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

Application of Frontier Communications Corporation, Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California Inc. (U 1024 C), Frontier Communications of the Southwest Inc. (U 1026 C), Frontier Communications Online and Long Distance Inc. (U 7167 C), Frontier Communications of America, Inc. (U 5429 C) For Determination That Corporate Restructuring Is Exempt From or Compliant With Public Utilities Code Section 854.

A. 20-05-010
(Filed May 22, 2020)

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**OPENING COMMENTS OF
FRONTIER COMMUNICATIONS CORPORATION
FRONTIER CALIFORNIA INC. (U 1002 C)
CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA INC. (U 1024 C)
FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U 1026 C)
FRONTIER COMMUNICATIONS ONLINE AND LONG DISTANCE INC. (U 7167 C)
FRONTIER COMMUNICATIONS OF AMERICA, INC. (U 5429 C)
("APPLICANTS")**

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**ON SEPTEMBER 17, 2020 ASSIGNED ALJ EMAIL RULING REQUESTING
COMMENTS REGARDING REPORT ABOUT FRONTIER**

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1 **I. INTRODUCTION.**

2 Pursuant to the September 17, 2020 Administrative Law Judge (“ALJ”) Email Ruling
3 Requesting Comments Regarding Communications Division’s Report About Frontier (“CD
4 Report”), Frontier Communications Corporation (“Frontier”) and its California local exchange and
5 long distance subsidiaries, Frontier California Inc. (U 1002 C) (“Frontier California”), Citizens
6 Telecommunications Company of California Inc. (U 1024 C) (“CTC California”), Frontier
7 Communications of the Southwest Inc. (U 1026 C) (“Frontier Southwest”),¹ Frontier
8 Communications Online and Long Distance Inc. (U 7167 C) (“Frontier LD”), and Frontier
9 Communications of America, Inc. (U 5429 C) (“Frontier America”) (Frontier California, CTC
10 California, Frontier Southwest, Frontier LD and Frontier America, collectively, the “California
11 Operating Subsidiaries,” and, together with Frontier, the “Applicants”) hereby offer these opening
12 comments regarding the CD Report. These comments highlight evidentiary and factual problems
13 with the CD Report and provide additional context for the propositions presented therein.

14 The CD Report raises several concerns. *First*, the CD Report does not meet evidentiary
15 standards, so it should not be included in the evidentiary record. Applicants have been asked to
16 comment on the proffered facts in the CD Report on short notice without being afforded access to
17 the CD Report's underlying data or a meaningful opportunity to challenge the Report's factual
18 findings, submit counter-evidence and cross-examine the authors.² With these predicates missing,
19 the factual material in the CD Report cannot be treated as evidence, nor should it be cited as
20 authoritative material in parties’ testimony. *Second*, the CD Report does not connect its factual
21 findings to relevant issues within the scope of this proceeding, which is focused on the effects of
22 Applicants’ restructuring and the related parent company transfer of control. Many of the subjects
23 addressed in the CD Report are outside the scope of this proceeding and have already been
24 addressed in other Commission proceedings. *Third*, the CD Report also contains inaccurate and

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26 ¹ Frontier California, CTC-California, and Frontier Southwest are collectively referenced as the “California
ILECs.”

27 ² The parties were provided just seven business days for opening comments and five business days for reply
28 comments. As explained below, Applicants have made a prompt request for the underlying data in the CD
Report, but, as of the date of these comments, Applicants have not received this information.

1 potentially misleading findings and conclusions. In particular, the data concerning alleged
2 complaints appear to be overstated. Further, the CD Report contains several maps that purport to
3 reflect various aspects of the California ILECs' footprint, but Applicants are unable to verify the
4 accuracy of certain information in the CD Report, including whether the maps correctly portray
5 the service territories and the extent of the companies' broadband deployment.³

6 Applicants address each of these concerns below to the extent possible given the lack of
7 underlying source information and the short timeframe permitted. At best, the CD Report reflects
8 an informal collection of unsubstantiated factual material whose authenticity and accuracy cannot
9 be confirmed. While Applicants would not oppose the use of the CD Report as an informal
10 reference document at the upcoming Public Participation Hearing and Workshop, its inclusion in
11 the evidentiary record would be premature and prejudicial.

