

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Dan Lipschultz	Vice Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications

DOCKET NO. P-405, 407/CI-18-122

INITIAL COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL

INTRODUCTION

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) submits these Initial Comments in response to the Public Utilities Commission’s (“Commission”) August 7, 2019 Notice of Comment Period on Settlement (“Notice”). The Notice was issued in response to the Proposed Stipulation of Settlement Pursuant to Minn. Stat. § 237.076 (“Proposed Settlement”) executed by the Minnesota Department of Commerce (“Department”), Frontier Communications of Minnesota, Inc., and Citizens Telecommunications Company of Minnesota LLC (collectively, “Frontier”). Specifically, the Notice inquires whether the Commission should: (1) “approve, modify, or reject” the Proposed Settlement; (2) “take on the issues raised, but not resolved” by the Proposed Settlement (“Excluded Issues and Reserved Matters”); (3) take action concerning the August 2, 2019 comments filed by the OAG and the Department; and (4) consider “other issues or concerns.”

SUMMARY OF RECOMMENDATION

As explained more fully below, the OAG provides the following recommendations in response to the Commission’s Notice.

Given the OAG’s separate investigation of Frontier regarding Minnesota’s consumer protection laws, the OAG neither supports nor opposes the Proposed Settlement. Instead, the

OAG identifies factual and legal issues that the Commission may wish to consider when deciding if the Proposed Settlement is supported by substantial evidence and furthers the public interest. In the event the Commission decides to approve the Proposed Settlement, the OAG suggests certain modifications to the Proposed Settlement.

In light of these recommendations, the OAG suggests that the Commission take no action with regard to the comments filed on August 2, 2019. Instead, the OAG recommends that the Commission accept the Department's offer to continue its investigation into the Excluded Issues and Reserved Matters. By doing so, the Commission need not currently decide its next steps but would defer any action relating to the Excluded Issues and Reserved Matters over which the Commission decides it has jurisdiction until the Department's investigation concludes. The OAG currently does not have any additional issues or concerns regarding the Notice, but will provide supplemental comments and recommendations to the Commission if warranted.

BACKGROUND

This matter involves the Commission's investigation under Minnesota Statutes section 237.081 into Frontier's service quality, customer service, and billing practices. The Commission's investigation both referred the matter to the Office of Administrative Hearings ("OAH") for the purpose of holding public hearings and requested that the Department file a report, while providing Frontier with an opportunity to respond to that report.¹

Administrative Law Judge ("ALJ") Jeffery Oxley filed a report on November 16, 2018, after hosting six public hearings in five Minnesota cities (Ely, McGregor, Wyoming, Slayton and

¹ See Order Initiating Investigation and Referring Matter for Public Hearings (April 26, 2018) (hereinafter "April 26, 2018 Order").

Lakeville).² ALJ Oxley acknowledged “significant numbers of complaints concerning Frontier’s voice services” that “identified call quality (excessive static or hiss), frequent outages, frustrating interactions with Frontier’s customer service, long repair intervals, and incorrect billing as common problems.”³ ALJ Oxley recommended that the Commission undertake an inquiry into Frontier’s compliance with the service quality standards set forth in its Alternative Form of Regulation (“AFOR”) plans and the Commission’s rules:

With regard to the Commission’s consideration of future steps in the proceeding, it may wish to inquire further to determine whether Frontier is meeting the service quality standards with respect to its telecommunications services set out in Frontier’s AFOR Plan. . . .

[T]he testimony given at the public hearings suggests either that Frontier’s service quality standards such as those for restoration or repair of service and answer time are not being met, or, if they are being met, the standards are inadequate to secure reasonable service quality. For example, testimony concerning excessive holding times was clear and unequivocal. If Frontier is meeting this standard, many of Frontier’s customers would contend the standard is inadequate. . . .

In addition to considering whether Frontier has complied with the service quality standards in its AFOR Plans . . . the Commission should consider whether Frontier is meeting the service quality standards in the Commission’s rules.⁴

In addition to ALJ Oxley’s report summarizing the public hearings, the Department’s investigation “reviewed public comments, public testimony, and [approximately 1,000] complaints to regulatory agencies from Frontier’s Minnesota customers.”⁵ This investigation culminated in the filing of the Department Report on January 4, 2019. The Department Report

² See generally Report on Public Hearings (November 16, 2018) (hereinafter “ALJ Public Hearing Report”).

³ ALJ Public Hearing Report at 47.

