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. (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.	A.15-03-005 (Filed March 18, 2015)

PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES TO FRONTIER/VERIZON JOINT APPLICATION FOR APPROVAL OF TRANSFER OF CONTROL AND RELATED APPROVAL OF TRANSFER OF ASSETS AND CERTIFICATIONS

I. INTRODUCTION

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) protests the Joint Application (Application) of Frontier Communications Corporation (Frontier), Frontier Communications of America, Inc. (U 5429 C) (Frontier America), Verizon California Inc. (U 1002 C) (Verizon California), Verizon Long Distance, LLC (U 5732 C) (Verizon LD), and Newco West Holdings LLC (collectively, the Joint Applicants) requesting that the California Public Utilities Commission (CPUC or Commission) authorize the sale and transfer of Verizon California, certain assets held by Verizon California, and Verizon LD's customer accounts in Verizon California's service territory to Frontier.

The Joint Applicants filed the Application in connection with a transaction in which Verizon Communications Inc. (Verizon) proposes to transfer its incumbent local exchange carrier (ILEC) operations and related assets in California, Florida, and Texas to Frontier. In California, specifically, the Joint Applicants seek to transfer approximately two million telephone service lines, and certain Verizon LD customers, to Frontier America. The proposed acquisition will allow Frontier to acquire Verizon California's authority to offer incumbent and

competitive local exchange services, its status as an Eligible Telecommunications Carrier (ETC) and all other regulatory certifications held by Verizon California.

The Joint Applicants state that the proposed transaction will result in several benefits and further the public interest. The stated benefits include the operational efficiencies and increased financial strength of Frontier, expanded and enhanced broadband services, improved customer service, rate stability, and other economic benefits. The Joint Applicants also state that the transaction will not adversely affect competition because the operations included in the proposal do not overlap with any of Frontier's existing exchanges. Finally, the Joint Applicants state that the proposed transaction will be fair and reasonable to all affected employees.

This proposed transaction represents a watershed in the evolution of the network, and is an opportunity for the Commission to ensure that the enduring values of safety, reliability, affordability and universal service continue to apply to the essential telecommunications services and underlying facilities that are changing hands as part of this transaction. As further discussed below, based on the information provided in the Application, it is not evident that the proposed transaction is in the public interest.

II. SUMMARY OF RECOMMENDATIONS

ORA files this Protest to ensure that ratepayers benefit from the proposed transaction. The proposed transaction could significantly impact millions of consumers, including Frontier's existing and prospective customers who currently receive service from Verizon California and/or Verizon LD. Without proper obligations and requirements in place on the Joint Applicants, the proposed transaction could diminish service quality and reliability, public safety, impede the deployment and adoption of broadband services, and generally fail to further the public interest. The Joint Applicants did not provide sufficient detail to meet their burden of proof regarding the public interest and the benefits of the proposed transaction.

III. DISCUSSION

A. JURISDICTION

Review of these applications comes under Public Utilities (P.U.) Code sections 851 to 854, Section 706(a) of the Telecommunications Act of 1996 and *Northern California Power Agency v. CPUC* .

1. Public Utilities Code Sections 851 to 854

The Joint Applicants filed the proposed transaction pursuant to Public Utilities (P.U.) Code Sections 851 and 854. Pursuant to P.U. Code section 854(b), the Commission must find that the acquisition, "[p]rovides short-term and long-term economic benefits to ratepayers . . . [n]ot adversely affect competition," and must examine several factors to ensure that the transaction is in the public interest.[1]

As a threshold matter, Joint Applicants claim that P.U. Code section 854(b)(2), which requires the Commission to find that the transaction "[e]quitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits . . . between shareholders and ratepayers," should not apply to this transaction because the Commission has not relied on it in a few other telecommunications acquisitions and mergers, the most recent of which was ten years ago.[2] ORA disagrees. The Commission should require the Joint Applicants to demonstrate how P.U. Code section 854(b)(2) will be satisfied.

First, P.U. Code section 854(b)(2) applies "where the commission has ratemaking authority." The Commission has ratemaking authority over Verizon and Frontier. It is only by Commission decision that the CPUC decided to not exercise its ratemaking authority, instead relying on market forces to constrain prices.[3] The Commission retains its ratemaking authority over Verizon and Frontier, and it could reassert rate regulation at some later point, if it so chooses.

