

Gregory M. Romano
General Counsel - Northwest Region



1800 41st St., WA0105GC
Everett, WA 98201

Phone 425 261-5460
Fax 425 252-4913
gregory.m.romano@verizon.com

May 26, 2010

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Public Utilities Commission of Oregon
Attention: Filing Center
550 Capitol Street N.E., Suite 215
Salem, OR 97301-2551

Re: UM 1431; Applicants' Response to CUB's Motion

Dear Filing Center:

Enclosed for filing is the Applicants' Response to CUB's Motion Pursuant to Condition 56 of Order No. 10-067 Requesting the Adoption of a Provision From Another State's Order as Permitted by Oregon's "Most Favored State" Provision.

Sincerely,

A handwritten signature in cursive script that reads "Gregory M. Romano".

Gregory M. Romano

GMR:pl

Enclosures

cc: See Certificate of Service

UM 1431
CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all of the following parties, as follows:

Public Utilities Commission of Oregon

Attention: Filing Center
550 Capitol Street N.E., Suite 215
Salem, OR 97301-2551
VIA FEDERAL EXPRESS & EMAIL

Michael T. Weirich

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
michael.wieirich@state.or.us
VIA EMAIL & DOCUMENTS SENT VIA U.S. MAIL

Charles L. Best **

Attorney at Law
1631 NE Broadway, Suite 538
Portland, OR 97232-1425
chuck@charleslbest.com
VIA EMAIL

Kevin L. Saville **

Frontier Communications of America, Inc.
2378 Wilshire Blvd.
Mound, MN 55364
kevin.saville@frontiercorp.com
VIA EMAIL

G. Catriona McCracken **

Staff Attorney
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
catriona@oregoncub.org
VIA EMAIL & CONFIDENTIAL DOCUMENTS SENT VIA U.S. MAIL

Bob Jenks **

Executive Director
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
bob@oregoncub.org
VIA EMAIL & CONFIDENTIAL DOCUMENTS SENT VIA U.S. MAIL

Gordon Feighner **

Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
gordon@oregoncub.org
VIA EMAIL & CONFIDENTIAL DOCUMENTS SENT VIA U.S. MAIL

Mark P. Trincherro **

Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
marktrincherro@dwt.com
VIA EMAIL & CONFIDENTIAL DOCUMENTS SENT VIA U.S. MAIL

Gregory J. Kopta **

Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-1688

gregkopta@dwt.com

**VIA EMAIL & CONFIDENTIAL
DOCUMENTS SENT VIA U.S. MAIL**

Lisa F. Rackner **

Adam Lowney **
McDowell & Rackner
520 SW 6th Street, Suite 830
Portland, OR 97204

lisa@mcd-law.com

**VIA EMAIL & CONFIDENTIAL
DOCUMENTS SENT VIA U.S. MAIL**

DATED: May 26, 2010.



Patti Lane

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of)
)
VERIZON COMMUNICATIONS INC.,)
and FRONTIER COMMUNICATIONS)
CORPORATION)
)
Joint Application for an Order Declining to)
Assert Jurisdiction, or, in the)
Alternative, to Approve the Indirect)
Transfer of Control of)
VERIZON NORTHWEST INC.)

**APPLICANTS' RESPONSE TO
CUB'S MOTION**

On May 24, 2010, the Citizens' Utility Board of Oregon ("CUB") filed a motion requesting that a provision in the Washington Utilities and Transportation Commission order approving the Frontier/Verizon transaction¹ ("WUTC Order") be adopted under Condition 56 of Order No. 10-067 ("Oregon Order"). The provision from the WUTC Order, however, does not meet the terms of Condition 56 and thus may not be adopted into Oregon. Specifically, among other requirements, Condition 56 requires that a provision from another state may be adopted into Oregon only if it is more effective at preventing a harm previously identified by the Commission or Staff than provisions in the Oregon Order. As explained below, the provision from the WUTC Order is not more effective at preventing a systems-related harm than the terms of the Oregon Order. Moreover, the WUTC Order provision applies to Verizon, whereas Condition 56 is expressly limited to commitments of Frontier. And adopting into Oregon a customer refund provision that would be crafted based on Washington facts would be inequitable.

