

BEFORE THE STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of a Commission Inquiry into
Frontier Communications' Virtual Separation
Analysis

PUC Docket No.
P-405, 407, 5316/CI-21-150

COMMENTS OF
COMMUNICATIONS WORKERS OF AMERICA AND THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS

In response to the Order issued by the Commission on September 29, 2021, the Communications Workers of America - District 7 ("CWA") and the International Brotherhood of Electrical Workers ("IBEW") submit the following Comments concerning issues identified for the scope of the proceeding by the Commission and the informational filings made by Frontier Communications of Minnesota, Inc., Citizens Telecommunications Company of Minnesota, LLC, and Frontier Communications of America, Inc. (collectively "Frontier") on October 29, 2021.

I. INTRODUCTION AND SUMMARY

The Commission opened this investigation following approval of Frontier's bankruptcy-related restructuring to seek assurance that Frontier had a plan to sufficiently invest in the Minnesota network to ensure the long-term viability and resiliency of critical telecommunications services for Minnesota customers. Other state regulatory agencies that approved Frontier's restructuring had similar concerns and sought binding investment

commitments to assure that service would be adequate.¹ Frontier’s track record of poor performance and mismanagement leading up to the bankruptcy gave credibility to these concerns. Across Frontier’s footprint, the free market has not in the past been adequate to protect consumers and ensure good service, as evidenced by service quality investigations and settlements in Minnesota and elsewhere.²

The Order issued by the Commission made explicit that the intent of this investigation was to understand Frontier’s plans for investment in telecommunications services in Minnesota, and was not limited to the company’s evolving definition of the phrase “Virtual Separation.”

For purposes of this inquiry and as used in the scope set forth below, the term “virtual separation” shall also include subsequent investment plans arising from that process and from the bankruptcy that may impact Minnesota service quality, whether Frontier considers them part of virtual separation or is calling them something new.³

CWA and IBEW find that Frontier’s October 29, 2021 informational filing (“informational filing”) resorts to generic statements, such as the following quote, and fails to address this explicit instruction by the Commission to provide information regarding Frontier’s investment plans in Minnesota:

In terms of its future broadband deployment, every company engages in capital allocation assessments to determine whether and where to target capital expenditures. Frontier has finite capital and it cannot deploy fiber or otherwise expand broadband to

¹ See Speed Matters, *CWA’s year-long fight for improved service, good jobs at Frontier results in the company emerging from bankruptcy with significant commitments to invest in the network, its workers*, (May 3, 2021), <https://speedmatters.org/news/cwa-s-year-long-fight-improved-service-good-jobs-frontier-results-company>.

² See for example Connecticut Office of the Attorney General, *Attorney General Tong and Consumer Protection Commissioner Seagull Announce Investigation Into Frontier Communications Following Over 1,000 Consumer Complaints*, (Apr. 8, 2020), <https://portal.ct.gov/AG/Press-Releases/2020-Press-Releases/Attorney-General-Announces-Investigation-Into-Frontier-Communications-Following-Consumer-Complaints>; Jon Brodtkin, *Frontier network outages get worse in NY, triggering state investigation*, ARS Technica, (Aug. 12, 2019), <https://arstechnica.com/tech-policy/2019/08/frontier-network-outages-get-worse-in-ny-triggering-state-investigation/>; PUCO approves settlement agreement in Frontier service complaint, Public Utilities Commission of Ohio, (Aug. 12, 2020), <https://puco.ohio.gov/wps/portal/gov/puco/news/frontier-settlement>; and Hoppy Kercheval, *Customers’ growing frustrations with Frontier Communications*, (Jan. 28, 2020), <https://wvmetronews.com/2020/01/28/customers-growing-frustrations-with-frontier-communications/>.

³ Order Setting Inquiry Scope and Schedule, In the Matter of a Commission Inquiry into Frontier Communications’ Virtual Separation Analysis, Docket No. P-405,407,5316/CI-21-150, at 7 (Sep. 29, 2021)[hereinafter Commission Order].

