

## Staff Briefing Papers

Meeting Date **May 3, 2018** Agenda Item \*\*1


Company **Frontier Communications of Minnesota, Inc. (Frontier)**

Docket No. **P405/M-16-696**

In the Matter of Frontier Communications of Minnesota, Inc.  
Election of Small Company Alternative Form of Regulation  
Pursuant to Minn. Stat. § 237.773, Subd. 2

Issue **Is a Commission determination or clarification necessary regarding the effective date of Frontier's small company AFOR election?**

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 <b>Relevant Documents</b>	<b>Date</b>
Initial Filing – Small Company Alternative Regulation Plan, Pursuant to § 237.773, Subd. 2	August 19, 2016
Comments of Minnesota Department of Commerce (DOC)	September 8, 2016
Response of Frontier Minnesota to PUC Staff Information Requests	November 4, 2016
Supplemental Comments of the Minnesota Department of Commerce (DOC)	August 29, 2017
Reply Comments of Frontier Minnesota	September 18, 2017

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 **Relevant Documents**

**Date**

Comments – Second Set of Supplemental Comments

February 28, 2018

Reply Comments of Frontier Minnesota

March 9, 2018

## I. Statement of the Issues

Is a Commission determination or clarification necessary regarding the effective date of Frontier's small company AFOR election?

## II. Background

On August 19, 2016, Frontier filed a notice to inform the Commission of its election to be regulated as a small company pursuant to Minnesota Statute § 237.773.

On September 8, 2016, the Department of Commerce (DOC) filed comments recommending that the Commission consider whether it is permissible for Frontier to be subject to the provisions of the small company AFOR statute prior to the expiration of its "large" company AFOR.

On August 1, 2017, Frontier filed a letter in Docket No. P-405/AR-14-735 advising the Commission that it is allowing its large company AFOR plan to expire on March 1, 2018 and upon its expiration, Frontier will be regulated under the small telephone company alternative regulation provisions of Minnesota Statute § 237.773.

On August 29, 2017, the DOC filed Supplemental Comments asking the Commission to consider whether Frontier's election to be subject to the small company AFOR statute is permissible, while it continues to operate under a large company AFOR.

On September 18, 2017, Frontier filed a reply stating that the statute does not provide for any Commission action in response to a small company's election. Frontier also stated that the Department's August 29, 2017 concerns are groundless and the Commission should not consider them.

On February 28, 2018, the DOC made another filing in this matter, submitting supplemental comments. The comments raised the same concerns that the Department had noted in their prior comments.

On March 9, 2018, Frontier filed reply comments indicating that Frontier Minnesota's election and operation under the small company alternative regulation are valid and effective.

## III. Parties' Comments

**DOC:** The DOC observes that, under the provisions of Minnesota Statute § 237.773, Subdivision 2, the remedies available to the Commission on the service quality investigation may be affected by the date Frontier is determined to be operating under a small company AFOR.

In its August 29, 2017 Supplemental Comments, the Department stated that the language of Minnesota Statute § 237.76 appears to support the conclusion that a telephone company can operate under only one AFOR plan at a time. If the Commission agrees the earliest date Frontier can make its election of the small company AFOR is March 1, 2018, when Frontier's large company AFOR expires, the Commission's investigation into Frontier's service quality would have been initiated before Frontier's election to a small company AFOR plan.

If instead Frontier's election of the small company AFOR is determined by the Commission to be August 1, 2016, when Frontier filed the letter electing to be under a small company AFOR, then the Commission's investigation into Frontier's service quality would have been initiated long after Frontier was under a small company AFOR plan.

**Frontier:** As Frontier-Minnesota noted in its previous comments, the requirements for a company to be eligible to elect small company alternative regulation are set out in Minn. Stat. § 237.773, Subd. 1 and 2. There are only two requirements: (1) having fewer than 50,000 subscribers and (2) prior to the election of the small company alternative regulation the small company cannot have been found by the Commission to have significant service quality problems in violation of Commission rules. At the time of the election Frontier-Minnesota had and continues to have fewer than 50,000 subscribers. At the time of its election and continuing today, Frontier-Minnesota has not been found by the Commission to have significant service quality problems in violation of Commission rules. Thus, Frontier-Minnesota met both of those conditions in August 2016, and meets them today.

