

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
Frontier Communications Corporation,)	
Debtor-in-Possession and its)	WC Docket 20-197
Wholly-Owned Operating Subsidiaries)	
)	

**COMMENTS OF
COMMUNICATIONS WORKERS OF AMERICA
AND THE UTILITY REFORM NETWORK**

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I. INTRODUCTION

The Communications Workers of America (CWA) and The Utility Reform Network (TURN) submit the following comments in response to the Federal Communications Commission's (Commission) *Public Notice* regarding the application of Frontier Communications Corporation, Debtor-in-Possession (Frontier) and its wholly-owned operating subsidiaries (collectively, Applicants).¹

CWA represents working people in telecommunications, customer service, media, airlines, health care, public service and education, and manufacturing. CWA represents approximately 8,000 employees of Frontier and its subsidiaries nationwide. CWA workers at Frontier work as technicians and call center representatives, among other positions. CWA has an interest in Frontier's restructuring as representatives of employees of Frontier, its subsidiaries, and workers in the telecommunications industry. Many CWA members are also customers of Frontier and have an interest in ensuring a financially-stable and robust Frontier with quality service.

TURN is a consumer advocacy and social justice organization that believes no one should be cut off from essential utility services, including voice and broadband communications and that utility corporations should be held accountable to their customers. For over 40 years, TURN has represented California consumers before state and federal regulatory agencies and the California Legislature. TURN also provides the tools and education to California consumers to understand and fight for their rights as a utility customer. TURN has been representing consumers in Frontier's California serving territory for decades and has been an active party to

¹ See *Public Notice*, Applications Filed for the Assignment and Transfer of Control of Authorizations Held by Frontier Communications Corporation, Debtor-in-possession And Its Wholly-owned Subsidiaries, WC Docket No. 20-197 (July 20, 2020); See also Joint Application of Frontier Communications Corporation, Debtor-in-Possession, and its WhollyOwned Operating Subsidiaries for Consent to Assign and Transfer Control of Domestic and International Section 214 Authorizations Holders, WC Docket No. 20-197 (filed June 24, 2020) (Lead Application).

many California Public Utility Commission (“CPUC” or “California Commission”) proceedings involving Frontier, including the Commission’s review of the purchase of Verizon California territory. TURN continues to fight for fair rates, access to broadband, robust service quality, public safety, and meaningful low income programs for all of Frontier’s customers. TURN is an active party to the California Commission’s review of the Frontier Reorganization to determine if it will be in the public interest for California consumers.

At this time, and based on the information currently available, CWA and TURN do not take a position on the relief requested by Frontier in this proceeding. It is premature to reach a determination concerning whether the proposed transaction is in the public interest without sufficient information. CWA and TURN, however, encourage the Commission to ensure that it has complete and accurate information about the effect of the proposed transaction on the proposed new owners and their ability to ensure sufficient employment and make appropriate investment decisions for the provision of safe, adequate, and reliable service, especially for residential customers in rural and low-income communities, and communities of color. This may require that the Commission craft targeted mitigation measures to prevent adverse consequences from the restructuring that would specifically affect these stakeholders. CWA and TURN reserve the right to change their position if the underlying facts, including the details of the final reorganization, change.

II. THE COMMISSION DOES NOT HAVE SUFFICIENT INFORMATION TO VERIFY THAT THE REORGANIZATION SERVES THE PUBLIC INTEREST

Pursuant to Sections 214(a) and 310(d) of the Communications Act, Applicants must demonstrate that the proposed reorganization will serve the public interest, convenience, and

necessity.² After reviewing compliance with the Communications Act and other applicable statutes, the Commission considers whether the transaction would result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³ The Commission also considers the impact of the transaction on the quality of communications services⁴ and whether the new entity will have the requisite financial, operational, and technical qualifications to invest in its operations and to provide the public interest benefits that the Applicants claim the transaction will provide.⁵

a. Frontier’s final Plan of Reorganization is not yet before this Commission

Initially, CWA and TURN note that Frontier filed the Lead Application before its proposed plan of reorganization was finalized. In fact, on June 29, 2020 -- five days after Frontier filed the Lead Application with this Commission -- Frontier filed its Third Amended Plan of Reorganization with the Bankruptcy Court. It is that Third Amended plan that was approved by Frontier’s Senior Noteholders during a vote held in the month of July.⁶

Even that Plan, however, is not finalized. On August 17, 2020, Frontier filed its Fourth Amended Plan of Reorganization with the Bankruptcy Court.⁷ The Fourth Amended Plan made significant changes in financing and other arrangements to incorporate the terms of a settlement

² 47 U.S.C. §§ 214(a), 310(d).

