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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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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. :

PUCO
Case No. 09-454-TP-ACO

**REPLY MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE OF
COMCAST PHONE OF OHIO, LLC**

I. INTRODUCTION

Frontier Communications Corporation ("Frontier") and Verizon Communications Inc. ("Verizon") (collectively, "Applicants") seek approval of a change of control transaction which, if approved, will result in one of the largest incumbent local exchange carriers ("ILEC") in Ohio transferring its operations to an entity with virtually no presence in this state. Despite the magnitude of the proposed transaction, Applicants take the position that no one should be allowed to intervene in this proceeding,¹ and that the Application should be approved without a hearing. In short, Applicants seek to have the Commission rubber stamp their Application.

But the Commission cannot rubber stamp the Application. Ohio law requires the Applicants to prove (and not other parties to disprove) that the proposed transaction "will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge." R.C. 4905.402. The Commission cannot consider whether the proposed transaction will promote the "public convenience" without considering how the transaction may affect the Applicants' wholesale customers and, in turn, their wholesale customers' customers. Therefore, as a competitor who is necessarily a wholesale customer of Verizon, Comcast Phone of Ohio, LLC ("Comcast") has an interest in this proceeding that warrants intervention.

¹ Applicants have opposed every motion to intervene filed in this docket to date.

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Arguing otherwise, the Applicants claim that Comcast has failed to demonstrate a real and substantial interest and has instead offered only "vague generalities" to describe its interests. (Memorandum Contra, p. 2.) This is more or less the same thing that Verizon said about XO Communications Services, Inc. ("XO") and Qwest Communications Corporation ("Qwest") in the merger of Verizon and MCI, Inc. *See In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc. for Consent and Approval of a Change in Control*, Case No. 05-497-TP-ACO (Entries of June 29 and Aug. 9, 2005) The Commission rejected Verizon's argument in the prior proceeding, and should do the same here. XO and Qwest were granted intervention in *Verizon/MCI* for essentially the same reasons that Comcast should be granted intervention here. Specifically, Comcast obtains interconnection, number portability, 911 connectivity and other wholesale services and facilities from Verizon, the incumbent provider in large portions of the state. Comcast undoubtedly has an interest in ensuring that the proposed transaction will not adversely impact competition or Comcast's right or ability to obtain the wholesale services and facilities it needs to continue providing service.

Additionally, the Commission is not required to accept the Applicants' naked assertion that everything will be "business as usual" if the proposed transaction is approved. Considering the magnitude of this transaction, it would be reasonable to develop a full and robust record which will require a reasonable period for discovery. Meaningful discovery, however, cannot occur until Comcast is granted intervention.² The Commission should grant Comcast's Motion to Intervene.

² Comcast recognizes that by virtue of filing a motion to intervene, it is entitled to serve discovery. Comcast expects to begin serving discovery to the Applicants in the near future. But Comcast's discovery will necessarily be limited in nature until the Commission determines whether to grant intervention. For example, it would make no sense for Comcast to spend the time and money taking depositions until it is granted intervention.

II. ARGUMENT

The standards for intervention are contained in R.C. 4903.221 and Rule 4901:1-11, O.A.C. The statute and rules must be "liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Public Util. Comm'n*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 16, quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St. 3d 143, 144. It is reversible error for the Commission to deny intervention to parties that satisfy the statutory and administrative standards.

The Applicants acknowledge that Comcast is both a competitor and customer of Verizon, but argue that neither status is sufficient to warrant intervention. (*See Memorandum Contra*, p. 3.) With respect to Comcast's status as a customer, the Applicants' claim that "[n]owhere does Comcast describe what kind of a 'customer' it is, nor how any such customer-interest connects to this case." (*Memorandum Contra*, p. 3.) Comcast's status as a competitor is insufficient, according to the Applicants, because Comcast allegedly has failed to "demonstrate the 'probable relation' of its interest to the merits of the proceeding." (*Id.*, p. 2.)

