

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of Frontier Communications Corporation, Frontier California Inc. (U1002C), Citizens Telecommunications Company of California Inc. (U1024C), Frontier Communications of the Southwest Inc. (U1026C), Frontier Communications Online and Long Distance Inc. (U7167C), Frontier Communications of America, Inc. (U5429C) for Determination that Corporate Restructuring is Exempt from or Compliant with Public Utilities Code Section 854.

A.20-05-010

**PROTEST OF THE PUBLIC ADVOCATES OFFICE**

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**I. INTRODUCTION**

Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (“Public Advocates Office”) submits this protest to the May 22, 2020 Application (Application) of Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California Inc. (U 1024 C), Frontier Communications of the Southwest Inc. (U 1026 C), Frontier Communications Online and Long Distance Inc. (U 7167 C), and Frontier Communications of America, Inc. (U 5429 C) (collectively, “Frontier”) requesting approval for Frontier’s corporate restructuring (the “Proposed Transaction”).<sup>1</sup> Frontier seeks Commission approval pursuant to

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<sup>1</sup> Frontier filed the Application on May 22, 2020, along with several additional documents, including, a draft Joint Plan of Reorganization of Frontier Communications Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (“the Plan”). The Plan provides for a comprehensive restructuring of Frontier’s obligations by implementing the Restructuring Support Agreement (“RSA”), which establishes the terms of the restructuring as negotiated between Frontier and its debtholders. See Application at 1, lines 19-20; at 2, lines 1-7.

California Public Utilities Code<sup>2</sup> § 853(b) claiming that the corporate restructuring is exempt from the transfer of control requirements provided in P.U. Code § 854.

Alternatively, Frontier requests approval of the corporate restructuring pursuant to P.U. Code § 854.

The Application is associated with Frontier’s petition in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”)<sup>3</sup>, filed under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Frontier claims that the Proposed Transaction is necessary to address principal factors that led to the company’s financial difficulties,<sup>4</sup> namely intense competition,<sup>5</sup> high debt-service costs associated with recent acquisitions,<sup>6</sup> and high costs of service coupled with declining state and federal support.<sup>7</sup>

The notice of filing first appeared on the Daily Calendar on May 29, 2020. The Public Advocates Office protests this Application on the grounds that the P.U. Code § 853(b) exemption does not apply to this filing, that Frontier did not provide sufficient detail regarding the public interest and the benefits of the Proposed Transaction, and that the California Public Utilities Commission (Commission) must determine whether the Application is reasonable and in the public interest pursuant to P.U. Code § 854. This protest is timely.

## **II. SUMMARY**

In reviewing the Application, the Commission must determine whether the Proposed Transaction is in the public interest. However, Frontier does not provide sufficient information or detail for the Commission to make this determination.

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<sup>2</sup> Hereinafter, “P.U. Code.”

<sup>3</sup> See Frontier Communications Corporation Case No. 20-22476, at: <https://cases.primeclerk.com/ftc/Home-Index>.

<sup>4</sup> Application at 10-12.

<sup>5</sup> Application at 10, lines 26-27.

<sup>6</sup> Application at 11, lines 8-10.

<sup>7</sup> Application at 11, lines 12-16.

Similarly, the Application makes unsubstantiated claims regarding California-specific benefits the restructuring will bring to ratepayers. Frontier should be required to show concrete California-specific commitments and plans that support the criteria set forth in P.U. Code § 854(b) and (c), such as the impact on competition, economic benefits, jobs, and service quality, to inform review of the proposed restructuring and ensure that it is in the public interest. At a minimum, specific plans should include network infrastructure investments; service quality and reliability improvements; consumer protections, including pricing; and broadband deployment.

Frontier seeks to expedite Commission review of the Application under P.U. Code § 853, claiming it meets the public interest standard for the Commission to grant an exemption from Section 854's "transfer of control" requirements.<sup>8</sup> However, the purported public interest benefits cannot be verified on the face of the Application. Therefore, the Commission should conduct a detailed review and afford parties the opportunity to assess the Application and determine whether the Proposed Transaction is in the public interest. The Commission also should consider whether it is necessary to adopt specific performance-based conditions to mitigate any negative impacts resulting from the Proposed Transaction such as, for example, (a) requiring Frontier to honor any commitments ordered in Decision [D.]15-12-005 pursuant the settlement agreements between Frontier and various parties, including the Public Advocates Office, and (b) requiring that any conditions adopted in this proceeding are accompanied by periodic reporting requirements that quantifiably demonstrate Frontier's progress.

