

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Frontier
Communications of New York, Inc.
Pursuant to Section 221 of the Public Service
Law for Confirmation of a Cable Television
Franchise Awarded by the Village of
Harriman (Orange County)**

Case 18-V-

PETITION FOR CONFIRMATION

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May 14, 2018

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PETITION FOR CONFIRMATION

Frontier Communications of New York, Inc. (“Frontier”) respectfully requests that the Commission confirm, pursuant to § 221 of the Public Service Law, a non-exclusive cable / video franchise (the “Franchise”) that has been awarded to Frontier by the Village of Harriman, a municipality located in Orange County, New York (the “Franchisor” or “Municipality”).

As set forth in this Petition, the Franchise, and Frontier’s proposed offering of a facilities-based cable/video service in the Municipality pursuant to the Franchise, comply with all applicable requirements of federal and state law. Moreover, prompt approval of the Franchise provides important public benefits including expanded high speed broadband services and a competitive cable/video option to the residents of New York and is in the public interest.

I. Confirmation of the Franchise is in the Public Interest.

Generally, the Commission confirms a franchise unless the Commission finds that the operation of the proposed cable system under the proposed franchise does not conform to applicable New York State regulations or that it is in violation of the public interest.¹ As set forth below, there is ample evidence to support a Commission finding that the Franchise is both in the public interest and complies with applicable laws, regulations and standards.

¹ See Public Service Law §221(3)

The Franchise is beneficial to the public and warrants expedited confirmation. Specifically, the Franchise not only significantly contributes toward achieving the Governor's initiative to expand the availability of 100 mbps broadband service throughout NYS, but also introduces facilities-based, full service video competition in underserved communities, like the Municipality, in Frontier's service territory. As a consequence, the Franchise brings the benefits of competition, like enhanced service quality and lower prices, as well as the increased economic opportunities associated expanded broadband to these communities. Moreover, the Franchise is fully supported by the Municipality and its residents, who are thirsty for advanced service and enhanced consumer choice.

1. Frontier's Application Furthers its Commitment to the State of New York and the Governor's Broadband Program.

Frontier is fully committed to the State of New York and to the success of Governor Cuomo's New NY Broadband Program (the "Program"). Frontier has invested nearly \$540M in its NYS network since 2011 to enhance and expand the availability of services in its New York territory. Frontier is a trusted and effective state and local partner in bringing economic opportunity to some of the most rural parts of the state. For example, in 2015, Frontier earned the NYS Broadband Program Office's NYS Economic Leadership Broadband Champion Award for its partnership with Hamilton County, the most rural county in New York, to upgrade high speed Internet throughout the County.² Frontier also received a 2015 NYS Most Innovative Broadband Project Champion Award for its creativity in helping the Town of Thurman and others to use "white space" technology to successfully provide residences and businesses broadband access to the

² Because of this partnership, 75% of households in a 1,700 square mile portion of the Adirondack Park have access to speeds of 12 to 40 Mbps.

Internet where dial-up was previously the only option.

In addition, Frontier has successfully pursued multiple projects in the Program to serve unserved and underserved populations in NYS. Most recently, Frontier was awarded six (6) different NYS grants through the Program to complete these FTTH projects in four (4) different regions of New York which, in total, will bring 100 mbps service to over Three Thousand Three Hundred (3,300) unserved and underserved households and businesses. Frontier will use fiber-to-the-home (FTTH) technology in these Phase 1 projects to bring 100 mbps service to currently unserved and underserved communities. At this time, Frontier is seriously considering additional Phase 2 projects it can undertake to help achieve the Governor's goal and its ability to offer competitive video services is central to the planning, economics and success of these projects.

