

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



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In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C), Verizon California Inc. (U 1002 C), Verizon Long Distance, LLC (U 5732 C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications

Application 15-03-005
(Filed March 18, 2015)

**PROTEST OF THE UTILITY REFORM NETWORK TO THE JOINT
APPLICATION OF FRONTIER COMMUNICATIONS CORPORATION ET AL.
FOR APPROVAL OF TRANSFER OF CONTROL**

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I. INTRODUCTION

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the Public Utilities Commission (“Commission”), The Utility Reform Network (“TURN”) hereby protests the above-captioned Application jointly filed on March 18, 2015 by Frontier Communications Corporation and Frontier Communications of America, Inc. (“Frontier), Verizon California Inc. and Verizon Long Distance, LLC (“Verizon”) and Newco West Holdings LLC (“Newco”) (collectively, “Joint Applicants”) (“Joint Application”).

The Joint Application acknowledges the Commission’s jurisdiction to review this transaction under the standards set forth in Section 854 of the California Public Utilities Code, but falls far short of satisfying the statutory framework. The Joint Application contains perfunctory recitations attesting to Frontier’s qualifications and good intentions with regard to the criteria set forth in Sections 854(b) and 854(c), but the Commission cannot simply accept these assurances without concrete record evidence. After reviewing the initial filing by the Joint Applicants, the related federal filings, and a small number of related documents, TURN concludes that the public interest benefits of the proposed transaction have not been demonstrated beyond mere assertion, and more information and analysis are necessary to fully analyze the impact of the proposed transfer on California consumers. TURN also recommends that the Commission hold public participation hearings in the affected service territories. As discussed below, this is a significant and far-reaching transaction that raises numerous questions and concerns; therefore, TURN requests that the Commission thoroughly investigate the proposed transfer of control for the following reasons:

- The Joint Application fails to establish with specific and verifiable evidence that the transaction will provide short- and long-term economic benefits for both ratepayers and

shareholders, nor have the Joint Applicants provided sufficient information for the Commission to assess the impact that the proposed transfer will have on competition and broadband deployment within California;

- Joint Applicants have provided insufficient information to satisfy a Section 854(c) showing that Frontier will maintain or improve upon the 1) financial condition of the business proposed to be transferred, 2) service quality to public utility ratepayers, or 3) the quality of management of the resulting public utility, or that it will be “beneficial on an overall basis to state and local economies, and to the communities”; and
- Joint Applicants’ contentions that the merger will have benefits to the public are vague and insufficient to allow the Commission to assess whether the merger is in the public interest.

II. JOINT APPLICANTS FAIL TO MEET THEIR BURDEN OF PROOF THAT SERVICE QUALITY, FINANCIAL CONDITIONS AND MANAGEMENT CAPABILITY WILL BE IMPROVED AS A RESULT OF THE TRANSACTION

The proposed transaction would variously double and triple the customer base for key services comprising Frontier’s national operations. Less than one year after Frontier acquired AT&T’s operations in Connecticut – itself a large operation,¹ the company seeks to expand its operations further by acquiring Verizon’s incumbent local exchange carrier (“ILEC”) operations in California, Florida, and Texas, adding 3.7 million customer lines to the existing 3.9 million lines that Frontier operates across its existing 28-state footprint.² The majority of the lines in this transaction- approximately 2 million- are in California thus making it critical that California

¹ See, “AT&T Completes Sale of Connecticut Wireline Operations to Frontier Communications,” http://about.att.com/story/att_completes_sale_of_connecticut_wireline_operations_to_frontier_communications.html and Connecticut Public Utility Regulatory Authority (“PURA”) Decision dated October 15, 2014 in Docket No. 14-01-46, Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change of Control, Decision, October 15, 2014 (“CT Decision”).

² See, Table 1.

thoroughly investigate the proposed transaction.³ Despite Frontier’s assurances that it has successfully accomplished past expansions of comparable magnitude,⁴ this latest expansion has the strong potential to jeopardize the levels of investment, customer service, service quality and managerial focus throughout Frontier’s post-acquisition footprint – all key factors that relate directly to the required showings under Section 854.