⁴ *Id.* at 48 (citing *In re Petition by Frontier Communications of Minnesota, Inc. for Approval of its Revised Alternative Regulation (AFOR) Plan*, Docket No. P405/AR-14-735, Alternative Form of Retail Regulation Plan for the State of Minnesota (March 3, 2015)).

⁵ Report of the Minnesota Department of Commerce at 1, 10 (January 4, 2019) (hereinafter “Department Report”).

found that “[m]any of the issues reported by consumers show direct violations of Minnesota law and Commission rules, and indicate broad, systemic problems with Frontier’s service quality, recordkeeping, and business operations.”⁶ In addition to those concerns, the Department Report also highlighted Frontier’s AFOR failures:

The findings of this investigation detail an extraordinary situation, where customers have suffered with outages of months, or more, when the law requires telephone utilities to make all reasonable efforts to prevent interruptions of service. When interruptions occur, telephone utilities are to restore service “with the shortest possible delay.” Frontier customers with these outages include those with family members with urgent medical needs, such as pacemakers monitored by their medical teams via the customer’s landline. . . .

The degradation of Frontier’s operations in Minnesota, while it was operating under an [AFOR] plan, cannot quickly, or easily, be resolved. Not only are there large numbers of serious violations, they are interrelated. For example, the Commission’s rules require regulated utilities to maintain accurate records, but Frontier customers repeatedly reported that their “trouble” reports had become, mysteriously, “lost.” These Comments discuss Frontier’s recordkeeping, which appears to have become so deficient that, for some critically important data, such as data on duration of outages, the Company’s records cannot be relied upon by Frontier’s executives or the Commission to know if the company is meeting its performance obligations or not. As discussed in these Comments, it will take significant, multistep actions by the Commission to set Frontier on a path to reach an acceptable level of performance, and any actions ordered by the Commission will need verifiable methods to ensure compliance. Further, additional problems may be uncovered during the remainder of the current investigation or during the compliance process. The Department recommends in these Comments that the Commission not rely on data from Frontier’s records, unless a Frontier executive officer confirms the accuracy of that data.⁷

The Department concluded that “Frontier has been violating at least 35 separate laws and rules that the Commission has clear authority to enforce through this regulatory proceeding.”⁸ In particular, the Department acknowledged that “the Minnesota legislature has provided a clear set of remedies to curb misconduct of rogue companies, ones who routinely, knowingly disregard

⁶ Department Report at 10.

⁷ *Id.* at 1–2 (citing and quoting Minn. R. 7810.5800).

⁸ *Id.* at 2.

the law and jeopardize the lives and wellbeing of Minnesotans, including hefty civil penalties and criminal prosecutions.”⁹

On January 11, 2019, Frontier sought additional time to file its response to the Department Report; one week later, Frontier notified the Commission that the company anticipated requesting mediation.¹⁰ On February 14, 2019, the Commission requested mediation services from OAH, and the next day the Commission granted Frontier’s extension request.¹¹

On March 5, 2019, Frontier filed its Response to Report of the Department of Commerce, which also acknowledged Frontier’s good faith mediation commitment.¹² The Frontier Response asserted overall compliance with Frontier’s AFOR service quality standard obligations and maintained that Frontier provided adequate and reliable telephone service to the vast majority of its customers.¹³ Frontier quoted the Commission’s identification of the “primary issues in this case” as being “whether and, if so, to what extent, [Frontier] [is] or [has] been in violation of any applicable customer service, service quality, or billing practice requirements or standards.”¹⁴ The Frontier Response, however, concluded that the Department Report “does not provide the Commission with an adequate basis to make such assessment of whether, and to what extent, Frontier has violated relevant requirements and standards, and represents only one side of many complex and contested factual issues.”¹⁵ Rather, Frontier argued that that “[t]he

⁹ *Id.* at 2 (citing Minn. Stat. §§ 237.081, .46).

¹⁰ ALJ Public Hearing Report at 2.

¹¹ *Id.* at 3.

¹² *See generally* Response to Report of the Minnesota Department of Commerce of Frontier Communications of Minnesota, Inc. and Citizens Telecommunications of Minnesota, LLC at 3 (March 5, 2019) (hereinafter “Frontier Response”).

¹³ Frontier Response at 3.

¹⁴ Frontier Response at 19 (citing and quoting April 26, 2018 Order at Order Point 1).

