

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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In the Matter of the Application of Frontier Communications Corporation for Approval of the Chapter 11 Plan of Reorganization of Frontier Communications Corporation and Its Subsidiaries

Docket No. P405, 407, 5316/PA-20-504

**ANSWER OF THE MINNESOTA DEPARTMENT OF COMMERCE
TO THE COMMUNICATIONS WORKERS OF AMERICA'S
PETITION FOR RECONSIDERATION**

INTRODUCTION

On December 7, 2020, the Minnesota Public Utilities Commission issued an order approving Frontier's application for the transfer of control of its Minnesota operating subsidiaries to a new parent company.¹ On December 28, the Communications Workers of America filed a petition for reconsideration of the Commission's order. The Minnesota Department of Commerce files this answer in response to CWA's petition pursuant to Minn. R. 7829.3000, subp. 4 (2019).

The CWA requests that the Commission reconsider its decision and "require Frontier to make significant additional investments to improve the services received by consumers in

¹ *In re Appl. of Frontier Commc'ns Corp. for Approval of the Ch. 11 Plan of Reorg. of Frontier Commc'ns Corp. & Its Subsidiaries*, Docket No. P405, 407, 5316/PA-20-504, ORD. APPROVING TRANSFER OF CONTROL OF MINN. TELECOMMC'NS SUBSIDIARIES at 7–8. (Dec. 7, 2020).

Minnesota, including investments in fiber-to-the-premises services.”² CWA’s petition explains that reconsideration is appropriate because new and relevant evidence is available regarding Frontier’s commitments in other states. The CWA concludes that this evidence demonstrates Frontier may divert resources away from Minnesota to meet its new obligations.

For the reasons discussed below, the Department recommends that the Commission take up CWA’s petition to consider this new and relevant evidence.

ANALYSIS

I. The CWA’s Reconsideration Petition

Under the Commission’s Rules, “[a] petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed.”³ In general, the Commission takes up petitions for reconsideration that raise new issues, point to new and relevant evidence, expose errors or ambiguities in the Commission’s order, persuade the Commission that it should rethink the decisions set forth in its order, or where the Commission concludes that its decision is inconsistent with the facts, the law, or the public interest.⁴

After reviewing the petition, the Department concludes that the CWA petition for reconsideration meets both prongs of the “new” and “relevant” evidence basis for reconsideration. First, CWA provided new information that was not available during the September 24 meeting, including:

² CWA Petition at 4.

³ Minn. R. 7829.3000, subp. 2.

⁴ See, e.g., *In re Appl. of Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-015/GR-16-664, ORD. GRANTING RECONSIDERATION IN PART, REVISING MAR. 12, 2018 ORD., & OTHERWISE DENYING RECONSIDERATION PETITIONS at 2 (May 29, 2018).

- [1] Since September 24, Frontier has made commitments to invest over two billion dollars in at least three other states⁵
- [2] The Company [agreed] to expand its fiber to the premises (“FTTP”) network to at least 100,000 additional locations in Connecticut within four years⁶
- [3] Frontier, CWA, [and PSC staff] filed a joint stipulation that . . . classifies Frontier’s operations in West Virginia as “InvestCo“ Companies, requires Frontier to deploy Gigabit capable fiber to not fewer than 150,000 locations in West Virginia by the end of 2027, and requires a minimum investment of \$200 million in West Virginia⁷
- [4] As part of the proposed [California] settlement, Frontier committed to spend at least \$1.75 billion over the next four years on service quality and network enhancement projects, as well as provide a detailed plan with input from CWA, TURN and Cal Advocates that identifies needs like plant repair, maintenance, hiring, and how Frontier intends to address them.⁸
- [5] In [an investor] presentation, Frontier discusse[d] its fiber investment plans as follows: “~2.6M of the ~2.9M targeted new fiber home passings in the Modernization Plan are aimed at increasing fiber density in ‘CTFC’ (CA, TX, FL, and CT), and ‘WINO’ (WV, IL, NY, and OH). On that same page, it mentions only two other states as possible candidates for additional fiber investment: Indiana and Pennsylvania. It is now readily apparent that Frontier has no plans to increase the level of investment in Minnesota⁹