12 **II. THE CD REPORT SHOULD NOT BE CONSIDERED PART OF THE**
13 **EVIDENTIARY RECORD IN THIS PROCEEDING.**

14 The origin, purpose and authors of the CD Report are unknown and the Report does not
15 attach any supporting data or work papers. On September 21, 2020, Applicants' counsel requested
16 that CD staff provide Applicants with an unredacted copy of the CD Report and all supporting
17 data, documents and work papers and Applicants and their counsel have continued to follow up
18 with CD staff to seek this information. To date, however, Applicants have not received a response
19 other than that CD staff needs to confer with Legal Division on this request. Applicants have
20 therefore must prepare their opening comments to the Report on a very short timeframe without
21 access to this relevant information, which is needed to test the Report's factual findings and
22 conclusions. While Applicants hope to have access to this information to help inform their reply
23 comments, given the short five business days allotted for reply comments along with Applicants'
24 October 9, 2020 rebuttal testimony deadline, it will be very difficult to comprehensively evaluate
25 and address any supplemental information provided in this compressed time period. Applicants

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27 ³ Applicants reserve the right to supplement these comments to include additional information after they
28 have a meaningful opportunity to review an unredacted version of the Report and supporting data and work
papers.

1 therefore reserve the right to address additional issues relating to the CD Report in their rebuttal
2 testimony or through another appropriate procedural vehicle.

3 Because the Commission has not provided critical and relevant information relating to the
4 CD Report and the parties have not been afforded a meaningful opportunity to challenge its
5 findings and conclusions, it should not be used at the evidentiary hearing or otherwise considered
6 “evidence” on which the Commission may base its decision.⁴ To the extent it is used at the
7 upcoming PPH/workshop, it should only be referenced only as background material that is not part
8 of the evidentiary record.

9 Before the CD Report could lawfully be considered “evidence,” additional evidentiary
10 steps would be needed. *First*, the Commission would have to direct CD to produce all work
11 papers, source data, and communications regarding the subjects in the CD Report, with redactions
12 to preserve confidentiality.⁵ *Second*, interested parties should be afforded the opportunity to
13 conduct written discovery regarding the CD Report. *Third*, if the CD Report is going to be entered
14 into evidence, the CD staff who authored the Report should be subject to cross-examination at the
15 evidentiary hearing scheduled for this proceeding.⁶ Cross-examination would assist the
16 Commission in addressing omissions and inaccurate statements in the CD Report, some of which
17 are set forth in the following section. Admitting the CD Report as evidence without incorporating
18 these evidentiary safeguards would harm Applicants’ due process rights.⁷

19 _____
20 ⁴ This approach is consistent with the Commission's treatment of a staff report issued under similar
21 circumstances. See R.11-11-007, *Administrative Law Judges’ Ruling Denying the Independent Small*
22 *LECs’ Motion to Strike the Broadband Internet and Wireline Voice Competition Study from the Evidentiary*
23 *Record* (denying motion as moot as study is not in the evidentiary record as clarified at Prehearing
24 Conference) (Sept. 19, 2019).

25 ⁵ For parties who have signed Non-Disclosure Agreements (“NDAs”), any confidential portions of
26 documents could be withheld or appropriately redacted.

27 ⁶ See U.S. Const., amend. XIV; *Manufactured Home Commodities, Inc. v. County of San Luis Obispo*, 167
28 Cal.App.4th 705, 711-12 (2015) (“The right to cross-examine applies in a wide variety of administrative
proceedings, . . . [and] [w]hen a board makes a decision based on a party’s testimony, the adversary is
entitled to question his or her opponent.”).

⁷ See *Massachusetts Bonding and Ins. Co. v. Industrial Accident Comm’n*, 74 Cal.App.2d 911, 913-914
(1946) (The “reasonable opportunity to meet and rebut the evidence produced by his opponent is generally
recognized as one of the essentials of these minimal requirements [of due process] [citations omitted] and
the right of cross-examination has frequently been referred to as another.”); *Goldberg v. Kelly*, 397 U.S.
254, 269 (1970) (in “almost every setting where important decisions turn on questions of fact, due process
requires an opportunity to confront and cross-examine adverse witnesses”).

