

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Katie J. Sieben | Chair |
| Valerie Means | Commissioner |
| Matthew Schuerger | Commissioner |
| Joseph K. Sullivan | Commissioner |
| John A. Tuma | Commissioner |

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

ISSUE DATE: September 29, 2021

DOCKET NO. P-405,407,5316/
CI-21-150

ORDER SETTING INQUIRY SCOPE
AND SCHEDULE

PROCEDURAL HISTORY

On March 3, 2021, the Commission opened this inquiry into Frontier Communications’ virtual separation process and issued a notice of comment period regarding the appropriate goal, scope, and schedule of the inquiry.

On March 31, 2021, the Department of Commerce (the Department) filed comments.

On April 5, 2021, Frontier Communications of Minnesota, Inc.; Citizens Telecommunications Company of Minnesota, LLC; and Frontier Communications of America, Inc. (collectively, Frontier) filed joint comments. Communications Workers of America (CWA) and the International Brotherhood of Electrical Workers (IBEW) also jointly filed comments.

On April 19, 2021, Frontier filed reply comments.

On April 20, 2021, CWA and IBEW jointly filed reply comments.

On August 26, 2021, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Background

In 2018, the Commission opened an inquiry into alleged violations of requirements and standards for customer service, service quality, and billing practices by Frontier Communications of Minnesota, Inc., and Citizens Telecommunications of MN, LLC.¹ Following public hearings and

¹ In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications, Docket P-407, P-405/CI-18-122 (service-quality docket).

mediation led by an administrative law judge, the companies and the Department entered into a settlement agreement that would provide customer remedies for past service-quality lapses, require future service-quality improvements, and establish ongoing performance metrics providing for customer remedies if the standards are not met (the service-quality settlement). The Commission approved the service-quality settlement on January 22, 2020.²

In a separate financial restructuring docket, on December 7, 2020, the Commission approved the joint application of Frontier Communications Corporation; Frontier Subsidiary Telco, LLC; Citizens Newtel, LLC; Frontier Communications of Minnesota, Inc.; Citizens Telecommunications Company of Minnesota, LLC; and Frontier Communications of America, Inc., to transfer control of the company's Minnesota operating subsidiaries to a new entity called New Frontier Communications Parent, as a part of a Chapter 11 bankruptcy restructuring plan.³

As part of the restructuring plan, the company proposed what it called a "virtual separation" of accounts to refine its practice of allocating indirect expenses to state operations to reflect the economics of its operations in individual states. In the restructuring docket, CWA raised questions about how the virtual-separation process could affect operations in Minnesota. During the September 24, 2020 Commission meeting in the restructuring docket, it was suggested that it may be appropriate to open a separate docket to investigate virtual-separation issues in greater detail. The Commission opened this docket to conduct that investigation.

II. Inquiry Scope

A. Comments

1. The Department

The Department proposed that the goal of the inquiry should be to fully understand how Frontier is using virtual separation and the impact it has on Minnesota operations. Pursuant to that goal, the Department recommended defining the inquiry scope as follows:

- a. To clarify what virtual separation, as used by Frontier, means.
- b. To understand why Frontier has elected to use virtual separation.
- c. To better understand the origins of virtual separation and the extent to which Frontier has vetted the approach to anticipate its positive or negative affect on telecommunications service quality in Minnesota.

² Service-quality docket, Order Approving Settlement as Modified (January 22, 2020).

³ In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Subsidiary Telco, LLC, Citizens Newtel, LLC, Frontier Communications of Minnesota, Inc., Citizens Telecommunications Company of Minnesota, LLC, and Frontier Communications of America, Inc. for Approval of a Transfer of Control due to a Chapter 11 Plan of Reorganization of Frontier Communications Corporation and its Subsidiaries, Docket No. P-405, P-407, P-5316/PA-20-504 (restructuring docket), Order Approving Transfer of Control of Minnesota Telecommunications Subsidiaries (December 7, 2020).

