

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

In the Matter of Frontier Communications of Minnesota, Inc.	
Election of Small Company Alternative Form of Regulation	P405/AR-14-735
Pursuant to Minnesota Statute § 237.773, Subdivision 2.	P405/AR-16-696

**REPLY COMMENTS OF
FRONTIER COMMUNICATIONS OF MINNESOTA, INC.**

On August 19, 2016, Frontier Communications of Minnesota, Inc. (“Frontier-Minnesota” or “Frontier”) filed a notice to inform the Minnesota Public Utilities Commission (“Commission”) that it was electing to be regulated as a small telephone company under the alternative regulation provided for in Minn. Stat. § 237.773. In response to that notice, the Department of Commerce (“Department”) filed comments on September 8, 2016 raising concerns it had regarding the company’s election. Subsequently, the Commission staff sent a set of information requests to Frontier. Frontier responded to those information requests.

On August 1, 2017, Frontier filed a letter with the Commission, pursuant to the requirements of its existing alternative form of regulation plan (“AFOR”). That letter noted that the AFOR would expire on March 1, 2018 and that, upon that expiration, Frontier would be regulated under the small telephone company alternative regulation provisions of Minnesota Statute §237.773, as it had previous elected. On August 29, 2017, the Department filed comments, reiterating the concerns it had originally raised in its September 2016 comments. As Frontier reads the Department’s comments, they raise four areas of concern. Frontier responds to the Department’s comments below.

Permissibility

In its comments, the Department suggests that the Commission should consider whether Frontier's election to be subject to the alternative regulation provided for in Minn. Stat. § 237.773 is permissible¹. As Frontier noted in its August 19, 2016 notification to the Commission:

Frontier-Minnesota meets the requirements to make such an election, as described in Minn. Stat. § 237.773, Subd. 1 and 2. It has fewer than 50,000 subscribers. It has not been found by the Commission to have significant service quality problems in violation of Commission rules.

The statute identifies only two requirements for a company to make the election: having fewer than 50,000 subscribers and not having been found by the Commission to have significant service quality problems. Frontier met (and meets) both of those conditions.

The statute does not provide for any Commission action in response to a small company's election. No Commission review, approval, or permission is contemplated in the statute. As the Department's comments note, a small company's election to be subject to Minn. Stat. § 237.773 occurs "without any action by the Commission".² Therefore, the Department's suggestion that the Commission should consider the permissibility of Frontier's election is groundless.

Local rate increases

The Department also raises a hypothetical future situation, and invites the Commission address this hypothetical in a decision now. The Department posits that, "if Frontier proceeds to increase local service rates prior to March 1, 2020, the increase may be subject to challenge."³ Frontier has not proposed to increase rates prior March 1, 2020, which is nearly three years away. The Department's concern here is entirely imaginary. There is no need for the Commission to make any decision now regarding some possible unquantified event that may or may not happen at some indefinite time in the future. As Governor Mario Cuomo once noted, "'Don't decide what you don't have to decide.' That's not evasion, it's wisdom."⁴ If and when any local rate increase is proposed, the Commission will be able to react at that time, based on real facts and real timelines.

¹ Department Comments, page 2.

² Department Comments, page 2.

³ Department Comments, page 3.

⁴ As quoted in *The Quotable Politician* (2003) by William B. Whitman, page 25.

Multiple plans

The Department points to a section Minn. Stat. §237.76, which says that, “A telephone company may petition the commission for approval of an alternative regulation plan under sections 237.76 to 237.774.” From this, the Department concludes that “a telephone company may petition the commission for a plan, not multiple plans”.⁵

On this point, it is important to recognize the differences between the processes outlined in statute for alternative regulation plans under §237.761 through §237.766 (the “large company AFOR” as the Department terms it), and alternative regulation plans under §237.773 (the “small company AFOR” as the Department terms it). Under the large company AFOR process, a company petitions the Commission for approval of a plan. The Commission would then consider that petition, and make a decision to approve or deny. Under the small company AFOR process, the company elects to enter that alternative regulation and notifies the Commission of its decision. A Commission decision to approve or deny the election is not contemplated or authorized by the statute.

In short, a company *petitions* the Commission seeking the Commission’s approval of a large company AFOR, but it *notifies* the Commission of its election to enter a small company AFOR. In its comments, the Department makes reference to a legal rule of construction which it describes as meaning that, “that one thing having been mentioned the other is excluded”⁶. Applying that idea to this context, the statute says that a small company files “notice to the commission” of its election to be regulated under a small company AFOR; it does not “petition” the Commission seeking approval. “Notice to the commission” having been mentioned, “petition” is excluded. Hence, Frontier is not petitioning the Commission for multiple plans, and the Department’s concern here is unfounded.

Number of subscribers

The Department’s final concern relates to the number of Frontier’s subscribers, although the concept is not particular to Frontier but would encompass all small companies. The Department postulates that, at some point in the future, Frontier may have more than 50,000

⁵ Department Comments, page 3.

⁶ Department Comments, footnote on page 3.

subscribers and that this possibility would bar Frontier from a small company AFOR.⁷ As background, Frontier currently has approximately 44,000 subscribers, fewer than when it made its election in August 2016. But in any case, the Department's hypothetical here is irrelevant. Minn. Stat. § 237.773 does not provide for any kind of continuing review of a small company's access lines over time. A company simply qualifies at the time of election, and that is the end of it. Again, the Department's objection here is unwarranted.

Conclusion

The Department's August 29 comments simply rehash concerns that it raised a year ago. Those objections and concerns were groundless last year, and they continue to be. The Commission should not pursue or act upon the Department's requests.

Dated September 18, 2017

Respectfully submitted,

FRONTIER COMMUNICATIONS OF MINNESOTA, INC.

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⁷ Department Comments, page 3.