³ See, e.g., Applications of Level 3 Communications, Inc. and CenturyLink Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, WC Docket No. 16-403 (rel. Oct. 30, 2017) ¶ 9; Applications of Deutsche Telekom AF, T-Mobile USA, Inc., and MetroPCS Communications Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 12-301 (rel. March 12, 2013) ¶ 14.

⁴ See, e.g., T-Mobile/Metro PCS Order ¶ 15

⁵ 47 U.S.C. § 308(b); AT&T and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, 22 FCC Rcd at 5756 ¶ 190 (2007); Ameritech, Corp. Transferor, and SBC Communications, Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14947-48 ¶ 568; see also 47 U.S.C. § 310(d).

⁶ This history is set out in Frontier’s Notice of Filing of (A) The Debtors’ Supplemental Brief in Support of Confirmation of the Amended Plan, (B) The Amended Plan, and (C) The Proposed Confirmation Order, filed with the Bankruptcy Court on August 17, 2020 (hereafter “Aug. 17 Filing”), a copy of which is available at: <https://cases.primeclerk.com/ftr/Home-DownloadPDF?id1=MTU0MTYzNQ==&id2=0>.

⁷ *Id.*

reached with Frontier's secured creditors ("Secured Creditor Settlement"). It appears that Frontier's Senior Noteholders -- the group that originally voted on the Third Amended Plan -- does not agree with the Secured Creditor Settlement. Specifically, Frontier's brief in support of the Fourth Amended Plan states: "The Secured Creditor Settlement is supported by the First Lien Committee and Second Lien Committee, and has not been opposed by any creditor constituent *other than the Senior Noteholder Groups*."⁸ As this is being written, the Fourth Amended Plan is scheduled to be reviewed by the Bankruptcy Court at a hearing on August 21, 2020. Frontier should be required to amend its Application and submit the final approved plan with the Commission within seven days from its approval by the Bankruptcy Court.

b. Frontier's proposed Fourth Amended Plan of Reorganization has not yet been approved by Frontier's Senior Noteholders or the Bankruptcy Court

CWA and TURN appreciate the fact that, if approved and not subsequently modified, the proposed Fourth Amended Plan of Reorganization, dated August 17, 2020, would protect CWA's collective bargaining agreement and the rights of its members. The Fourth Amended Plan states: "Except as provided herein or in the Plan Supplement, or pursuant to an order of the Bankruptcy Court, or any applicable law, contract, instrument, release, or other agreement or document, all employee wages, compensation, and benefit programs, including, without limitation, any severance agreements, and collective bargaining agreements, including, without limitation, under any expired collective bargaining agreements, in place as of the Effective Date with the Debtors shall be assumed by the Reorganized Debtors and shall remain in place as of the Effective Date."⁹

It is unclear, however, whether any aspects of that Plan might be proposed to be modified by parties before the Bankruptcy Court or impacted by conditions adopted by state regulatory

⁸ *Id.*, p.19 of 280 (p. 13 of Frontier's Brief), note 12 (emphasis added).

⁹ *Id.*, p. 84 of 280 (p. 54 of the Fourth Amended Plan).

authorities in their own review proceedings. Indeed, the provision quoted above, begins with the proviso: except as “provided in the Plan Supplement” or an “order of the Bankruptcy Court.” Further, the Fourth Amended Plan clearly states in bold type on its first page: “NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE, COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS.”¹⁰ Therefore, Frontier should be required to provide any supplements or changes to the Plan to the Commission and parties to this proceeding at least a week before the September 8, 2020 reply comments deadline, or as soon as the material becomes available.

c. The Application does not discuss significant changes that might occur in Frontier’s service or facilities.

