any information regarding Frontier’s supplier diversity policies or statistics.<sup>22</sup> However, both Verizon and Frontier are required to include that information in annual reporting to the California Public Utilities Commission. The Commission encourages reporting companies to reach procurement goals of 5% for women, 15% for minorities, and 1.5% disabled veteran enterprises. The following two charts area summary of Verizon and Frontier’s supplier diversity hiring rates in 2013 and 2014, respectively:

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<sup>22</sup> “Supplier diversity” refers to a company’s procurement from Minority, Women, and Disabled-Veteran owned business enterprises.

**Comparison of Supplier Diversity Rates, 2013:**

| 2013           |                        | Verizon       | Frontier     |
|----------------|------------------------|---------------|--------------|
| Minority Men   | Asian Pacific American | 4.01%         | 0.00%        |
|                | African American       | 5.86%         | 0.00%        |
|                | Hispanic American      | 10.10%        | 0.30%        |
|                | Native American        | 1.83%         | 0.00%        |
|                | Other                  | NR            | 0.00%        |
|                | Total Minority Men     | 21.80%        | 0.03%        |
|                |                        |               |              |
| Minority Women | Asian Pacific American | 1.00%         | 0.01%        |
|                | African American       | 0.03%         | 0.00%        |
|                | Hispanic American      | 0.51%         | 0.00%        |
|                | Native American        | 1.51%         | 0.00%        |
|                | Other                  | NR            | 2.01%        |
|                | Total Minority Women   | 3.05%         | 0.74%        |
|                |                        |               |              |
| Total MBE      |                        | 24.84%        | 0.76%        |
| Total WBE      |                        | 20.88%        | 1.30%        |
| Total MWBE     |                        | 45.72%        | 2.16%        |
| Total DVBE     |                        | 3.13%         | 5.65%        |
| <b>WMDVBE</b>  |                        | <b>48.84%</b> | <b>7.71%</b> |

Source: 2013 Supplier Diversity Reports<sup>23</sup>

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<sup>23</sup> Available at [http://www.cpuc.ca.gov/PUC/SupplierDiversity/2013\\_Utility\\_Supplier\\_Diversity\\_Procurement\\_Reports.htm](http://www.cpuc.ca.gov/PUC/SupplierDiversity/2013_Utility_Supplier_Diversity_Procurement_Reports.htm).

**Comparison of Supplier Diversity Rates, 2014:**

| 2014           |                        | Verizon       | Frontier     |
|----------------|------------------------|---------------|--------------|
| Minority Men   | Asian Pacific American | 6.90%         | 0.40%        |
|                | African American       | 2.62%         | 0.00%        |
|                | Hispanic American      | 12.16%        | 2.00%        |
|                | Native American        | 1.04%         | 0.00%        |
|                | Other                  | NR            | 0.00%        |
|                | Total Minority Men     | 22.73%        | 0.06%        |
|                |                        |               |              |
| Minority Women | Asian Pacific American | 1.23%         | 0.00%        |
|                | African American       | 0.06%         | 0.00%        |
|                | Hispanic American      | 0.71%         | 0.00%        |
|                | Native American        | 1.15%         | 0.00%        |
|                | Other                  | NR            | 0.00%        |
|                | Total Minority Women   | 315.00%       | 0.00%        |
|                |                        |               |              |
| Total MBE      |                        | 25.89%        | 6.00%        |
| Total WBE      |                        | 17.43%        | 2.66%        |
| Total MWBE     |                        | 43.31%        | 2.72%        |
| Total DVBE     |                        | 5.80%         | 0.00%        |
| <b>WMDVBE</b>  |                        | <b>49.11%</b> | <b>2.72%</b> |

Source: 2014 CPUC Supplier Diversity Reports.<sup>24</sup>

These charts show that Verizon consistently exceeds the CPUC’s supplier diversity goals, while, with the exception of the DVBE category, Frontier’s **declining** diversity procurement falls vastly short of the CPUC’s goals. Verizon’s sale of its assets to Frontier could cause a significant reduction in supplier diversity, harming California’s economy, communities of color, and the public interest.

In a meeting between Greenlining and Verizon, Verizon’s leadership stated that as the transfer would include Frontier’s assumption of all of Verizon’s current supplier diversity

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<sup>24</sup> Available at [http://www.cpuc.ca.gov/PUC/SupplierDiversity/2014\\_Utility\\_Supplier\\_Diversity\\_Procurement\\_Reports.htm](http://www.cpuc.ca.gov/PUC/SupplierDiversity/2014_Utility_Supplier_Diversity_Procurement_Reports.htm).

contracts. However, there is no guarantee that Frontier would continue Verizon's commitment to supplier diversity when those contracts expired. Additionally, while the CPUC could **encourage** the expanded Frontier to expand its supplier diversity goals, the CPUC cannot **require** Frontier to do so.<sup>25</sup> The CPUC would not be able to mitigate the harms caused by the loss of Verizon, a provider that consistently exceeds the Commission's supplier diversity goals. Accordingly, it is particularly critical that the Commission consider the proposed transaction's effects on supplier diversity when evaluating the transaction.