The Applicants are wrong on both counts. Comcast's motion to intervene clearly explains both the nature of Comcast's interests as a competitor who is necessarily a wholesale customer, and the nexus between its interest and the outcome of this proceeding. As explained in the Motion to Intervene, "Comcast is a registered competitive local exchange carrier ("CLEC") authorized to provide both intraexchange and interexchange telecommunications services throughout Ohio. Comcast currently competes with, and obtains interconnection, number portability, and other wholesale services and facilities from Verizon in the provision of Comcast's telecommunications services." (*Memo. in Supp. of Motion to Intervene*, p. 2.)

It is well recognized that even facilities-based providers, like Comcast, must obtain certain wholesale services from the incumbent LEC in the markets where they compete. Consequently, Comcast must rely upon Verizon to provide interconnection to the public switched telephone network. Such interconnection allows for the exchange of traffic between Comcast's network and Verizon's. Interconnection also provides the means by which Comcast will achieve connectivity to the local 911 network, allowing emergency calls to successfully complete to the appropriate public service answering point. Another critical arrangement that Verizon must provide to wholesale customers like Comcast is the provision of efficient number porting processes. When Ohio consumers want to avail themselves of competitive voice service offerings, and take their telephone numbers with them when moving from one provider to another, the two service providers must engage one another to ensure the efficient transfer of that customer, and the telephone number. As the incumbent, Verizon plays an instrumental role in that wholesale "service" arrangement. Similarly, Verizon is obligated to provide certain services and functions to Comcast to ensure that Comcast customers can place their name and number in printed directories.

All of these arrangements require Verizon to interact with Comcast on a carrier-to-carrier operational level, to ensure the efficient delivery of these wholesale "services." How these wholesale services, and the carrier-to-carrier interactions that enable such services, will be affected by the transfer is unclear at this time. The Applicants have filed testimony alluding to their plans to "replicate" Verizon's systems that support these carrier-to-carrier service arrangements. But there is scant testimony or evidence of how that process will unfold, and how wholesale customers like Comcast may be affected.

Thus, Comcast has an interest in this proceeding as a wholesale customer of Verizon. Comcast is entitled to protect this interest through intervention "to ensure that the proposed transaction will not adversely impact competition or Comcast's right or ability to obtain the interconnection, number portability, and related wholesale services and facilities it needs to provide its telecommunications services." (Memo. in Supp. of Motion to Intervene, p. 2.) The Motion to Intervene leaves nothing to the imagination with respect to Comcast's interests and how those interests could be affected by this proceeding.

Comcast shares similar interests as other CLECs that have been granted intervention in prior change of control transactions before the Commission. For example, in the *Verizon/MCI* proceeding, Case No. 05-497-TP-ACO, Verizon and MCI sought approval of a planned merger pursuant to R.C. 4905.402, whereby MCI would become a wholly-owned subsidiary of Verizon, the incumbent provider in the market. XO purchased wholesale services from subsidiaries of Verizon and MCI. XO filed a motion to intervene, citing as its interest a concern that "the merger will adversely affect carrier-to-carrier business relationships, market concentration, and relative market strength among competitors." (Entry of Aug. 9, 2005, p. 2.) In granting intervention, the Attorney Examiner concluded that "taking into account post-merger potentialities, it cannot be denied that there are real and substantial consequences for both competitors and consumers." (*Id.*, pp. 6-7.)

In the same proceeding, but by separate entry, the Commission also granted intervention to Qwest, a CLEC that "relies on wholesale inputs [from] both Verizon and MCI." (Entry of June 29, 2005, p. 14.) The Commission reasoned that "although the applicants assure that there will be no immediate impact upon services, we find that there is at least a potential that this

merger have consequences at the operational level. As such, we must acknowledge that . . . providers like Qwest have a real and substantial interest in this proceeding." (*Id.*, p. 18.)

The Applicants fail to cite *Verizon/MCI* in their opposition brief, let alone attempt to distinguish it. And the fact that Verizon was the acquiring entity in *Verizon/MCI* and the divesting entity in this proceeding does not dictate a different result with respect to intervention. *Verizon/MCI* establishes that whenever there is a change in control involving an ILEC, CLECs that are wholesale customers of the ILEC necessarily (and logically) have a real and substantial interest in the outcome of the proceeding. See also *In the Matter of the Joint Application of SBC Corporation and AT&T Corporation for Consent and Approval of a Change in Control*, Case No. 05-269-TP-ACO (Entry of June 13, 2005, p. 5) (granting intervention and stating, "It is clear from the motions to intervene that various interests are involved, including customers . . . entities that interconnect with one or both of the applicants, and entities that provide service to one or more of the applicants.")