- d. To understand why Frontier has not elected to use virtual separation prior to its reorganization.
- e. To understand how Frontier intends to use virtual separation in other states.
- f. To understand how virtual separation works as an accounting approach for a multi-state telecommunications corporation.
- g. To understand how virtual separation relates to Frontier’s decisions to designate a state as an “InvestCo” or an “ImproveCo” state.⁴
- h. To understand the advantages and disadvantages virtual separation will impose on “ImproveCo” and “InvestCo” states.
- i. To determine if virtual separation will divert/impact investment in Minnesota, including the deployment of infrastructure for higher speeds and greater capacity for voice, video, and data.
- j. To determine if the virtual separation approach will divert financial resources away from maintaining and provisioning voice service in Minnesota, especially in less densely populated areas.
- k. To understand how virtual separation will be used to determine future workforce needs.
- l. To understand how virtual separation will be used to determine investment plans and whether Frontier’s virtual separation analysis will change what is invested in Minnesota.
- m. Other issues relating to how virtual separation will impact Frontier’s Minnesota operations.

In oral argument, the Department contended that the Commission has broad authority under Minn. Stat. § 216A.05 and other statutes and rules to inquire into this information as it relates to potential service-quality impacts in Minnesota, even if some information sought involves activities the Commission lacks authority to regulate directly. The Department recommended a broad investigation to obtain a full picture of the meaning of virtual separation and its prospective impacts on Minnesota customers, and it argued that further narrowing the scope of the investigation at this stage would unduly impede the goal of the inquiry.

2. Frontier

Frontier proposed a narrower inquiry tailored to the goal of understanding whether the virtual-separation initiative commenced as a part of restructuring will have any material impact on (1) Frontier’s Minnesota telephone service that is subject to the Commission’s authority; and (2) Frontier’s ability to comply with the Commission’s January 22, 2020 order approving the service-quality settlement in the service-quality docket.

⁴ Frontier has used the terms InvestCo and ImproveCo to distinguish between states in which it plans to deploy new fiber (InvestCo states) and those in which it will perform broadband upgrades and operational improvements (ImproveCo states).

Frontier argued that the investigation should exclude any matters pertaining to broadband service and any Frontier investments or operations in states other than Minnesota because the regulation of broadband and out-of-state activities is not within the Commission's authority.

3. CWA and IBEW

CWA and IBEW (collectively, the unions) proposed that the goal should be full transparency into Frontier's plans for investments in its Minnesota network and operations, including its workforce. The unions recommended that the Commission seek a full understanding of the intent and potential impact of Frontier's virtual-separation initiative and the modernization plan described in Frontier's December 15, 2020 Quarterly Investor Update. Additionally, the unions recommended that the inquiry include comparison of Frontier's Minnesota investment plans relative to past Minnesota investments and relative to Frontier's investment plans for other states.

The unions recommended that the scope of the proceeding should include, but not be limited to, obtaining a full understanding of the following:

- a. The intended purpose and potential impacts of virtual separation in relation to Frontier's Minnesota operations, workforce, and customers;
- b. Whether Minnesota will be an InvestCo state or an ImproveCo state;
- c. What investments Frontier expects or intends to make in Minnesota under its Modernization Plan;
- d. Whether Minnesota is among the "many states" under consideration by Frontier for fiber investments as described on p. 23 of its December 15, 2020 Quarterly Investor Update and, if not, why not;
- e. What investments Frontier expects to make to improve its network in Minnesota, including whether and to what extent Frontier is contemplating or planning brownfield fiber-to-the-home builds in Minnesota to upgrade its existing copper network as discussed on p. 19 of its December 15, 2020 Quarterly Update;
- f. What Frontier means, on p. 21 of its December 15 Update, by "superior fiber economics" and "attractive competitive environment" as the drivers of growth and what that means for its Minnesota operations and customers;
- g. What Frontier means by its statement on p. 22 of its December 15, 2020 Update that it "plans to deploy capital and pursue overbuilds in key states with high return potential," including what constitutes "high return potential," whether Minnesota is a high return potential state, and how the plan to "deploy capital" in these "key states" might impact Frontier's investments in Minnesota;
- h. Frontier's long-term target for the percentage of homes passed by fiber versus copper in Minnesota and how that compares to its overall plan as described on p. 22 of its December 15, 2020 Update;

- i. Frontier's operational plan to fulfill any investment that has already been planned for Minnesota customers and a description of Frontier's plan to meet the in-state staffing levels necessary to achieve its investment goals and adequately serve its customers in compliance with Commission rules and the company's service-quality settlement.

