

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: February 12/2015 *Agenda Item # 3

Company: **Frontier Communications of Minnesota, Inc.**

Docket No. **P405/AR-14-735**

**In the matter of a Petition by Frontier Communications of Minnesota, Inc. for
Approval of its Revised Alternative Regulation (AFOR) Plan.**

**Issue Should the Commission approve Frontier's Revised Alternative Regulation Plan
as filed as a settlement between Frontier and the Department on January 8,
2015?**

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Relevant Documents

Revised Alternative Form Of Regulation Plan (Revised Plan) January 8, 2015
Notice Requesting Further Comments January 13, 2015
Further Comments of Frontier Communications January 20, 2015

The attached materials are work papers of the Commission staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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I. Statement of the Issues

Issue Should the Commission approve Frontier's Revised Alternative Regulation Plan as filed as a settlement between Frontier and the Department on January 8, 2015?

II. Background

Since 1995, the Minnesota Public Utilities Commission (Commission) has been given the authority by the Minnesota Legislature to approve alternative form of regulation (AFOR) plans for local exchange carriers (LECs). See Minn. Stat. §237.76 through 237.774. The Legislature has since revised certain provisions of these statutes.

Frontier Communications of Minnesota, Inc. (Frontier) was among the first LECs in Minnesota to have an AFOR Plan approved by the Commission.¹

Frontier's Current AFOR Plan, assigned Docket No. P405/AR-11-562, was filed on April 30, 2011 as an adoption of the existing plan of affiliate company, Citizens Telecommunications Company of Minnesota, which was earlier approved by the Commission in Docket No. P407/AR-08-588. The Commission modified the adopted plan in ORDER APPROVING FRONTIER'S ALTERNATIVE REGULATION PLAN AS MODIFIED dated February 13, 2012. The Current AFOR Plan took effect March 1, 2012 and expires on March 1, 2015.

On August 29, 2014, Frontier submitted its proposed new AFOR plan to succeed the current plan.

In its October 10, 2014 Order Adopting Procedures and Requiring Settlement Conference the Commission stated that "Parties filing comments ... are directed to formally address ... the proposal's compliance with all relevant statutes. Parties are specifically directed to address, at a minimum, the 11 issues identified in pages 6 – 9 of the Commission staff's September 25, 2014, Briefing Papers (Appendix B)."

On December 18, 2014, Frontier and the Department requested a 20-day extension of time to the December 19, 2014 deadline in order to pursue settlement negotiations. The following day the Commission granted the request, extending the deadline to January 8, 2015.

¹ Frontier's First AFOR Plan was approved in ORDER APPROVING FRONTIER'S ALTERNATIVE REGULATION PLAN, Docket No. P405/AR-95-1048 issued on August 19, 1996, covering the period October 1, 1996 through October 1, 2000. The AFOR Plan was modified on July 19, 2001 in ORDER MODIFYING ALTERNATIVE REGULATION PLAN in Docket No. P405/AR-00-394. The Second Revised AFOR Plan was approved in ORDER ACCEPTING SETTLEMENT AND APPROVING SECOND REVISED ALTERNATIVE REGULATION PLAN in Docket No. P405/04-170 dated October 28, 2004, covering the period through November 1, 2007. The Third Revised AFOR Plan took effect November 1, 2007 through November 1, 2010, Commission's ORDER ACCEPTING SETTLEMENTS APPROVING THIRD REVISED ALTERNATIVE REGULATION PLAN in Docket No. P405/07-516 dated September 25, 2007. It was later extended until October 31, 2011 in ORDER dated June 11, 2011.

On January 8, 2015, the Parties submitted the Revised Petition which included settlement of 10 of the 11 issues to their mutual satisfaction. A summary is presented in the issue resolution grid “Attachment A” (also attached to this briefing paper). In the Revised Petition the Parties did not settle the Investment Plan issue.

In its cover letter of January 8, 2015, the Minnesota Department of Commerce (the “Department”) stated that while not opposing the plan’s approval “... the Department believes that the investment plan could be more specific and substantive ...” In its initial review of the Revised Petition, Commission staff was concerned that the Investment Plan provisions may not meet the minimum statutory requirements identified in Minnesota Statute 237.761, Subd. 8 (b).

On January 13, 2015 the Commission issued a Notice Requesting Further Comments from Frontier Communications addressing requirements in Minnesota Statutes 237.761, Subd. 8 (b), Investment Commitment.

On January 20, 2015 Frontier submitted Further Comments in response.