The Application contains provisions that are not clearly defined, but could result in significant changes in Frontier’s operations. For example, the Fourth Amended Plan refers to something called a “virtual separation.”¹¹ While not defined, this appears to refer to a separation of Frontier’s fiber deployment from its non-fiber operations, including perhaps provision of retail services such as broadband and routine operations in the company’s “legacy” or copper areas. Specifically, if approved the Fourth Amended Plan would require Frontier to use “commercially reasonable best efforts to analyze and develop a detailed report regarding a virtual separation under the same ownership structure of select state operations where the Reorganized Debtors will conduct fiber deployments from those states’ operations where the Reorganized Debtors will perform broadband upgrades and operational improvements.”¹²

¹⁰ *Id.*, p. 27 of 280 (p. 1 of Fourth Amended Plan)..

¹¹ *Id.*, p. 107 of 280 (p. 77 of the Fourth Amended Plan).

¹² *Id.*.

CWA and TURN are concerned that “virtual separation” could have an effect on the quality and reliability of service received by Frontier’s customers, as well as Frontier’s ability to achieve the Commission’s broadband goals. To better understand this term, and its effects on Frontier’s operations and customers, CWA and TURN believe it would be necessary for the Commission to review numerous documents that were not filed with the Commission. These documents appear to include the Restructuring Support Agreement referred to in the Fourth Amended Plan¹³ and any reports, timelines, and other information prepared by Frontier and its advisors concerning “virtual separation.”

Frontier’s Restructuring Term Sheet, dated April 15, 2020, which was not filed with the Commission, includes a footnote concerning “virtual separation,” which reads as follows:

“Within 14 days after the RSA Effective Date, the advisors to the Company Parties will provide to the advisors to the Consenting Noteholders (on a professionals’ eyes only basis) a detailed timeline with respect to the Virtual Separation and will provide updates to the advisors to the Consenting Noteholders (on a professionals’ eyes only basis) not less frequently than monthly as to progress with respect to the Company Parties’ efforts in connection therewith.”¹⁴

The virtual separation appears to set up a structure through which Frontier could seek to capture the revenues from fiber deployments for investors, potentially depriving retail operations of necessary cash flows, personnel, and other resources. The Commission should obtain all copies of analyses or timelines that the Applicants have provided to agents of the Consenting Noteholders. Only by obtaining these documents (on an ongoing basis) can the Commission

¹³ *Id.*

¹⁴ The Restructuring Term Sheet was appended to initial Declaration of Carlin Adrianopoli in the Bankruptcy Court, dated April 15, 2020, which is available at: <https://cases.primeclerk.com/ft/DownloadPDF?id1=MTM5NDQ0Nw==&id2=0>.

develop insights into the potential outcomes of Applicants' "virtual separation" plans. CWA and TURN do not know what a "virtual separation" might mean in practice. It is extremely important, however, for the Commission to understand the implications of such a separation on Frontier's participation in the federal broadband deployment programs including the Rural Digital Opportunity Fund (RDOF) auction. The Commission must ensure that an entire class of customers does not remain on the wrong side of the digital divide based on Frontier's strategic decision to limit its investment in certain communities where it remains as the only source of broadband Internet access.

Further, the Commission should request Frontier's detailed post-restructuring workforce plans and the impact of "virtual separation" on Frontier's expected staffing, customer service obligations, and broadband availability. The Commission must ensure that Frontier has committed resources to fulfill its existing regulatory commitments for all of its existing operations including its Carrier of Last Resort obligations in both the Frontier and Verizon incumbent serving areas.

The Commission should require Frontier to commit to investing in its network to support all Frontier customers and ensure no job reductions post-restructuring so that it has the sufficient resources and trained workforce needed to improve Frontier's struggling infrastructure.

d. The Commission should analyze the potential post-restructuring changes in ownership and control of Frontier

The Applicants go to some length to argue that nothing will change with respect to the ownership and control of Frontier, stating:

Under the Plan, each Senior Noteholder will receive its pro rata share of the new common stock of the Reorganized Frontier. None of the Senior Noteholders currently holds a 10 percent or greater direct or indirect equity interest in the Company. Upon emergence, the