¹⁵ *Id.* at 26.

current record does not constitute substantial evidence to support the findings” by the Department,” which is a precondition for “[a]ny decision by the Commission.”¹⁶

From March through August 2019, Frontier and the Department attended many OAH-led mediation sessions, which were supplemented by additional negotiations amongst the parties. On August 2, 2019, Frontier and the Department filed the Proposed Settlement, which was executed one day prior. Through the Proposed Settlement, the Department and Frontier contend that agreement “is reasonable and in the public interest because it resolves the concerns and alleged violations of Minnesota statutes and rules upon which the Department made the recommendations in the Department Report.”¹⁷

As set forth more fully in his filing supporting the Proposed Settlement, ALJ Oxley encouraged “the Commission to approve the [Proposed Settlement] as the most expeditious way to: (1) provide Frontier’s customers with remedies for inadequate telephone service they experienced under the most recent AFORs . . . and for . . . claims of inadequate telephone service arising since January 1, 2017, which are not contemplated by the AFORs but are instead set out in Minnesota rules; (2) provide specific remedies for poor service until the conclusion of the [Proposed] Settlement’s term; and (3) establish detailed and comprehensive reporting requirements and performance standards to provide improved visibility into Frontier’s telephone service quality and ensure good service quality going forward.”¹⁸ Accordingly, ALJ Oxley contended that the Proposed Settlement “is reasonable and in the public interest” and that “the parties’ resources are better directed to implementing the [Proposed] Settlement, thereby

¹⁶ *Id.* at 24.

¹⁷ Proposed Stipulation of Settlement Pursuant to Minn. Stat. § 237.076 at 28, Section VII.I (August 2, 2019) (hereinafter “Proposed Settlement”).

¹⁸ Statement in Support of Proposed Stipulation of Settlement at 7 (August 2, 2019) (hereinafter “ALJ Statement Supporting Proposed Settlement”).

providing customer remedies and improving service, than to litigating” acknowledging that “[a] contested case would undoubtedly be a prolonged and expensive undertaking.”¹⁹

RECOMMENDATION

I. THE LEGAL STANDARD FOR ACCEPTING A SETTLEMENT UNDER SECTION 237.076 REQUIRES THAT IT BE IN THE PUBLIC INTEREST AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Commission has routinely acknowledged that “[i]n general, the telecommunications statutes,” such as Minnesota Statutes section 237.076 (“section 237.076”), “encourage parties . . . to settle their disputes.”²⁰ Pursuant to section 237.076, the Commission “may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence.”²¹ The Commission has found that the “extensive involvement of diverse parties, including representatives of the public,” such as the Department and OAG, is “assuring” but “inadequate in itself” to accept settlements proposed under section 237.076. Instead, the Commission must independently review settlements under section 237.076 in order to “make its own determination of the merits of the matters which come before it.”²²

¹⁹ ALJ Statement Supporting Proposed Settlement at 7.

²⁰ See, e.g., *In the Matter of a Petition by Frontier Communications of Minnesota, Inc. for Approval of its Revised Alternative Regulation (AFOR) Plan*, Docket No. P-405/AR-14-735, Order Approving Alternative Regulation Plan as Modified at 2 (February 23, 2015) (citing, *inter alia*, Minn. Stat. § 237.076, subd. 1) (hereinafter “February 23, 2015 Order Approving Frontier AFOR”).

²¹ Minn. Stat. § 237.076, subd. 2.

²² *In re Northwestern Bell Telephone Company’s Request to Place Three Optional Features in the Private Line Transport Service Tariff and Price List*, Docket No. P-421/EM-89-688, Order Approving Tariff Filing for Improved Termination, Price Lists for Reverse Battery and Data Channel Terminating Equipment and Directing Northwestern Bell to File its Private Line Service Tariffs and Price Lists in a Single Book, at 3 (December 26, 1989).

A. Substantial Evidence.

Where a contested case hearing has not yet been initiated, the Commission has analyzed settlements “in light of the record established” in the particular matter.²³ Here, the Department and Frontier contend that the Proposed Settlement “is reasonable and in the public interest because it resolves the concerns and alleged violations of Minnesota statutes and rules upon which the Department made the recommendations in the Department Report, other than the Excluded Issues and Reserved Matters.”²⁴ The Proposed Settlement, however, fails to include a single reference to the phrase “substantial evidence.”