### **III. ISSUES TO BE CONSIDERED**

#### **A. Whether an Independent Commission Review is Necessary in Light of Bankruptcy Court Review**

The Commission should conduct a detailed review of the Application to determine whether it is in the public interest as required by P.U. Code §854. Frontier's application states that an exhaustive regulatory review by the Commission is unnecessary and

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<sup>8</sup> See Application at 3, 12-15.

duplicative because the draft Joint Plan of Reorganization of Frontier Communications Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (“the Plan”) will be reviewed extensively by the Bankruptcy Court.<sup>2</sup> Frontier concludes that the reorganization will not have any adverse consequences for customers, employees, shareholders, or the people of California, and, therefore, the Commission should approve the Plan without mitigation measures.<sup>10</sup>

P.U. Code § 854(b) and (c) set forth specific conditions that the Commission must establish before approving this Application. Pursuant to P.U. Code § 854(b), the Commission must find that the Proposed Transaction provides short-term and long-term economic benefits to ratepayers and does not adversely affect competition. P.U. Code § 854(c) provides that the Commission shall consider each of the enumerated criteria and “find, on balance, that the merger, acquisition, or control proposal is in the public interest.”

Thus, contrary to Frontier’s claim that that an exhaustive regulatory review by the Commission is unnecessary and duplicative because the Proposed Transaction will be reviewed extensively by the Bankruptcy Court,<sup>11</sup> Commission review must be independent of the Bankruptcy Court process and specific to the public interest of California. A detailed and independent Commission review of the Plan and the Restructuring Support Agreement is needed to make sure there is no adverse impact on California customers.

Commission review should consider Frontier’s service quality record, network infrastructure investments, and outstanding 2015 settlement conditions imposed on Frontier’s acquisition of Verizon assets to determine whether the Proposed Transaction is in the public interest. The Public Advocates Office is concerned that many Frontier customers in California have not received, and currently do not receive, adequate service

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<sup>2</sup> Application at 3 lines 10-13; at 15 lines 6-7.

<sup>10</sup> Application at 21, lines 20-25.

<sup>11</sup> Application at 3 lines 10-13; at 15 lines 6-7.

quality. For example, since March 2016, Frontier has consistently failed to meet the Commission’s minimum out of service repair interval standard under General Order 133-D.<sup>12</sup> While Frontier has met a number of the broadband deployment commitments associated with the 2015 acquisition from Verizon, Frontier has not met one of the broadband deployment interim deadlines.<sup>13</sup> Furthermore, the Commission’s 2019 Network Exam concluded that both Frontier and Verizon had under-invested in the California network for many years.<sup>14</sup> This current Application does not provide evidence for the Commission to conclude that the Proposed Transaction is sufficient to address these chronic concerns about service quality and under-investment.

**B. Whether the Application is Exempt from Review Pursuant to P.U. Code § 853.**

Frontier has not provided sufficient information and detailed plans for the Commission to exempt this Application from review pursuant to P.U. Code § 853. Frontier argues that a full Commission review under P.U. Code § 854 is not necessary, in part, because customer rates will not increase.<sup>15</sup> Frontier points to a 2003 Commission decision<sup>16</sup> related to the WorldCom, Inc. bankruptcy case where, Frontier claims, the Commission decided to forego a full Section 854 review “in part because the transaction did not change rates or terms of service for existing customers.”<sup>17</sup> The facts of this Frontier Application are inapposite.

In D.03-11-015, the Commission explained its decision to forego a Section 854 review in the WorldCom case with a variety of reasons that do not apply in this case.

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<sup>12</sup> G.O. 133-D establishes the minimum standard as, based on adjusted results, 90% of all out of service trouble reports should be restored within 24 hours. (See Section 3.4(c) in: Public Utilities Commission of the State of California, General Order 133-D, Rules Governing Telecommunications Services, adopted in Decision No. 16-10-019.)

<sup>13</sup> Application 15-03-005, Exhibit 1 Settlement Agreement at 7.

<sup>14</sup> See, “*Examination of the Local Telecommunications Networks and Related Policies and Practices of AT&T California and Frontier California, 2010 – 2017 (Network Exam)*” available at <https://www.cpuc.ca.gov/General.aspx?id=6442462050>.