Second, the above new information is relevant because it has a “bearing on or connection” to the Commission’s original decision.¹⁰ At the September meeting, the Commission expressed concern about possible divestment or underinvestment in Frontier’s Minnesota system.¹¹ The information provided by CWA regarding Frontier’s monetary commitment in other states—apparently in excess of \$2 billion—is connected to this concern

⁵ CWA Petition at 2

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Relevant*, American Heritage Dictionary (5th ed. 2011) (“Having a bearing on or connection with the matter at hand.”).

¹¹ Tr. at 14:11–15:23; 21:14–22:12.

because it suggests that the Company may divert resources away from Minnesota to meet its obligations or prioritize other states at the expense of Minnesota.

The information provided in the CWA petition also is connected to another area of Commission concern: Frontier's "virtual separation" planning.¹² During the hearing, Frontier suggested that the "exercise . . . is still ongoing and is not expected to be completed until [it] emerge[s] from Chapter 11."¹³ CWA's petition demonstrates, however, that this "exercise" is not an academic or hypothetical activity. Rather, the Company already is making decisions about its future operations, commitments in other states, and representations to its shareholders. Waiting until after Frontier exits bankruptcy to ascertain the Company's post-bankruptcy virtual separation plans risks a final decision being made regarding Minnesota without adequate Commission scrutiny.

The Department concludes that this evidence is both new and relevant to the Commission's original decision. As a result, the Department finds that the CWA has met the requirements for reconsideration and recommends that the Commission take up CWA's petition to consider these recent developments.

II. Resource Diversion Will Likely Exacerbate Frontier's Network Inadequacies

The Department generally shares the CWA's concerns about Frontier's ability to provide adequate service in the event that Minnesota is designated as an "ImproveCo" state, or Frontier otherwise diverts resources to other service areas. Frontier's performance already is inadequate in certain portions of its Minnesota service area. Frontier operates a total of 162 telephone exchanges in Minnesota. Yet, the following 9 rural telephone exchanges (shown in Table 1) account for 25 percent of all telephone service outages not resolved within 24 hours:

¹² *Id.* at 20:1–21:13.

¹³ *Id.* at 20:14–17.

Table 1: Exchanges with Chronic Outages¹⁴

Exchange	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20
ASKOV	67%	63%	100%	77%	75%	100%	89%	67%	100%
BABBITT	100%	N/A	100%	100%	N/A	86%	45%	43%	100%
CRANE LAKE	N/A	100%	N/A	N/A	50%	0%	89%	83%	78%
DENHAM	86%	100%	100%	100%	75%	83%	70%	100%	100%
ELY	83%	75%	100%	100%	70%	93%	84%	86%	95%
FAIRMONT	70%	68%	88%	71%	69%	89%	85%	88%	89%
FINLAYSON	100%	90%	100%	50%	82%	100%	95%	63%	100%
MCGREGOR	100%	100%	100%	67%	100%	75%	87%	100%	56%
STURGEON LAKE	100%	88%	50%	33%	67%	71%	82%	88%	75%

The failings shown above are likely the product of several factors including outage frequency, outage severity, and response times. These outage factors are aggravated by inadequate investment in outside plant and qualified staffing levels.

In addition, the Department’s analysis of Frontier’s reported out-of-service events (shown in Table 2) is consistent with the view that inadequate plant investments are a leading cause of Frontier’s poor network performance. Frontier’s activities have caused at least 58 percent of service outages in Minnesota.¹⁵ Moreover, Frontier’s deteriorated plant caused approximately 71 percent of the Company-related outages.¹⁶ In comparison, weather accounted for only 7.5 percent of outages, while other nature-related outages accounted for 7.7 percent of reported outages.

¹⁴ Report on Frontier’s Third Quarter Service Restoration Improvement Plan at 7 (Oct. 22, 2020) (eDocket No. 202011-168071-01).