Moreover, the Proposed Settlement fails to include any stipulated factual background or otherwise provide any explanation as to how the record developed either during the OAH public hearing process or in the Department’s Report supports the Proposed Settlement. Instead, the Proposed Settlement contains a provision in which Frontier continues to dispute the Department’s investigation²⁵ much the same as it did in response to the Department’s Report.²⁶

On the other hand, the Commission may find it instructive that the Proposed Settlement provides certain identical types of customer remedies as set forth in Frontier’s AFORs, which were previously found reasonable by the Commission.²⁷ The Commission’s past reasonableness determination could form the basis for a conclusion that the Proposed Settlement is supported by substantial evidence, at least with regard to past customer remedies during the timeframe in

²³ February 23, 2015 Order Approving Frontier AFOR at 3.

²⁴ Proposed Settlement at 28, Section VII.I.

²⁵ See Proposed Settlement at 28-29, Section VII.L (“This Proposed Settlement should not be construed as an admission by Frontier of any specific violation of . . . applicable statutes, rules or Commission orders.”)

²⁶ See *supra* Background.

²⁷ See generally February 23, 2015 Order Approving Frontier AFOR.

which Frontier's AFORs were in effect.²⁸ Nevertheless, the OAG finds it especially concerning that the parties apparently have entirely omitted any stipulated facts or citations to the record in support of the Proposed Settlement's stated purpose related to past Frontier violations where its AFORs have expired. To the contrary, the record here establishes that Frontier has repeatedly contended that the Department Report "does not meet the requirement for substantial evidence," which is a precondition for "[a]ny decision by the Commission."²⁹ Accordingly, the Commission may wish to inquire further with the parties to identify supplemental undisputed record citations that would constitute substantial evidence to support the Proposed Settlement.

B. Public Interest.

When analyzing whether a settlement submitted under section 237.076 furthers the public interest, past Commission decisions have considered a variety of factors, including: (1) whether the remedies are reasonable in light of the conduct alleged;³⁰ (2) whether the remedies provide reasonable assurance of future compliance;³¹ (3) the timeframe for remedies under the proposed settlement compared with delays and uncertainty of remedies if the matter were to be referred to

²⁸ Cf. *In Re Petition by Embarras Minnesota, Inc. for Renewal and Revision of its Revised Alternative Regulation (AFOR) Plan*, Docket No. P-430/AR-07-948, Order Approving AFOR Settlement Plan at 4 (January 31, 2008) (accepting a settlement under section 237.076 and noting that because the proposed settlement concerning the revised plan maintains "the essential elements of the current AFOR plan," which the Commission previously "found to be reasonable," the Commission "finds that they continue to be [reasonable] now")

²⁹ Frontier Response at 24.

³⁰ *In the Matter of the Department of Public Service's Recommendation that the Minnesota Public Utilities Commission Issue an Order to Peoples Telephone Company, Inc. and Telecoinc Communications, Ltd. Revoking Both Companies' Certificates of Authority to Operate in Minnesota*, Docket No. P-1621, 1657/PA-94-1004, Order Approving Settlement at 3 (July 21, 1995).

³¹ *Id.*

a contested case proceeding;³² and (4) the timeframe for addressing matters not resolved by the proposed settlement.³³

1. The Commission should examine the reasonableness of the remedies provided for by the Proposed Settlement compared with Frontier's alleged conduct.

As set forth more fully in the Background Section *supra*, the scope, gravity and pervasiveness of Frontier's alleged violations of Minnesota's telecommunications laws is well supported by the record. The Proposed Settlement, however, does not guarantee that Frontier will provide its customers with any relief or otherwise require Frontier to include a specific dollar amount in an escrow account to incentivize paying out customer remedies. Instead, that agreement merely provides a procedural framework for the types of remedies available to Frontier customers in the event Frontier later agrees with a customer's complaint regarding past conduct. If Frontier disagrees with customers' complaints, the Proposed Settlement provides that the Commission will be required to make a determination as to whether Frontier's past conduct violates any applicable service quality, customer service, or billing practices. There is even less certainty as to how Frontier's future conduct will be evaluated because the Proposed Settlement fails to set forth any detailed process for handling future customer claims of Frontier misconduct.

The Commission should find it noteworthy that the Proposed Settlement offers certain customer relief for past Frontier conduct that is identical to the types of customer remedies already provided for by Frontier's now-expired AFORs.³⁴ This signals to the OAG that the remedies provided for in the Proposed Penalty for certain past conduct by Frontier are not

³² *In Re Solicitation of Comments Regarding Access Charges*, Docket No. P-999/C-93-90, at *5 (Apr. 21, 1995), *amended sub nom. In Matter of Comm'n Solicitation*, Docket No. C-93-90 (July 21, 1995) *available at* 1995 WL 389319.