<sup>15</sup> Application at 13, lines 5-9.

<sup>16</sup> See Decision (D.) 03-11-015.

<sup>17</sup> Application at 13, lines 5-9.

The Commission’s WorldCom decision imposed conditions on approval, which included ordering that “WorldCom may not change rates, conditions or terms of service for its California customers as a consequence of this decision.”<sup>18</sup> WorldCom was also bound by 78 individual, enforceable recommendations that the Commission concluded, “go beyond many legal requirements imposed on corporations by the SEC and other regulators.”<sup>19</sup> Since Frontier has not made similar commitments or provided detailed California plans, the Commission has no basis for applying the same reasoning in this Application.

**C. Whether the Proposed Transaction is in the Public Interest.**

Frontier has not provided sufficient information or California-specific plans for the Commission to determine whether the Proposed Transaction is in the public interest. P.U. Code § 854(f) requires Frontier to prove that its Application meets the requirements of P.U. Code § 854(b) and (c). While the Application makes certain claims regarding the California-specific impacts and public interest benefits of the Proposed Transaction, it does not provide sufficient information to validate them. Frontier must provide additional information and detailed California-specific plans to support its claim that the Proposed Transaction meets the requirements of P.U. Code § 854. In addition, Frontier must demonstrate how the California-specific benefits will materialize from the Proposed Transaction. Without additional information, detailed plans, and a review of these claims, the Commission cannot reasonably conclude that the Proposed Transaction is in the public interest.

**1. Whether the Proposed Transaction will Maintain or Improve Service Quality and Broadband Deployment**

Frontier claims that, after the restructuring, Frontier’s California Operating Subsidiaries “will be better situated to improve the customer experience by making additional improvements in its operations and networks, including expanding their

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<sup>18</sup> D. 03-11-015 at 15.

<sup>19</sup> D. 03-11-015 at 13.

broadband infrastructure.”<sup>20</sup> Frontier also claims that the restructuring will free up resources that Frontier “intends to use to maintain and improve the California Operating Subsidiaries’ networks and operations.”<sup>21</sup>

However, the Application provides no evidence that Frontier will follow through with these promises to improve and expand service, let alone how Frontier plans to do so. Frontier also does not make any specific commitment to improve service quality in areas that may be experiencing outages or service degradations. The Commission should require Frontier to provide detailed California plans about the company’s near-term and long-term projects, including timelines for completion and the expected cost that will improve service quality and expand broadband deployment.

**2. Whether the Proposed Transaction will Maintain or Improve Customer Rates**

Frontier claims that its customer rates will not increase and that services will not be diminished or restricted as a result of the restructuring.<sup>22</sup> It is certainly in the public interest of Californians that the restructuring does not increase rates, or otherwise diminish or restrict service. However, the Application does not offer a guarantee that the company will faithfully execute these claims without Commission order or directive.

**3. Whether the Proposed Transaction will be Fair and Reasonable to Affected Public Utility Employees**

Frontier claims that the restructuring will be fair and reasonable to all affected employees because it will not change the terms of their employment.<sup>23</sup> Further, Frontier will assume all obligations under existing and expiring collective bargaining agreements after restructuring.<sup>24</sup> However, these promises are only as good as the terms of employment or the collective bargaining agreements may provide.

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<sup>20</sup> Application at 18.

<sup>21</sup> Application at 20, lines 23-24.

<sup>22</sup> Application at 3 lines 8-10; at 13 lines 16-18; at 14 lines 11-14; at 19 lines 9-11.

<sup>23</sup> Application, p. 20.

<sup>24</sup> Id.

P.U. Code §854 (c)(4) which requires the Commission to ensure that the restructuring must be fair to the public utility employees, including both union and nonunion employees, does not limit the Commission to ensuring that Frontier meets its pre-restructuring obligations in contractual agreements between the company and its employees or unions. These contractual agreements may well include restructuring clauses that exempt or excuse Frontier from actions that may be deemed unfair by the Commission.

Therefore, the Commission should examine the impact of the Proposed Transaction on Frontier's employees, including but not limited to the extent to which the Proposed Transaction would result in terminations, lay-offs, buy-outs, and reduced job benefits.