*every customer location in its service territory. Frontier will continue to invest and improve its network operations throughout its operating territory, including in areas that are not identified for FTTP deployment. This will include expenditures to repair, maintain, and upgrade network infrastructure to provide improved services.*⁴

In addition, Frontier says that it could deploy additional fiber in Minnesota if state or federal subsidies are provided to fund Frontier's investment.

Frontier's statements regarding Virtual Separation also raise questions regarding its lack of transparency. Frontier states that "InvestCo" and "ImproveCo" are not in current use by the company, despite the fact that Frontier negotiated settlements that are under enforcement by regulatory agencies in other states that use this terminology.⁵ Moreover, the company's assertion that cost allocation decisions informed by the "Virtual Separation" analysis have no bearing on investment decisions are undermined by statements indicating that build and maintenance costs are a crucial component in Frontier's decision making regarding capital expenditures and new investments.

Frontier states that compliance with and improvement on metric tracked as part of the 2020 Service Quality Agreement ("Settlement Agreement") prove that future service to Minnesota customers will meet service quality standards. However, sustainable, long-run service quality requires investment in preventive maintenance, not a temporary focus on prompt repairs. Without an investment in maintenance (including repairing or replacing deteriorated cable and ensuring proper air pressure is maintained on cables) and a sufficient staff of outside technicians to perform maintenance, service quality will deteriorate and repair needs will eventually

⁴Frontier's Public Informational Filing, In the Matter of a Commission Inquiry into Frontier Communications' Virtual Separation Analysis, Docket No. P-405,407,5316/CI-21-150, at 7 (Oct. 29, 2021)[hereinafter Public Informational Filing]

⁵See Joint Stipulation and Settlement Agreement, Public Service Commission of West Virginia, CASE NO. 20-0400-T-PC, at 3. See also Settlement Agreement attached to the Decision Approving Corporate Restructuring with conditions, California Public Utilities Commission, Application 20-05-010 at ¶ 26-27 (Apr. 20, 2021).

overwhelm Frontier’s reduced staffing. Frontier’s informational filing and recent track record do not give evidence that this investment has been made.

Frontier’s plans for investment in fiber in Minnesota is critical for the future of telecommunications services for Minnesota customers. Fiber, whether as backhaul for last-mile copper or deployed to the premise, offers better economics to Frontier in terms of lower maintenance costs and improved pricing, which will lead to higher profits and more incentive for investment, in addition to better quality of service. CWA and IBEW are requesting that Frontier provide information that is responsive to the September 29th Order, most especially: (1) Frontier’s current plans for fiber and other investment in Minnesota, (2) the “wave” of investment Minnesota service areas have been placed in under Frontier’s current long-term investment plan, (3) information describing how those investment plans were determined and (4) Frontier’s plans to deploy sufficient staffing and resources to maintain service quality for Minnesota customers following the expiration of the 2020 Service Quality settlement on January 22, 2022. This information will allow the commission to fulfill the goals articulated in its September 29th Order, which were a “full understanding of how Frontier’s investment plans emerging out of bankruptcy and the virtual separation process will impact the quality of Frontier’s telecommunications service to Minnesota customers.”⁶

II. FRONTIER WAS NOT RESPONSIVE TO THE COMMISSION’S REQUEST FOR INFORMATION RELATED TO PLANS FOR INVESTMENT IN MINNESOTA

Frontier’s public informational filing includes no references to the “Modernization Plan” announced to its investors in December of 2020, which articulated a nationwide buildout of 3.4 million new fiber passings over 10 years, 90 percent of which would take place in eight states -

⁶ Commission Order at 6.