Table 1
Frontier’s Proposed Acquisition of Verizon Property and Operations
Would Double Frontier’s Scale and Triple Its Video Connections⁵

	Current Frontier	VZ Acquisition (CA, FL, TX)	Frontier Post- Transaction	Increase in Scale
Voice Connections	3,876,000	3,708,000	7,584,000	96%
Broadband Connections	2,368,000	2,192,000	4,560,000	93%
Video Connections	611,000	1,181,000	1,792,000	193%
Fiber Availability: Homes Passed	8,536,000	6,059,000	14,586,000	71%
Fiber Availability: % of Homes Passed	14%	54%	31%	
Employees	17,400	11,000	28,400	63%
Revenue (billions)	\$5.87	\$5.78	\$11.66	98%

Aside from vague claims of anticipated cost savings from this merger and broader economies of scope and scale, the Joint Application does not address how Frontier will ensure it has the necessary resources to satisfy its ongoing obligations to its ILEC operations in its existing 28-state footprint *and* to integrate newly acquired property and operations from Verizon California in a way that will be seamless and harmless to consumers. An acquisition with the scale of the proposed transaction, coming virtually on the heels of Frontier’s largest single-state acquisition to date, in Connecticut, will substantially stretch Frontier’s financial and managerial resources

³ Joint Application at 1-2.

⁴ Joint Application at 2-3, 6, 16.

⁵ Frontier Investor Presentation, “Frontier Communications to Acquire Verizon's Wireline Operation in California, Florida and Texas,” February 5, 2015, available at: <http://investor.frontier.com/events.cfm>.

and could increase pressure to cut costs, in ways that jeopardize service quality for voice customers and limit Frontier's ability to fulfill its commitments regarding broadband expansion.

As part of its review, the Commission should also ensure that Frontier maintains sufficient staffing levels, including operational capacity and customer service, to offer high quality basic local service. The information in Table 1 above shows that, in the three states affected by the proposed sale (of which California is by far the largest), Verizon has far fewer employees relative to its base of voice connections than Frontier does in its 28-state footprint. Frontier's ratio of voice connections to employees presently is 223:1; by contrast, Verizon's ratio of voice connections to employees in the three-state footprint is 337:1. Moreover, with its relatively smaller base of employees, Verizon is serving twice as many video connections as Frontier.

Beyond staffing deficiencies in Verizon territory, Frontier may lose further personnel, and expertise, through early retirements due to differences in benefits structures between Verizon and Frontier.⁶ Frontier relies heavily on the perceived value of its "local engagement model" to assuage regulatory concerns about impacts on service quality and customer service from this transaction,⁷ yet it does not explain how it will expand its staff-intensive local engagement model to include the Verizon California territory in the face of potential impacts on staffing levels from the transaction.

With pressure to cut costs potentially affecting staffing levels (which are already lower than what Frontier is used to in connection with its other operations), it becomes particularly important for Frontier to make enforceable commitments to federal and to state regulators to achieve acceptable service quality levels, to prioritize network investment, to meet staffing requirements, and to fulfill basic broadband Internet deployment plans. The Commission must

⁶ California Association of Competitive Telecommunications Companies ("CALTEL"), Comments filed April 13, 2015 in FCC WC Docket 15-44, at 8.

⁷ Joint Application at 30.

investigate the full implications of Frontier's aggressive expansion to assess whether this transaction meets the standards set forth in Section 854.

III. MULTIPLE ASPECTS OF THE TRANSACTION GIVE RISE TO SERIOUS SERVICE QUALITY CONCERNS

Currently, the Commission has an open proceeding on service quality policies and procedures. In that proceeding, there is evidence on the record that Verizon's California copper plant has been poorly maintained.⁸ However, the Joint Application does not indicate whether Frontier has conducted sufficient due diligence to examine the actual condition of the network facilities it proposes to acquire through this acquisition, nor does it provide the results of any such due diligence investigation.⁹ Without evidence of a due diligence investigation to assess the condition of the operating plant it is acquiring, Frontier's assurances about future service quality cannot be relied upon as grounds to approve the proposed transaction. Frontier must establish and document specific and detailed commitments for plant maintenance and investment in California to not only remedy known service quality deficiencies, but to ensure ongoing public safety and welfare.