1 **III. THE REPORT EXCEEDS THE SCOPE OF THIS PROCEEDING AND**
2 **ADDRESSES MANY SUBJECTS THAT HAVE ALREADY BEEN ADDRESSED**
3 **IN OTHER COMMISSION PROCEEDINGS.**

4 The Scoping Memo and Ruling of Assigned Commissioner Guzman-Aceves confirms that
5 “the primary issue in this proceeding is whether, under Pub. Util. Code Sections 853 and 854, the
6 Restructuring is in California’s public interest” based on consideration of “its present and future
7 effects” and identifies a list of twenty-one specific issues that should be considered in relation to
8 the effects of the Restructuring.⁸ The Scoping Memo also excludes certain criteria under Section
9 854 from the scope of this proceeding, including subsection(b)(3), because the “Restructuring is
10 not a merger or acquisition that could have an adverse effect on competition.”⁹

11 As Applicants explained in their application and testimony, the now-confirmed Plan of
12 Reorganization¹⁰ will have no impact on customers or day-to-day operations of the California
13 Operating Subsidiaries.¹¹ The only consequences of the transaction that are within the purview of
14 the statutory standard of review are that Applicants will be owned by a new parent comprised of
15 the bondholders and their parent company will be relieved of \$10 billion in debt.¹² This debt relief
16 will in turn create benefits for the California Operating Subsidiaries by freeing up capital to allow
17 Frontier to be a stronger competitor able to continue to provide a voice service alternative in a
18 dynamic competitive marketplace.¹³

19 The CD Report discusses historical facts regarding Applicants that, even if true, would not
20 be impacted by this Restructuring. Neither the ALJ Ruling nor the CD Report identify how any of
21 the subjects in the Report are relevant to whether the Restructuring is in the public interest or the
22 effects of the Restructuring on the issues identified in the Scoping Memo. Indeed, the CD Report
23 includes information relating to the level of competition within the California Operating

24 ⁸ *Scoping Memo* at 4-6 (August 5, 2020).

25 ⁹ *Scoping Memo* at 3.

26 ¹⁰ The Plan was reviewed extensively by the Bankruptcy Court and approved, which was focused on
27 protecting the economic health and viability of Applicants. *See August 27, 2020 Supplement to Response*
28 *of Applicants to Administrative Law Judge Wercinski’s Email Ruling Authorizing Submission of Plan of*
Reorganization.

¹¹ A.20-05-010 at 3, 21; Opening Testimony of Mark D. Nielsen on behalf of Applicants (“Nielsen Direct
Testimony”) at 3.

¹² A.20-05-010 at 3, 6; Nielsen Direct Testimony at 9.

¹³ A.20-05-010 at 3; Nielsen Direct Testimony at 23.

1 Subsidiaries' service territories even though the Scoping Memo expressly finds that the
2 Restructuring will not have an adverse effect on competition and thus, excludes consideration of
3 this issue from the scope of this proceeding.¹⁴

4 As additional examples, the CD Report notes the California ILECs' current compliance
5 with its surcharge reporting and remittances for public purpose programs, its General Order
6 ("G.O.") 133-D fines, and its annual fees as a video franchise holder.¹⁵ The Report does not
7 identify any reasons why the California ILECs' compliance would change following the
8 Restructuring. Similarly, the CD Report identifies distributions made to the California ILECs
9 under public purpose programs and notes the unremarkable increase following the acquisition of
10 Verizon California's operations and its expanded footprint in California. It is unclear why the
11 Report addresses these public purpose program amounts, as the distributions reflect the
12 straightforward operation of those programs and the Commission's approval of Frontier's claims.
13 Moreover, the California ILECs' participation in these programs will not be impacted by the
14 Restructuring. The California ILECs are required to collect the adopted Commission ordered
15 surcharges from customers and remit the funds collected to the Commission to fund the programs.
16 The Report also contains a discussion of the California Operating Subsidiaries' service territories
17 and service offerings in California, but their service territory and offerings will not be affected by
18 the Restructuring.

