

**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 Over, )  
or, in the Alternative, Approving the )  
Indirect )  
Transfer of Control of Verizon Northwest )  
Inc. )

---

TESTIMONY IN SUPPORT OF IMPOSITION OF MOST-FAVORED  
STATE CONDITION  
OF THE  
CITIZENS' UTILITY BOARD OF OREGON

December 17, 2009



**BEFORE THE PUBLIC UTILITY COMMISSION**  
**OF OREGON**  
**UM 1431**

In the Matter of VERIZON	)	
COMMUNICATIONS INC. and	)	TESTIMONY IN SUPPORT OF
FRONTIER COMMUNICATIONS	)	IMPOSITION OF MOST-FAVORED
CORPORATION Joint Application for an	)	STATE CONDITION OF THE
Order Declining to Assert Jurisdiction Over,	)	CITIZENS' UTILITY BOARD
or, in the Alternative, Approving the	)	OF OREGON
Indirect Transfer of Control of Verizon	)	
Northwest Inc.	)	

---

1 My name is Bob Jenks, and my qualifications were listed in CUB Exhibit 101.

2 **I. Introduction.**

3 CUB is a signatory to the stipulation in this docket that was filed on December 4,  
4 2009. That stipulation left one item unresolved – whether the Oregon PUC should  
5 impose a most favored state provision. CUB supports such a provision and agrees with  
6 the PUC Staff’s description of such a mechanism in its Opening Testimony.<sup>1</sup>

7 **II. CUB Believes the Commission Should Add a Most Favored State**  
8 **Condition.**

9 **A. There is an incentive to “go last.”**

10 Applications for a change of ownership or control of a utility are some of the most  
11 complicated and difficult proceedings that stakeholders of the PUC address. These

---

<sup>1</sup> UM 1431 / Staff / 100 / Dougherty / 60.

1 proceedings require identification and evaluation of the risks associated with the transfer,  
2 which often leads to the Commission imposing conditions that mitigate those risks. For  
3 example, in this proceeding CUB identified a risk associated with Frontier being unable  
4 to secure the current video programming that is offered under Verizon's FiOS system.  
5 CUB was then able to negotiate a condition that would allow customers to void a long-  
6 term contract if they were unhappy with any changes in video programming that may  
7 occur after Frontier assumes ownership of the FiOS system.

8         While all merger and acquisition dockets are complicated and difficult, multi-state  
9 transactions have additional complications. In a multi-state transaction, each state  
10 regulatory proceeding has an incentive to "go last." As a stakeholder, CUB can be  
11 advantaged by knowing what risks consumer advocates in other states have identified and  
12 what conditions the applicants were willing to grant to mitigate those risks. By  
13 conducting regulatory proceedings early in the merger process, a state may fail to identify  
14 risks that come to light through longer, more extensive discovery processes in other  
15 states. A state going early in the regulatory process might then inadvertently omit a  
16 condition that would mitigate a risk common to all the states in which merger/transaction  
17 applications have been filed. It is unfair that a state, by agreeing to a shorter regulatory  
18 process (which benefits the applicants), should be penalized when those same applicants  
19 agree to conditions to mitigate that risk in other states after the docket in the early-going  
20 state has closed.

21         The different state regulatory structures and docket timings described above  
22 create an incentive for each state to attempt to be the last to host the merger/transaction  
23 proceeding, so that each has the ability to build upon the records existing in each state.

1 However, some jurisdiction has to go first, so some unlucky state will have to conduct the  
2 first investigation in uncharted territory without the benefit of the discovery and  
3 testimony that will be filed in other states (which were fortunate enough to be able to  
4 build upon the investigation and testimony done in the first state). This is the position in  
5 which Oregon finds itself in this docket.

6 With regard to this transaction, Oregon is ahead of many states, including most of  
7 the states in which the Applicants' more substantial transactions will occur. Those states  
8 can now build off of the research that Staff, CUB and the CLECS have done. Oregon has  
9 a great deal of experience in dealing with utility transactions and was, therefore, more  
10 willing to go first. However, Oregon still runs the risk of failing to identify all of the  
11 risks posed by this transaction. There is also the possibility that a mitigation condition  
12 that stakeholders in Oregon wanted, but the Applicants currently find unacceptable, will  
13 become, through mass pressure from other states, acceptable to the Applicants and will  
14 then be included in later stipulations in other states.

15 The easiest way to solve this problem – without playing chicken with other states  
16 to see who can really go last – is to add a most-favored state condition to the Oregon  
17 Stipulations. While a most favored-state condition still won't enable Oregon to build on  
18 what other states will do over the course of the merger proceedings, it will allow Oregon  
19 to consider all the conditions that are agreed upon in other states and to then determine  
20 whether any such conditions should reasonably be added to the Oregon Stipulations.