In the proposed transaction, Verizon, one of the largest ILECs in Ohio, proposes to divest its operations to Frontier, an entity with no substantial operations in this state. Comcast is currently a wholesale customer of Verizon, and will become a wholesale customer of Frontier. Although the joint applicants would have this Commission believe that the transfer of the Verizon networks, systems, operations and personnel will be a seamless process, the Commission cannot simply accept that assertion on its face. There is ample evidence from other recent Verizon transactions which tells us that these types of transfers are not seamless. In fact, the evidence overwhelmingly demonstrates that these transfers can have a significant impact on wholesale customers and their end users. Common sense tells us that when a small communications company proposes to acquire the operations of a very large communications

company whose operations are three to four times (or more) greater than the small company, there are real issues to consider. Recognizing the complexities involved in this type of transfer, Comcast therefore seeks "to ensure that the proposed transaction will not adversely impact competition or Comcast's right or ability to obtain the interconnection, number portability, and related wholesale services and facilities it needs to provide its telecommunications services." (Memo. in Supp. of Motion to Intervene, p. 2.) Comcast has therefore established a direct relationship between its interests as a customer of Verizon and the outcome of this proceeding. The Applicants do not contend that any other party represents Comcast's interests.

Comcast has done much more than simply state that it is a competitor and customer. Comcast has demonstrated how, by virtue of its status as a competitor who necessarily is a wholesale customer, it will be affected by the outcome of this proceeding. Comcast has therefore satisfied the intervention standard under R.C. 4903.221 and Rule 4901:1-11, O.A.C.

III. CONCLUSION

Because Comcast meets the requirements for intervention contained in R.C. 4903.221 and Rule 4901-1-11, O.A.C., its Motion to Intervene should be granted.

Dated: August 10, 2009

Respectfully submitted,



Mark A. Whitt (Counsel of Record)
Joel E. Sechler
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 (Telephone)
(614) 365-9145 (Facsimile)
whitt@carpenterlipps.com
sechler@carpenterlipps.com

Michael C. Sloan
K.C. Halm
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Ave., NW, 200
Washington, DC 20006
(202) 973-4200 (Telephone)
(202) 973-4499 (Facsimile)
michaelsloan@dwt.com
kchalm@dwt.com

ATTORNEYS FOR COMCAST PHONE
OF OHIO, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Memorandum in Support of Motion to Intervene was electronically served to the following parties on this 10th day of August, 2009:

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815
Scott.J.Rubin@gmail.com

Christine A. Reardon
5550 W. Central Avenue
P.O. Box 352170
Toledo, Ohio 43635-2170
creardon@kiflaw.com

Thomas E. Lodge
Carolyn S. Flahive
Thompson Hine LLP
10 West Broad Street, Suite 700
Columbus, Ohio 43215-3435
Thomas.lodge@thompsonhine.com
Carolyn.flahive@thompsonhine.com

John H. Jones
Duane W. Luckey
Assistant Attorney General
Chief, Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
John.Jones@puc.state.oh.us
Duane.Luckey@puc.state.oh.us

Theodore E. Meckler
Communications Workers of America
20525 Center Ridge Road, Room 700
Cleveland, Ohio 44116
tmeckler@cwa-union.org

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
600 Hidden Ridge, HQE 02J27
Irving, Texas 75038
Randy.vogelzang@verizon.com

Kevin Saville
Associate General Counsel
Frontier Communications
2378 Wilshire Blvd
Mound, MN 55364
Kevin.Saville@frontiercorp.com

Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
etter@occ.state.oh.us

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202
dhart@douglasshart.com

A handwritten signature in black ink, appearing to read 'Mark A. Whitt', written in a cursive style.

Mark A. Whitt

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