There is also no evidence in the Joint Application demonstrating that the transaction as structured would provide Frontier with either the incentive or the financial resources to undertake the capital expenditures necessary to improve the plant it acquires or to adequately

⁸ See, e.g., *Before the Public Utilities Commission of the State of California, Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules*, R. 11-12-001, Opening Comments of the Communications Workers of America, District 9, On Proposed Modifications to General Order 133-C, March 30 2015, Comments and Attachment A. F-12

⁹ Indeed, it is TURN's understanding that in previous transactions Frontier has not prioritized a network review. CT PURA Docket No. 14-01-46, Testimony of Susan M. Baldwin on behalf of the Connecticut Office of Consumer Counsel ("OCC"), May 23, 2014, at 37-39, excerpting and citing Frontier responses to EN-2 and OCC-20. Also, through numerous interrogatories propounded to AT&T, the OCC attempted to develop a fuller record on the condition of the network that Frontier was acquiring in Connecticut. See, e.g., CT PURA Docket No. 14-01-46, OCC-12 through OCC-15; see also OCC's Motion To Compel And Memorandum In Support Of CL&P's Motion To Compel, May 20, 2014.

maintain its expanded plant. As discussed below, Frontier’s reliance on earnings before interest, taxes, depreciation, and amortization (“EBITDA”) as demonstration of its financial integrity actually sounds a cautionary note about its intentions regarding the level of investment necessary to maintain its California network. The EBITDA metric, by definition, does not include additional investment necessary to deploy broadband or improve service quality.¹⁰ Add to this, Frontier’s motivation to obtain the promised post-merger synergies that may in turn necessitate cost-cutting measures and Frontier’s financial promises begin to look not only hollow but possibly a forewarning of harm for California consumers.

Not only might Frontier have limited incentive or capability to invest in its network, as the transaction is described, but evidence from previous acquisitions demonstrates that Frontier has been “disinvesting” in its network. Table 2, below, shows that in each of the years 2011- 2014, inclusive, Frontier invested far less in its network than cash flow provided by depreciation. This pattern is troubling and merits regulatory scrutiny to understand Frontier’s past practices and to compare the priorities Frontier developed for the savings that came from those previous mergers with the vague promises in its Joint Application. To conduct its own analysis, TURN has requested detailed information about Frontier’s level of investment, broadband deployment, and quality of service since 2010 in its existing footprint.

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¹⁰ Joint Application at 26-28.

Table 2
Disinvestment by Frontier: 2011 – 2014¹¹

	2011	2012	2013	2014
1 Depreciation and amortization	\$ 1,403,175,000	\$1,266,807,000	\$1,169,500,000	\$ 1,138,942,000
2 Capital Expenditures	\$ 748,361,000	\$ 748,407,000	\$ 634,685,000	\$ 572,443,000
Capital Expenditures: Integration				
3 Activities	\$ 76,478,000	\$ 54,097,000	\$ -	\$ 115,653,000
4 Quantity of Residential Customers	3,103,766	2,887,063	2,803,481	3,214,836
5 Annual disinvestment (line 1 minus sum of lines 2 and 3)	\$ 578,336,000	\$ 464,303,000	\$ 534,815,000	\$ 450,846,000
6 Annual disinvestment per residential customer (line 5/line 4)	\$ 186	\$ 161	\$ 191	\$ 140

IV. THE COMMISSION SHOULD NOT RELY SOLELY ON COMPETITIVE FORCES TO SATISFY ITS STATUTORY MANDATE THAT BENEFITS ARE EQUITABLY SHARED OR THAT IMPACTS ON COMPETITION ARE INSIGNIFICANT

The Joint Applicants acknowledge the Commission’s statutory obligation to identify the short-term and long-term benefits and equitably allocate those benefits between ratepayers and shareholders.¹² Benefit sharing is a critical statutory mandate that protects California consumers from harmful effects of short-sighted transactions that prioritize shareholders over stakeholders. The Application also assures the Commission the transaction will not “adversely affect competition,” pursuant to Section 854(b)(3). The Commission must ensure it has a clear and detailed record to satisfy its statutory requirements in these areas.

