

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Applications of Global Crossing Ltd., and)	File Nos.
Citizens Communications Company for Authority)	ITC-T/C-20000828-00530
To Transfer Control of Corporations Holding)	CCBPol No. 00-1
Commission Licenses and Authorizations Pursuant)	20001005AD-09
to Sections 214 and 310(d) of the Communications)	0000209675, <i>et al.</i>
Act and Parts 20, 22, 63, 78, 90, and 101 of the)	
Commission’s Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2001

Released: April 16, 2001

By: the Chief, Common Carrier Bureau; Chief, International Bureau; Chief, Cable Services Bureau; Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we approve the transfer of control applications filed by Global Crossing Ltd. (“Global Crossing”) and Citizens Communications Company (“Citizens”) (collectively, the “Applicants”).¹ Based on the record, we conclude that approval of the transfer of control applications will serve the public interest.

2. On October 10, 2000, Global Crossing and Citizens filed joint applications seeking to transfer licenses and authorizations held by indirect, wholly-owned subsidiaries of Global Crossing (collectively, “Frontier”)² to Citizens. Frontier is an incumbent local exchange carrier (“LEC”), which holds various

¹ See *Global Crossing Ltd. Seeks FCC Consent for Transfer of Control of Frontier to Citizens Communications Company*, Public Notice, DA 00-2366 (rel. Oct. 19, 2000) (Global Crossing Application).

² The indirect, wholly-owned subsidiaries of Global Crossing involved in the transfer requests are: Frontier Communications of Alabama, Inc.; Frontier Communications of AuSable Valley, Inc.; Frontier Communications of Breezewood, Inc.; Frontier Communications of Canton, Inc.; Frontier Communications of DePue, Inc.; Frontier Communications of Fairmount, Inc.; Frontier Communications of Georgia, Inc.; Frontier Communications of Illinois, Inc.; Frontier Communications of Indiana, Inc.; Frontier Communications of Iowa, Inc.; Frontier Communications of Lakeside, Inc.; Frontier Communications of Lakewood, Inc.; Frontier Communications of Lamar County, Inc.; Frontier Communications of Michigan, Inc.; Frontier Communications – Midland, Inc.; Frontier Communications of Minnesota, Inc.; Frontier Communications of Mississippi, Inc.; Frontier Communications of Mt. Pulaski, Inc.; Frontier Communications of Mondovi, Inc.; Frontier Communications of New York, Inc.; Frontier Communications of Orion, Inc.; Frontier Communications of Oswayo River, Inc.; Frontier Communications – Prairie, Inc.; Frontier Communications of Pennsylvania, Inc.; Frontier Communications – Schuyler, Inc.; Frontier Communications of Seneca-Gorham, Inc.; Frontier Communications of the South, Inc.; Frontier Communications – St. Croix, Inc.; Frontier Communications of (continued....)

wireless radio licenses that support its operations. The Frontier companies operate in Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, New York, Ohio, Pennsylvania, and Wisconsin.³ Frontier will transfer competitive LEC operations to Citizens in Newburgh, New York; Poughkeepsie, New York; and Bloomington, Minnesota. The applications seek Commission approval for transfer of control of a domestic section 214 authorization, an international section 214 authorization, and a cable television relay service (“CARS”) license. Additionally, the Applicants filed 28 related applications for transfer of control of wireless licenses.⁴ The transferee, Citizens, is a diversified public utility that provides telecommunications services and operates as an incumbent LEC in Arizona, California, Idaho, Illinois, Iowa, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, West Virginia, and Wisconsin.⁵ Citizens has competitive LEC operations in Arizona, California, Idaho, Oregon, Utah, and Washington.

3. The Public Utility Law Project (“PULP”), the Communications Workers of America (“CWA”), and Choice One Communications (“Choice One”) filed comments in response to the joint applications on November 20, 2000.⁶ The Applicants filed a joint reply to the comments on December 6, 2000.⁷

4. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the “Act” or the “Communications Act”), we must determine whether the Applicants have demonstrated that the proposed transfer of control of Frontier’s licenses and authorizations will serve the public interest,

(Continued from previous page) _____

Sylvan Lake, Inc.; Frontier Communications of Thorntown, Inc.; Frontier Communications of Viroqua, Inc.; Frontier Communications of Wisconsin, Inc.; and Frontier Telephone of Rochester, Inc.