III. Staff Analysis

Commission Authority to Approve, Reject or Modify Proposed Settlement

The issue before the Commission is whether the Commission should accept, reject, or modify the proposed Revised AFOR which was filed as a settlement between Frontier and the Department.

Minnesota Statute § 237.764 subd. 1(f) requires the Commission to accept, reject or to modify each settlement proposal within 60 days of receipt. Minnesota Statute § 237.764 subd. 2 provides that:

- If the Commission modifies the proposed settlement, Frontier and the Department each have 30 days to comment on the proposed modifications, after which the Commission is required to issue a final order; and
- If the final order modifies the proposed settlement, Frontier and the Department each have ten days to reject its modifications, in which case the matter must be decided in an Expedited Proceeding (Minn. Stat. § 237.61).

Staff has reviewed the Revised Petition which the parties have submitted as a settlement proposal and find it in substantial compliance with AFOR statutory requirements (Minn. Stat. § 237.76 through Minn. Stat. § 237.775). The Revised Petition incorporates the agreement parties reached on ten of the eleven issues presented in Attachment A. However, the statutory sufficiency of the Investment Plan (issue number 11) is doubtful, and this concern would be largely mitigated if the additional information provided by Frontier in its Further Comments were to be incorporated by way of Commission modification.

Revised Petition Settlement of Agreed Issues

The Revised Petition submitted to the Commission on January 8, 2015 reflects a negotiated settlement between Frontier and the Department. Frontier solicited public input of its proposed AFOR plan through a bill message insert, but no public comments were received.

The Revised Plan caps basic local exchange residential and business rates at their current level for the first year of the plan, and limits increases in the second and third years of the plan to a total of \$2.00, except as specifically authorized by the Commission.

The Revised Plan maintains quality of service protections, and provides for a process to measure and report Frontier's performance in meeting the quality of service standards. With the exception of the Investment Plan (part VI of the AFOR), the Parties have reached agreement on the provisions of the Revised Plan and Commission staff concurs with the adequacy of those portions of the Revised Plan.

Remaining Differences

On page 9 of the September 25, 2014 Staff Briefing Papers, issue number 11 states "Frontier's Investment Plan in Section VI needs to be reviewed as to whether it satisfies Minn. Stat.237.761, Subd. 8."

Minnesota Statute 237.761, Subd. 8, Investment Commitment, requires:

- (a) An alternative regulation plan must also include a plan outlining the company's commitment to invest in telecommunications infrastructure improvements in this state over a period of not less than six years.
- (b) An investment plan shall include all of the following:
 - (1) a description of the level of planned investment in technological or infrastructure enhancement;
 - (2) a description of the extent to which planned investment will make new telecommunications technology available to customers or expand the availability of current technology;
 - (3) a description of the planned deployment of fiber-optic facilities or broadband capabilities to schools, libraries, technical colleges, hospitals, colleges and universities, and local governments in this state; and
 - (4) a description of planned investment and deployment of higher speed telecommunications services and increased capacity for voice, video, and data transmission, in both the metropolitan and outstate portions of the company's service territory.

In its cover letter of January 8, 2015, the Department observed that the Parties did not reach agreement on the specifics of the required Investment Plan. The Department, while not opposing

the plan's approval "... believes that the investment plan could be more specific and substantive ..."

Upon review of the Investment Plan in the Revised Petition, Commission staff was concerned that the investment provisions of the settlement were vague and may not meet the minimum statutory requirements. In lieu of a forward-looking Investment Plan, Frontier offered on page 18 to report annually by March 1 on its previous years expenditures on unspecified "technological and infrastructure enhancements".

To assist the Commission in reconciling the Revised Petition Investment Plan with the requirements of Minnesota Statute 237.761, Subd. 8, Frontier was requested to submit additional comments describing in greater detail its current plans to invest in its telecommunications infrastructure. Frontier was further requested to structure its comments to specifically address funding for improvements (beyond maintenance) for each of the 4 parts in Minnesota Statute 237.761, Subd. 8, (b).

Further Comments

Frontier provided some additional detail of its Investment Plan in its filing of Further Comments.

With regards to voice services Frontier clarified that it will primarily focus on maintaining the system to meet required service metrics stating "There is nothing notable in the way of new voice services or features that Frontier is planning to deploy currently that will require substantial investment."

Frontier states in its Further Comments, "With respect to expanding availability of services, the investment demands of Frontier's network are driven by the provision of broadband."

Frontier clarifies that DSLAM upgrades mentioned in its Revised Petition will provide for speeds of up to 40 Megs.