Second, the idea that market forces have led to a capture of those savings for ratepayers has not been proven, and history has shown an increase in rates. Therefore, the Joint Applicants have the burden to demonstrate how those savings will be captured for ratepayers; the Commission cannot assume that it will happen.

Additionally, in order to approve the proposed transaction under the other subsections of P.U. Code section 854(b), the CPUC will need to determine that the merger "[p]rovides short and long-term economic benefits to ratepayers" and does not "adversely

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[1] P.U. Code § 854.

[2] *See* AT&T-SBC merger transaction, Decision 05-11-028, 2005 Cal. PUC Lexis 516, at *36 (Feb. 28, 2005); Verizon-MCI merger transaction, Decision 05-11-029, 2005 Cal. PUC Lexis 517, at *32 (Apr. 21, 2005).

[3] Uniform Regulatory Framework Decision, (D.) 06-08-030

affect competition." As part of the competition analysis, the CPUC is required to "request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result."[4] Furthermore, under P.U. Code section 854(c), the CPUC must consider a list of eight criteria "and find, on balance, that the merger, acquisition, or control proposal is in the public interest. These criteria include:

> (1) Maintain or improve the financial condition of the resulting public utility doing business in the state.
>
> (2) Maintain or improve the quality of service to public utility ratepayers in the state.
>
> (3) Maintain or improve the quality of management of the resulting public utility doing business in the state.
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> (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.
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> (5) Be fair and reasonable to the majority of all affected public utility shareholders.
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> (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.
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> (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
>
> (8) Provide mitigation measures to prevent significant adverse consequences which may result.[5]

P.U. Code section 854(c) requires findings on each of seven factors and a finding that on balance, the merger "is in the public interest."[6] It requires the CPUC to "*provide* mitigation measures to *prevent* significant adverse consequences which may result." It also places on *the applicant* the burden of proving by a preponderance of the evidence that these requirements are

[4] P.U. Code § 854(b).

[5] P.U. Code § 854(c).

[6] *Id.*

met.[7] "Preponderance" is a standard "prevalent in civil proceedings, including administrative proceedings, and adopted by the CPUC, is generally viewed to require that the evidence presented on one side of an issue is more persuasive than that in opposition."[8]

2. Section 706(a) of the 1996 Telecommunications Act

Section 706(a) of the 1996 Telecommunications Act (Section 706(a)) requires the Commission to examine the effects of this merger on the deployment of broadband and voice over Internet protocol (VoIP) services in California, and to take regulatory measures necessary to advance such deployment. Section 706(a) provides:

> The Commission *and each State commission with regulatory jurisdiction over telecommunications services*[9] shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.[10]

The District of Columbia Court of Appeal (D.C. Circuit) recently determined that Section 706(a) grants parallel authority to the Federal Communications Commission (FCC) and to the state commissions, such as the CPUC, [11] to take regulatory measures to promote the

[7] Pub. Util. Code § 854(e), which provides: "The person or corporation seeking acquisition or control of a public utility organized and doing business in this state shall have, before the commission, the burden of proving by a preponderance of the evidence that the requirements of subdivisions (b) and (c) are met." (Emphasis added).

[8] California Administrative Hearing Practice 2nd Ed. (CEB) § 7.51.

[9] Under the 1996 Telecommunications Act, "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(50). "The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53).

[10] Section 706(a) is codified at 47 U.S.C. § 1302(a), *et seq*.

[11] In response to Verizon's contention that "Congress would not be expected to grant both the FCC and state commissions the regulatory authority to encourage the deployment of advanced telecommunications capabilities", the Court reasoned, "Congress has granted regulatory authority to state telecommunications

deployment of and competition for broadband and VoIP services.[12] Section 706(a) defines "advanced telecommunications services" to include broadband and VoIP.[13] Because the language in Section 706(a) does not distinguish between delegation to the FCC and to the state commissions, the CPUC may invoke Section 706(a) in its review of the merger of Frontier and Verizon.