³ The Applicants have indicated that the proposed transfer also includes Frontier’s wholly-owned subsidiary Frontier Communications of America, Inc., which is or has applied to be certified as a long distance carrier and a competitive LEC in all of these states.

⁴ See *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing*, Public Notice, WTB Report No. 722, File Nos. 0000284803, 0000284820, 0000284834, 0000284841, 0000284843, 0000284848, 0000284884, 0000284887, 0000284930, 0000284933, 0000284936, 0000284942, 0000284946, 0000284950, 0000284956, 0000284960, and 0000284853 (rel. Dec. 13, 2000); *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing*, Public Notice, WTB Report No. 632, File Nos. 0000209675, 0000209683, 0000209691, 0000209696, 0000209700, 0000209706, 0000209707, 0000209710, 0000210650, 0000210651, and 0000210653 (rel. Sept. 6, 2000).

⁵ Citizens is in the process of acquiring incumbent LEC operations in Colorado, Wyoming, and Washington.

⁶ Letter from Ben Wiles to Magalie Roman Salas, Secretary, Federal Communications Commission, (filed Nov. 20, 2000) (PULP Nov. 20 *Ex Parte* Letter); Petition to Impose Conditions of Communications Workers of America (filed Nov. 20, 2000) (CWA Petition); Petition of Choice One Communications of New York, Inc. to deny and defer the transfer of control application of Global Crossing and Citizens Communications Company (filed Nov. 20, 2000) (Choice One Comments). Although Choice One filed a petition to deny without the required supporting affidavit, Choice One subsequently filed an *ex parte* requesting that their attached affidavit either be accepted as part of the submission, or in the alternative, treated as comments. The original filing will be treated as comments filed in the proceeding.

⁷ Opposition to Petitions to Deny and Reply Comments of Global Crossing and Citizens (filed Dec. 6, 2000) (Global Crossing-Citizens Reply).

convenience, and necessity.⁸ In discharging these statutory responsibilities, we have weighed the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the transfers of control serve the public interest, convenience, and necessity.⁹

II. DISCUSSION

5. We determine that the proposed transfer will not likely result in harm to competition in any relevant market and will likely yield tangible public interest benefits. With respect to the application to transfer control of the international section 214 authorization, we find that the application does not raise any significant issues that require discussion and would normally have received streamlined treatment under section 63.12 of the Commission's rules. We therefore find that grant of the international section 214 transfer application would serve the public interest, convenience, and necessity. Additionally, with respect to the applications for the transfer of control of the wireless licenses, no qualification or competitive concerns have been raised, and the transaction does not involve aggregation of commercial mobile radio service spectrum or implicate the cellular cross-ownership rule.¹⁰ Accordingly, we find that grant of the applications for the transfer of control of the wireless licenses is in the public interest.

A. Potential Public Interest Harms

6. The Commission has previously found that absent conditions, a proposed merger could harm consumers by precluding the potential for one party to a transaction to enter the other's markets as a competitor.¹¹ Specifically, the Commission has found that a proposed merger involving incumbent LECs could have an anti-competitive effect based in part on: (1) the metropolitan areas involved, which supported competitive LEC entry;¹² (2) the mobile telephony holdings of the parties, which enhanced their ability to

⁸ 47 U.S.C. §§ 214(a), 310(d).

⁹ See, e.g., *In the Matter of AT&T Corp., British Telecommunications, Plc, VLT Co. L.L.C., Violet License Co. L.L.C. and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, Plc*, IB Docket No. 98-212, Memorandum Opinion and Order, 14 FCC Rcd 19410 (1999) (*AT&T/BT Order*).

¹⁰ See File Nos. 0000210650, 0000210651, and 0000210653. See also 47 C.F.R. §§ 20.6, 22.942.

¹¹ *In re Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997) (*Bell Atlantic/NYNEX Order*). See also *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (*Bell Atlantic/GTE Order*); *In re Application of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (*SBC/Ameritech Order*).