¹⁵ Percent of outages caused by Frontier activities: $\left(\frac{1,015+2,466}{5,995}\right) \times 100 = 58\%$.

¹⁶ Percent of Company-related outages caused by deteriorated plant: $\left(\frac{2,466}{1,015+2,466}\right) \times 100 = 71\%$.

Table 2: Out-of-Service Events¹⁷

Month	Nature (Animals, Trees, Etc.)	Weather	Company Driven (Equip. Install., Sys. Issue, Etc.)	Deteriorated Plant (Bad Cable Pair/Sector, Corrosion, Etc.)	Machine/Men Working (3rd Party Const., Etc.)	Other
Jan-20	117	68	136	352	9	78
Feb-20	35	5	51	207	7	130
Mar-20	47	12	107	170	6	116
Apr-20	44	22	120	172	30	107
May-20	51	27	110	187	95	115
Jun-20	48	82	156	254	251	123
Jul-20	38	156	118	441	72	130
Aug-20	44	49	111	376	96	82
Sep-20	38	26	106	307	97	61
YTD TOTAL	462	447	1015	2466	663	942
% of TOTAL	7.7%	7.5%	16.9%	41.1%	11.1%	15.7%

Based on its review of Frontier’s performance, the Department believes that the deterioration of Frontier’s network is a significant concern that could be exacerbated by its commitments to other states and virtual separation decision making. As a result, the Department finds that the underlying condition of Frontier’s network lends credence to CWA’s concerns about the Company’s ability to adequately serve Minnesota customers.

¹⁷ Report on Frontier’s September Outage Report at 5 (Oct. 19, 2020) (eDocket No. 202011-168071-06)

III. Recommendations

As discussed above, the Department recommends that the Commission take up CWA's reconsideration petition to discuss the issues raised in it. While CWA's "significant additional investments" recommendation may ultimately be appropriate, Frontier's expertise, analysis, and cooperation is required to determine the capital investment levels needed to resolve existing service quality deficiencies. The Department doubts that the needed capital investment will occur in the absence of a Commission requirement. Further, any new Minnesota investment should reflect an incremental increase from existing plans, and should not be diverted from other areas in Minnesota. Accordingly, the Department recommends that Frontier be required to address the following questions either in this docket or a separate proceeding:

- Provide network maintenance and plant modernization spending levels annually for 2015–2020. Provide planned network maintenance and plant modernization efforts over the next three years (2021–2023). Specifically, provide the investment amounts by year and a narrative describing how these dollars were or will maintain and enhance its voice networks. Explain whether plans for future investment will be affected as a result of the change of control.
- Provide an investment plan, including the network investment to fully address the chronic network outages in the exchanges identified in this answer. The plan should demonstrate the additional investment required, without diverting investment from other areas in Minnesota.
- Explain whether Frontier's Minnesota operations will be subject to "virtual separation."
- Explain whether "virtual separation" will be accomplished through separate legal entities, and if so, explain in detail the process for transferring physical assets, intangible assets (such as cash), employees, contracts, and other things of value between or among the entities. If not, explain how "virtual separation" will be accomplished.
- Explain in detail the concept of "virtual separation," including but not limited to the types of facilities and/or operations that will be placed in each "virtually separate" entity; the practical effect of such separation on operations, personnel, finances, and regulation; and whether Frontier intends for the Commission to have the ability to regulate each "virtually separate" entity or enterprise.

- Explain in detail how the “virtual separation” will enable improvements to Frontier’s system integrity and operational reliability, including the quality of customer-facing IT systems such as service order provisioning systems, billing systems, and repair services. The explanation should be specific on expected metrics of service quality improvement or other deliverables that can be expected of Frontier moving forward, post-reorganization.
- Provide copies of all documents that relate to the meaning, design, planning, implementation, and/or operation of the “virtual separation” concept.

CONCLUSION

For the reasons discussed above, the Department recommends that the Commission take up the CWA’s petition for reconsideration of the December 7, 2020 order. The Department further requests that the Commission adopt the recommendations described in Section III of this answer.

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Respectfully submitted,

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