The D.C. Circuit also found that that Congress, in passing the 1996 Telecommunications Act, most likely relied on the FCC's continued oversight of broadband facilities.[14] Notably, the D.C. Circuit reasoned that "the legislative history suggests that Congress may have, somewhat presciently, viewed that provision [Section 706(a)] as an affirmative grant of authority to the Commission whose existence would become necessary *if other contemplated grants of statutory authority were unavailable.*"[15] The D.C. Circuit also quotes the Senate Report's description of Section 706(a) as a "'necessary fail-safe' 'intended to ensure that one of the primary objectives of the [Act]--to accelerate deployment of advanced telecommunications capability--is achieved.'"[16] Thus, the D.C. Circuit's recent opinion underscores that Section 706(a) clearly delegates authority to the states to take concrete steps that will promote broadband competition.

The plain language of Section 706(a) directs states to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . .

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commissions on other occasions, and we see no reason to think that it could not have done the same here." 740 F.3d at 638.

[12] *Verizon*, 740 F.3d at 635. *See also Verizon*, 740 F.3d at 649 (finding "section 706 grants the [Federal Communications] Commission authority to promote broadband deployment by regulating how broadband providers treat edge providers . . . .").

[13] 47 U.S.C. § 1302(d)(1) states: "The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."

[14] "To the contrary, … when Congress passed section 706(a) in 1996, it did so against the backdrop of the Commission's long history of subjecting to common carrier regulation the entities that controlled the last-mile facilities over which end users accessed the Internet. Indeed, one might have thought, as the Commission originally concluded, that Congress clearly contemplated that the Commission would continue regulating Internet providers in the manner it had previously." 740 F.3d at 639.

[15] *Id.* (emphasis added).

[16] *Verizon*, 740 F.3d at 639 (citation omitted).

by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." Thus, the CPUC has the authority to conduct a review of the deployment of broadband and VoIP services in California, and to take any regulatory measures necessary to mitigate the potential harms of the merger on the deployment of broadband and VoIP services in California. Under Section 706(a), the CPUC has delegated power to promote competition by adopting rules for broadband and VoIP providers, including issuing data requests to ascertain who owns telecommunications infrastructure in California; monitoring broadband and VoIP service quality and consumer protection and imposing relevant rules if needed; monitor market concentration; and adopting strong reporting requirements so that states may assist federal agencies in monitoring and promoting competition.[17]

Furthermore, under Section 3.5 of the California Constitution, the Commission is required to implement and follow Section 706(a) unless and until an appellate court tells it otherwise. Section 3.5 states:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
> (b) To declare a statute unconstitutional;
> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.[18]

3. P.U. Code Section 710

[17] SB 1161 should not be an impediment to a robust Commission investigation here. Section 710 of the Public Utilities Code prohibits Commission jurisdiction or control over IP-enabled services "except as required or expressly delegated by federal law," and Section 706, codified at 47 U.S.C. § 1302(a), provides that delegation.

[18] CA Const., Art. 3, § 3.5.

P.U. Code section 710 contains clear exceptions that preserve the Commission's jurisdiction to review and take regulatory measures for Internet Protocol (IP) enabled and VoIP services, consistent with Section 706(a). P.U. Code section 710 states:

> The commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services *except as required or expressly delegated by federal law or expressly directed to do so by statute* or as set forth in subdivision (c).[19]

By enacting P.U. Code section 710, the Legislature affirmed the Commission's subject matter jurisdiction over VoIP and IP enabled services, and then chose to limit the Commission's authority to regulate such services. If the CPUC did not have regulatory authority over VoIP service before the Legislature enacted P.U. Code section 710, then the need for it would have never arisen.

P.U. Code section 710 preserves aspects of the Commission's regulatory jurisdiction and authority over IP enabled and VoIP services. In addition to the reporting requirements discussed above, P.U. Code section 710(a) also provides a clear exception for requirements or express delegations of federal law. Section 706(a) constitutes one example of a requirement and an express delegation of federal law.

In the recent merger review of Comcast, Time Warner Cable, and Charter Communications, Applications (A.) 14-04-013 et al., issued a scoping memo and ruling asserting that the "scope of the Commission's current review… falls within the limited authority granted under Pub. Util. Code § 854 *and Section 706(a) of the Telecommunications Act*."[20] The Commission sought information on the effects of the merger on broadband deployment in California "to promote state and federal goals, such as encouraging broadband deployment, promoting safety and furthering "innovation, consumer choice and protection, and economic benefits to California." Both the proposed decision and the alternate proposed decision in the Comcast/Time Warner Cable merger proceeding found that Section 706(a) applied to the review of the proposed merger.[21]

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[19] P.U. Code § 710(a) (emphasis added).