Explaining in greater detail the pending FCC offers for Phase II of the Connect America Fund (CAF) program promoting broadband, Frontier notes that:

1. customers not yet receiving 10 Meg service will benefit;
2. these customers will be primarily outside of the Twin Cities; and
3. service improvements will facilitate the use of video and data transmission.

Although eligible locations and available federal funds are still unknown, Frontier commits in its Further Comments:

Frontier will invest all the funding it accepts [through the CAF II program] and supplement with its own capital to fulfill the associated expansion and speed upgrade obligations.

Frontier invested approximately \$20M during 2012, 2013, and 2014. It is expected that capital investment will exceed these levels in the next three years, reflecting the anticipated CAF II impact.

Modifications (Attachment B)

Staff proposes for the Commissioners' consideration the following modifications of the Revised Petition, Section VI, Investment Plan as shown in Attachment B:

- I. Incorporate information from Frontier's "Further Comments" in the Revised Petition, Section VI, Investment Plan as presented in the Staff Briefing Paper, Attachment B, Sections VI.A and VI.B;
- II. Consolidate reporting requirements in the same section VI. C "Reporting" by advancing the heading one paragraph;
- III. Clarify the two proposed paragraphs under "Reporting" in Staff Briefing Paper, Attachment B as follows:
 - A. report its updated plans "Within 30 days of the FCC's CAF II offerings" rather than "as that information becomes available";
 - B. indicate the amount of funding Frontier provides as distinct from the amounts received from the FCC (rather than as a merged total); and
 - C. "describe" rather than simply identify its previous year's investments in annual reports.

IV. Commission Options

1. Approve the Revised Petition for its AFOR as filed as a settlement between Frontier and the Department on January 8, 2015.
2. Reject the Revised Petition for its AFOR as filed as a settlement between Frontier and the Department on January 8, 2015.
3. Modify the Revised Petition, Section VI, Investment Plan filed as a settlement between Frontier and the Department on January 8, 2015 to:
 - a) incorporate changes to the Investment Plan as shown in Attachment B; and
 - b) otherwise incorporate changes at the Commission's direction.

If Frontier accepts these modifications, then 14 days after the issuance of the Final Order by the Commission Frontier shall file a revised AFOR Plan reflecting the modifications (a "clean copy"), along with a copy showing how the earlier text has been revised (a "redlined copy").

ATTACHMENT A

Issue	Resolution
1. Frontier’s proposal to add “broadband services” to the list of services classified as “non-telephone” services.	Eliminated “broadband services” from the list of services in Section IV(A)(1)(b) that are not subject to Commission oversight.
2. Concerns about how Frontier classifies certain services.	Re-classified Line Extension Charges from a flexibly-priced to a price-regulated service, and established methodology for line extension pricing. Classified Emergency Connect 911- Only Service as a Price Regulated Service.
3. Limits to Commission’s authority to act within a specified period of time	Removed all provisions that allow for automatic approval of a Frontier proposal if no Commission action is taken within a specified period of time. Changed time allowed for Commission to act in certain circumstances to 90 days, to be consistent with statute.
4. Frontier’s proposal to increase rates for one-party basic local and business services after the first year of the plan.	<p>Minn. Stat. 237.766 subd. 2 states that a new plan proposed by a company must be reviewed by the commission and, with the consent of the company, revised or approved consistent with sections <u>237.76</u> to <u>237.774</u>, except that the justification of earnings levels in section <u>237.764</u>, subdivision <u>1</u>, paragraph (c), if required, and <i>the provisions prohibiting rate increases at the initiation of or during the first three years of a plan contained in section <u>237.762</u>, shall not apply to a new plan. Any new plan must be approved by the commission and shall contain a mechanism under which a telephone company may reduce the rates for price-regulated services below the initial rates or prices or increase the rates or prices during the term of the plan.</i></p> <p>Frontier’s plan maintains existing rates for one-party basic local residential and one-party basic business service for the first year of the plan. Frontier is permitted to increase those rates up to a total of \$2.00 over the remaining two years of the plan.</p>
5. As proposed there is no provision predating any rate increases to price-regulated services on a showing that	The provision, “Frontier may not increase the price of a price regulated service if it has not demonstrated substantial compliance with the