¹¹ Sources for depreciation, amortization and capital expenditures: Frontier Form 10-K, filed with the SEC for 2013 (“Frontier 2013 Annual Report”), page F-8, Frontier Form 10-K, filed with the SEC for 2014 (“Frontier 2014 Annual Report”), pages 33 and F-8; CAF funds excluded). Sources for residential customers: Frontier 2013 Annual Report, page 39 and Frontier 2014 Annual Report, page 7. Data for 2014 include Connecticut operations. Note that Frontier disinvestment for 2014 is lower than the previous three years due to the approximately \$116 million invested to integrate its newly acquired Connecticut operations. Table 2 shows that Frontier’s capital expenditures relating to its integration of Verizon operations acquired in 2010 lasted through 2012.

¹² Joint Application at 20.

A. Commission Should Not Rely on Competition as the Sole Means for Sharing Benefits between Shareholders and Ratepayers

Joint Applicants go too far when they argue that the sharing mechanism required under Section 854(b)(2) must be consistent with “the extent of the rate making authority it exercises over the affected utilities.”¹³ The statute imposes no such limitation on the Commission nor does it make a direct link between the methodology used to allocate merger savings pursuant to Section 854(b)(2) and the authorized ratesetting mechanisms for the parties to the transaction. The Joint Applicants also provide an overly narrow interpretation of Commission precedent to support its proposal that the Commission should rely on competitive market forces to deliver the benefits of the transaction to California customers¹⁴ and that, accordingly, no regulatory intervention is necessary.¹⁵

Historically, the Commission’s determination of whether and how to require an allocation of benefits to ratepayers rests on more than a finding of potential competition or lack of market power.¹⁶ In previous merger cases cited by the Joint Applicants, the Commission’s analysis has been fact-specific, looking at 1. the specific characteristics of the merger applicants, 2. the state of and impact of the transaction on the market as a whole, and 3. the likelihood that competitive pressures and current regulatory regime will cause the benefits achieved to flow through to consumers.¹⁷ The Commission has stated that, “Indeed, there is no one hard and fast test which

¹³ Joint Application at 24.

¹⁴ Joint Application at 20.

¹⁵ The Joint Application states this proposition both broadly (e.g., “the competitive market will drive the allocation of economic benefits” id. at 22) and specifically (e.g., “the Commission should not mandate an allocation through an explicit rate order” id.).

¹⁶ Joint Application at 22.

¹⁷ D. 05-11-028 (A.05-02-027 AT&T/SBC), Cal PUC LEXIS 516 at p. 14 (mimeo); D.06-04-074, 2006 Cal. PUC LEXIS 142, *15.

must be applied in granting an exemption pursuant to Section 853(b). We have looked to differing factors, depending upon the particular facts of a case and the situation at hand.”¹⁸

In each of the cases cited by the Joint Applicants, except the GTE/Bell Atlantic 2000 merger *where they did order surcredit sharing in addition to alternative mechanisms*,¹⁹ the Commission found that at least one party to the transaction “grew under competitive forces at the sole risk of its shareholders.”²⁰ Both Frontier and Verizon are traditional incumbent local exchange carriers in California. In some of these cases, the Commission also found that the transaction would have little impact on the overall revenues and financial condition of the parties to the transaction or that at least one of the parties was not a major provider of telecommunications services in California.²¹ As discussed above, this transaction involves two of the largest carriers in the state and poses significant risk and financial impact on both parties. Finally, while not ordering an explicit surcredit mechanism for the sharing of benefits in some of those cases, the Commission did not leave it solely up to the vagaries of competition but found, instead, that the parties’ acceptance of “merger related conditions” served to facilitate the sharing and allocation of benefits to ratepayers.²²

The Joint Application implies that the Commission has no choice under Section 845(b), because of the Commission’s pricing flexibility rules, but to rely on the forces of competition to affect sharing of benefits.²³ TURN urges the Commission to take not only a closer look, but also a broader look, at the allocation of merger benefits to satisfy its statutory obligation in this case. Under URF, the Commission’s pricing flexibility rules have been a forbearance of authority, not

¹⁸ D.06-04-074, 2006 Cal. PUC LEXIS 142, *14.

¹⁹ D.00-03-021 (A.98-12-005 GTE/Bell Atlantic merger), 2000 Cal. PUC LEXIS 211.

²⁰ D.05-11-029 (A.05-04-020, Verizon/MCI), 2005 Cal. PUC LEXIS 517, at 18 (mimeo).

²¹ *Id.* at 19.