**4. Whether the Proposed Transaction will Maintain or Improve the Quality of Management of the Resulting Public Utility**

Frontier makes several claims regarding the reorganized company's management and operations. The Application states that the restructuring, "will only impact the ultimate ownership of the parent company, Frontier, with no material impact on the California Operating Subsidiaries or consumers."<sup>25</sup> The Application further states that because the restructuring will not create any new majority shareholder, the proposed restructuring does not "create a vehicle for a new ultimate owner to assume control of the California ILECs."<sup>26</sup>

However, the Application fails to address the proposed changes to Frontier's parent company and its subsidiaries, with Section K of the Plan specifying that, by the time the Plan is effective, the company will have selected, "the directors, managers, members, and officers for the Reorganized Debtors, including the appointment of the New Board or any directors of a subsidiary Debtor."<sup>27</sup> Frontier must provide additional

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<sup>25</sup> Application at 13, lines 16-18.

<sup>26</sup> Application at 13, line 18-20.

<sup>27</sup> The Plan at 41.

information for the Commission to consider whether this change will result in maintaining or improving the quality of management pursuant to P.U. Code § 854(c)(3).

**D. Whether the Commission should Expedite this Application**

Frontier claims that an “extended” approval process “would cause Applicants to incur significant administrative, legal, and bankruptcy-related expenses,”<sup>28</sup> and would “deplete resources that could otherwise be invested in and used to operate the Company’s businesses.”<sup>29</sup> Frontier therefore requests the Commission exempt the Application from review under P.U. Code § 853(b).

Frontier specifically requests that the Commission resolve this proceeding before October 29, 2020, which is the start date for the Federal Communications Commission’s (the “FCC”) Rural Digital Opportunity Fund (“RDOF”) auction.<sup>30</sup> Frontier claims that “the scope of Frontier’s participation [in RDOF] will be influenced by both the scope and detail of state approval proceedings.”<sup>31</sup>

While the Public Advocates Office expects to take all necessary steps to effectively and efficiently participate in this proceeding, the schedule Frontier proposes is far too constrained to be considered reasonable for the Commission and intervenors to conduct an adequate investigation. Further, Frontier’s argument that this proceeding must be completed prior to the start of the RDOF auction is questionable. RDOF has only minimal requirements for participation, which Frontier would undoubtedly meet.

The Public Advocates Office has proposed a schedule in this protest that will not impede the successful and timely completion of the bankruptcy, while ensuring the Commission and intervenors have sufficient time to review the Application.

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<sup>28</sup> Application at 4 lines 4-5; at 23 line 18-19.

<sup>29</sup> Application at 23 line 19-20.

<sup>30</sup> Application at 4 lines 8-10.

<sup>31</sup> Application at 23, lines 21-23.

## **E. Procedural Issues**

### **1. Categorization**

The Public Advocates Office agrees with the Commission's categorization of this Application as Ratesetting<sup>32</sup> and requests a schedule that includes time for hearings pending further review of the Application.

### **2. Schedule**

The Public Advocates Office proposes an alternative to the schedule in Frontier's Application, below.

<b>Events</b>	<b>Frontier's Proposal</b>	<b>Public Advocates Office's Proposal</b>
Application on Daily Calendar	May 27, 2020	May 29, 2020
Responses and Protests to Application	June 26, 2020	June 29, 2020
Reply to Responses and Protests	July 6, 2020	July 9, 2020
Prehearing Conference (PHC)	July 10, 2020	July 15, 2020
Scoping Memo	N/A	July 29, 2020
Frontier's Opening Testimony	N/A	August 26, 2020
Intervenor Testimony	N/A	September 23, 2020
Rebuttal Testimony	N/A	October 8, 2020
Evidentiary Hearings	N/A	November 5-6, 2020
Concurrent Opening Briefs filed	N/A	December 1, 2020
Reply Briefs Filed	N/A	December 15, 2020
Proposed Decision Issued	September 8, 2020	March 20, 2021

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<sup>32</sup> RESOLUTION ALJ 176-3462. Preliminary determinations of category and need for hearing for proceedings initiated by application pursuant to Rule 7.1 of the Commission's Rules of Practice and Procedure. (Issued May 28, 2020)

#### IV. CONCLUSION

For the reasons stated herein, the Public Advocates Office recommends that the Commission adopt its recommendations on issues for this proceeding and proposed scheduled.

Respectfully submitted,

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