



85 7TH PLACE EAST, SUITE 500  
SAINT PAUL, MINNESOTA 55101-2198  
MN.GOV/COMMERCE  
651.539.1500 FAX: 651.539.1547  
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September 8, 2016

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101-2147

**RE: 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.  
Docket No. P405/AR-16-696**

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce regarding Frontier Communications of Minnesota, Inc.'s notice informing the Minnesota Public Utilities Commission that it elects to be regulated as a small telephone company pursuant to Minn. Stat. § 237.773.

Sincerely,

/s/ BONNIE JOHNSON  
Telecommunications Analyst

BJ/lt

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P405/AR-16-696

**I. BACKGROUND**

On February 23, 2015, the Minnesota Public Utilities Commission (Commission) issued an order approving the Alternative Form of Regulation Plan (AFOR) of Frontier Communications of Minnesota, Inc. (Frontier), in Docket No. P-405/AR-14-735.

The Frontier AFOR plan approved in 2015 has a duration of three years, and will expire on March 1, 2018.

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

**II. LEGAL REFERENCES**

Minn. Stat. § 237.766 subd. 1, entitled “[p]lan duration,” states that an approved AFOR plan “must remain in force as approved for the term specified in the plan, which must be for no less than three years” and that, “*within six months* prior to the termination of the plan the company shall give notice that it will propose a new plan.” (emphasis added).

Minn. Stat. § 237.76 states: “[t]he purpose of an alternative regulation plan is to provide a telephone company’s customers with service of a quality consistent with commission rules at affordable rates, to facilitate the development of telecommunications alternatives for customers, and to provide, where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation as reflected in other provisions of this chapter.” Companies with 50,000 or more subscribers must file a petition for Commission approval of an AFOR plan. “Large” company AFOR plans include an investment commitment pursuant to Minn. Stat. § 237.761, subd. 8, and a service quality plan pursuant to Minn. Stat. § 237.765.

Minnesota Statute § 237.773 enables a company with fewer than 50,000 subscribers to elect to be subject to the provisions of the small company AFOR statutes without any action by the Commission.

### III. DEPARTMENT COMMENTS

The Commission may wish to address whether Minn. Stat. § 237.766 subd. 1, allows a company with an approved AFOR plan to give notice of a new plan more than six months prior to the termination of an approved plan. The Commission may also wish to address whether a company may simultaneously operate under two AFOR plans.

Frontier is apparently asserting that it may file a new AFOR plan more than six months prior to expiration of its existing AFOR plan, and may operate under both its existing Commission-approved AFOR plan and the proposed small company AFOR statute concurrently until March 1, 2018.<sup>1</sup> The Commission may wish to consider the following regarding Frontier's proposal.

First, by filing notice of a new AFOR plan more than six month prior to termination of its existing plan, the likelihood is increased that important circumstances may change prior to expiration of the current plan. For example, Frontier had in excess of 50,000 subscriber lines when it received Commission approval of its current AFOR plan. When Frontier's current AFOR plan expires on March 1, 2018, Frontier may or may not have fewer than 50,000 subscriber lines. It is possible that Frontier will not qualify for a small company AFOR on March 1, 2018 when its current AFOR expires, and Frontier has not shown otherwise.

Second, there are inconsistencies between Frontier's current AFOR plan and the small company AFOR plan, and the alternative regulation plan for small telephone companies allows certain activity which is not permitted under Frontier's current plan. There are both timing and substantive inconsistencies between the small company AFOR plans and the "large" company AFOR plans, with respect to how companies can raise rates. For example, *one year* after electing to operate under a small company AFOR, Minn. Stat. § 237.773, subd. 3 (b) allows the small company to increase rates for local services to reflect changes in state and federal taxes, substantial financial impacts of investments, etc. Thus, if Frontier's proposed election to be concurrently regulated under two different AFORs is permissible, Frontier will be able to raise rates under the small company AFOR in approximately August 19, 2017, which is several months before its current three-year AFOR plan expires. Under Minn. Stat. § 237.762 subd. 3 (a), (which applies to Frontier's current AFOR) a rate increase could be implemented after *three years* only if the company has "*demonstrated substantial compliance with the quality of service standards set forth in the plan*" (emphasis added). Minn. Stat. § 237.762 subd. 3 (b) (ii), permits plans to allow for rate increases after *two years*, where the company shows substantial financial impacts of investments that "*are the result of government mandates to construct specific telephone infrastructure, ...and the company would not otherwise be compensated through some other manner under the plan.*" (emphasis added.)

Third, allowing concurrent regulation under multiple AFOR plans appears to circumvent the normal rate stability mechanisms contemplated by the small company AFOR statute. For

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<sup>1</sup> In its Notice Frontier states that it will "continue to adhere to, and comply with, that [current AFOR] plan through the expiration date." Frontier is obligated to adhere to, and comply with, its current plan. Minn. Stat. § 237.766 subd. 1.

example, Minn. Stat. § 237.773, subds. 3 (a) and (c) manages rate stability by prohibiting a small telephone company from implementing a rate increase for price-regulated services until “two years after making an election” to be regulated under a small company AFOR. If Frontier’s election at this time is deemed permissible, however, Frontier will be permitted to increase rates after only six months after Frontier’s current AFOR plan expires on March 1, 2018.

#### **IV. CONCLUSION**

The Commission should consider whether Frontier’s election to be subject to the provisions of the small company AFOR statute is permissible. If the Commission finds Frontier’s election is permissible:

- Frontier may not qualify as a small telephone company when its existing AFOR plan expires on March 1, 2018.
- Frontier will be operating simultaneously under two AFOR plans with distinctive differences.
- The rate increase protections in the small company AFOR statute would be absent or soon expiring when Frontier’s existing AFOR plan expires.

Frontier has not shown that it is in the public interest or that any of the statutory telecommunications goals of Minn. Stat. § 237.011 would be met by a determination that Frontier’s election is permissible.

#### **V. COMMISSION DECISION ALTERNATIVES**

- (1) Find Frontier’s election to be a small telephone company pursuant to Minn. Stat. § 237.773 permissible while it is also operating under an existing Commission approved AFOR plan.
- (2) Find Frontier’s election to be a small telephone company pursuant to Minn. Stat. § 237.773 not permissible while it is regulated under an existing Commission approved AFOR plan.
- (3) Other action the Commission deems appropriate.

#### **VI. DEPARTMENT RECOMMENDATION**

The Department recommends option 2: find Frontier’s election to be a small telephone company pursuant to Minn. Stat. § 237.773 not permissible while it is regulated under an existing Commission approved AFOR plan.

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## CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

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

**Dated this 8<sup>th</sup> day of September 2016**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_16-696_AR-16-696
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd  Mound, MN 55364-1652	Electronic Service	No	OFF_SL_16-696_AR-16-696
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_16-696_AR-16-696
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_16-696_AR-16-696
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_16-696_AR-16-696