The unions argued that a full understanding of Frontier's long-range investment plans across all states is needed to assess whether Frontier will maintain sufficient investments and staffing levels to fulfill its obligations to Minnesota customers. During oral argument, CWA expressed particular concern about whether Frontier plans to employ enough technicians to meet service-quality standards in Minnesota. CWA asserted that Frontier has failed to replace technicians who have left service, resulting in a significant reduction in Frontier's Minnesota workforce over the last two years, which has burdened remaining technicians with overwhelming workloads.

4. Frontier's Reply

Frontier stated that it does not disagree with the Department's articulation of the goal of the inquiry if it is limited to regulated telephone service in Minnesota and does not include broadband services or any investment or operations plans associated with broadband.

Frontier objected to the 13-item scope the Department proposed, arguing that some of the issues exceed the scope of the Commission's regulatory authority. Frontier specifically opposed any investigation related to video, data, or broadband services, operations in other states, and anything beyond a review of virtual separation to the extent it focuses on Frontier's regulated telephone service within Minnesota.

Frontier contended that the inquiry goal and scope CWA and IBEW proposed are also outside the scope of the Commission's authority and responsibility. It argued that the investigation should focus on virtual separation and not extend to capital and operational investment plans. Frontier also opposed the unions' proposal to compare Frontier's investment plans for Minnesota with its investment plans for other states.

Frontier contended that the workforce issues raised by the unions are outside the scope of this proceeding because virtual separation does not include direction on workforce matters. Additionally, Frontier asserted the Commission's authority does not include workforce issues except to the extent there are defects in regulated telephone service related to workforce.

Frontier argued that, although it is obligated to meet the Commission's service-quality standards for regulated voice telephone service, the manner in which it does so is a matter for the company's judgment and should not be the subject of a Commission inquiry. Frontier contended that, to the extent any of the unions' concerns are within the Commission's authority, they have already been resolved through the service-quality settlement.

5. CWA and IBEW's Reply

CWA and IBEW argued that the concept of virtual separation cannot be severed from Frontier's ongoing investment decisions and its modernization plan to effectuate those decisions.

The unions opposed Frontier's request to preclude any investigation relating to other states, arguing that Frontier's investment decisions in other states will impact its decisions in Minnesota because it is a national company with finite resources.

The unions also opposed Frontier's request to exclude broadband-related investments from the inquiry, arguing that network investments cannot easily be divided between voice and broadband services because both types of service are delivered largely over the same network of lines and share operational systems and personnel, such that network and workforce investment decisions will impact the quality of both voice and broadband services provided to Minnesota customers.

The unions argued that, even if the Commission lacks authority to regulate broadband service, no law precludes it from undertaking an informational inquiry into a telecommunications provider's broadband infrastructure investments.

The unions asserted that the service-quality settlement does not obviate the need for an investigation because the settlement is limited in scope and duration and does not provide sufficient insight into the long-term resiliency and reliability of Frontier's Minnesota network or whether Frontier is planning the investments needed to maintain or improve its service quality in Minnesota in the long term.

B. Commission Action

The Commission will authorize a broad investigatory scope in pursuit of 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. Narrowing the scope to the extent Frontier proposes is not an effective way to advance the goal of this inquiry. Rather, the 13-point scope set forth in the Department's March 3, 2021 comments is appropriate to guide the proceeding and is within the Commission's investigatory authority.⁵

The investigation may inquire broadly into Frontier's investments in order to facilitate a clearer understanding of the potential impacts of such investments on regulated telephone service quality. As the unions noted, investments in one area may impact service in another area because the company's services share networks, operations, and personnel, and devoting finite resources to one type of service often means not devoting resources to another.

Further, Frontier acknowledged that the Commission has authority to investigate regulated telecommunications services. To the extent that the inquiry shows no relationship between investments in regulated telecommunications services and Frontier's unregulated services, Frontier will have the opportunity to make such assertions during the course of the inquiry.