Frontier's well demonstrated commitment to expand broadband in NYS is furthered by Frontier's efforts to provide video service as described in this Petition for several reasons. First, the video deployment fully utilizes and pushes Frontier's fiber infrastructure and upgraded electronics deeper into Frontier's network, much of which is located in rural high-cost areas that other providers have chosen not to serve. Second, the investments required to provide video services positions Frontier for future enhancements and upgrades over time, particularly through public-private partnerships such as the New NY Broadband Program and its federal Connect America Fund (CAFII) buildouts. In fact, Frontier was the first provider in NY to accept its CAFII offer of support and has already begun leveraging the over \$100 Million in funding (2015-2020) to bring broadband service to Forty-Five Thousand (45,000) unserved and underserved households in NYS. Frontier is similarly eager to find additional opportunities to partner with the State of New York to bring near term broadband and video enhancements to the thousands of households across New York that will

not immediately benefit from CAFII funding either because they were excluded from the FCC's funding model or because the offered support was rejected.

Frontier's efforts to advance the public interest by providing enhanced broadband services go hand in hand with its commitments to provide the video services as described in this Petition.

2. The Proposed Franchise Encourages Competition and Expands Networks.

The proposed Franchise not only encourages competition but also expands wireline broadband networks across the state, which will support the video service platform. By offering Vantage™ TV video services, Frontier will provide, for the first time in the Municipality, a much needed and often requested competitive alternative to conventional cable and satellite services. The emergence in the video market of healthy competition—like that which already exists in the telecommunications voice and broadband market—will bring the advantages of price and service discipline that are associated with competition to community residents. Frontier anticipates this competition will benefit Frontier customers as well as customers of its competitors who will, in all reasonable likelihood, see price reductions and service improvements as a result of Frontier's introduction of competitive alternatives. Further, such expansion and competition is consistent with and promotes the Commission's core policy goals in the video market.

Indeed, the Commission has a long history of adopting pro-competitive measures in the video market in order to capitalize on the well understood and documented consumer benefits of competition, such as improved pricing, choice, and service quality, and greater financial investment. In fact, the promotion of competition is so crucial to the public interest that the

Commission has indicated that its core interest in the video market is “to encourage wireline video network expansion and competition to the fullest extent possible Statewide”.³ Despite its laudable efforts over the last decade, however, the Commission has only been able to approve two hundred twenty-seven (227) new local franchises⁴ in municipalities that were previously served by a single cable operator.⁵ But, there are over one thousand five hundred (1,500) municipalities in NYS. Thus, a significant portion of the municipalities in the state still do not have the benefit of video competition and choice and are at the mercy of a video market dominated by one monopolistic cable operator.

By confirming the Franchise proposed by Frontier in this Petition, the Commission will strongly encourage wireline video network expansion and competition, which provides consumers with the options and choices they deserve and seek.

3. Frontier’s Proposed Franchise is Supported by, and Brings Choice to, the Municipality.

The proposed Franchise is overwhelmingly supported by the residents of the Municipality. No residents opposed the proposed Franchise when it was discussed at the required public hearing or when it was approved at the public municipal board meeting. To the contrary, residents’ feedback / comments were supportive of a new, yet known, provider with a long history in their community entering the marketplace to bring them greater competition and enhanced choice. It should come as no surprise that customers of traditional incumbent cable providers

³ See Staff Assessment of Telecommunications Services, June 23, 2015, p. 37.

⁴ 189 of the 227 local franchise were granted to one provider.

⁵ See Staff Assessment of Telecommunications Services, June 23, 2015, p.38.

appear to have grown weary of the lack of competitive choice and varying levels of service. As Commission staff recognized in its review of video services just last year, customer dissatisfaction remains high.⁶ In fact, customer satisfaction with traditional cable companies has actually grown worse year over year (2014 – 2015).⁷ Simply put, the need for second entrants into the wireline video market is greater now than ever and additional entrants will drive service improvements, consumer choice and consumer desired impacts on pricing.

4. **Frontier's Investment Will Enhance Broadband Service.**

Frontier's investment in wireline video infrastructure will have the ancillary benefit of enhancing both residential and commercial broadband service. This is because video service is a critical component of Frontier's broader strategic initiative to invest in the delivery of a full suite of services over its IP-enabled network platform (the "Frontier Platform"). The Frontier Platform is an innovative technology that uses fiber to the premise and a hybrid fiber-copper network, combined with upgraded electronics, to link homes, businesses and other commercial enterprises directly to Frontier's new suite of services. Aside from making advanced services—including a robust array of video services—available to Frontier's customers, the Frontier Platform exemplifies the substantial investment in network infrastructure that Frontier has been and will be making to deliver enhanced communications services to residents and businesses in New York.