[20] A.14-04-013, Scoping Memo at 12 (emphasis added).

[21] A.14-04-013 et al., Proposed Decision Granting with Conditions Application to Transfer Control at 11, 18-21; Alternate Proposed Decision Denying Transfer of Control at 12, 20-24.

4. The FCC's Recent Open Internet Order

In the Open Internet Order (OIO) adopted on February 26, 2015, the FCC reclassified broadband as a Title II common carriage telecommunications service. The OIO also emphasized that it is not a substitute for antitrust enforcement on the issue of interconnection. Paragraph 203 of the OIO explicitly shields merger enforcement in acquisitions from any arguments that it solves interconnection market power issues.

> Our 'light touch' approach does not directly regulate interconnection practices. Of course, this regulatory backstop is not a substitute for robust competition. The Commission's regulatory and enforcement oversight, including over common carriers, is complementary to vigorous antitrust enforcement. Indeed, mobile voice services have long been subject to Title II's just and reasonable standard and both the Commission and the Antitrust Division of the Department of Justice have repeatedly reviewed mergers in the wireless industry. Thus, it will remain essential for the Commission, as well as the Department of Justice, to continue to carefully monitor, review, and where appropriate, take action against any anti-competitive mergers, acquisitions, agreements or conduct, including where broadband Internet access services are concerned." The Order then cites in a footnote the antitrust savings clause of the Telecom Act (47 U.S.C § 152(b), "nothing in this Act . . . shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws).[22]

5. Northern California Power Agency v. CPUC

Lastly, under and *Northern California Power Agency (NCPA) v. CPUC*, the Commission is ***required*** to review the anti-competitive harms in every proceeding before it and is *required* to make findings on those anti-competitive effects, *whether the Commission has jurisdiction or not*.[23] In *NCPA v. CPUC*, which is still good law,[24] the California Supreme Court stated:

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[22] *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24 at 93, ¶ 203.

[23] *Northern California Power Agency (NCPA) v. CPUC*, 5 Cal. 3d 370 at 377-378, 486 (1971).

[24] *See Greenlining Institute v. Public Utilities Com.*, 103 Cal. App. 4th 1324, 1333 (Cal. App. 1st Dist. 2002); *Re Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation*, Decision 99-02-085, R. 94-04-031, I. 94-04-032, 85 CPUC2d 158, February 18, 1999; *Rulemaking on the Commission's own motion for the purpose of modifying existing tariff filing rules for telecommunications utilities, other than local exchange carriers and AT&T-C, and for the*

> It is no longer open to serious question that in reaching a decision to grant or deny a certificate of public convenience and necessity [the specific issue in that proceeding], the Commission should consider the antitrust implications of the matter before it. The Commission itself has stated: "'There can be no doubt that competition is a relevant factor in weighing the public interest,'" and that "[antitrust] considerations are also relevant to the issues of . . . public convenience and necessity." (citing *M. Lee (Radio Paging Co.)* (1966) 65 *Cal. P.U.C. 635*, 640 and fn. 1.)[25]
> In short, the antitrust laws are merely another tool which a regulatory agency employs to a greater or lesser degree to give 'understandable content to the broad statutory concept of the "public interest."
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> As seen above, the Commission may approve projects even though they would otherwise violate the antitrust laws; it may also disapprove projects which do not violate such laws. Its consideration of antitrust problems is for purposes quite different from those of the courts; it does not usurp their function.
> …
> As we have seen, it is clear that the Commission must take into account the antitrust aspects of applications before it. As we have indicated above, the public interest in preventing monopolies is one facet of the larger public convenience and necessity which the Commission was established to protect. The Commission may and should consider *sua sponte* every element of public interest affected by facilities which it is called upon to approve. It should not advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result." Pub. Util.