²² *Id.* at 28.

²³ Joint Application at 22-23.

a permanent abdication of its ratemaking authority that it can invoke for targeted purposes to address a specific need or market failure, such as the allocation of merger benefits at issue here.²⁴ Further, the Commission should explore other mechanisms beyond leaving statutory sharing to the fate of competition.

Even if the Commission were inclined to rely on competitive forces, the Joint Application fails to demonstrate that sufficient levels of competition exist in California at this time to ensure that Frontier will pass through any meaningful level of savings based on the synergies to consumers in the form of either rate reductions or additional incremental investment (i.e., investment over and above the planned baseline level). While TURN does not believe that this docket is an appropriate forum to conduct a state-wide competition analysis, the Commission should build a record sufficient to analyze competitive pressures in the context of merger sharing- in both the urban and rural areas of what is proposed to be the entire Frontier territory. Frontier has emphasized the potential benefits of this transaction to the rural areas of the state.²⁵ Yet, with regard to its discussion about allocation of benefits, Frontier fails to address the special considerations and the limited – or non-existent – competitive pressures that exist in the rural parts of both Verizon and Frontier territory.²⁶

Even in the more dense areas of Frontier and Verizon territory, the level of competition is limited for wireline basic service and ancillary services. Recently, TURN filed a complaint against AT&T California arguing that competition for basic local service was not sufficient to

²⁴ D.06-08-030 (R.05-04-005), 2006 Cal. PUC LEXIS 367 at COL 32, “The Commission retains the authority and firm resolve, should it see evidence of market power abuses, to reopen this proceeding and promptly investigate any such abuses.” And FOF 73, “There is a need for the Commission to remain vigilant..to ensure that the market continues to serve California consumers well.”

²⁵ Joint Application at p. 2

²⁶ D.06-08-030 at FOF 68 (finding that market conditions at the time did not support pricing flexibility for rural territory covered by the CHCF-B subsidy money; D.12-12-038 (R.09-06-019) at p. 15, arguing that consumers in urban settings have more choices and less constraints than “those residing in rural or remote regions with fewer or only one choice of provider for basic service.”

constrain rates to just and reasonable levels while at the same time, basic service continues to be a critical piece of the Commission's universal service obligations. TURN and others urged the Commission to take steps to protect consumers where "the market" has failed to do so in the face of skyrocketing rates.²⁷

In order to assess whether the transaction will result in savings for ratepayers that are consistent with the requirements of Section 854(b)(2), the Commission must have the data and information it needs to verify the forecasted level of synergies and then determine how those synergies, including cost savings, will be shared with ratepayers. Vague promises of a financially stronger Frontier, "continued" investment in existing network facilities, and increased broadband penetration do not go far enough to satisfy the fact-intensive and data-driven analysis that the Commission should undertake. With so much at stake, it is not sufficient simply to assume that market forces will flow through the required benefits, and indeed, it would be unfounded to do so.

B. The Commission Must Review the Impact on Competitive Alternatives

The transaction also raises two other issues that relate to the level of competition that exists in California's markets. First, it is ironic that the Joint Application assures the Commission that the transaction will have no impact on competition in part because the two companies had no plans to compete in each other's territory. And yet, the immediately preceding discussion described the level of vibrant competition within each other's territories and the Commission's finding in URF that the markets were competitive. Here again, while this is not the appropriate docket for a comprehensive analysis, the Joint Applicants' claims about competition should be reviewed.

²⁷ See, *TURN v. AT&T California*, C.13-12-005.

The Joint Application also assures the Commission that it will “retain all existing obligations under Verizon California’s current interconnection agreements”²⁸ but it provides no detail regarding time frames and other conditions, nor does it discuss Frontier’s plans for new interconnection requests or its provision of wholesale facilities to its competitors at reasonable rates, terms, and conditions, and to offer seamless operations support systems (“OSS”). Changes in these terms and conditions of competitive entry, negotiated over the past several years between competitors and Verizon, will directly affect the potential for competition to evolve in California, which, in turn, affects the variety, prices, and quality of services offered to consumers in telecommunications markets. TURN has sought detailed information from the Joint Applicants regarding their individual assessments of the present and future status of competition in relevant markets. This information is critically important to enable the Commission to investigate the merits of the proposed transaction.