19 The CD Report also includes a number of subjects that will not be impacted by the
20 Restructuring and that are already addressed in other proceedings, including Frontier California's
21 service outages, interruptions and other events related to the transition of services and customers
22 from Verizon California and Frontier California's progress towards meeting its commitments
23 following its acquisition of Verizon California.¹⁶ Frontier, Frontier America and Frontier
24 California and the Commission's Consumer Protection and Enforcement Division entered into a
25 settlement agreement to resolve issues relating to Frontier California's outages, interruptions and

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27 ¹⁴ *CD Report* at 30-33; *Scoping Memo* at 3 (excluding consideration of Public Utilities Code section 854(b)(3)).

28 ¹⁵ *CD Report* at 2.

¹⁶ *CD Report* at 2-3; *see also* Orders Instituting Investigation 14-12-012, 19-12-009.

1 other issues related to the acquisition of Verizon’s operations, which has been pending before the
2 Commission for approval since April 14, 2020. This settlement reflects that Frontier California
3 acknowledged the transition issues and voluntarily implemented multiple corrective and
4 preventative measures, and it also agreed to make substantial commitments, including investing
5 \$2.1 million in its network to improve service quality, service reliability, and network resiliency in
6 its California service territory.¹⁷ Applicants are concerned about the expenditure of resources that
7 would be involved if this proceeding were to become entrenched in a fact-specific, audit-style
8 inquiry that replicates the Commission’s previous inquiries on the same subjects. This result
9 would also delay the completion of the separate investigation proceeding.

10 As the CD Report notes, in the decision closing the rural call completion proceeding, the
11 Commission declined to develop guidelines to ensure that transfers or mergers do not compromise
12 safe and reliable service because it found that these guidelines were not necessary in light of
13 Public Utilities Code section 854 and G.O. 133-D.¹⁸ While the CD Report contains an extensive
14 discussion of the California ILECs’ service quality and complaints received by the Commission’s
15 Consumer Affairs Branch (“CAB”), it fails to connect these issues to any specific impacts of the
16 Restructuring on service quality. The Report acknowledges that “there is a downward trend for
17 the volume of complaints regarding Frontier, peaking in 2016,”¹⁹ and as noted, the peak in
18 complaints following the acquisition of Verizon’s assets has already been addressed in another
19 Commission proceeding. In addition, the California ILECs have already paid substantial fines and
20 agreed to invest approximately \$6.8 million in the network to pursuant to the established structure
21 under G.O. 133-D.²⁰ This significant investment will help improve overall service quality.
22 Moreover, the Restructuring will afford the California ILECs the stability to maintain or improve
23 service quality, maintain or advance broadband infrastructure deployment, and benefit state and
24 local economies.

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26 ¹⁷ I.19-12-009, *Joint Motion of Frontier and CPED for Adoption of Settlement Agreement*.

27 ¹⁸ *CD Report* at 2 (referencing D.19-09-042).

28 ¹⁹ *CD Report* at 3.

²⁰ G.O. 133-D, Section 9.2. This amount includes \$2.5 million of proposed investment for which Frontier is waiting for Commission approval.

1 **IV. THERE ARE MULTIPLE ERRORS AND INCOMPLETE OR POTENTIALLY**
2 **MISLEADING STATEMENTS IN THE CD REPORT THAT SHOULD BE**
3 **CORRECTED.**

4 Applicants have attempted to verify the factual findings in the CD Report, but were unable
5 to comprehensively evaluate all subjects in light of the extremely limited time afforded for
6 comments and their lack of access to an unredacted copy of the Report or any of its underlying
7 data and work papers. At this time, Applicants were able to initially identify multiple errors
8 discussed below, but reserve the right to address additional errors and produce counter-evidence
9 through their testimony or another procedural vehicle.