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purpose of addressing other issues concerning the regulation of these utilities, Decision No. 92-06-069, Rulemaking No. 85-08-042 (Filed August 21, 1985), 1992 Cal. PUC LEXIS 972, 2-3 (Cal. PUC 1992); *In the Matter of the Application of SCE Corp and its public utility subsidiary Southern California Edison Company (U 338-E) and San Diego Gas & Electric Company (U 902-M) for Authority to Merge San Diego Gas & Electric Company into Southern California Edison Company*, Decision No. 91-05-028, Application No. 88-12-035 (Filed December 16, 1988; amended April 17, 1989), California Public Utilities Commission, 1991 Cal. PUC LEXIS 253; 40 CPUC2d 159, 122 P.U.R.4th 225, May 8, 1991; *United States Steel Corp. v. Public Utilities Com*., 29 Cal. 3d 603 (Cal. 1981)29 Cal. 3d 603; 629 P.2d 1381, 175 Cal. Rptr. 169; 1981 Cal. LEXIS 156, July 6, 1981; *Industrial Communications Systems, Inc. v. PUC*, 22 Cal. 3d 572, 150 Cal. Rptr. 13, 585 P.2d 863, 1978 Cal. LEXIS 304 (1978); 1981 Cal. AG LEXIS 74, 11-13 (Cal. AG 1981).

[25] *NCPA v. CPUC*, 5 Cal. 3d 370, 377 (1971).

Code § 854(b)(3).

> be necessary for any private party to rouse the Commission to perform its duty, and where a private party has so clearly demonstrated the adverse impact of the proposed facilities, the Commission certainly cannot ignore the problem simply because it was not raised by one having impeccable credentials of legal standing. (*Marine Space Enclosures, Inc. v. Federal Maritime Com'n (1969) 420 F.2d 577, 585, 591-592 [137 App.D.C. 9]*.)[26]

After carefully reviewing the facts of that specific case, the Court stated:

> As we have seen, it is clear that the Commission must take into account the antitrust aspects of applications before it. It is equally obvious that the Commission failed to perform this essential duty in the instant case…The Commission must place the important public policy in favor of free competition in the scale along with the other rights and interests of the general public. Here, the Commission did not perform this task.[27]

Finally, the Court noted, which is consistent with the requirements of P.U. Code section 854:

> Even if we were to assume, as the Commission and PG&E [the real party in interest] contend, that the Commission did in fact take into account the antitrust problems, we would still be compelled to annul the decision because of the Commission's obvious failure to make appropriate findings. As we have often said, the Commission must make specific findings of fact and conclusions of law relevant to all materials issues of a case. Here, there are no findings of fact which could possibly be construed as dealing with antitrust considerations. There is no definition of relevant market, no determination of effect upon competition, no finding as to the reasonableness of any restraint.[28]

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[26] *Id.* at 378.

[27] *Id*. at 379.

[28] *Id*. at 380.

The Joint Applicant state in their Application that there is no overlap in their respective service territories today.[29] But this does not necessarily mean that the Application, if granted, will not result in additional market power which Frontier would have the incentive and ability to exercise. The Commission must assess in this proceeding the extent to which this additional market power can potentially result in significant harmful effects on competition and customers.

The Verizon/Frontier application may implicate antitrust considerations and its effect on existing and potential competitors and customers. Therefore, in rendering its decision on the Application, the CPUC "must make specific findings of fact and conclusions of law relevant to all materials issues" of this proceeding. This encompasses findings of fact dealing with antitrust considerations, including defining the relevant market, determining the impact of the application on competition, and making findings "as to the reasonableness of any restraint."[30]

In the Comcast/Time Warner Cable merger proceedings, A.14-04-013, et al., both the proposed decision and the alternate proposed decision acknowledged the applicability of *NCPA v. CPUC*.[31]

B. BROADBAND AND IP ENABLED SERVICES

In the Application, the Commission is asked, in part, to approve the sale and transfer of Verizon California to Frontier. The Joint Applicants describe Verizon California as an ILEC and competitive local exchange carrier (CLEC) with approximately two million lines in service within 266 exchanges. However, the proposed transaction must be evaluated in a manner consistent with the evolving landscape of the communications industry. Frontier, the acquiring company, has adopted this sentiment, and recognizes that, "[b]roadband is the core growth driver among Frontier's service offerings."[32] As such, the Commission must consider the broadband networks, services and customers included in the proposed transaction during its evaluation of the Application.