³³ *Id.*

³⁴ *Compare* Department Report at Attachment 5 (corrected Frontier AFORs) *with* Proposed Settlement at 4–8, Section II.

commensurate with the gravity of the allegations by the Department Report. Moreover, the OAG recommends that the Commission proceed with caution in approving either customer remedies for past Frontier conduct postdating the AFORs' expiration or future customer remedies, as such relief may be prone to reversal as prohibited by Minnesota Statutes section 16A.151.³⁵

Additionally, the OAG recommends that the Commission more closely analyze whether the Proposed Settlement provides for remedies that go beyond the authority granted to the Commission by the Minnesota Legislature. After all, the Commission must independently review settlements under section 237.076 in order to “make its own determination of the merits of the matters which come before it.”³⁶ The Proposed Settlement's contemplated customer remedies for certain past and future Frontier misconduct certainly will not further the public interest if such provisions are later found to be legally impermissible. The Eighth Circuit has found that while Minnesota Statutes sections 237.081, 237.461, and 237.763 vest the Commission with “broad statutory authority to regulate the telecommunications market in Minnesota, none of them vest MPUC with the express [or implied] authority to order remedial relief.”³⁷ The OAG questions whether the Commission has the legal authority to accept the

³⁵ See generally *In re Qwest's Performance Assur. Plan*, 783 N.W.2d 571 (Minn. Ct. App. 2010); accord *In re Qwest Corporation's Alternative Form of Regulation (AFOR) Plan*, Docket No. P-421/AR-97-1544, Order on Reconsideration (January 20, 2006).

³⁶ *In re Northwestern Bell Telephone Company's Request to Place Three Optional Features in the Private Line Transport Service Tariff and Price List*, Docket No. P-421/EM-89-688, Order Approving Tariff Filing for Improved Termination, Price Lists for Reverse Battery and Data Channel Terminating Equipment and Directing Northwestern Bell to File its Private Line Service Tariffs and Price Lists in a Single Book, at 3 (December 26, 1989).

³⁷ See *Qwest Corp. v. Minnesota Pub. Utilities Comm'n*, 427 F.3d 1061, 1064–67 (8th Cir. 2005) (rejecting the Commission's arguments that it has statutory authority to order restitution or remedial relief pursuant to Minn. Stat. §§ 237.081, 237.461, 237.462, and 237.763).

Proposed Settlement if the Commission itself could not order such relief or, arguably, modify a proposal under section 237.076 to require such relief.

Finally, as the Commission considers whether the Proposed Settlement's remedies are proportionate with the gravity of Frontier's alleged conduct, the OAG respectfully recommends that the Commission compare this matter with its 1996 order approving a settlement, as modified, with US West Communications, Inc. ("US West"). That matter related to allegations that US West's "service quality was seriously deficient in at least the following areas: responding to requests for new service, responding to requests for repairs, and responding to customer calls to the business office."³⁸ There, the Commission was presented with a proposed settlement under section 237.076, which included a requirement that US West deposit \$5,000,000 in a fund that would "pay compensation of approximately \$300,000 to customers who have recently had new service installations or essential repairs delayed" with the remainder reserved "to expand and upgrade telecommunications service to Minnesota schools, libraries, and rural health care centers."³⁹ US West's proposal also provided for "individual customer remedies" for failing to meet future customer service performance metrics related to installing new service, restoring out-of-order service, and responding to customer calls to the business office.⁴⁰ Finally, that agreement incentivized US West's future compliance with such customer service performance metrics by penalizing the company either daily (ranging from \$100 to \$500) or yearly (ranging from \$250,000 to \$750,000) depending on the metric.⁴¹

³⁸ *In re Investigation into US West Communications, Inc.'s Service Quality*, Docket No. P-421/CI-95-648, Order Accepting Settlement with Modifications at 1 (May 2, 1996) (hereinafter "1996 Order Accepting US West Settlement with Modifications").

³⁹ 1996 Order Accepting US West Settlement with Modifications at 3.

⁴⁰ *Id.*

⁴¹ *Id.* at 3–4.