Minn. State § 237.773 does not provide for any Commission action in response to a small company's election. No Commission review, approval, or permission is contemplated in the statute. As the Department's comments note, a small company's election to be subject to Minn. Stat. § 237.773 occurs "without any action by the Commission". It is clear that Frontier-Minnesota's election to operate under the small company alternative regulation is valid and effective. As such, the Commission should not pursue or act upon the Department's requests.

#### IV. Staff Analysis

Staff notes that Minn. Stat. §237.773, Subd. 2 makes it quite clear that a telephone company with less than 50,000 access lines are merely required to provide notice to the Commission that they have elected to be regulated as a small company. A company simply must provide notice to the Commission. Commission approval is not required. The first paragraph of Minn. Stat. §237.773, Subd. 2 states the following:

A local telephone company with fewer than 50,000 subscribers may elect to become a small telephone company by notice to the commission, in writing, of its decision. The small telephone company may not revoke its election for three years after making the election. While that election remains in effect, a small telephone company is not subject to the rate-of-return regulation or earnings investigation provisions of section [237.075](#) or [237.081](#).

The second paragraph of Minn. Stat. §237.773, Subd. 2 states the following:

If, before electing under this subdivision, a small telephone company has been found by the commission to have significant quality of service problems in violation of applicable commission rules, that company must either resolve the quality of service problems or develop a plan to resolve the quality of service problems in conformance with section 237.765. The quality of service plan must be approved by the commission in order for an election under this subdivision to be effective. The commission shall make a determination on the quality of service plan within 60 days after it is submitted.

Staff notes that there was no such finding prior to Frontier's election. As such, the preconditions of the statute seem to have been satisfied.

With respect to Frontier's AFOR plan which recently expired on March 1, 2018, Section III , Part C of that AFOR Plan states the following:

C. Duration and Renewal.

The Plan shall be adopted pursuant to the requirements of Minn. Stat. § 237.766, subd. 2, and will continue for a period of three (3) years (36 consecutive months) from the Plan Effective Date.

Pursuant to Minn. Stat. 237.766, subd 1, within six months prior to the termination of the Plan, Frontier shall file with the Commission notice that it proposes a new plan, extend the existing plan, or revert to rate of return regulation.

This Plan was approved pursuant to the Commission's February 23, 2014 Order Approving Alternative Regulation Plan as Modified. The AFOR was unambiguously the form of regulation that Frontier was subject to over this three-year period. Additionally, this section requires that Frontier provide notice within six months of the expiration of the plan regarding a successor plan. Frontier provided approximately 18 months notice. There is nothing that precludes Frontier from either a timing or a practical perspective from making the election pursuant to Minn. State § 237.773, Subd. 2

Finally, regarding the question of the Company's election to become a small company, Frontier provided notice to the Commission of its election to become a small telephone company on August 19, 2016. If there is any ambiguity regarding the date of the election or whether the Company is simultaneously subject to two regulatory paradigms, Frontier's August 19, 2016 provided the necessary clarity:

Frontier-Minnesota is currently operating under an alternative form of regulation plan approved by the Commission in Docket P405/AR-14-735. That plan expires on March 1, 2018. Frontier-Minnesota will continue to adhere to, and comply with, that plan through its expiration date.

Based on the fact that Frontier chose to operate under its large company AFOR until it expired on March 1, 2018, and that Frontier is currently operating under a small company AFOR pursuant to a timely election to do so, it is not clear to staff that the Commission needs to address on what date Frontier's small company AFOR election was "effective."

Finally, it should be clear to the Commission that whichever form of regulation that Frontier is subject to that it should have no bearing on the Commission Inquiry into the Service Quality, Customer Service, and Billing practices of Frontier, Docket No. P407,405/CI-18-122. Frontier continues to be subject to the Commission's authority pursuant to Minn. Stat. § 237.081 with the exception rate of return regulation or earnings investigations.

Frontier also represented to the Commission in its August 19 AFOR election notice that it would comply with the service quality requirements of its large company AFOR through March 1, 2018. So the Commission's investigation of customer complaints about Frontier's service will examine whether Frontier did or did not comply with those AFOR requirements, as well as with the Commission's rules on service quality, customer service, and billing practices which Frontier has at all times been subject to.

## V. Decision Options

1. Take no action on this issue.
2. Determine that the effective date of Frontier's election of small company regulatory status is August 19, 2016 (the actual date of Frontier's election letter).
3. Determine that some other date applies.
4. Determine that the effective date of Frontier's election of small company regulatory status is March 1, 2018 (the DOC's position).

## VI. Staff Recommendation

Staff recommends that the Commission adopt alternative #1.