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[29] Application at 3-4.

[30] *NCPA v. CPUC*, 3 Cal. 3d at 380.

[31] Proposed Decision Granting with Conditions Application to Transfer Control at 17-18; Alternate Decision Denying Application to Transfer Control at 19.

[32] A.15-03-005 at 16.

The proposed transaction is about the future of telecommunications as much, if not more so, than traditional ILEC and CLEC telephone operations. Both Frontier and Verizon California currently offer an array of communications and broadband services, including voice, Internet access, video and other IP enabled services.[33] In the proposed transaction, Frontier will acquire Verizon California's landline telephony operations *and* broadband business, including Verizon California's FiOS network and operations. The FiOS network is a fiber-optic communications network that delivers Internet access, VoIP telephony, and video services. Frontier, as the acquiring company, promises the continuity of services, including Internet access and video services.[34] The Joint Applicants also express their intention to transfer Verizon California's video franchise in accordance with the Digital Infrastructure and Video Competition Act (DIVCA) of 2006.[35]

The Joint Applicants themselves recognize the large role that broadband services and customers play in the proposed transaction. Indeed, Frontier goes so far as to reassure the Commission that its "[c]apital expenditures are dedicated to expanding infrastructure, enhancing transport and improving the capabilities of Frontier's middle-mile and data network backbone."[36] Still yet, the Joint Applicants do not make a significant and detailed showing with regard to the effects of the acquisition on broadband deployment in California. For example, if the transaction is consummated, will Frontier deploy broadband consistent with the FCC's definition of broadband, which is currently defined as service at speeds of a minimum of 25 Mbps download and 3 Mbps upload? The Commission must recognize the prominent role that broadband has in the proposed transaction, and evaluate the Application with specific regard to broadband infrastructure, services and customers.

In addition, pursuant to P.U. Code section 854(b)(3), the CPUC is required to "request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result."

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[33] *Id.* at 6-8.

[34] *Id.* at 11.

[35] *Id.* at 11.

[36] *Id.* at 16.

C. CONDITION OF VERIZON CALIFORNIA'S NETWORK

The condition of Verizon California's network is highly suspect. In fact, the Commission currently has an open a proceeding to address service quality[37] in which it ordered an investigation into the adequacy of Verizon California's (and others') telephone networks.[38] ORA recently submitted comments in the Service Quality Proceeding to emphasize the need for an actual examination of Verizon California's (and others') physical telephone networks.[39] Further, the Utility Reform Network (TURN) submitted an Emergency Motion in the same Service Quality Proceeding, accusing Verizon California of, "deliberately neglecting the repair and maintenance of its copper network."[40] The Commission has yet to rule on TURN's motion.

Although the aforementioned investigation into the condition of Verizon California's telephone networks has not yet concluded, there exists ample evidence to suggest that Verizon California has not adequately maintained its landline networks. For example, the Commission's Communications Division (CD) released a Staff Report which analyzed Verizon California's performance with regard to the General Order (GO) 133-C Service Quality Standards.[41] The Report found that, from 2010 through 2013, Verizon California failed to meet the standards for service outage repairs and answer time to reach a live operator.[42] Furthermore, the Staff Report found that Verizon submitted[43] *Corrective Action Reports* for every quarter (from 2010 through 2013), but the reports were not effective in improving service restoral time.[44]

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[37] R.11-12-001 (Service Quality Proceeding).

[38] D.13-02-023.

[39] R.11-12-001, Opening Comments of ORA on CD's February 2015 Proposal for Modifications to General Order 133-C, March 30, 2015.

[40] *Emergency Motion of the Utility Reform Network Urging the Commission to take Immediate Action to Protect Verizon Customers and Prevent Further Deterioration of Verizon's Landline Network*, March 17, 2014 at 1.

[41] *See* General Order 133-C.

[42] California Wireline Telephone Service Quality Pursuant to General Order 133-C Calendar Years 2010 through 2013. (CD Staff Report), September 2014 at 3-5.

[43] Pursuant to General Order 133-C § 6.2.

[44] CD Staff Report at 6, 16-17.