¹² *SBC/Ameritech Order*, 14 FCC Rcd at 14746-477, 14789 paras. 69, 168; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd 20015-19, paras. 54-57.

springboard into adjacent markets;¹³ (3) the announced plans and potential for one company to enter the other's markets;¹⁴ and (4) extensive advertising across regions.¹⁵ The Commission has considered whether this type of analysis is necessary when the transaction pertains to smaller carriers, and found that it would on a case-by-case basis determine the competitive effects of the proposed transactions.¹⁶

7. We conclude that the instant case does not pose the same threat of a reduction in the number of potential competitive entrants that the Commission found in the *Bell Atlantic/NYNEX Order*, the *SBC/Ameritech Order* or the *Bell Atlantic/GTE Order*. The instant transaction involves the transfer of small and rural incumbent LECs, which are spread across 13 different states. By contrast, the *SBC/Ameritech Order* and *Bell Atlantic/NYNEX Order* focused on potential competitive entry in large metropolitan areas such as St. Louis, Chicago, and New York.¹⁷ Virtually all of Frontier's incumbent LECs are in small exchanges (some with less than 200 access lines). Of these exchanges, adjacencies with Citizens' incumbent LECs occur in only four states: Illinois, Iowa, Minnesota, and New York. With the sole exception of Rochester, New York, the number of access lines in the adjacent exchanges is extremely small.¹⁸ The Commission has previously found that such largely rural and less populated areas are less attractive to new entrants.¹⁹

8. We find that, although Rochester has a number of access lines and the Applicants have adjacent service areas in Rochester, this application does not present the same types of competitive issues as in the previous cases cited above. Global Crossing notes that Rochester already has six local exchange competitors with their own switches, including AT&T (through its purchase of ACC Corp.), WorldCom (through its purchase of Metropolitan Fiber Systems), Time Warner (competing through its cable TV facilities), PacTec Communications, Choice One, and Timely Information Corp. AT&T, WorldCom, and Time Warner, also have their own fiber networks in place. In addition, two transport competitors without

¹³ *Bell Atlantic/GTE Order*, 15 FCC Rcd 14032, 14091-92, paras. 107, 110; *SBC/Ameritech Order*, 14 FCC Rcd at 14748, 14753-54, paras. 73, 85.

¹⁴ *Bell Atlantic/GTE Order*, 15 FCC Rcd 14088, 14090-92, paras. 100, 105, 108, 110; *SBC/Ameritech Order*, 14 FCC Rcd at 14749-54, paras. 77-86; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19990-91, para. 8.

¹⁵ *SBC/Ameritech Order*, 14 FCC Rcd at 14753-54, para. 85. See also *Bell Atlantic/GTE Order*, 14 FCC Rcd 14764, para. 108.

¹⁶ *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, FCC 99-105, Third Memorandum Opinion and Order, 14 FCC Rcd 10816, 10830, para. 19 (1999).

¹⁷ *SBC/Ameritech Order*, 14 FCC Rcd at 14749-54, paras. 77-86; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19990-91, para. 8.

¹⁸ In Illinois, the average number of access lines per exchange is approximately 1410 for Citizens and 640 for Frontier. In Iowa, the average number is 2400 for Citizens (representing properties that it has contracted to purchase from Qwest) and 400 for Frontier. In Minnesota, the average number is 2140 for Citizens (including properties it has contracted to purchase from Qwest), and 2010 for Frontier. And in New York, the average number is 6950 for Citizens and 6440 for Frontier, excluding Rochester. Letter from John B. Adams, Counsel to Citizens Communications Company, and William J. Sill, Counsel to Global Crossing, Ltd., to Magalie Roman Salas, Secretary, Federal Communications Commission, CCBPol No. 00-1 at 3-4 (filed March 28, 2001) (Global Crossing March 28 *Ex Parte* Letter).

¹⁹ *GTE/Bell Atlantic Order*, 15 FCC Rcd at 14095, para. 117.

local exchange switches are constructing competitive fiber networks in Rochester.²⁰ In looking at the competitive status of the metropolitan areas affected by a merger, the Commission has also considered the advantages an adjacent incumbent LEC might have that would allow it to quickly gain market share, such as mobile telephony holdings. Neither party in the instant case has a mobile telephony system that could be used to springboard into the other's market.²¹

9. Furthermore, there is no evidence of intent on the part of either party in the instant case, absent this transaction, to enter the market of the other party. The *Bell Atlantic/NYNEX Order*, the *SBC/Ameritech Order*, and the *Bell Atlantic/GTE Order* expressed the Commission's concerns that the carriers had intent to enter one another's markets and, thus, were likely to be competitors if the proposed transaction did not take place.²² This is not the case in the instant transaction. In fact, Citizens actually provided service in Rochester and found that "economic results from these competitive operations did not warrant continuing them."²³ Citizens withdrew from the market in late 1997 and early 1998, which is more than two years prior to signing the contract with Frontier/Global Crossing regarding the instant transaction. There is no indication that the withdrawal by Citizens two years ago has any connection to the transaction before us. Because Citizens attempted and failed to enter the Rochester market that is served by Frontier, we find that it is unlikely they would reenter the market as a competitor in the near future. Accordingly, we conclude, based on the foregoing considerations, that no harm to competition is likely to occur from the instant transaction.