V. THE FINANCIAL STRUCTURE OF THE PROPOSED TRANSACTION AND OF POST-TRANSACTION FRONTIER RAISE CONCERNS FOR CONSUMERS THAT JOINT APPLICANTS HAVE FAILED TO ADDRESS

Frontier’s reliance on EBITDA as a way to value the transaction provides a disturbing signal to consumers about Frontier’s intentions post-transaction.²⁹ The EBITDA metric expressly fails to account for capital investment³⁰ and thus raises the concern that Frontier is neither committed nor financially prepared to make the ongoing investment necessary to provide its customers with high quality service and to deploy state-of-the-art broadband where it does not already exist. At

²⁸ Joint Application at 29.

²⁹ See generally, Joint Application at 26-29.

³⁰ Indeed, it is telling that even Warren Buffett, a well-respected investor, said in an annual report to shareholders: “References to EBITDA make us shudder.” He stated that too many investors focus on earnings before depreciation and amortization and that that makes sense only if you think capital expenditures are funded by the tooth fairy. Berkshire Hathaway Inc., 2000 Annual Report, Chairman's Letter at 17.

present, Frontier is substantially leveraged with debt,³¹ and this proposed transaction assumes additional substantial debt is incurred.³² The Commission should closely examine Frontier's debt leverage and debt levels, as excessive debt leverage can result in an inability to meet financial commitments and subsequent bankruptcy and/or reorganization, or other financial difficulties that would substantially impair provision of service to customers at adequate levels.

Financial assessments of the proposed transaction (including perspectives on competitive conditions confronting Frontier post-transaction) from disinterested third parties and from the parties' pre-merger interactions contain valuable information that can often be more illuminating than documents prepared for the benefit of regulators. Thus, in reviewing this transaction, it is critical that intervenors and Commission staff have full access to such sources, including the Joint Applicants' unredacted federal Hart-Scott-Rodino Act filings ("HSR") and related documents that are prepared for the financial and investment community as contrasted with those documents prepared for the regulatory community. According to recent responses by both Verizon and Frontier, the companies have not yet submitted their HSR filings.³³ These filing are critical and the Commission should not schedule intervenor testimony until at least 30 days following the Joint Applicants' provision of the HSR documents to the parties to allow for adequate time for review.

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³¹ See, e.g., Joint Application, Exhibit 7 (Frontier 2014 Annual Report), at p. 27 showing long-term debt of approximately \$9.5-billion and total shareholders' equity of approximately \$3.7 billion.

³² Joint Application, Attachment 1, Securities Purchase Agreement. *See also* Joint Application at p. 27, between 2010 and 2014, "Frontier improved its capital structure by reducing its net debt-to-adjusted EBITDA ratio from 4.04x to 3.72x" and its February 5, 2015 press release that, "Frontier will finance this acquisition with the issuance of a combination of equity and equity-linked securities, as well as debt." Finally, a February investor presentation noted that "Frontier expects a "3.8x Pro Forma Net Debt/EBITDA ratio at closing" of the transaction.

³³ Frontier Response to TURN 2.4.

VI. THE APPLICATION LACKS CRITICALLY IMPORTANT INFORMATION NECESSARY TO ASSESS WHETHER THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST

Frontier relies too heavily on claims of purported past successes and the Commission's approval of its earlier California acquisition.³⁴ Instead, Frontier must demonstrate what it is prepared and committed to do for California ratepayers going forward. Contrary to Frontier's rosy accounts of those transactions, TURN understands that the experience on the ground has been somewhat mixed.³⁵ The Commission should oblige Frontier to provide further details regarding the impact of its aggressive acquisition strategy beginning in 2010 to allow the Commission to determine whether Frontier's claims and promises for this transaction of improved service quality, network expansion, broadband deployment and financial stability are likely to materialize and therefore whether this transaction will "maintain or improve" services. The Commission should also ensure that Frontier is fully prepared to apply "lessons learned" from its recent experience integrating AT&T's Connecticut operations to its proposed new footprint including metrics such as rates, quality of service, broadband expansion, and investment, in order to assess Frontier's various claims.