ATTACHMENT A

Frontier is in substantial compliance with the quality of service standards set forth in the plan.	quality of service set forth in the plan” has been restored in Section IV (B)(1)(c) of the plan.
6. Outstate/Metro rate parity	The provision “ <i>If Frontier implements the optional increase in years two and three of the Plan, Frontier will not increase the outstate prices for one-party basic local residential service by more than it increases the metro price of one-party basic local residential service,</i> ” has been added to Section IV(B)(1)(a).
7. Frontier’s plan is not clear about the impact of the open Rulemaking docket on Possible Changes to Minn. Rules Chapter 7810 on its Service Quality Plan.	Section V(A) of the plan has been clarified to reflect that, “Frontier will be governed by the Commission’s service quality standards, appearing in Chapter 7810 of the Commission’s Rules, except as specifically modified in this Plan. <i>If the Commission modifies those service quality standard rules during the term of the Plan, Frontier and the Department will jointly revise this Plan to reflect the modified service quality rules.</i> In addition, certain specific individual customer remedies will apply.”
8. Substantial Compliance definition	Provisions addressing substantial compliance with service quality standards have been added in Section V(D).
9. The Plan contains no provisions for measuring and reporting service quality metrics.	The Plan includes provisions for monitoring and reporting of service quality results.
10. The Plan does not contain the specific service quality metrics as required Minn. Stat. 237.765	The plan has been revised to include statewide standards for measuring the quality of price-regulated and flexibly priced services provided by the company, including, (i) time intervals for installation, (ii) time intervals for restoration or repair of service, (iii) trouble rates, (iv) exchange access line held orders, and (v) customer service answer time;
11. Investment Plan	The Parties have not reached agreement on the specifics of the investment plan.

Attachment B:
**Incorporation of Investment Plan “Further Comments” and Reporting Provisions
into Revised Petition**

VI. INVESTMENT PLAN

Requirements Under AFOR Statute

Minn. Stat. §237.761. Subd. 8. requires that a proposed AFOR plan include an outline of infrastructure improvement plans. The investment plan must include the following: 1) a description of the planned level of investment in technological or infrastructure improvements; 2) a description of the extent to which the investment plan will make new technology available to customers or will expand availability of current technology to customers; 3) a description of the planned deployment of broadband capabilities or fiber optic facilities to schools, libraries, technical colleges, hospitals, colleges and universities, and local governments; and 4) a description of planned investment and deployment of higher speed telecommunications services and increased capacity for voice, video, and data transmission, in both the metropolitan and outstate portions of the company’s service area.

A. Voice Services

As a baseline, Frontier is committed to making the investments necessary to maintain reliable service, consistent with the service quality metrics contained in this plan. Voice service and the various calling features are available across Frontier’s footprint. There is nothing notable in new voice services or features that Frontier is planning to deploy that will require substantial investment.

Frontier will continue to deploy a network designed to meet the future needs of its telecommunications customers. Frontier has built a network that includes thousands of miles of fiber and copper cable linking homes and businesses. Maintaining, preserving, and rehabilitating this expansive network will remain a significant portion of Frontier’s annual capital budget for the state of Minnesota. Frontier will continue to invest significant resources to maintain network reliability. This includes deploying backup systems that are designed to detect and repair system problems — often before customers ever experience any impacts to their service. These investments increase network redundancy, network diversity, and disaster recovery capabilities. Examples of network improvements associated with network reliability/survivability and disaster recovery include: digital switching systems, self-healing network services, special metallic access systems and SONET technology.

Frontier’s investment in the deployment of fiber optics throughout the interoffice trunking and feeder networks is an important component not only of a long-term network design but an ongoing necessity for greater efficiency, greater capacity, higher transmission quality and speeds, and better customer service. Copper network enhancements, fiber optics and associated next

generation electronics are expected future investments to establish a future network that will meet the needs of customers.

B. Broadband Services

With respect to expanding availability of services, the investment demands of Frontier's network are driven by the provision of broadband. Expansion and enhancement of Frontier's network will be undertaken to allow for the provision of faster broadband to a wider area. Frontier has invested significantly in the deployment of broadband service and provides broadband service to all of its wire centers. Frontier will continue to expand its provisioning of advanced service offerings where reasonable customer demand exists. In addition to facility investment that will provide for growth and offer advanced network services, Frontier's investment will be directed toward network preservation and rehabilitation initiatives to continue to improve and maintain service quality.

Frontier is currently using advanced technologies such as improved types of DSL technology, bonding of copper cable pairs, and Ethernet; and will continue to employ these techniques in the future. Digital Subscriber Line (DSL) and Ethernet-based technologies have allowed Frontier to efficiently and quickly deploy high-speed data and voice service to end users over the existing infrastructure of traditional copper telephone lines. Downstream speeds reach up to 24 Mbps, depending in part upon the distance from the central office. Customers include residential consumers, small and large businesses. DSL and Ethernet-based technologies are utilized by businesses, residences, schools, libraries and healthcare providers for Telecommuting, Internet Access, Computer Telephony Integration, Distance Learning, Remote LAN Access, video conferencing, video streaming and E-mail access. Frontier will continue to invest and expand the availability of broadband in Minnesota.