10. Several commenters have urged us to condition any approval of the proposed transaction to address other alleged public interest harms, but have failed to show that the harms they allege are sufficiently merger-specific or come within the scope of harms we consider in dealing with license transfer applications.

11. We, therefore, reject Choice One's requests that the Commission grant the transfer of control only on a temporary basis for 180 days.²⁴ Choice One makes no attempt to allege potential harm as a result of the transfer of control from Global Crossing to Citizens and the harms it alleges are thus not

²⁰ Global Crossing March 28 *Ex Parte* Letter at 4.

²¹ The record indicates that Frontier does not operate any cellular systems which could be used to springboard into other markets and Citizens' sole cellular system is Mojave Cellular, which operates in the northwest corner of Arizona and is far removed from Frontier's access lines. Global Crossing March 28 *Ex Parte* Letter at 4. Additionally, neither Citizens nor Frontier hold any Personal Communications Services licenses or Specialized Mobile Radio service licenses used for mobile telephony services. See Letter from John B. Adams, Counsel to Citizens Communications Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, CCBPOL No. 00-1 at 1 (filed April 16, 2001) (Global Crossing April 16 *Ex Parte* Letter).

²² *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14088, 14090-92, paras. 100, 105, 108, 110; *SBC/Ameritech Order*, 14 FCC Rcd at 14745, para. 66; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19990-91, para. 8.

²³ Global Crossing March 28 *Ex Parte* Letter at 6.

²⁴ Choice One argues that the permanent grant should be given when the applicants have cured the issues raised in their comments. They also argue that if the issues raised are not cured within the 180 day period, the Commission should then revoke the pending approval or significantly fine the Joint Petitioners until such issues are satisfactory to the Commission. Choice One Comments at 16.

merger-specific.²⁵ Instead, Choice One is seeking in a license transfer proceeding to resolve disputes between itself and the Applicants. Choice One raises several specific allegations against the transferor in connection with Frontier's section 251 local competition obligations. For example, Choice One claims that it has encountered substantial difficulty and delay in obtaining collocation with adequate interconnection facilities at most central office facilities.²⁶ We conclude that these disputes should not be addressed through this review process, but rather should be handled through the appropriate complaint or enforcement processes.²⁷ If Choice One wishes to pursue the general section 251 allegations brought forth in its comments, they should be addressed in an enforcement or complaint proceeding pursuant to section 208 of the Act.

12. We also decline to impose the Lifeline requirements proposed by PULP.²⁸ In its filing, PULP addresses its concern with what it terms "the seriously inadequate efforts by some of the merger participants for enrolling customers in their telephone Lifeline programs."²⁹ PULP argues that in connection with the approvals sought from the Commission, the Applicants should assure that measures are taken to increase the Lifeline enrollment to a level at or above the statewide average, including the implementation of automatic enrollment programs.³⁰ While we recognize that PULP raises important concerns, we conclude that these issues are more appropriately handled by the New York Public Service Commission.³¹ Moreover, we note that these concerns are before the New York Public Service Commission in connection with its review of the instant proposed transaction.³²

²⁵ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, para. 6 (rel. Jan. 22, 2001).

²⁶ Choice One Comments at 5. Choice One also alleges that Frontier has yet to offer dark fiber to Choice One as an unbundled network element ("UNE"), even though it was requested a year ago. Furthermore, Choice One alleges that it continues to experience problems with hot cuts and cutover coordination along with Local Number Portability ("LNP"). Choice One alleges that Frontier technicians frequently fail to mark or they mis-mark circuit terminations, especially Digital Subscriber Line ("DSL") terminations. Choice One has not alleged, however, that Frontier's performance is likely to worsen as a result of its transfer of control to Citizens.