To the extent that the Commission seeks to ensure that services are provided in a manner consistent with public safety, an evaluation of the proposed transaction must consider the current condition and capabilities of Verizon California's networks. There exists ample evidence[45] that maintenance, repairs or upgrades may be necessary for *any* service provider to offer safe and reliable services over Verizon California's networks.

To this point, the Joint Applicants maintain that "Frontier's sole focus on wireline operations means that it will devote substantial resources to the acquired property, and Frontier will make it a chief operational priority to maintain and improve service over these facilities."[46] However, the Joint Applicants did not submit information or plans of sufficient scope and detail to address the potential inadequacies of Verizon California's networks and Frontier's plan to address the shortcomings. It appears possible that Frontier may not, at this time, have intimate knowledge of the assets that it seeks to acquire.

The Joint Applicants make broad and vague statements with regard to network maintenance and service quality. The Application states that "Frontier intends to continue to invest in the acquired network's facilities and operations…," but does not offer detailed plans.[47] The Joint Applicants offer only accounts of Frontier's prior experiences in other states, but do not make specific commitment or demonstrate meaningful level of understanding as to the required maintenance, repairs and/or upgrades that are likely necessary to provide safe and reliable service over the Verizon California network.

In its review of the Application, the Commission should consider Frontier's ability to assess the condition of Verizon California's network pre-acquisition, and Frontier's ability to address any inadequacies post-acquisition.

D. OTHER CONCERNS

The Application states, "Frontier has had consistent success in numerous system and network migrations…"[48] Conversely, many customers included as part of Frontier's prior acquisitions might entirely disagree with the "success" of the migration. For example, in 2014

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[45] Specifically within the record of R.11-12-001.

[46] A.15-03-005 at 4.

[47] A.15-03-005 at 30.

[48] *Id.* at 10.

Frontier acquired AT&T's wireline operations in Connecticut, and experienced a variety of issues. In reference to that 2014 transaction, Frontier admitted it did not anticipate a variety of system problems that that affected nearly 10,000 customers.[49] Clearly, the Application understates the complex nature of a large scale acquisition and integration. The Commission must carefully assess the proposed transaction in order to avoid costly harms to ratepayers.

The proposed transaction is a large acquisition for Frontier, and will instantly and significantly expand Frontier's customer base. Frontier currently serves approximately 3.5 million customers nationwide, with only 100,000 local exchange customers in California.[50] Verizon California, on the other hand, serves approximately two million customers in California alone.[51] If the proposed transaction is approved, Frontier stands to grow its California customer base by 2,000%. Thus, the Commission should examine the extent to which Frontier is able to accommodate such rapid expansion overnight. Below, ORA presents some of the pertinent areas that the Commission should evaluate.

Allocation of Economic Benefits. P.U. Code section 854(b)(2) of the Public Utilities Code requires that the Commission assess, where it has ratemaking authority, whether the proposed transaction allocates no less than 50 percent of the forecasted short-term and long-term economic benefits to ratepayers. The Joint Applicants claim the Commission does not need to make this assessment in its review of the Application. They contend that because Verizon California's services are competitive and are not rate-regulated, the allocation of benefits should occur by operation of market forces.[52] The Commission should require the Joint Applicants to demonstrate how P.U. Code section 854(b)(2) will be satisfied.

Billing Systems. If the proposed transaction is approved, Frontier plans to immediately transition Verizon California's operations to Frontier's existing billing systems.[53] The Application does not provide plans of sufficient scope or detail to assure the Commission that it

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[49] Ari Mason. "State Steps in After Frontier Fiasco." NBC Connecticut. NBCUniversal Media. November 10, 2014. *See* http://www.nbcconnecticut.com/news/local/State-Stepping-in-to-Handle-Frontier-Complaints-282629031.html

[50] A.15-03-005 at 6.

[51] *Id.* at 8.

[52] *Id.* at 20.

[53] *Id.* at 2.

is capable of avoiding complications in this endeavor that can result in billing errors; such as overbilling.