This investment in video and enhanced broadband will provide extraordinary value and service to customers while simultaneously helping to "future-proof" New York's telecommunications network. On the residential side, Frontier's infrastructure upgrades will enable

⁶ Id. at p.45.

⁷ Id.

it to deliver speeds that approach or exceed the Governor's 100+ mbps target to a much greater number of residential consumers. And, as Frontier's deployment of its video services offerings grows so will the availability and performance of its high speed broadband offerings. Commercial customers, including wholesale customers, will also realize substantial benefits from Frontier's planned network infrastructure upgrades. The network upgrades Frontier makes in order to launch and expand the availability of video services will also be available to its competitors and wireless providers, on a wholesale basis, to provide ultra-high capacity, competitive, commercial services—including transport facilities that are critical to the successful expansion of advanced wireless services like 5G. Thus, there is a virtuous cycle between expanding Frontier's video services and Frontier's broadband capabilities.

By approving and confirming the Franchise, the Commission will be further demonstrating its own continuing commitment to policies that encourage innovation, competition and ongoing network investment in NYS. Accordingly, Frontier respectfully requests that the Commission review this Petition, find it is in the public interest, and confirm the Franchise on an expedited basis.

II. Information Submitted in Support of the Petition.

In support of this Petition, Frontier states the following:¹

1. The applicant for confirmation and approval of the Franchise is Frontier Communications of New York, Inc. Frontier's contact for purposes of this application is Jan VanDeCarr, Manager, Government and External Affairs, 137 Harrison Street, Gloversville, New York 12078-4815, (518) 773-6252. The municipality that will be served pursuant to the Franchise is the Franchisor. Frontier is prepared to and anticipates that it will begin offering service to the public for hire pursuant to the Franchise as soon as is practicable after the Commission confirms the Franchise. (16 NYCRR § 897.2(a))

2. True copies of the Franchise and the resolution authorizing the Franchise are provided as **Attachment II-2(A)** and **Attachment II-2(B)**, respectively, to this Petition. A public hearing on Frontier's application for a franchise was held by the Franchisor on April 10, 2018 at Village Hall, One Church Street, Harriman, New York, starting at approximately 7:30 P.M. True copies of the affidavits of publication of the notices of public hearing are provided as **Attachment II-2(C)** to this petition. (16 NYCRR § 897.2(b))

¹ Each of the numbered paragraphs in this section of the Petition identifies the statute or regulation that requires Frontier to provide the information set forth in the paragraph.

3. True copies of the documents submitted by Frontier to the Franchisor as part of, or in support of, its application for the Franchise are included in **Attachment II-3** to this petition. (16 NYCRR § 897.2(c))

4. The facilities in New York State that will be used to provide cable television service pursuant to the Franchise are owned by Frontier and/or a Frontier affiliate. (16 NYCRR § 897.2(d))

5. The technical specifications and design of the cable system are described in **Attachment II-5** to this Petition. At the time of this petition, Frontier has not launched origination cablecasting in other New York municipalities. Frontier provides origination cablecasting/Vantage TM TV by Frontier in Connecticut for more than one hundred fifty thousand (150,000) households as well as in other markets in Washington, Oregon, California, Texas, Indiana, Florida and North Carolina. Frontier will comply with all of the Commission's regulations regarding the provision of PEG access channels. (16 NYCRR § 897.2(e))

6. Frontier's proposed operation of the cable system at issue in this Petition would not violate, or in any way be inconsistent with, any applicable federal or State law or regulation. (16 NYCRR § 897.2(f)) As discussed herein, Frontier's proposed operation is in furtherance of the Commission's policy and federal guidance.

7. A copy of this Petition is being served upon the Clerk for the Franchisor, and proof of such service is provided as **Attachment II-7** to this Petition. (Publ. Serv. L. § 221(1); 16 NYCRR § 897.2(g))

8. A notice of this Petition will be published on Friday, May 18, 2018 in the Times Herald-Record (the “Publication”). The Publication is a newspaper of general circulation in the Municipality. Frontier has submitted the notices to the Publications, has arranged for payment of the necessary charges, and has been assured that the notices will be published on the specified dates. Proof of these facts is provided as **Attachment II-8** to this Petition. Frontier will file a supplemental affidavit confirming the actual publications of the notices following publication. (16 NYCRR § 897.2(g))

III Build-out Related Information.