²⁷ See *Application for Consent to Transfer Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292 at 21306, paras. 28-29 (1998). Additionally, we note that Choice One has addressed a number of these issues in state proceedings.

²⁸ Lifeline is a retail local service offering that is available only to qualifying low income consumers for which the consumers pay reduced charges. 47 C.F.R. § 54.401.

²⁹ PULP Nov. 20 *Ex Parte* Letter at 1.

³⁰ *Id.* at 2.

³¹ See 47 C.F.R. §§ 54.401(d), 54.409(a).

³² Joint Petition of Global Crossing and Citizens Communications Company for approval of the transfer of capital stock of their New York ILECs (Frontier of Rochester, Ausable Valley, Sylvan Lake, and Seneca Gorham) and Frontier subsidiary, Telco Inc. to Citizens Communications, and for Other Authorizations Needed, New York State Public Service Commission, Case No. 00-C-1415.

13. We also reject CWA's request that the Commission condition approval for the transfer of control on the transfer of all the assets and liabilities of the Frontier employee pension plans to Citizens.³³ The CWA Petition asserts that after the closing of the proposed transaction, Citizens will be required to recognize the collective bargaining agreements already in place and to maintain wages and benefits. Among the benefits included in the collective bargaining agreements between Frontier and its employees is a defined benefit pension plan.³⁴ CWA is concerned that since the assets are not being transferred with Frontier to Citizens that Citizens will not honor the agreements.³⁵ We find that the treatment of pension plan assets following a merger or acquisition is outside the scope of review in the license transfer context. Even if the matter were within the jurisdictional boundaries of the Commission, the parties alleging harm in connection with the employee pension plan assets have not provided evidence that any potential harm will necessarily follow from the division of assets as they have been laid out in the merger agreement between the parties. In this case, the transferee has agreed to honor the collective bargaining agreement.³⁶ Furthermore, as the Applicants point out, employees who are entitled to benefits have remedies under contract law.³⁷

B. Potential Public Interest Benefits

14. Based on the present record, we also conclude that the transfer of control is likely to result in some public interest benefits. We find that the instant transaction will permit both the Citizens and the Frontier incumbent LECs to sharpen their focus on the areas where they are best able to provide their customers with innovative and cost effective services. Furthermore, the combined size and depth of experience of the companies will enhance their abilities to provide these services as competitors in additional areas. We also agree with the Applicants that the combined entity will be better equipped to focus on growing its customer base through new business opportunities, both inside and outside the Citizens and Frontier incumbent LEC territories.³⁸

III. CONCLUSION

15. Thus, we determine that the proposed transfer will not likely result in harm to competition in any relevant market and will likely yield tangible public interest benefits. Accordingly, we approve the requested transfer of the domestic wireline section 214 authorization, the international section 214

³³ CWA Petition at 8.

³⁴ *Id.* at 3.

³⁵ CWA claims that the costs of employer contributions to the pension trust fund are embedded in local rates and in the prices set by the Commission for exchange access and since Citizens will have to fund benefits that have already been paid by Frontier's prior contributions to the pension fund and the earnings fund, Citizens may be forced to ask the Commission for price cap relief. *Id.* at 7. We find CWA's argument that Citizens may someday file for price cap relief based on the costs of its employee benefits to be entirely speculative.

³⁶ Global Crossings-Citizens Reply at 5 n.12.

³⁷ *Id.* at 12.

³⁸ The companies expect to increase their overall presence in Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, New York, Ohio, Pennsylvania, and Wisconsin. Global Crossing Application at 7.

authorization, the wireless licenses, and the CARS license associated with these applications.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (j), 214 (a) and (c), and 309 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the applications for transfer of control of the domestic section 214 authorization, the international section 214 authorization, the CARS license transfer of control application, and the 28 transfer of control applications of the wireless licenses filed by Global Crossing and Citizens, in the above captioned proceeding ARE GRANTED.

17. IT IS FURTHER ORDERED that the request of Choice One for the imposition of conditions on our approval of the proposed transaction IS DENIED.

18. IT IS FURTHER ORDERED that the Petition to Impose Conditions of the Communications Workers of America IS DENIED.

19. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

20. IT IS FURTHER ORDERED that this action is taken under delegated authority pursuant to 47 C.F.R. §§ 0.91, 0.291, 0.101, 0.321, 0.51, 0.261, 0.331 and 0.131.

FEDERAL COMMUNICATIONS COMMISSION

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