The Commission ultimately accepted and adopted the settlement with US West, but with certain modifications, including the following:

If at any point total financial penalties incurred (not paid) by the Company under the terms of the settlement reach or exceed \$500,000, the Commission may at its option reopen this matter, terminate the operation of the settlement, and act under its normal statutory and regulatory authority.⁴²

The Commission reasoned that such modification was necessary given its lack of confidence in

US West's proposal:

[T]he Commission is not so confident in the settlement's ability to solve previously intractable problems that it is willing to surrender its normal regulatory authority for two years. The Commission will therefore retain the right to terminate the operation of the settlement and deal with service quality through standard regulatory procedures, should that prove to be necessary. While the settlement is clearly designed to focus Company attention on service quality, it does not include any mechanism to compel Company action. It relies on self-executing financial incentives to goad the Company into improving service. Theoretically, service quality could deteriorate drastically, and as long as the Company paid the financial penalties agreed upon in the settlement, regulators could do little, if anything, until the end of the two-year settlement term. This is unacceptable to the Commission. There could, after all, be factors at work which make it more cost-effective over the next two years to pay financial penalties than to improve customer service. There could be structural barriers to improving service, for example, or unforeseen consequences of reengineering which are expensive to reverse. However unlikely these scenarios, they merit some consideration. It is very encouraging that the Company, in response to Commission questions, stated it is aggressively pursuing excellence in customer service, sees no major obstacles to achieving that goal, and expects its liability for financial penalties under the settlement to be very close to zero. Nevertheless, to provide an extra margin of security for Minnesota ratepayers, the Commission will reserve the right to terminate the settlement, should the Company at any point incur financial penalty obligations totaling \$500,000.⁴³

The Proposed Settlement's remedies strike the OAG as paltry compared with Frontier's alleged misconduct as set forth in the Department Report, especially when compared to the Commission's 1996 Order Accepting US West Settlement with Modifications.

⁴² *Id.* at 7, Order Point 1(a).

⁴³ *Id.* at 5.

2. The Commission should examine whether the remedies provided for by the Proposed Settlement provide a reasonable assurance that Frontier will comply with Minnesota’s telecommunications laws in the future.

The Department Report highlights the “significant, multistep actions by the Commission” that will be required “to set Frontier on a path to reach an acceptable level of performance” and the fact that “any actions ordered by the Commission will need verifiable methods to ensure compliance.”⁴⁴ The OAG recommends that the Commission explore the extent to which the Proposed Settlement will effectively ensure improvement to Frontier’s service quality, customer service, and billing practices. Similar to the Commission’s reasoning in its 1996 Order Accepting US West Settlement with Modifications, the Commission should be hesitant to accept the Proposed Settlement, which may inadvertently incentivize Frontier to deny customer remedies and force the Commission to satisfy its burden of proof while Frontier achieves “substantial performance” and thereby terminates its obligations under the Proposed Settlement.

3. The Commission should compare the timeframe under which remedies provided for by the Proposed Settlement will be implemented with the uncertainty and delay of potential remedies if a contested case hearing is required.

As stated previously, the OAG expresses concern that the Proposed Settlement fails to resolve any past violation by Frontier of Minnesota’s telecommunications statutes or rules. Instead, it merely “kicks the can down the road” and provides a procedural claims process that authorizes Frontier to deny customer remedies and force the Department (or individual customers) to mediate such disputed claims at OAH prior to any resolution by the Commission during an informal expedited proceeding under Minnesota Statutes section 237.61.⁴⁵ These same concerns likewise plague future Frontier violations under the Proposed Settlement given that the

⁴⁴ Department Report at 3.

⁴⁵ See Proposed Settlement at 8, Section II.

agreement does not prevent the company from disputing such allegations of misconduct and forcing the Department and Commission to engage in further administrative proceedings.⁴⁶ Instead, under the Proposed Settlement, the Commission must rely upon Frontier’s “good faith” to follow Minnesota’s telecommunications laws without detailing any procedural claims process.⁴⁷

In other words, the Proposed Settlement does not provide sufficient immediacy and certainty to justify accepting that proposal in lieu of ordering further administrative proceedings.⁴⁸ And even if such immediacy and certainty were provided to Frontier customers, the Commission has found that “[s]ignificant as they are, concerns about delay and uncertain outcome associated with a contested case proceeding are not enough in themselves to warrant acceptance of an otherwise unreasonable settlement. These considerations are always present in these kinds of disputes.”⁴⁹ The Commission should be especially cautious in finding that the Proposed Settlement furthers the public interest in light of Frontier’s repeated statements in the record that the Department Report fails to articulate substantial evidence supporting any violations of Minnesota’s telecommunications laws.