It is also critical to the Commission's public interest assessment to obtain specific and enforceable commitments from Frontier about the company's plans for broadband deployment, especially with respect to the non-FiOS portions of the Verizon footprint. Claims about competition and customer service are small comfort to customers abandoned on the wrong side of the digital divide.

³⁴ See, e.g., Joint Application at pp. 2-3, 6, 16.

³⁵ See for example, "Facing Customer Anger, Frontier Offers Customer Service Refunds" (October 29, 2014) Hartford Courant, <http://www.courant.com/business/dan-haar/hc-haar-frontier-att-problems-20141029-column.html#page=1>; "Frontier to Regulators: We Guessed Wrong on Call Volume" (December 22, 2014), Hartford Courant, <http://www.courant.com/business/hc-frontier-service-hearing-20141222-story.html>.

Frontier has also made other representations in the Joint Application that are meaningless without a mechanism for enforcing them. For example, Frontier asserts that it will offer “substantially the same products and services Verizon California provides to [its current customers], and at the same rates” and that it will “adopt existing tariffs and honor existing contracts” for retail customers.³⁶ It also states that it “expects to invest in enhancing broadband speeds and service in the acquired territories,”³⁷ that it will expand its local engagement model to improve customer service, and that it will “focus on customer service and service quality through a customer feedback process.”³⁸

Certainly, TURN urges the Commission to categorically reject the notion that “no mitigation measures are necessary under Section(c)(8) in order for the Commission to find that the merger is in the public interest,” as is boldly asserted in the Joint Application.³⁹ The record does not support such a finding and the Commission will need to embark on a fact-specific analysis to determine the necessary mitigation measures and conditions.

VII. PROCEDURAL ISSUES

The Joint Applicants urge the Commission to categorize this proceeding as “ratesetting” pursuant to Rule 7.1(e) of the Commission’s Rules of Practice and Procedure.⁴⁰ While it may be appropriate to categorize this proceeding as ratesetting, TURN urges the Commission to open a companion investigation proceeding or phase of this proceeding to allow for a robust fact-finding process to build a sufficient record so that the Commission may determine whether the proposed merger complies with applicable laws and is in the public interest. TURN also urges the Commission to hold public participation hearings in key parts of Verizon territory and, perhaps,

³⁶ Joint Application at 19.

³⁷ Joint Application at 17.

³⁸ Joint Application p. 18.

³⁹ Joint Application at 36.

⁴⁰ Joint Application at 38.

Frontier territory to allow ratepayers to contribute to the Commission's consideration of this transaction. This is a significant transaction with potential for both benefits and harm to consumers. Further, various proposals for the statutorily mandated sharing of benefits should be subject to public comment. The Commission frequently holds public hearings as part of its review under Section 854.⁴¹

TURN notes that the proposed schedule in the Joint Application does not contemplate hearings, workshops or other procedural vehicles that could assist the Commission in its analysis. TURN agrees with the proposal's allowance for 60 days between the Applicants' testimony and intervenors' testimony. However, the Commission should not set intervenor testimony deadlines until some designated interval (a minimum of 30 days) after the Joint Applicants have provided complete and unredacted copies of their Hart-Scott-Rodino filings to the parties.

The Joint Applicants argue that there is no need for hearings as the Application materials and testimony should be sufficient for the Commission to issue a decision.⁴² At this time, TURN disagrees and urges the Commission to tentatively move forward with hearings. This is a complex, wide-reaching transaction with the potential for significant impact on millions of California customers. It is likely that there will be disputes of material factual issues related to a number of aspects of the transaction. TURN suggests that the Commission tentatively find that hearings will be necessary and schedule additional comments on the matter after all testimony has been filed.

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⁴¹ See, AT&T/T-Mobile Merger (I.11-06-009); SBC/AT&T merger had 7 PPHs in 2005 (A.05-02-027); Most recently there were limited public hearings in the Comcast/Time Warner merger (A.14-04-013).

⁴² Joint Application at 38.

VIII. CONCLUSION

TURN urges this Commission to conduct a data-rich and comprehensive review of this transaction that includes public input from all affected stakeholders. As discussed above, not only does the Joint Application fail to provide sufficient information ensure compliance with statutory requirements pursuant to Section 854, but the Application also raises red flags that call into question the public interest benefits of the transaction and must be further investigated.

Dated: April 27, 2015

Respectfully submitted,

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