10 The CD Report's portrayal of the number of complaints received by CAB appears
11 inaccurate based on Applicants' review of their records. The number of complaints shown in the
12 CD Report greatly exceed the number of complaints that CAB provided to the California
13 Operating Subsidiaries for resolution. The regulatory teams for the California Operating
14 Subsidiaries work directly with CAB to help resolve complaints, and this fact will not change
15 following the restructuring. Applicants believe that the CD Report may be including informal
16 inquiries in addition to complaints sent to the California Operating Subsidiaries, but Applicants
17 are unable to confirm this information without CD's supporting documents. The CD Report also
18 includes complaints regarding Voice over Internet Protocol ("VoIP") or Internet service, even
19 though these complaints exceed the Commission's jurisdiction.²¹ Because the CD Report does not
20 specify the nature of the complaints received or provide supporting data, the numbers presented
21 are potentially misleading.

22 The CD Report also presents an unfair and potentially misleading comparison of Frontier
23 California's service quality performance to Verizon California's performance in timely repairing
24 outages.²² In particular, the CD Report compares Verizon California's average outage duration for

25 ²¹ Insofar as the references to these complaints is intended to bring VoIP or Internet services within the
26 Commission's jurisdiction, it is contrary to federal law. *See, e.g., Vonage Holdings Corporation Petition*
27 *for Declaratory Ruling Concerning and Order of the Minnesota Public Utilities Commission*, WC Docket
28 No. 03-211, *Memorandum Opinion and Order*, FCC 04-267 (rel. Nov. 12, 2004) ¶ 1 & n. 78 (confirming
that interconnected VoIP is not subject to traditional telephone company regulations); *Minnesota PUC v.*
FCC, 483 F.3d 570 (8th Cir. 2007) (affirming Vonage order); *see also Charter Advanced Services, LLC v.*
Lange, 903 F.3d 715, 719 (8th Cir. 2018) ("[i]n the absence of direct guidance from the FCC,"
interconnected VoIP service should be treated as an "information service.").

²² *CD Report* at 6.

1 27 months to Frontier California’s average outage duration for a 12-month time period, during
2 which time Frontier California did perform worse than in other time periods.²³ No rationale is
3 provided for comparing such unequal time periods. Comparison over an equivalent 27 month time
4 period reveals that Frontier California, in fact, generally performed better than Verizon California
5 in repairing outages on a timely basis.²⁴ Frontier California also notes that the chart on page 8 of
6 the CD Report incorrectly shows Frontier California’s average outage durations for October
7 through December 2018 and does not incorporate data shown in a raw data file submitted by
8 Frontier California but rather an incorrect public version of the summary used for public posting.²⁵

9 The CD Report also contains imprecise and inaccurate information concerning the
10 California ILECs' California Advanced Service Fund (“CASF”) grants. The CD Report
11 inaccurately finds that “Frontier has not begun the build” for three of five projects that are
12 expected to be completed by June 2022.²⁶ Because reimbursement for the projects may not have
13 occurred does not mean the projects have not begun. In fact, the California ILECs have started
14 work for all of these projects, except for the Northeast Project, which is in the final stages of
15 detailed engineering and discussions with impacted stakeholders. The CD Report also contains
16 inaccurate and unclear information regarding the California ILECs' pending CASF applications.
17 The chart on pages 21-22 incorrectly states that two projects (Northeast and Mad River) are not
18 Fiber to the Premise (“FTTP”). To the contrary, all of the California ILECs' pending CASF
19 projects, including Northeast and Mad River are FTTP. In addition, the CD Report notes that one
20 of the California ILECs' pending CASF applications is a last-mile type of project and the others
21 are proposed middle-mile/last-mile types of projects.²⁷ It is unclear why the CD Report includes

22 _____
23 ²³ *Id.*

24 ²⁴ A fair comparison would result in the following revised finding: Frontier California has generally
25 performed *better* than Verizon California in repairing outages on a timely basis. In six of 27 months,
26 Verizon California’s monthly average for the average outage duration was less than 25 hours. In 10 of the
27 last 27 months, Frontier California’s monthly average for the average outage duration was less than 25
28 hours. Those 10 months are May through November 2018, October and November 2019 and May 2020.

²⁵ Frontier California also notes that the chart on page 8 of the CD Report incorrectly shows Frontier
California's average outage durations for October through December 2018. The average outage duration
for October, November and December are 24.22, 13.72 and 28.74, respectively. An updated public report
is being sent to the Commission to be placed on the website.

²⁶ *CD Report* at 21.

²⁷ *Id.* at 20.