**F. The Commission Should Investigate the Effect of the Proposed Transaction on Customer Service Language Access.**

The uncertainty regarding the new company's Board of Directors raises concerns about ratepayers' access to customer service in their own language. The quality and level of customer service for ratepayers who do not speak English should be comparable to the quality and level of customer service for ratepayers who do. It is unclear whether, post-transaction, the extent to which Frontier will provide in-language customer service is unclear. Greenlining respectfully requests that the Commission ensure protections for non-English speaking customers.

**G. The Commission Should Investigate the Effect of the Proposed Transaction on Jobs.**

Applicants do not refer to lost jobs specifically, but instead speak in terms of cost savings which Applicants expect "to be accomplished by consolidating various administrative and procurement functions, network monitoring and support systems, and finance and accounting procedures."<sup>26</sup> According to Applicants, "Frontier anticipates that it will derive \$700 million in

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<sup>25</sup> Cal. Const. Art. 1, § 31.

<sup>26</sup> Application at 15.

annual corporate cost savings from the Transaction” as a result of “the consolidation of various administrative systems and functions” and “reductions in corporate overhead.”<sup>27</sup>

Applicants’ “consolidation of administrative systems and functions” will presumably include the elimination of some jobs. Applicants include some nebulous assertions regarding job benefits, stating that the proposed transaction “will be fair and reasonable to all affected personnel, including union-represented and non-union employees.”<sup>28</sup> However, these assertions are too vague to ensure that those benefits would be sufficient to mitigate any harms caused by any elimination of jobs or reduction of employee pay or benefits. If the Commission approves the proposed transaction, there is a substantial risk of harms to employees.

**F. The Commission Should Deny the Proposed Transaction or, in the Alternative, Assess the Public Interest Impacts of the Proposed Transaction.**

Based on the information that Applicants have provided to the Commission up to this point, the Commission cannot conclude that the proposed transaction will not offer public interest benefits sufficient to outweigh any public interest harms. Greenlining respectfully requests that the Commission deny the application or, in the alternative, investigate the above-listed issues to determine whether the proposed transaction is in the public interest.

**III. MITIGATION MEASURES**

If the Commission does not deny the Application, it should impose mitigation measures sufficient to ensure that the proposed transaction is in the public interest.<sup>29</sup> Accordingly, should the Commission approve the Application, the Commission should impose mitigation measures

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<sup>27</sup> Application at 15.

<sup>28</sup> *Id.*

<sup>29</sup> See Pub. Util. Code § 854(c)(8).

that will preserve competition, protect consumers, ensure that the new company passes through the economic benefits of the transaction, and promote diversity.

#### **IV. PROCEDURAL MATTERS**

##### **A. Categorization**

Greenlining agrees with Applicants that this proceeding should be classified as Ratesetting.<sup>30</sup>

##### **B. Determination of Need for a Hearing**

The Joint Applicants request relief without a hearing and contend that the Joint Application demonstrates that the proposed transaction is in the public interest.<sup>31</sup> As discussed above, Joint Protestors believe this application should be reviewed by using the criteria in §§ 854(b) and (c). The Application does not set forth any specific criteria for the Commission to use in analyzing the transaction. Therefore, Joint Protestors submit that additional information is needed in order for the Commission to assess the transaction, and the Commission should not assess Joint Applicants' request based on their submission alone. Joint Protestors have identified a number of issues that need to be explored in order for the Commission to conduct an adequate review. At this time, Joint Protestors are still in the process of reviewing and analyzing the application and cannot say whether evidentiary hearings will be necessary. Joint Protestors recommend that a prehearing conference be convened by the Commission to address procedural matters regarding the application, including the need for hearings.

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<sup>30</sup> Application at 38.

<sup>31</sup> *Id.*

### **C. Determination of Issues to Be Considered**

The discussion above encompasses the issues Joint Protestors have identified to date based on their initial, limited review of the application. Joint Protestors may identify additional issues to be considered once they have conducted discovery and performed a thorough review of the application.

### **D. Proposed Schedule**

Joint Protestors believe that the schedule proposed by Joint Applicants may not provide sufficient time for Joint Protestors to conduct discovery, conduct a full review of the application, and provide time for the Commission's consideration in this matter. Joint Protestors request that the Commission convene a prehearing conference to address scheduling matters, and propose the following schedule:

3/26/25: Application on Daily Calendar

4/27/15: Protests Due

5/11/15: Reply to Protests Due

5/11/15: Applicants' Direct Testimony

5/19/15: Prehearing Conference

6/1/15: Scoping Memo

7/8/15: Intervenor Reply Testimony

8/4/15: Applicant Rebuttal Testimony

9/2-4/15: Hearings, if necessary

9/24/15: Opening Briefs

10/8/15: Reply Briefs

**V. CONCLUSION**

Greenlining respectfully recommends that the Commission categorize this proceeding as ratesetting, and that the scope of the proceeding include, but not be limited to, the issues identified in this protest. Greenlining also recommends that the Commission schedule a prehearing conference to address the need for hearings and scheduling matters.

Respectfully Submitted,

Dated: April 27, 2015

/s/ \_\_\_\_\_  
Paul Goodman