21 **B. CUB supports the proposal in Staff's Opening Testimony.**

22 The idea of a most-favored state condition is not new. Most-favored state conditions  
23 were included in several recent multi-state transactions involving telecommunication

1 utilities, electric utilities and natural gas utilities: the Embarq/CenturyTel transaction, the  
2 PacifiCorp/MEHC transaction; and the Cascade/MDU transaction.<sup>2</sup>

3 In its Opening Testimony, Staff proposed a condition to implement a most-favored  
4 state condition.<sup>3</sup> Under the Staff proposal, the Oregon PUC could review orders and  
5 stipulations from other states and could then adopt conditions from those states, subject to  
6 two circumstances:

7 The Commission or Staff had not previously identified the harm to Oregon  
8 ratepayers; or

9 The commitments or conditions in a final order of another state are more  
10 effective at preventing a harm previously identified by the Commission or  
11 Staff.

12 CUB strongly urges the Commission to adopt Staff's proposed condition that establishes  
13 a process for the Most Favored State review.

14

15

---

<sup>2</sup> OPUC Order 09-169, OPUC Order 06-082; and OPUC Order 07-221.

<sup>3</sup> UM 1431 / Staff / 100 / Dougherty / 60-61.

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1431**

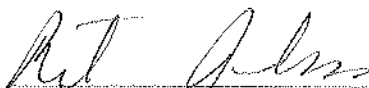
In the Matter of	)	
	)	
VERIZON COMMUNICATIONS INC.,	)	
and FRONTIER COMMUNICATIONS	)	
CORPORATION	)	AFFIDAVIT OF ROBERT (BOB) JENKS
	)	
Joint Application for an Order Declining to	)	
Assert Jurisdiction, or, in the	)	
Alternative, to Approve the Indirect	)	
Transfer of Control of	)	
VERIZON NORTHWEST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

I, Robert (Bob) Jenks, being duly sworn on oath, say:

1. I am the Executive Director of the Citizens' Utility Board of Oregon (CUB).
2. I, along with a number of other witnesses in this docket, filed joint testimony on December 18, 2009, in support of the Stipulation reached by Frontier Communications Corporation, Verizon Communications Inc., Staff of the Public Utility Commission of Oregon, Citizens' Utility Board of Oregon, XO Communications Services, Inc., Integra Telecom of Oregon Inc., TW Telecom of Oregon LLC, Covad Communications Company, McLeodUSA Telecommunications Services, Inc., and 360 Networks. I also filed, on December 18, 2009, Testimony in Support of the Imposition of Most Favored State's Condition as requested by Staff and CUB.

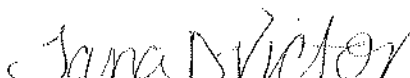
3. All of my testimony is true and accurate based on my information and belief. If I were to be asked the same questions today under oath, my responses would be the same.

Dated this 17<sup>th</sup> day of December, 2009

  
Robert (Bob) Jenks

SUBSCRIBED AND SWORN to before me this 17 day of December, 2009.



  
Notary Public, State of Oregon  
County of Multnomah  
My Commission expires: 05/04/2012

## UM 1431 – CERTIFICATE OF SERVICE

I hereby certify that, on this 17<sup>th</sup> day of December, 2009, I served the foregoing **TESTIMONY IN SUPPORT OF IMPOSITION OF MOST-FAVORED STATE CONDITION OF THE CITIZENS' UTILITY BOARD OF OREGON** and the accompanying **AFFIDAVIT OF ROBERT (BOB) JENKS** in docket UM 1431 upon the PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending the original and 5 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

**(W denotes waiver of paper service)**

**(C denotes service of Confidential material authorized)**

C     **DEPARTMENT OF JUSTICE**  
HC    MICHAEL T. WEIRICH  
       ASSISTANT ATTORNEY  
       GENERAL  
       RUBS  
       1162 COURT ST NE  
       SALEM OR 97301-4096  
       [michael.weirich@state.or.us](mailto:michael.weirich@state.or.us)

C     **PUBLIC UTILITY**  
HC    **COMMISSION**  
       MICHAEL DOUGHERTY  
       PO BOX 2148  
       SALEM OR 97308-2148  
       [michael.dougherty@state.or.us](mailto:michael.dougherty@state.or.us)

W     **FRONTIER**  
C     **COMMUNICATIONS OF**  
       **AMERICA, INC.**  
       KEVIN L SAVILLE  
       ATTORNEY AT LAW  
       2378 WILSHIRE BLVD  
       MOUND, MN 55364  
       [kevin.saville@frontiercorp.com](mailto:kevin.saville@frontiercorp.com)

C     **CHARLES L. BEST**  
HC    ATTORNEY AT LAW  
       1631 NE BROADWAY # 538  
       PORTLAND OR 97232-1425  
       [chuck@charleslbest.com](mailto:chuck@charleslbest.com)