A. Generally.

Frontier is seeking to be a new entrant into and to become the second provider of cable video services in the Municipality. As a second market entrant, Frontier is prepared to invest the necessary capital to upgrade its current infrastructure within the Municipality to offer this new service. Frontier is also prepared to invest its capital to expand its current infrastructure to ensure that Frontier can be capable of serving as many willing subscribers as possible.

However, there are significant risks and other challenges Frontier faces as the second entrant in a market where the sole incumbent service provider has, or nearly has, a 100% market share. To address these risks and challenges, Frontier's proposed Franchise contemplates building upon Frontier's current infrastructure and includes a commitment to being capable of serving thirty-five percent (35%) of all Municipality households with video service within two (2) years.⁸ Frontier also commits to making its best efforts to complete such deployment within a shorter period of time.⁹ It is important to note that this initial minimum build-out commitment includes a significant number of households below the median income in the municipality.¹⁰ The Municipality will, in fact, provide detailed maps of such areas and nothing in the franchise agreement restricts

⁸ See Franchise Agreement, Exhibit A, Section 1.

⁹ Id.

¹⁰ Id.

Frontier from serving additional households in the Municipality with cable service.¹¹

In order to permit the Municipality to monitor and enforce these commitments, Frontier will provide the Town information showing where Frontier is providing video service.¹² Frontier has also committed to regularly meeting with the Municipality to: 1) review its progress and the location of its facilities; 2) demonstrate Frontier's compliance with Frontier's commitments regarding investments targeted to areas below the median income within the Municipality; 3) communicate Frontier's non-discriminatory deployment of services; and 4) identify further opportunities for providing service.¹³

Then, assuming Frontier is actually serving at least thirty percent (30%)¹⁴ of the Qualified Living Units¹⁵ in the Municipality, Frontier has committed to further expand the households it is capable of serving over time and, more specifically, within the next two (2) years. Frontier's commitment to ongoing regular meetings with the Municipality continues throughout the term of the Franchise Agreement.¹⁶ Frontier and the Municipality will thus continue to partner to identify further opportunities to increase the number of Qualified Living Units that are able to select Frontier's services. In this way, Frontier's deployment and expansion proceeds in relation to its ability to win

¹¹ Id.

¹² Franchise Agreement, Exhibit A, Section 2.

¹³ Id.

¹⁴ Franchise Agreement, Exhibit A, Section 3.

¹⁵ Franchise Agreement, Section 1(k).

¹⁶ Franchise Agreement, Exhibit A, Section 2.

customers from the monopoly provider and its success in the market.

Such a market success-based future build-out commitment is in harmony with, and supported by, the Federal Communications Commission's findings. *See* In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, p. 43 (March 5, 2007) ("FCC 06-180") (encouraging competition and stating support for market success-based build out plans). It is also consistent with PSC precedent. *See Petition of Verizon New York Inc. for Limited Waivers of Certain Rules in Connection with a Proposed Cable Television Franchise Agreement with the City of New York*, (issued July 18, 2008) ("City of New York").

This market success-based approach was discussed at some length with the Municipality and its residents at both the required public hearing and the public meeting approving the Franchise with no objections voiced by residents.

This commitment is also the most economically feasible solution to introduce and sustain competition and network growth within the Municipality. To demand otherwise would not be reasonable or within the limitations of economic feasibility.

B. Municipality Wide Franchise - Geographically Limited Expansion

Based on Success.

The requested franchise area is Frontier's infrastructure footprint in the Municipality. The development and service expansion will be phased and based on Frontier's success in the market. Frontier will use its best efforts to complete its phased deployment as expeditiously as possible and further build out will be addressed at least annually in meetings between Frontier and the Municipality. Frontier intends and aspires to ultimately serve substantially every Qualified Living Unit in the Municipality.¹⁷

The initial development phase begins with the portion of the area in which Frontier's infrastructure is currently in place and is capable of serving (or able to be expanded to serve) a minimum of thirty-five percent (35%) of the Municipality's households within two (2) years or less. Subsequent phases would expand Frontier's infrastructure based on a plan/discussion with the Municipality and as Frontier has demonstrated success in the marketplace.