⁴⁶ See generally Proposed Settlement.

⁴⁷ See *id.* at 2–4, Section I.G; see also *id.* at 8-22, Section III.A-R.

⁴⁸ See, e.g., *In Re Solicitation of Comments Regarding Access Charges*, Docket No. P-999/C-93-90, at *5 (Apr. 21, 1995), amended *sub nom. In Matter of Comm’n Solicitation*, Docket No. C-93-90 (July 21, 1995) available at 1995 WL 389319 (“The contested case process and possible judicial review could require over a year to complete, thereby substantially delaying customer experience of any toll rate reductions, if any were achieved at all through the adversarial process. In contrast, approval of the proposed settlement would provide an immediate and actual reduction in most customers’ toll charges without such delays.”).

⁴⁹ *Id.*

The OAG does, however, concede that the Proposed Settlement effectively and immediately imposes on Frontier myriad reporting, training, and system improvement requirements that aim to enable the Department to gauge Frontier's compliance.

4. The Commission should examine the timeframe for resolving the Excluded Issues and Reserved Matters not decided by the Proposed Settlement.

Finally, as the Commission considers whether the Proposed Settlement furthers the public interest, it should note that the parties' proposal fails to propose a timeframe during which the Excluded Issues and Reserved Matters would be decided. While this factor alone may not be enough to warrant rejecting the Proposed Settlement, the Commission should nevertheless include this factor in its public interest analysis. In doing so, the Commission should note that the Department has agreed to "make its best efforts to comply with any schedule set forth by the Commission" with regard to completing any investigation concerning the Excluded Issues and Reserved Matters.⁵⁰

II. IF THE COMMISSION ACCEPTS THE PROPOSED SETTLEMENT IT SHOULD INCORPORATE PROTECTIVE MODIFICATIONS.

The OAG recommends that the Commission consider modifying the Proposed Settlement in the event the Commission is inclined to accept that proposal. Additionally, the OAG recommends that the Commission require further informational filings by the Department and Frontier to assist the Commission's consideration of the Proposed Settlement under section 237.076. Such potential modifications and/or informational filings include, but are not limited to, the following, which the OAG separates by subject matter:

⁵⁰ See generally Comment of the Minnesota Department of Commerce at 4 (August 2, 2019).

A. Substantial Evidence.

- Requiring the parties to submit a list of past Frontier customer complaints for which there is an agreement concerning the availability of remedies.
- Requiring the parties to further elucidate the extent to which substantial evidence in the record supports a finding that the Proposed Settlement resolves the issues framed by the Commission.

B. Public Interest.

- Requiring the parties to submit proposals regarding the timeframe by which the Department will complete its investigation into the Excluded Issues and Reserved Matters over which the Department and/or Commission have jurisdiction and explain the Commission's options for next procedural steps after completion of such Department investigation.
- Requiring the parties to further elucidate the extent to which the Proposed Settlement's past remedies would be resolved in a more definite and timely manner than if the Commission were to refer this matter to a contested case hearing.
- Requiring the parties to further elucidate the extent to which the Proposed Settlement would provide the Commission with a reasonable assurance regarding Frontier's compliance with Minnesota's telecommunications statutes and rules in light of the 1996 Order Accepting US West Settlement with Modifications.
- Requiring the parties to further elucidate the extent to which the Proposed Settlement provides for reasonable remedies compared with Frontier's alleged conduct in light of the 1996 Order Accepting US West Settlement with Modifications.

C. Remedies Under The Proposed Settlement.

- Resolving the parties' apparent disagreement over what constitutes a complaint for purposes of administering the Proposed Settlement. *See* Proposed Settlement at 15, Section III.G.7.
- Clarifying, as appropriate, that the Commission initiated its investigation to vindicate the rights of individual Frontier customers, in order to insulate the Proposed Settlement from potential section 16A.151 challenges.
- Requiring Frontier to make an upfront dollar-specific payment to a nonrefundable escrow account to discourage the company from arbitrarily denying both past and future customer claims.