Consistent with Frontier's deployment of broadband services, Frontier will continue its commitment to link schools, libraries, technical colleges, hospitals, colleges and universities, and local governments together with technology. Frontier will actively respond to requests from schools, libraries, technical colleges, hospitals, colleges and universities, and local governments in its service area. Additionally, to the extent that these types of institutions are located in areas that qualify for CAF II funding, they will reap the benefit of networks providing broadband speeds of 10Meg or better

Frontier recognizes the State goal for broadband deployment identified in Minn. Stat. §237.012: "all state residents and businesses have access to high-speed broadband that provides minimum download speeds of ten to 20 megabits per second and minimum upload speeds of five to ten megabits per second." As the State and the Commission endeavor to advance toward this goal, Frontier also intends to continue its expansion of broadband service, both into unserved areas and increasing the speed available in its service areas. Just as important, Frontier is expanding its transport infrastructure to support greater speed and capacity to meet the demands of retail and wholesale customers. Investment will be directed to both expand the geographic reach of broadband availability as well as to provide increased speed and capacity.

During 2015, Frontier intends to upgrade DSLAMs in the Balaton, Belle Plaine, Elysian, Henderson, and Janesville exchanges. These upgrades will allow for the provision of faster internet speeds, of up to 40Meg.

The FCC is implementing changes in the federal support mechanisms, aimed at encouraging ~~for~~ broadband deployment. Frontier will actively seek to obtain any additional federal funding that may become available for broadband deployment. ~~The FCC is implementing changes in the federal support mechanisms, aimed at encouraging broadband deployment.~~ The Connect America Fund (“CAF”) will provide funding to carriers to support broadband network investment. Frontier anticipates that the CAF II will likely provide significant funding amounts for its territory in Minnesota. Acceptance of CAF II funding is conditioned upon specific criteria for both expanded availability to unserved areas and increased speed in many other currently served areas. This will be fulfilled through a combination of CAF II funding and Frontier-provided capital. As a result, Frontier’s investment plans for the next several years will primarily be driven by these CAF obligations.

The FCC is now developing the offers for Phase II of its CAF mechanism, with the goal of which includes identifying geographic areas that lack broadband and are eligible for support, modeling the network facilities needed to bring broadband to those areas, and then ~~providing appropriate funding amounts~~ identifying the level of support available to carriers to build the necessary facilities in those specific areas. At this point, the FCC has not finalized its CAF Phase II ~~procedures~~ funding areas or funding amounts. Thus, it is not certain what localities within Frontier’s Minnesota service footprint may qualify for CAF II funding, or how much funding might eventually be provided. Frontier anticipates that the FCC’s unfolding CAF II program will provide significant funding amounts for use in deploying broadband service in Frontier’s Minnesota service territory. Frontier will actively consider any CAF funding that the FCC does make available for areas within the company’s service footprint, and barring unforeseen circumstances will accept the funding that is offered. Any CAF II funding received will be tied to a specific geographic location, and Frontier must invest that money, along with its own capital, in that specific geographic area. Therefore, at this time, Frontier cannot identify how much it will be investing or where specifically that investment will occur.

Frontier will invest all the funding it accepts and supplement with its own capital to fulfill the associated expansion and speed upgrade obligations.

Frontier invested approximately \$20M during 2012, 2013, and 2014. It is expected that capital investment will exceed these levels in the next three years, reflecting the anticipated CAF II impact.

CAF II funding will be targeted to a census block level to provide broadband service at 10Meg speeds to the households in the census block that do not currently have 10 Meg service. The bulk of the areas that will benefit from this new investment will be in the outstate portions of Frontier’s service territory. This improved broadband service will allow for video and data transmission.

C. Reporting

Within 30 days of the FCC's CAF II offerings, Frontier will report to the Commission its investment plans including: 1) the areas eligible for CAF funding, 2) the CAF funding amounts that Frontier is eligible to receive, 3) the CAF funding amounts that Frontier accepts, and 4) the amounts of Frontier's plans for the own investment and in addition to of any CAF funding received in Minnesota; as that information becomes available.

C. Reporting

Beginning in 2016, Frontier will submit a report to the Commission that ~~identifies~~ describes the investments and their funding, including any investments supported by CAF funding, in technological and infrastructure enhancement, it has made during the previous calendar year. The report will be filed by March 1 of each year.