At its annual meetings with the Municipality, if Frontier is serving thirty percent (30%) or more of the Qualified Living Units, then Frontier's build-out commitment will increase to households then capable of receiving service plus an additional fifteen (15%) of the total households in the Municipality (which will be served

¹⁷ Franchise Agreement, Exhibit A, Section 3.

within two (2) years). In general, as noted above, this process will continue until substantially every Qualified Living Unit in the Municipality is served.

Frontier's initial plan is to build-out using Frontier's existing infrastructure within its existing service area in order to ensure Frontier is capable of serving a minimum of thirty-five percent (35%) of households in the Municipality within two (2) years. Thus, this portion of the plan with respect to such geography is well within the 5-year build out requirement set forth in the relevant regulations. The portion of the franchise area being addressed will then expand and serve additional households in accordance with the schedule agreed to and supported by the Municipality. This will, per the Franchise Agreement, take place again within two (2) years and again, with respect to such households capable of being served, well within the 5-years regulatory requirement. Stated more simply, the proposed Franchise and business solution contemplates: 1) Frontier capitalizing on existing infrastructure; 2) Frontier focusing on a geographically limited area that is capable of being served initially (within Frontier's existing territory); and 3) expansion of that area over time based on the location of Frontier's facilities, meetings with the Municipality, and Frontier's success in the market. This Petition requests confirmation of such Franchise to promote the public interest as described in **Section I** above.

C. **Frontier's Approach is Supported by Prior Commission Franchise Approvals and Federal Communications Commission ("FCC") Guidance.**

The approach presented by Frontier in this Petition is well-grounded and well-established in prior Commission franchise approvals as to both geographically limited franchises and success-based approaches.

(1) **Geographically Limited Franchises Have Been Approved.**

The Commission has confirmed geographically-limited franchises on numerous occasions in the past including, but certainly not limited to, franchises in the Town/Village of Harrison (Westchester County), City of Glen Cove (Nassau County), Village of Camillus (Onondaga County), and the Town of Cicero (Onondaga County). *See* Case 14-V-0226, *Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the Town/Village of Harrison* (December 17, 2014) ("Town/Village of Harrison") (The desire to pursue a geographically limited franchise was not to engage in redlining, but rather the [applicant] "making a business decision to assess its investment risk profile..."); *see* Case 14-V-0089, *Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the City of Glen Cove* (issued February 27, 2015) ("Glen Cove"); *see* Case 13-V-0523, *Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the Village of Camillus* (issued January 17, 2014)) ("Village of Camillus"); *see* Case 09-V-0585, *Petition of Verizon New York Inc. for a*

Certificate of Confirmation for its Franchise with the Town of Cicero (issued September 18, 2009) (“Town of Cicero”) (“...with the emergence of competition, allowing geographically-limited franchises is reasonable and may foster competition...”). In fact, there are even cases in which an incumbent provider has been allowed to maintain a “service area” that does not cover its entire authorized franchise area. *See* reply of Verizon New York, Inc. dated April 14, 2014 re: Case 14-V-0089 (Petition of Verizon New York, Inc. for a Certificate of Confirmation for its Franchise with the City of Glenn Cove, Nassau County; citing Case 03-V-1473, “Order Approving Transfer” (issued and effective March 4, 2004); see also authority cited in footnotes 44, 45 and 46 of the April 14, 2014 Verizon reply in Case 14-V-0089.

(2) **Success Based Thresholds Have Been Approved.**

Moreover, the Commission has addressed and approved the use of market success-based thresholds in connection with build out schedules in the franchise between the City of New York and Verizon. Although the facts and circumstances of each of the aforementioned franchises may vary, the underlying principles are the same—that geographically limited franchises promote competition, provide consumers with options and choices, and are in the public interest. *See* City of New York (Considering the competitive pressures that surround build-out when granting a waiver of the strict five-year build out obligation; extensions of time granted for build out based on achievement of certain penetration thresholds – i.e. market success); *see* Case 14-V-0098 Petition of Verizon New York, Inc. for a Certificate of Confirmation for Its Franchise with the City of

Glen Cove (issued August 14, 2014) (“Glen Cove #2) (“...with the advent of competition, [the Commission] has approved geographically-limited franchises to competing providers.”).

