

August 29, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th 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 Minnesota Statute § 237.773, Subdivision 2.**
Docket Nos. P405/AR-14-735 and P405/AR-16-696

Dear Mr. Wolf:

Attached are the supplemental 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 Minnesota Statute § 237.773.

Sincerely,

/s/ BONNIE JOHNSON
Telecommunications Analyst

BJ/ja
Attachment



Before the Minnesota Public Utilities Commission

Supplemental Comments of the Minnesota Department of Commerce

Docket Nos. P405/AR-14-735 and 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 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 election to be regulated as a small company pursuant to Minnesota Statute § 237.773.

On September 8, 2016, the Department of Commerce (Department) filed comments recommending that the Commission consider whether it is permissible for Frontier to be subject to the provisions of the small company AFOR statute prior to the expiration of its “large” company AFOR. The Commission took no action on Frontier’s election.

On August 1, 2017, Frontier filed a letter in Docket No. P-405/AR-14-735 advising the Commission that it is allowing its large company AFOR plan to expire on March 1, 2018 and upon its expiration, Frontier will be regulated under the small telephone company alternative regulation provisions of Minnesota Statute § 237.773.

II. LEGAL REFERENCES

Minnesota Statute § 237.766 subdivision 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 “within six months prior to the termination of the plan the company shall give notice that it will propose a new plan.”

Minnesota Statute § 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 Minnesota Statute § 237.761, subdivision 8, and a service quality plan pursuant to Minnesota Statute § 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.

Minnesota Statute § 237.011 outlines state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services. Relevant to this issue are:

- (2) maintaining just and reasonable rates;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service;

III. ANALYSIS

To avoid potentially negative impacts to Frontier customers in Minnesota, the Commission should consider whether Frontier's election to be subject to the small company AFOR statute is permissible, while it continues to operate under a large company AFOR. Specifically, do Minnesota Statutes §§ 237.76 through 237.774, allow a telephone company to be operating under two different AFORs simultaneously.

Frontier's election of a small company AFOR plan prior to the expiration of its large company AFOR plan appears to circumvent the normal rate stability mechanism contemplated by the small company AFOR statute. Minnesota Statute § 237.773, subdivisions 3 (a) and (c) prohibit a company electing a small company AFOR from implementing a rate increase for price-regulated services until "two years after making an election." If Frontier's election to operate under a small company AFOR plan is permissible prior to the expiration of its large company AFOR plan, Frontier will be able to raise local service rates eighteen months sooner than if Frontier made its small company AFOR election on March 1, 2018, when its large company AFOR expires.

In the absence of some further clarity from the Commission, if Frontier proceeds to increase local service rates prior to March 1, 2020, the increase may be subject to challenge. The notice to customers of a price increase, including the process for consumer petitions seeking an investigation, will place burdens on both consumers and Frontier, to no avail, if it is later determined that Frontier cannot operate under both a large company and small company AFOR at the same time. The Commission can avoid the disruptive effects that may occur in the absence of a Commission decision on this matter.

The language of Minnesota Statute § 237.76 appears to support the conclusion that a telephone company can only operate under one AFOR plan at a time. The stated purpose of the Alternative Regulation Plan states:

A telephone company may petition the commission for approval of **an** alternative regulation plan under sections 237.76 to 237.774.
(Emphasis added)

The sections noted in the purpose statement include both the large company and small telephone company AFOR plans and states a telephone company may petition the commission for **a** plan, not multiple plans.¹

Finally, 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 less 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.

IV. COMMISSION DECISION ALTERNATIVES

- (1) Find Frontier's election to be a small telephone company pursuant to Minnesota Statute § 237.773 permissible while it is also operating under an existing Commission approved large company AFOR plan.

¹The Commission may consider *expressio unius est exclusio alterius* - a rule of construction, applying both to statute and legal writings, that states that one thing having been mentioned the other is excluded. Here a telephone company may petition for a single plan, therefore it cannot petition the Commission for multiple plans. See <http://legal-dictionary.thefreedictionary.com/expressio+unius+est+exclusio+alterius>. See also <https://www.merriam-webster.com/dictionary/an> which states: An is in fact a weakened form of one; both an and one come from Old English ān, "one."

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

V. DEPARTMENT RECOMMENDATION

The Department recommends alternative 2: Find Frontier's election to be a small telephone company pursuant to Minnesota Statute § 237.773 not permissible while it is operating under an existing Commission approved AFOR plan.

/ja

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
Supplemental Comments**

Docket No. P405/AR-14-735 and P405/AR-16-696

Dated this 29th day of August 2017

/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_14-735_AR-14-735
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_14-735_AR-14-735
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_14-735_AR-14-735
Ian	Dobson	Residential.Utilities@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_14-735_AR-14-735
Kevin	Saville	kevin.saville@ftr.com	Citizens/Frontier Communications	2378 Wilshire Blvd. Mound, MN 55364	Electronic Service	Yes	OFF_SL_14-735_AR-14-735
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_14-735_AR-14-735

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@fr.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 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_16-696_AR-16-696
Ian	Dobson	Residential.Utilities@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