California, Texas, Florida, Connecticut, West Virginia, Illinois, New York, and Ohio.⁷ In Exhibit 1 of Frontier’s confidential filing, the modernization plan and state-based fiber deployments are discussed generally and without any specifics regarding investment decision-making.⁸

Frontier’s informational filing contains no mention of its updated and expanded investment plan, announced in August of 2021. That plan categorized all Frontier locations under three “waves” of investment with a first wave of 600 thousand new fiber deployments to be completed by the end of 2021, a second wave of 6 million new fiber deployments to be completed by the end of 2025 and a final “wave” of 5 million copper locations for which Frontier is preserving its options to “upgrade to fiber” (possibly funded by federal or state subsidies), “optimize and hold”, or investigate other “strategic options.”⁹

Frontier CEO Nick Jeffery explained the company’s assessment of these “wave 3” locations as follows:

So therefore, there's a further 5 million homes, which we're calling wave 3. Now these are ones where, today, either the build economics the market attractiveness is slightly lower, and therefore, the IRR is slightly less attractive. It's still attractive but slightly less attractive than our wave 1 and 2 builds. And so we're currently working through proposals on what do we do then? Do we build ourselves? And of course, as you rightly say, the federal money flowing into fiber builds may change the economics of that, they're able to make it attractive for us to build ourselves. Or do we partner with either an owner of capital or a owner of assets to perhaps run a JV structure? Or do we think about those assets as something we could maybe dispose of in the future. And all of those are great options for us that we're evaluating at the moment, all through the lens of rigorous capital discipline and how do we maximize shareholder value over that time period.¹⁰

Instead of providing information to clarify where Minnesota service areas fall in these new “wave” categories, Frontier provides the above quoted statement that capital allocation will

⁷ See Frontier 3Q 2020 Investor Presentation at 23 (Dec. 15 2020), https://s1.q4cdn.com/144417568/files/doc_financials/2020/q3/FTR-Q3-2020-Investor-Update-Final.pdf.

⁸ See Frontier’s Confidential Informational Filing, In the Matter of a Commission Inquiry into Frontier. Communications’ Virtual Separation Analysis, Docket No. P-405,407,5316/CI-21-150, Exhibit 1, at 3 (Oct. 29, 2021).

⁹ See Frontier 2Q 2021 Investor Presentation at 32 (Aug. 5, 2021).

¹⁰ See UBS Global TMT Conference Call with Frontier CEO Nick Jeffrey, 12/7/2021, Transcript accessed through Capital IQ.

be made according to an internal assessment along with an assurance that Frontier will continue to invest in places not targeted for fiber deployment. This level of generality is not responsive to the information request issued by the commission in its Order. As indicated by its presentations to investors and other recent statements, Frontier has developed investment plans through at least 2025 that could be disclosed to the Commission in compliance with the Order.

III. FRONTIER’S DESCRIPTION OF VIRTUAL SEPARATION DOES NOT ALIGN WITH COMMITMENTS MADE IN OTHER VENUES

In its informational filing, Frontier states that “InvestCo” and “ImproveCo” are not terms used by the company:

While the “InvestCo” and “ImproveCo” terminology was used with bondholders involved in the early stages of Frontier’s Chapter 11 restructuring, Frontier stopped using that terminology and it has no applicability to Frontier’s planned investment decisions.¹¹

However, Frontier is currently subject to Orders issues by Public Utility Commissions in West Virginia and California that require Frontier to maintain these state designations.

In West Virginia, the Joint Stipulation included by the West Virginia Public Service Commission as part of its order approving Chapter 11-Related Reorganization Changes states:

The Frontier companies represent and affirm that the “state operations” in West Virginia will be classified as “InvestCo” where the reorganized Frontier will conduct fiber deployments consistent with Article IX.A. 10 of the Plan of Reorganization approved by the Bankruptcy Court on August 27, 2020 and the Restructuring Term Sheet. Frontier’s fulfillment of the conditions specified herein is not contingent on the classification of the West Virginia state operations as “Investco.” Frontier shall notice the Commission within ten (10) days if it discontinues the use of the “InvestCo” classification for its West Virginia state operations.¹²

The West Virginia Public Service Commission Docket on the Frontier Bankruptcy (No. 20-0400-T-PC) currently contains no filing by Frontier informing the Commission that the use of the “InvestCo” classification has been discontinued in West Virginia.