- Imposing a stayed civil penalty to be later recovered by the Office of the Minnesota Attorney General pursuant to section 237.461 in the event Frontier either continues to violate telecommunication laws or otherwise fails to comply with the Proposed Settlement.
- Exploring additional enforcement measures that compensate Frontier customers without contravening legal precedent finding that the Commission is without express or implied authority to compel remedial damages.
- Amending Section I.G to require Frontier to include in its quarterly report to the Department the details regarding all customer complaints for which Frontier denied the remedies provided for in Section I.G.1-6.
- Clarifying, as appropriate, whether the Commission may approve (with or without modifications) the remedial relief provided to Frontier customers under section 237.076 without violating past legal precedent holding that the Commission is without express or implied legislative authority to order remedial relief.
- Amending the Proposed Settlement to require a specific claims process for future Frontier customer complaints alleging violations of Section I.G.1-6 similar to the claims process for past Frontier violations as elucidated in Section II.

D. Ongoing Commission Authority Over The Proposed Settlement.

- Maximizing the Commission's ability to terminate that agreement in the event Frontier continues to violate telecommunication laws in light of the 1996 Order Accepting US West Settlement with Modifications.

E. Miscellaneous.

- Amending Section VII.D so that the parties are provided ten days to respond to a Commission order modifying the Proposed Settlement to align the timeframe with that contained in section 237.076.
- Clarifying the extent to which the Department's or the Commission's actions to vindicate the rights of Frontier customers impact or otherwise preclude those customers' legal or administrative abilities to independently seek relief from Frontier.
- Requiring Frontier to waive any equitable arguments (e.g., statutes of limitation, repose, etc.) that would preclude the Commission, the Department and/or any individual Frontier citizen from seeking remedies under the Proposed Settlement.

- Moving the Excluded Issues and Reserved Matters from Section III.S-X, which governs future Frontier conduct, into Section I to clarify that such excluded issues and matters relate both to past and future Frontier conduct.

CONCLUSION

In light of these recommendations, the OAG suggests that the Commission take no action with regard to the comments filed on August 2, 2019. Instead, the OAG recommends that the Commission accept the Department's offer to continue its investigation into the Excluded Issues and Reserved Matters. By doing so, the Commission need not currently decide its next steps but would defer any action relating to the Excluded Issues and Reserved Matters over which the Commission decides it has jurisdiction until the Department's investigation concludes. The OAG currently does not have any additional issues or concerns regarding the Notice, but will provide supplemental comments and recommendations to the Commission if warranted.

Dated: August 21, 2019

Respectfully submitted,

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August 21, 2019

Mr. Daniel Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

**Re: In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications
MPUC DOCKET NO. P405-407/CI-18-122**

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find Comments of the Minnesota Office of the Attorney General—Residential Utilities and Antitrust Division.

By copy of this letter all parties have been served. An Affidavit of Service is also enclosed.

Sincerely,

s/ **Max Kieley**

MAX KIELEY

Assistant Attorney General

(651) 757-1244 (Voice)

(651) 296-9663 (Fax)

max.kieley@ag.state.mn.us

Enclosure

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_18-122_Official
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_18-122_Official
Brent	Christensen	bchristensen@mnta.org	Minnesota Telecom Alliance	1000 Westgate Drive, Ste 252 St. Paul, MN 55117	Electronic Service	No	OFF_SL_18-122_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-122_Official
Ron	Elwood	relwood@mnlsap.org	Mid-Minnesota Legal Aid	2324 University Ave Ste 101 Saint Paul, MN 55114	Electronic Service	No	OFF_SL_18-122_Official
Shannon	Heim	shannon.heim@lawmoss.com	Moss & Barnett A Professional Association	150 S. 5th Street, Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-122_Official
Katherine	Hinderlie	katherine.hinderlie@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota St Suite 1800 St. Paul, MN 55101-2134	Electronic Service	No	OFF_SL_18-122_Official
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street St. Paul, MN 551012134	Electronic Service	No	OFF_SL_18-122_Official
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-122_Official
Jeff	Oxley	jeff.oxley@state.mn.us	Office of Administrative Hearings	600 North Robert Street St. Paul, MN 55101	Electronic Service	No	OFF_SL_18-122_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
William	Phillips	wphillips@aarp.org	AARP	30 E. 7th St Suite 1200 St. Paul, MN 55101	Electronic Service	No	OFF_SL_18-122_Official
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_18-122_Official
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	No	OFF_SL_18-122_Official
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_18-122_Official
Patrick	Zomer	Patrick.Zomer@lawmoss.com	Moss & Barnett a Professional Association	150 S. 5th Street, #1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-122_Official