¹ Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction (April 16, 2010), Docket UT-090842, Washington Utilities and Transportation Commission.

1. The WUTC Order provision is not more effective than the systems-related terms of the Oregon Order.

The Oregon Order contains a comprehensive set of terms to ensure that the replicated systems provided by Verizon to Frontier to serve Oregon function properly *prior to closing*. For example, Condition 28 of the Oregon Order, which was developed through extensive negotiations with CUB, Staff and other parties, provides detailed procedures on retail system testing both before and after the replicated systems are put into production but *prior to closing*.

Prior to putting the replicated systems to be transferred to Frontier into production at the end of March 2010, Verizon was required to provide CUB and the Staff testing results showing that any severe failures had been resolved, along with validation by a third party reviewer that the results are accurate. That was completed (with validation by Ernst & Young, a third party selected with input from Staff and CUB under the process set forth in the Oregon Order) on March 22, 2010. Condition 28 also requires that *prior to closing*, Verizon provide Staff and CUB with 60 days of production results on three specified metrics (related to installation commitments, customer network trouble reports and completion of repairs) that are not materially less favorable than benchmark data from the previous twelve months, along with validation by the third party reviewer (Ernst & Young). Verizon plans to provide this information in June, and Frontier will include this data in its validation and confirmation that the replicated systems are fully operational.

As was detailed in the joint testimony of all settling parties (including CUB and Staff), Condition 28 was a key component of the global stipulation entered by the parties to this docket:

- “The Parties have agreed to important conditions which ensure that the transaction will not close unless Verizon delivers OSS that are fully-functional and capable of providing high-quality service to all Oregon customers.... Therefore, even after receiving approval

for the transaction, the provisions of the Global Stipulation and the Merger Agreement add protections that Verizon necessarily will provide the functioning OSS and remains at-risk financially if it does not do so.” Testimony of Daniel McCarthy, Timothy McCallion, Michael Dougherty, Bob Jenks and Gordon Feighner, and Douglass Denney on behalf of the Parties to the Global Stipulation (“Stipulation Testimony”) at 33: 3-10.

- “Condition 28 addresses Staff’s concern over the OSS.” Stipulation Testimony at 46: 27 (citing in particular the role of the third party reviewer).

Indeed, the Commission itself cited the details of this particular condition, and noted that it “helps meet the required ‘no harm’ standard for approval of the transaction.” Oregon Order at 18.

The focus of these settled terms in the Oregon Order ensures that the replicated systems will operate successfully *prior to* the closing of the transaction. Addressing any systems issues at the outset before the transaction closes as required by the Oregon Order is far more effective at mitigating potential harm than an awkward mechanism that would necessarily need to consider numerous variables that will be present *after* the transaction is closed and Frontier is operating the replicated systems transferred by Verizon. That is clear by the cumbersome nature of the WUTC Order provision itself, which requires consideration of after-the-fact issues such as whether any alleged problems were caused by Verizon, the systems provided to Frontier, or Frontier’s operation of them. *See* ¶163, page 71, of the WUTC Order.² And by focusing on the closing of a transaction of this magnitude, Condition 28 of the Oregon Order provides a far greater incentive to the parties to avoid systems-related problems than the potential invocation of an adversarial proceeding in the future that might involve customer refunds. Because the term proposed to be adopted into Oregon is not more effective at addressing a perceived harm than the provisions in the Oregon Order, it is not eligible for adoption under Condition 56.

² The page cited by CUB in its motion, page 89, provides only a summary of the WUTC Order provision.

2. The WUTC Order provision focuses on Verizon, not Frontier.

Condition 56 of the Oregon Order applies to conditions from other states that impose commitments on Frontier, not Verizon. That is clear by the language stating that Frontier (not Verizon) agrees to the expansion of conditions in certain circumstances:

Frontier agrees that the Conditions may be expanded or modified as a result of regulatory decisions in other states, including decisions based upon settlements, that impose conditions or commitments related to this transfer proposal. *Frontier agrees* that the Commission may adopt any commitments or conditions from other states that are adopted after the final order in UM 1431 is issued that are related to addressing harms of this transaction if ...