¹¹ Public Informational Filing at 12.

¹² See Joint Stipulation and Settlement Agreement, Public Service Commission of West Virginia, CASE NO. 20-0400-T-PC, at 3

Similarly in California, Frontier reached a Settlement Agreement included in the California Public Utility Commissions' final order approving Frontier's bankruptcy-related corporate restructuring that maintains an "InvestCo" classification for its California operations:

Frontier affirms that its "operations" in California will be classified as "InvestCo," a designation signifying that the reorganized Frontier will conduct fiber deployments consistent with Article IX.A.10 of the Plan of Reorganization approved by the Bankruptcy Court on August 27, 2020 and the Restructuring Support Agreement executed by Frontier on April 14, 2020.¹³

Further explanation is required from Frontier to reconcile its statement regarding continued use of "InvestCo" and "ImproveCo" terminology with these Regulatory Orders.

Even if we accept Frontier's statements that Virtual Separation and related "InvestCo" and "ImproveCo" categories are only relevant as an accounting exercise to properly allocate indirect costs between regions, the company goes further to claim the new allocation of costs under this framework has no "direct" impact on investment decisions:

Virtual separation does not directly drive future investment. Hence, virtual separation itself will neither positively nor negatively affect telecommunications service quality in Minnesota.¹⁴

As the above quote from Frontier CEO Nick Jeffery indicates, measures of long-run profitability ("Internal Rate of Return" or "IRR" in this case) are central to Frontier's decision-making regarding the allotment of investment across its service areas. Cost is a central component of the IRR calculation or any measure of profitability. In Exhibit 1 of the company's non-public filing, the results of the new cost allocation under Virtual Separation are reported based on resulting state-level profits measurements ("EBITDA") and, notably, resulting profit calculations for state groupings that align with states identified for fiber deployment under the

¹³ See Settlement Agreement I attached to the Decision Approving Corporate Restructuring with conditions, California Public Utilities Commission, Application 20-05-010 at ¶ 26-27 (Apr. 20, 2021)

¹⁴ Public Informational filing at 11.

“Modernization Plan.” This suggests a direct connection between new cost allocations under the Virtual Separation analysis and Frontier’s investment decisions.¹⁵ More clarification is needed to understand Frontier’s statement that changes in its allocation of costs between regions has no effect on regional investment decisions under this framework.

IV. COMPLIANCE WITH THE TERMS OF THE SERVICE QUALITY AGREEMENT DOES NOT ASSURE LONG-TERM SERVICE QUALITY FOR MINNESOTA CUSTOMERS

In its informational filing, Frontier states that improvements related to terms of the Settlement Agreement are sufficient evidence that Frontier’s Minnesota service quality will remain high.

*Some parties to this docket have suggested that Frontier’s telephone service quality is sub-standard, and have expressed concerns that Frontier’s telephone service quality will be adversely impacted by the “virtual separation” work completed by Frontier during its Chapter 11 restructuring. These concerns are unwarranted...*¹⁶

*Frontier’s results show compliance and continuing improvement using its existing network. The actions that Frontier has taken to achieve these substantial service quality improvements remain in place, and are not impacted in any way by the virtual separation accounting analysis...*¹⁷

However, the service quality settlement is limited in scope and duration and does not, by itself, ensure the long-term resiliency or reliability of Frontier’s network in Minnesota. Nor does it provide insight into whether Frontier is planning the investments needed to maintain or improve Frontier’s service quality in the long-run.

Frontier cites improved compliance with metrics associated with customer repairs and installation, but does not report any information regarding improvement in the overall condition of the plant, issued intended to be addressed as part of Frontier’s “Long Duration Maintenance

¹⁵ Frontier Confidential Filing, Exhibit 1., at 7

¹⁶ Public Informational Filing at 3.

¹⁷ Public Informational Filing at 6-7.