Further, competition in the telecommunications marketplace has only intensified since the Commission has approved franchises with the above limitations. In light of the economic realities faced by new entrants, like Frontier, that seek to enter numerous markets and municipalities across New York in near simultaneous fashion, a market success-based approach is an appropriate alternative to ensure the introduction of greater video competition in the near term throughout NYS.

(3) **Federal Guidance and New York State Law and Rules Supports Promotion of Second Entrants – Level Playing Field Requirement Does Not Mean Identical.**

(i) **Competition is Required and Encouraged by Federal and New York State Law.**

The United States Congress passed legislation to foster and encourage competition in the cable video market. *See* Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 (the “Act”). The FCC later issued its 2007 Order making clear that a market success-based build out plan is permissible under the Act and Congress’s intent to assist a second-

market entrant. *See* In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, p. 43 (March 5, 2007) (“FCC 06-180”). In FCC 06-180, the FCC stated that a franchise granting authority’s “refusal to grant a competitive franchise because of an applicant’s unwillingness to agree to unreasonable build out mandates constitutes an unreasonable refusal to award a competitive franchise” under the Act. Federal courts have upheld and enforced the Act and struck down state and local laws that violated the Act under conflict preemption principles where local/state law created unreasonable barriers for a second-market entrant. *Qwest Broadband Servs. Inc. v. City of Boulder*, 151 F. Supp. 2d 1236, 1244 (D. Colo. 2001) (City Charter was found to be an obstacle to the “accomplishment and execution of the full purposes and objective of Congress” to foster competition and was thus preempted by federal law); *Alliance for Cmty. Media v FCC*, 529 F.3d 763, 766 (6th Cir. 2008) (The FCC was well within its authority to release its 2007 Order prohibiting local franchising authorities from unreasonably refusing to award competitive cable franchises).

This federal guidance on facilitating competition in video franchises must be read in harmony with New York State’s laws and rules, and PSC precedent. New York permits competing video franchises and requires franchise agreements to be “non-exclusive.” New York also vests waiver authority in the PSC where certain requirements are not economically feasible or may be an unreasonable mandate impeding competition. *See* 16 NYCRR 895.5.

To implement the federal video competition goals and directive, as noted above, the PSC has approved both geographically limited franchises (*see* Glen Cove; *see* Village of Camillus; *see* Town/Village of Harrison; *see* Town of Cicero) and market success-based build out plans. *See* City of New York. As a result, Frontier is not asking for anything new. It seeks approval of its negotiated Franchise with the Municipality, which includes a reasonable build out plan, in accordance with federal and state requirements.

(ii) Level Playing Field.

Similarly, Frontier's proposed Franchise satisfies federal and state guidance on ensuring a "level playing field". The FCC has noted that requiring a second-market entrant to agree to the exact terms of the long-time monopolist incumbent would be an unreasonable impediment for a second-market entrant. FCC 06-180. New York rules provide that "level playing field" requirements are to be viewed "as a whole" and not in an apples-to-apples comparison. *See* 16 NYCRR 895.3. Understandably, no new cable franchisee can ever be in the same position as a thirty-plus-year monopolist incumbent.

Nevertheless, Frontier and the Municipality have agreed to substantially the same franchise terms as exist with the current, monopoly franchisee including the same franchise fee, regular meeting requirements, PEG accommodations, and free service to municipal buildings, among other things. Thus, taken as a whole, Frontier has clearly satisfied the "level playing field" requirements.

D. Frontier Respectfully Requests Consideration of its Waiver Requests In addition to / as an Alternative to Geographically Limited but Success-Based Approach to Serving the Municipality.