Senior Noteholders will initially own, in the aggregate, 100 percent of the new common stock of Reorganized Frontier, though none of the Senior Noteholders is anticipated to individually hold, directly or indirectly, 10 percent or more of the new common stock of Reorganized Frontier. It is intended that the new common stock of Reorganized Frontier will be publicly traded and listed on a recognized U.S. stock exchange as promptly as reasonably practicable after the Company's emergence from Chapter 11. This transition will not create any new majority shareholders of Frontier, and the Senior Noteholders will not exercise day-to-day control over the Company.¹⁵

Applicants, however, do not address any of the agreements that some or all of the Senior Noteholders have reached regarding their post-emergence actions, including implementation of "virtual separations," as discussed above. Moreover, while no single Senior Noteholder may indeed hold 10% or more of the Reorganized Frontier ownership, according to press accounts, a group of Senior Noteholders, including Elliott Management Corporation and Franklin Resources Incorporated, which hold nearly 50% of Frontier's bonds appears to have a more consolidated interest in the company and could work in concert to determine the future of Frontier and protect their unique interests.¹⁶ These investors, known as the AG Notes Group, are represented by the law firm Akin Gump Strauss Hauer & Feld LLP and investment bank Ducera Partners LLC.¹⁷ Senior Noteholders in coordination may well exercise much more than 10% control of the company and the Commission must understand the risks to the public interest from all possible ownership scenarios under the final confirmed Plan.

¹⁵ Lead Application Exhibit 1 at 11-12.

¹⁶ See Allison McNeely, Sridhar Natarajan, and Katherine Doherty, *Frontier Communications Seeking New CEO Ahead of Restructuring*, Bloomberg (November 8, 2019), <https://www.bloomberg.com/news/articles/2019-11-08/frontier-communications-seeking-new-ceo-ahead-of-restructuring>. See also Allison McNeely, Katherine Doherty, and Sridhar Natarajan, *Frontier Tells Creditors It Seeks a March Bankruptcy* (January 16, 2020), <https://www.bloomberg.com/news/articles/2020-01-16/frontier-said-to-tell-creditors-it-seeks-a-mid-march-bankruptcy>.

¹⁷ *Id.*

Specifically, Frontier states that the Senior Noteholders will own essentially all of the common stock in the new company.¹⁸ The Fourth Amended Plan also makes clear that those stockholders will work in concert to appoint the new board of directors.¹⁹ The Commission should require that Applicants and Senior Noteholders disclose any agreements which have been reached with the new stockholders regarding the post-restructuring process for Frontier. The Commission also should inquire into the capabilities, goals and, motivations of the Senior Noteholders to own and direct the operations of a major telecommunications provider.

e. The Commission should not make a final determination until it has had the opportunity to review the findings of the state regulators

The Applications argue that “an extended approval process would cause Frontier to incur significant administrative, legal, and bankruptcy-related expenses and would deplete resources that could otherwise be invested in and used to operate the Company’s businesses.”²⁰ Frontier has filed similar applications in 14 other states. According to the Testimony of Mark Nielsen submitted with the CPUC, as of July 29, 2020, only state proceedings in Nevada, South Carolina, Nebraska, and Utah had been concluded, leaving ten more proceedings to move forward.²¹ The testimony does not mention that the proceedings are likely to be contested in at least some states, resulting in on-the-record proceedings that could take many months to resolve. The Commission should not be rushed into making a public interest determination until it has had an opportunity to review the findings of the state regulatory authorities.

¹⁸ Aug. 17 Filing, p. 22 of 280 (p. 16 of Brief, n. 16).

¹⁹ *Id.* at 78 of 280 (p. 48 of the Fourth Amended Plan).

²⁰ FCC Public Interest Statement, Exhibit 1, at 4.

²¹ See Opening Testimony of Mark D. Nielsen in the California Public Utilities Commission Docket A.20-05-010, at 14-15 (August 4, 2020).

III. CONCLUSION

It is premature to reach a public interest determination until the Commission has had an opportunity to review a final restructuring plan, and other relevant documents acquired through a data request. The purported parties to the transaction have not finalized the terms of their agreement. The draft before the Commission remains subject to substantial modifications, during both regulatory and bankruptcy proceedings. The Commission should inquire about the impact of the proposed transaction on Frontier's employees (including CWA's members) and the meaning and potential effect on the "virtual separation" that may be developed by Frontier and the proposed new owners. Without more information, it is simply too soon to reach any conclusion about the transaction's impacts on the public interest.

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Respectfully submitted,

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