BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Frontier Communications Corporation, New Communications Holdings, Inc. and Verizon Communications Inc. for Consent and Approval of a Change in Control.	))))	Case No. 09-454-TP-ACO

REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE BY CINCINNATI BELL EXTENDED TERRITORIES LLC

On June 5, 2009, Cincinnati Bell Extended Territories LLC ("CBET") moved to intervene in this proceeding to protect its interests as a wholesale customer of Verizon. On June 22, 2009, the Joint Applicants opposed CBET's Motion to Intervene, contending that CBET has failed to demonstrate a real and substantial interest in this proceeding. In the alternative, the Joint Applicants seeks to limit CBET's intervention to the issues identified in CBET's motion. The Joint Applicants have not rebutted CBET's showing that it has a real and substantial interest in this proceeding, so the Motion to Intervene should be granted.

I. CBET Has A Real and Substantial Interest In This Proceeding That Is Not Represented By Any Other Party.

The Joint Applicants characterize CBET's interest in this proceeding solely as that of a competitor. While CBET certainly is a competitor, its interest in this proceeding is not as a competitor, but as a *customer* of Verizon. CBET depends upon Verizon for the provision of wholesale services. It relies upon Verizon to receive and confirm orders for wholesale services, to timely and accurately provision those orders, and to make timely and adequate repairs of the services it provides. These functions involve the very systems and personnel that Verizon proposes to transfer to Frontier.

The Joint Applicants attempt to isolate CBET's interests in this case to those of a competitor, citing the Commission's June 14, 2005 order in *In the Matter of the Application of Akron Thermal, Limited Partnership for an Increase in its Rates for Steam and Hot Water Service*, Case No. 05-5-HT-AIR ("*Akron Thermal*"). *Akron Thermal* has no application to CBET's Motion to Intervene in this case because the facts are completely different. FSG, the intervenor in *Akron Thermal*, was *not* a customer of the utility in whose it attempted to intervene. FSG was only a potential competitor of Akron Thermal. It also happened to have a complaint case pending alleging that Akron Thermal was pricing its services below cost for the purpose of injuring competition. In addition, *Akron Thermal* was not an application to approve a change in control, like this case, but only an application for a rate increase. Because FSG was not an Akron Thermal customer, it had no direct interest in the rates to be charged. The rate setting interests to ensure that the regulated rates covered the cost of providing service were adequately represented by both the utility and Staff, who would investigate of the cost of service and file a report of its investigation. Because the pending proceeding was an application for a rate increase, there was also no purpose in going forward with FSG's pending complaint case about Akron Thermal's rates, as those very rates were what was under review in the application.

The Commission found that being a competitor "does not, of itself, constitute a 'real and substantial interest' sufficient to automatically entitle a party to participate." *Akron Thermal*, p. 3. But, CBET's interests here are not as a mere competitor, nor does CBET rely upon its status as a competitor by itself. CBET's primary interest here is as a customer, an interest it would have whether or not it was also a competitor of Verizon. CBET noted that it is a competitor of Verizon merely to explain the context of its status as a wholesale customer of Verizon. It does not matter whether CBET competes with Verizon or not, as it is still a wholesale customer and is

dependent upon the service provided by Verizon for its own business. Even if Verizon was strictly a wholesale supplier and had no retail customers, CBET's interest in this case would be exactly the same. However, the fact that CBET is also a competitor of Verizon ought to augment its interests in this case, rather than diminish them.

Joint Applicants contend that Frontier will honor the agreement Verizon has with CBET. That is the issue – how will Frontier do that if it is relying on the exact systems and personnel that Verizon has been using to provision the interconnection agreement, when Verizon has been incapable of meeting its obligations under the agreement? In CBET's experience, Verizon has failed to provide adequate service,[1] so merely transferring the exact same systems and personnel to a new purchaser does not explain how the new purchaser will be able to provide adequate service.

CBET did not "concede" that the proposed transaction will be transparent to Verizon customers, as Joint Applicants argue on page 3 of their opposition, or that the transaction will have no effect on services provided to CBET, as stated on page 4. CBET's motion to intervene merely paraphrased language from the application that made such representations. It was the

[1] For example, Verizon's process for notifying CBET of the completion of loop conversions is a billable, coordinated conversion process – a process that Verizon had previously asked CBET to discontinue using due to inadequate Verizon personnel to facilitate the procedure. For a time, Verizon technicians would call CBET when converting a loop, but Verizon unilaterally discontinued that method due to parity concerns. At the end of March 2009, Verizon directed CBET to resume using coordinated conversions as the only means of notification that a loop conversion was completed. However, performance has suffered again (Verizon has missed CBET's required installation intervals at a monthly rate of 27- 45%), putting CBET in jeopardy of missing its own MTSS obligations to retail customers. In addition, Verizon inexplicably refuses to repair loops with DSL service – short of a dead circuit – that encounter trouble. Presumably, these problems would simply be handed over to Frontier to address. It is unclear which of several possible past Verizon policies Frontier would follow when it assumes responsibility.