Oregon Order Condition 56 (emphasis added). The first sentence of the Oregon Order defines “Verizon” and “Frontier” separately and creates a term (the “Applicants”) to refer collectively to both parties. Had the Commission intended Condition 56 to apply to commitments of both parties, it would have used its own defined term “Applicants.” It did not. Moreover, obligations of Frontier and Verizon are clearly distinguished throughout the Oregon Order. For example, Condition 28 in the Oregon Order imposes different systems-related conditions on Verizon (“Verizon will share (subject to confidentiality protection) with Staff and CUB...”; “Verizon will provide Staff...”; “Verizon will select”; “Verizon will take full responsibility”) and Frontier (“Frontier will include this data”; “Frontier will provide Staff...”). Thus, since the Oregon Order required Frontier to agree to be bound by certain commitments adopted into Oregon from other states but said nothing about any commitments applicable to Verizon, the latter are not eligible for adoption under Condition 56.

However, the WUTC Order provision at issue clearly addresses Verizon, not Frontier. Indeed, the entire provision requires satisfaction of a number of preconditions focused squarely on Verizon (e.g., whether systems problems were caused by Verizon or systems provided by

Verizon, the extent to which Verizon attempted to address the alleged problem, the time it took for Verizon to correct the problem) before the WUTC “may require Verizon to make a refund payment to Frontier...” after considering a number of specified factors. WUTC Order ¶163. Verizon was even required to file a sworn statement in Washington agreeing to be bound by the provision. WUTC Order ¶164.

Indeed, in its Testimony in Support of Imposition of Most-Favored State Condition, the Staff advocated (because Frontier had not agreed to the condition) that all uses of the phrase “Frontier agrees” in the language adopted into Condition 56 be removed. Staff/700 at 5: 5-8. The Commission thus was reminded of this particular phrasing in the “most favored state” provision and apparently saw no need to delete or change it. That makes sense as the Commission, for most-favored-state provision purposes, is typically focused on conditions applicable to the acquiring company in a transaction rather than the company divesting the transferred assets. In any event, Condition 56 by its express terms applies only to conditions applicable to Frontier, not Verizon.

3. The provision in the WUTC Order was based on Washington facts.

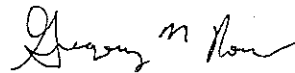
The provision in the WUTC Order imposes a potential requirement for a refund that is based on the size of the Verizon Northwest territory in Washington, the number of customers served therein and specific testimony filed in the Washington proceeding. For example, the provision was adopted in response to arguments made by Washington Public Counsel based in part on the size of the Washington service area. *See, e.g.*, ¶160 of the WUTC Order (describing Public Counsel’s proposal as based on Washington’s pro rata share of the transaction). Thus,

adopting the provision into Oregon as requested by CUB would impermissibly ignore the Washington-specific basis for the provision.³

For the foregoing reasons, the Motion by CUB that the requirement imposed by WUTC Order ¶163 be adopted into Oregon should be rejected. Given the pendency of the expected closing of the transaction, the Applicants respectfully request that the Commission act expeditiously to reject the Motion.

Respectfully submitted May 26, 2010.

VERIZON COMMUNICATIONS INC.

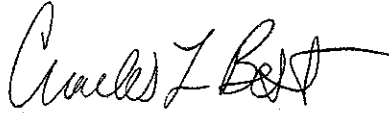


By: _____

Gregory M. Romano
General Counsel – Northwest Region
Verizon
1800 41st Street, WA0105GC
Everett, Washington 98201
Tel: 425-941-1737
Fax: 206-777-2222
gregory.m.romano@verizon.com

³ Indeed, adopting the provision in Oregon would ignore the relatively large difference in the sizes of Verizon Northwest's service territories in Washington and Oregon. Verizon Northwest serves approximately *half* the number of customers in Oregon as it does in Washington. Thus, in addition to violating the terms of Condition 56 as described above, adopting a customer refund provision from Washington into Oregon with maximum refund exposure based on Washington's much larger service territory and customer base would be inequitable.

FRONTIER COMMUNICATIONS CORPORATION



By: _____

Charles L. Best
OSB No. 781421
Attorney at Law
1631 NE Broadway # 538
Portland, Oregon 97232-1425
Tel: 503-287-7160
Fax: 503-287-7160
chuck@charleslbest.com