The inquiry also may include comparisons between Frontier's investment plans in Minnesota and in other states because such comparisons may be relevant to prospective service-quality issues in Minnesota. For example, if Frontier plans to assign a certain number of technicians to cover a service area of a certain size in some states, that decision could inform the Commission's

⁵ See Minn. Stat. § 216A.05.

understanding of what staffing levels are appropriate to maintain service quality, and any relative difference in staffing levels planned for Minnesota may have service-quality implications.

CWA and IBEW proposed additional issues for investigation in their March 31, 2021 comments. At the Commission meeting, however, the Department stated that it believed the broad scope proposed in the Department's comments, including "other issues relating to how virtual separation will impact Frontier's Minnesota operations," would encompass the additional issues raised by the unions. CWA agreed. The Commission agrees with this interpretation of the Department's proposed scope and, therefore, does not find it necessary to expressly enumerate the unions' additional suggestions in the inquiry scope adopted in this order. However, within the scope defined below, the parties may inquire into those additional issues.

Frontier has characterized virtual separation as an accounting exercise that is now complete; however, 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. This understanding is reasonable to advance the goal of the inquiry and is consistent with the Commission's investigatory authority.

III. Inquiry Procedure and Schedule

The parties agreed that the following procedural schedule would be appropriate for the inquiry:

- a. Within 10 days after issuance of a procedural order, Frontier shall file a proposed protective order;
- b. Within 30 days after the procedural order, Frontier shall file an informational filing pertaining to virtual separation within the scope of this proceeding;
- c. 60 days after Frontier's informational filing, parties should file initial comments on the issues identified for the scope of this proceeding.
- d. 45 days after initial comments, reply comments are due.

The Commission finds this procedural outline reasonable to facilitate the inquiry described above and, therefore, will adopt it. Additionally, the Commission will delegate authority to the Executive Secretary to modify any of the timelines specified above.

ORDER

1. The scope of the proceeding should include some or all of the following:
 - a. To clarify what "virtual separation" means as used by Frontier Communications of Minnesota, Inc.; Citizens Telecommunications Company of Minnesota, LLC; and Frontier Communications of America, Inc.
 - b. To understand why Frontier has elected to use virtual separation.

- c. To better understand the origins of virtual separation and the extent to which Frontier has vetted the approach to anticipate its positive or negative affect on telecommunications service quality in Minnesota.
 - d. To understand why Frontier has not elected to use virtual separation prior to its reorganization.
 - e. To understand how Frontier intends to use virtual separation in other states.
 - f. To understand how virtual separation works as an accounting approach for a multi-state telecommunications corporation.
 - g. To understand how virtual separation relates to Frontier's decisions to designate a state as an "InvestCo" or an "ImproveCo" state.
 - h. To understand the advantages and disadvantages virtual separation will impose on "ImproveCo" and "InvestCo" states.
 - i. To determine if virtual separation will divert/impact investment in Minnesota, including the deployment of infrastructure for higher speeds and greater capacity for voice, video, and data.
 - j. To determine if the virtual separation approach will divert financial resources away from maintaining and provisioning voice service in Minnesota, especially in less densely populated areas.
 - k. To understand how virtual separation will be used to determine future workforce needs.
 - l. To understand how virtual separation will be used to determine investment plans and whether Frontier's virtual separation analysis will change what is invested in Minnesota.
 - m. Other issues relating to how virtual separation will impact Frontier's Minnesota operations.
 - n. For purposes of this investigation, "virtual separation" includes any subsequent investment plans that will impact Minnesota service quality
2. The inquiry will proceed via a Commission proceeding with the following schedule:
 - a. Frontier shall file a proposed protective order within 10 days.
 - b. Frontier shall file an informational filing pertaining to virtual separation within the scope of this proceeding within 30 days.
 - c. 60 days after Frontier's informational filing, parties should file comments on the issues identified for the scope of the proceeding.
 - d. 45 days after initial comments, reply comments are due.

- e. The Commission delegates to the Executive Secretary the authority to modify any of the timelines specified above.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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CERTIFICATE OF SERVICE

I, Chrishna Beard, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

Minnesota Public Utilities Commission
ORDER SETTING INQUIRY SCOPE AND SCHEDULE

Docket Number **P-405, P-407, P 5316/CI-21-150**

Dated this 29th day of September, 2021

/s/ Chrishna Beard

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