C     **360 NETWORKS (USA) INC**  
HC    MICHEL SINGER-NELSON  
       867 COAL CREEK CIR STE 160  
       [mnelson@360.net](mailto:mnelson@360.net)

W     **LEVEL 3 COMMUNICATIONS**  
       **LLC**  
C     GREG L ROGERS  
HC    SR CORPORATE COUNSEL  
       1025 ELDORADO BLVD  
       BROOMFIELD CO 80021  
       [greg.rogers@level3.com](mailto:greg.rogers@level3.com)

UM 1431- Certificate of Service TESTIMONY IN SUPPORT OF IMPOSITION OF MOST-FAVORED STATE CONDITION OF THE CITIZENS' UTILITY BOARD OF OREGON



UM 1431- Certificate of Service TESTIMONY IN SUPPORT OF IMPOSITION OF  
MOST-FAVORED STATE CONDITION OF THE CITIZENS' UTILITY BOARD OF  
OREGON

**VERIZON NORTHWEST INC**  
EUGENE M ENG  
VICE PRESIDENT –  
LEGISLATIVE AND  
REGULATORY AFFAIRS  
20575 NW VON NEUMANN  
DR  
STE 150 MC OR030156  
HILLSBORO, OR 97006  
[eugene.eng@verizon.com](mailto:eugene.eng@verizon.com)

**VERIZON NORTHWEST INC**  
GREGORY M. ROMANO  
GENERAL COUNSEL NW  
REGION  
1800 41<sup>ST</sup> STREET  
MC WA0105GC  
EVERETT, WA 98201  
[gregory.m.romano@verizon.com](mailto:gregory.m.romano@verizon.com)

**C COMCAST PHONE OF  
OREGON LLC**  
ANDREW FISHER  
ONE COMCAST CENTER  
PHILADELPHIA, PA 19101  
[andrew\\_fisher@comcast.com](mailto:andrew_fisher@comcast.com)

**C COVAD COMMUNICATIONS  
CO**  
KATHERINE K MUDGE  
7000 N MOPAC EXPWY 2<sup>ND</sup> FL  
AUSTIN, TX 78731  
[kmudge@covad.com](mailto:kmudge@covad.com)

**C DAVIS WRIGHT TREMAINE  
HC LLP**  
GREGORY J KOPTA  
1201 THIRD AVE – STE 2200  
SEATTLE WA 98101-1688  
[gregkopta@dwt.com](mailto:gregkopta@dwt.com)

**C DAVIS WRIGHT TREMAINE  
HC LLP**  
MARK P TRINCHERO  
1300 SW FIFTH AVE STE 2300  
PORTLAND OR 97201-5682  
[marktrinchero@dwt.com](mailto:marktrinchero@dwt.com)

**C INTEGRA TELECOM OF  
OREGON, INC**  
DENNIS AHLERS  
6160 GOLDEN HILLS DR  
GOLDEN VALLEY MN 55416-  
1020  
[ddahlers@integratelecom.com](mailto:ddahlers@integratelecom.com)

**C TW TELECOM OF OREGON  
LLC**  
LYNDALL NIPPS  
845 CAMINO SUR  
PALM SPRINGS CA 92262-4157  
[lyndall.nipps@twtelecom.com](mailto:lyndall.nipps@twtelecom.com)

**C XO COMMUNICATIONS  
SERVICES INC**  
REX M KNOWLES  
7050 UNION PARK AVE – STE  
400  
MIDVALE UT 84047  
[rex.knowles@xo.com](mailto:rex.knowles@xo.com)


**W MCDOWELL & RACKNER PC**  
WENDY MCINDOO  
OFFICE MANAGER  
520 SW 6<sup>TH</sup> AVE STE 830  
PORTLAND OR 97204  
[wendy@mcd-law.com](mailto:wendy@mcd-law.com)

**PAETEC  
COMMUNICATIONS INC**  
WILLIAM A HAAS  
VP REGULATORY AND  
PUBLIC POLICY  
1 MARTHA'S WAY  
CEDAR RAPIDS IA 52233  
[bill.haas@paetec.com](mailto:bill.haas@paetec.com)

W  
C  
HC  
**MCDOWELL & RACKNER  
PC**  
ADAM LOWNEY  
ATTORNEY  
520 SW SIXTH AVENUE STE  
830  
PORTLAND OR 97204  
[adam@mcd-law.com](mailto:adam@mcd-law.com)

W  
C  
HC  
**MCDOWELL & RACKNER PC**  
LISA F RACKNER  
ATTORNEY  
520 SW SIXTH AVENUE STE 830  
PORTLAND OR 97204  
[lisa@mcd-law.com](mailto:lisa@mcd-law.com)

Respectfully submitted,



G. Catriona McCracken  
Staff Attorney  
The Citizens' Utility Board of Oregon  
610 SW Broadway, Ste. 308  
Portland, OR 97205  
(503)227-1984  
[Catriona@oregoncub.org](mailto:Catriona@oregoncub.org)