Joint Applicants that represented that this transaction would be "seamless" and not affect the services that are provided. CBET has no knowledge of how Frontier actually intends to perform its obligations under the interconnection agreement. CBET's point was that, if these representations are true, they indicate that more needs to be done to ensure that Frontier provides adequate service after the transfer.

CBET has been trying to work with Verizon over the last year to correct these service problems. Verizon has blamed some of its problems on its systems or on the transition of functions and/or personnel from one system to another, or from one customer service call center to another. Thus, the representation that identical systems will simply be taken over by Frontier (when it is not clear Verizon has certain systems or that they work properly) is not particularly comforting.[2] In addition, Verizon has told CBET that it has inadequate field personnel in Ohio to keep up with the installation and repair activity.[3] The application does not explain how Frontier, using the same personnel, will accomplish what Verizon has not.

Verizon has repeatedly urged CBET not to file a complaint case or a contractual arbitration proceeding against it, preferring to try to work out problems informally. Now, Verizon seems to be using the lack of such a formal complaint proceeding as a basis for preventing CBET from participating in this proceeding. The Joint Applicants suggest that CBET has other remedies available that do not involve this transaction and intervention cannot be used

[2] Recent discovery responses state that Frontier will acquire a "separate instance" of Verizon's systems software, which is not consistent with the representation that Verizon s systems would be seamlessly transferred to Frontier. Frontier Communications Corporation's Responses and Objections to the Office of the Ohio Consumers' Counsel's First Set of Interrogatories and Requests for Production of Documents, Response to Interrogatory 72.

[3] Frontier was asked in discovery if it has conducted an analysis of the adequacy of Verizon's staffing levels, but only answered the question by referring to a different interrogatory response that did not provide an answer. *Id.* Response to Interrogatory 66.

to "extract concessions" from either Verizon or Frontier. But, if this transaction goes through as planned, Verizon would be out of the picture and there would be no ongoing basis for a complaint case or arbitration against it because it would no longer own or control the Ohio ILEC business at issue. After the sale, Verizon would not be in a position to rectify any problems going forward. Under those circumstances, Frontier should not be allowed to obtain control of the business without showing how it will ensure that customers receive adequate service. Merely stating that Frontier will do exactly what Verizon has been doing is no answer.

Insistence upon the Joint Applicants complying with the Commission's MTSS rules should not be viewed as extracting a "concession." MTSS compliance is a bare legal minimum. If Verizon's Ohio ILEC property is not in compliance with the minimum requirements now, those deficiencies need to be fixed before the property is sold. Perhaps a sale to Frontier is the best thing that could happen, as Verizon appears unwilling to devote any more resources to this market. But Frontier needs to show that it will do more than conduct "business as usual." It needs to explain how it will make the property function as it is required to do.

CBET has adequately demonstrated why its interests are not represented by any other party. The OCC represents only residential retail customers who do not purchase wholesale services. The only other applicants for intervention are the two unions that represent Verizon's employees. They represent the interests of the employees, who likewise do not purchase wholesale services. The Joint Applicants do not identify any other person whom they suggest does represent CBET's interests. CBET has demonstrated a real and substantial interest in this proceeding, so its Motion to Intervene should be granted.

II. CBET Identified Its Interests In Its Application, But Should Not Be Precluded From Participating in Other Issues That Affect It, Should They Arise in the Course of This Proceeding.

The Joint Applicants suggest that, if CBET is permitted to intervene, that it should be limited to the "single issue" identified in its motion. CBET does not agree that "the operation of Verizon's ordering, provisioning, repair and customer service systems" is a "single" issue. This potentially covers such diverse matters as ordering systems, staffing of call centers, adequacy of installation and repair crews, providing repair of all services offered and more. CBET should be allowed to participate in any issue that affects it as a customer of Verizon. As such, it would be inappropriate to limit CBET's participation to a "single issue."

For these reasons, CBET respectfully requests that this motion to intervene in the above-captioned proceedings be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Memorandum in Support of Motion to Intervene was served upon the parties of record listed below this 29th day of June, 2009 by electronic service at the e-mail addresses shown below.

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Summary: Reply Memorandum in Support of Motion to Intervene electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Extended Territories LLC