Frontier respectfully submits that a waiver of the build-out requirements is not required for a geographically-limited franchise area described above and federal guidance on second entrants supports Commission approval of the Franchise for the reasons, and as proposed, above. Nonetheless, in an effort to facilitate the Commission's timely review of its application, Frontier has included a request for waivers herein and below that demonstrates that the application of a 100% build out requirement to its Franchise is not appropriate, does not service the public interest, and is not economically feasible. Frontier's waiver request demonstrates that there is good cause and it is in the public interest to grant Frontier a limited waiver of the Commission's franchise rules in order to permit NYS residents to realize the benefits of video services competition and enhanced broadband services in the near term.

IV. Performance Test Data.

Pursuant to 16 NYCRR Part 896, cable television systems are subject to certain federal rules relating to performance tests (i.e. 47 C.F.R. 76.601). However, Vantage™ TV by Frontier utilizes an IP-enabled network platform that uses fiber to the premise and a hybrid fiber-copper network, combined with upgraded electronics, to link

homes and businesses directly to Frontier's new suite of services. Consequently, the provisions of 47 C.F.R. § 76.601 do not apply to the proposed Franchise because such provisions only apply to legacy analog cable systems (see, e.g., Cable Television Technical and Operational Requirements, Notice of Proposed Rulemaking, 27 FCC Rcd 9678 ¶ 28 (2012)) which have had RF signal leakage issues. Vantage™ TV by Frontier does not have these RF signal leakage issues. Much like Verizon, another IP-based TV provider, Frontier respectfully submits that Frontier is not required to provide this information at the FCC and should not be required to do so in connection with this Petition.

V. **State Environmental Quality Review Act.**

A Department of Environmental Conservation “Short Form Environmental Assessment Form” (“EAF”) for Frontier’s offering of cable service in the Municipality, together with certain supplemental materials, is provided as **Attachment V** to this Petition. Frontier has completed Part 1 of the form, which calls for information to be provided by the “Project Sponsor”; Parts 2 and 3 are to be filled out by the Commission.

Attachment V is submitted without prejudice in recognition of the fact that the Commission has concluded in previous orders that the offering of cable service by other providers is an “unlisted” action — rather than a Type II action or a non-action under the State Environmental Quality Review Act (“SEQRA”). Even if the Commission concludes that submission of an EAF is required, it should determine on the basis of **Attachment V** that the actions at issue here will not have a significant effect on the environment *i.e.*, the Commission should issue a “negative declaration” under SEQRA as it has done in prior confirmation proceedings with respect to other providers.

VI **Waivers requested by the Petitioner.**

The waivers requested by Frontier are set forth in **Attachment VI**.

VII Conclusion.

For the reasons set forth above, the Franchise and Frontier's proposed offering of Vantage™ TV by Frontier video services in the Municipality pursuant to the Franchise, comply in all respects with applicable laws. Moreover, the proposed offering of a new alternative to the video services provided by incumbent cable and satellite providers, utilizing Frontier's Platform, is in the public interest. Frontier respectfully requests that the Commission promptly review this Petition and confirm and approve the Franchise.



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New York, Inc.**

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Case 18-V-_____

AFFIRMATION OF FREDERCK A. THOMAS

Frederick A. Thomas, an attorney admitted to practice in the courts of the State of New York, affirms under penalty of perjury pursuant to CPLR 2106 as follows:

1. I am an officer of the petitioner Frontier Communications of New York, Inc.
2. I am not a party to this action.
3. I have read the foregoing Petition and I know its contents. To the best of my knowledge, based on information provided to me by employees of the Petitioner and its affiliates, the foregoing Petition is true.



Frederick A. Thomas

**Dated: New Haven, Connecticut
May 14, 2018**

LIST OF ATTACHMENTS TO THE PETITION

- II-2(A) True copy of the Franchise
- II-2(B) True copy of the resolution authorizing the Franchise
- II-2(C) True copies of the affidavits of publication of notices of public hearing
- II-3 True copies of documents submitted by Frontier to the Franchisor
- II-5 Technical specifications and design of the cable system
- II-7 Proof of service of the Petition upon the Franchisor
- II-8 Proof of publication of notice of the Petition
- V Short-Form Environmental Assessment Form
- VI Waivers Requested