Flash Cut Approach. The Joint Applicants intend to do a “flash cut” integration of Verizon California’s customers and networks into Frontier’s operations. Such an aggressive strategy leaves little room for error, and does not allow the company any significant window of time to assess and address complications as they arise. Instead, the “flash cut” strategy is akin to an all-in-bet, where problems are likely to affect customers before Frontier can execute a solution. As previously mentioned, Frontier completed acquisitions in the past using the “flash cut” strategy, and consumers were often left to suffer the consequences of the various hiccups.[54]

Given the large number of new customers that Frontier will obtain from Verizon in California, perhaps an integration strategy in phases that take a less aggressive approach can allow Frontier the time to recognize and solve complications before thousands of customers are negatively impacted. Or, perhaps the Joint Applicants can mitigate concerns over the “flash cut” integration by providing sufficient data and detailed plans to avoid complications. Having undertaken similar acquisitions and integrations in recent years, Frontier is likely able to provide a schedule of “lessons learned” that can help assess these concerns. At a minimum, the Commission should ask the Joint Applicants to identify potential technical complications with the handoff of operations, and establish a plan to deal with unexpected challenges.

Customer Service. The Application states, “…Frontier expects to utilize its major customer contact centers to bring its new California customers the customer service enhancements it has implemented in other markets…”[55] Still, a transaction of this size is likely to cause an uptick in customer inquiries and, potentially, customer complaints. A sufficient number of call center employees, and proper training, is necessary to assist customers. The Commission should assess Frontier’s ability to adequately address customer inquiries (or complaints) in a timely fashion.

[54] Ari Mason. “State Steps in After Frontier Fiasco.” NBC Connecticut. NBCUniversal Media. November 10, 2014. *See* http://www.nbcconnecticut.com/news/local/State-Stepping-in-to-Handle-Frontier-Complaints-282629031.html

[55] A.15-03-005 at 31.

Safety and 911 Access. ORA is concerned that the questionable condition of the Verizon California networks[56] might pose a threat to public safety. Recently, Verizon and the FCC reached a $3.4 million settlement to resolve an investigation into the company's failure to meet its emergency call obligations.[57] The investigation related to a 911 service outage that affected customers in nine California counties and lasted for six hours in April of 2014. That particular outage affected *wireless* customers of Verizon Business Services. The proposed transaction does not include Verizon Business Services; nevertheless, the outage is a stark reminder of the potential vulnerabilities in communications infrastructure, systems and services. The Commission should evaluate the Application in light of the proposed transactions potential effects on the safety of the public.

ORA is also concerned with VoIP and Broadband outages that impact public safety. Frontier's stated focus on Broadband and IP services[58] and the proposed transaction make it critical for the CPUC to know how Frontier's operations may impact public safety. More information and data is needed on VoIP and Broadband outages in California from the Joint Applicants.

IV. PROCEDURAL MATTERS

ORA also recommends that the Assigned Commissioner and ALJ hold public participation hearings throughout the combined service territories of Frontier and Verizon in California to received feedback from the public on this proposed transaction.

ORA proposes the following schedule for the proceeding, which has the support of the Joint Applicants:[59]

3/26/25: Application on Daily Calendar

4/27/15: Protests Due

5/11/15: Reply to Protests Due & Applicants file direct testimony

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[56] Refer to Section C, *Condition of Verizon California's Network,* at 10.

[57] *In the Matter of Verizon*, Order Issuing Fine, DA 15-308, March 18, 2015.

[58] A.15-03-005 at 16.

[59] ORA also sent this proposed schedule to The Greenling Institute, TURN and Center for Accessible Technology and none of these parties raised concerns with this proposed schedule.

5/19/15: Prehearing Conference

6/1/15: Scoping Memo Issued

7/8/15: Intervenor Reply Testimony due

8/17/15: Applicants' Rebuttal Testimony due

9/9-11/15: Hearings, if necessary

10/1/15: Post-hearing opening briefs

10/16/15: Post-hearing briefs due

If no hearings: then opening briefs due 9/22/15, reply briefs 10/6/15

11/17/15: Proposed Decision by this date

12/17/15: CPUC Vote on Proposed Decision

V. CONCLUSION

The Application states that the transaction will provide benefits to the public interest by improving Frontier's financial strength, enhancing broadband services and availability, improving customer service, and ensuring rate stability. The Application does not, however, speak to a myriad of legitimate concerns that must be addressed in order to guarantee consumers will receive adequate, safe and reliable communications services. ORA urges the Commission to review the concern detailed herein to determine if the proposed transaction is in the public interest.

Respectfully submitted,

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