Activities plan” discussed in the supplemented maintenance plan.¹⁸ Accounting for improvement in maintenance would more accurately address concerns raised by this investigation, namely the level of investment required to maintain quality service in the long-term and Frontier’s plan to meet those needs.

Technicians in the field report that Frontier has improved its responsiveness to PUC repair tickets but that this has come at the expense of plant maintenance. For example, currently there is one person assigned to central office maintenance throughout Frontier’s southern Minnesota service area, assigned to critical tasks like checking batteries and generator maintenance. This technician is charged with maintaining one hundred units across a five city area. In the past, Frontier maintained dedicated technicians for cable maintenance, work that is not being assigned now. Forgoing maintenance in favor of repair response is a short-term focused solution, improving service now at the expense of the future.

Frontier’s settlement terms specify that “all remedies and reporting that is not otherwise required by the Commission’s rules, will terminate two years after the Commission Order accepting this Proposed Settlement, subject to possible continuation for specific provisions...”¹⁹ The Commission approved the proposed settlement on January 22, 2020. Therefore, Frontier’s additional obligations are scheduled to terminate on January 22, 2022.

V. INVESTMENT IN FIBER IS CRITICAL FOR THE FUTURE OF TELECOMMUNICATIONS SERVICE IN MINNESOTA

Fiber provides better, and more cost effective service, both when deployed directly to the home, or as backhaul for copper service to the home. Frontier has made it clear that the future of its business is fiber with a new ticker on the NASDAQ exchange (“FYBR”) and recent

¹⁸ See Frontier’s Supplemental Minnesota Maintenance Plan (Jan. 27, 2021).

¹⁹ Customer Service, and Billing Practices of Frontier Communications, Proposed Stipulation of Settlement Pursuant to Minn. Stat. § 237.076, In the Matter of a Commission Inquiry into the Service Quality, at 27 (Aug. 2, 2019).

statements from CEO Nick Jeffery describing the new, reorganized Frontier as a company with a “mission of Building Gigabit America”²⁰ Customers in Minnesota deserve clarity on whether they have a place in Frontier’s future and if Frontier has a plan to maintain adequate copper services to customers in the state who lack other viable alternatives. Frontier management has acknowledged the reality of customers in its footprint that lack viable alternatives in its August 5th investor presentation when Chief Network Officer Veronica Bloodworth noted that in “88% of our footprint, we have one or fewer competitors,”²¹

Neither Minnesota law nor federal law prohibits Commission inquiry into Frontier’s broadband infrastructure investments, whether related to voice service or not. Frontier’s fiber and copper networks share personnel and are co-located in central offices across Minnesota. As such, Frontier’s network and workforce investment decisions pertaining to fiber will invariably impact the quality of both voice and broadband service provided to Minnesota customers.

VI. CONCLUSION

The September 29, 2021 Commission Order was appropriately written to provide necessary information and transparency on questions related to the future of Frontier’s telecommunications’ service in Minnesota. Unfortunately, Frontier’s informational filings are not responsive to the questions posed by the Commission and raise new questions related to the continued use of “Investco” and “ImproveCo” designations and the impact of the company’s Virtual Separation analysis on investment decisions.

The Commission should require Frontier to fulfill the stated goals of the proceeding and provide information responsive to the Commission’s September 29, 2021 Order. In particular, Frontier should provide the following: (1) Frontier’s current plans for fiber and other investment

²⁰ Frontier Communications Sets New Course as Telecommunications Technology Company, Press Release, (April 30, 2021)

²¹ Capital IQ transcript of Frontier Investor Day and 2Q 2021 Presentation (Aug. 5, 2021).

in Minnesota, (2) the “wave” of investment Minnesota service areas have been placed in under Frontier’s long-term investment plan, (3) information describing how those investment plans were determined and (4) Frontier’s plans to deploy sufficient staffing and resources to maintain service quality for Minnesota customers following the expiration of the 2019 Service Quality settlement on January 22, 2022.

Respectfully Submitted,

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