



William F. Charley

August 4, 2020

Via FedEx

ALJ Peter Wercinski
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: **A.20-05-010 (Frontier Restructuring) -- Opening Testimony**

Dear ALJ Wercinski:

In compliance with the California Public Utilities Commission's confidentiality protocols, as established in D.17-09-023, General Order ("G.O.") 66-D, and Public Utilities Code Section 583, Frontier¹ is supplying this cover letter to accompany the opening testimony of Mark D. Nielsen in Application 20-05-010. This letter identifies the confidential material in that testimony and complies with the requirements for those materials to be held under seal in the Commission's records.

Contemporaneously with this cover letter, and consistent with the date for testimony agreed upon at the Pre-Hearing Conference ("PHC"), Frontier is submitting opening testimony from two witnesses, Mr. Mark D. Nielsen and Mr. Carlin Adrianopoli. Only Mr. Nielsen's testimony contains confidential material, and the confidential portions are specifically marked. The confidential portions are redacted in the public version being served on the public service list, but a fully-unredacted confidential version is being served on the Commission recipients and those who have signed a Non-Disclosure Agreement with Frontier. By this letter, Frontier identifies the specific legal grounds for confidential treatment of these materials. Further, in compliance with D.17-09-023, this letter is accompanied by the declaration of Allison Ellis, Senior Vice President for Frontier. The declaration provides the factual support for the confidential designations and a further summary of the confidential information and data submitted.

Portions of Mr. Nielsen's testimony include confidential information regarding Frontier's recent, current and planned network deployment at specific capability levels to precise numbers

¹ 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), and Frontier Communications Of America, Inc. (U 5429 C) (collectively, "Frontier").

of households. This type of information is presented in various places on pages 39 through 41 of Mr. Nielsen's testimony. Frontier keeps this information confidential and it derives economic and competitive value from not being known to the public. If disclosed, Frontier's competitors could leverage this information to make strategic operational and business decisions to the economic detriment of Frontier, resulting in unfair competition and harm to the competitive market and to the detriment of the consumers. *See* Cal. Gov't. Code § 6254(k); Cal. Civ. Code § 3426.1(d); Cal. Evid. Code § 1060. The network capability information that Mr. Nielsen provides qualifies for protection as a trade secret because it is a "compilation" and "pattern" that derives independent economic value from not being generally known to the public or Frontier's competitors. *See* Cal. Civ. Code § 3426.1(d), *et seq.*

In addition, Government Code Section 6255(a) includes a "balancing test" that is used to protect records from disclosure where, "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319, 329 (2007). The Section 6255(a) "public interest" balancing test is appropriately employed to protect competitive information of a regulated entity from disclosure because a strong public interest exists in encouraging vigorous competition for the benefit of consumers. *See Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1520 (1997) ("Yet also fundamental to the preservation of our free market economic system is the concomitant right to have the ingenuity and industry one invests in the success of the business or occupation protected from the gratuitous use of that "sweat-of-the-brow" by others."); *United States v. Tribune Publishing Company* (C.D. Cal., Mar. 18, 2016, No. CV1601822ABPJWX) 2016 WL 2989488, at *5 ("[T]he preservation of competition is always in the public interest."); *United States v. Columbia Pictures Indus., Inc.*, 507 F. Supp. 412, 434 (S.D.N.Y. 1980) ("Far more important than the interests of either the defendants or the existing industry... is the public's interest ... in the preservation of competition."). The disclosure of network capabilities pertaining to numbers of households would undermine competition in the overall telecommunications and the unregulated, broadband market. Moreover, any public benefit associated with the disclosure of this type of information is far outweighed by the harm caused to competitors and competition that would occur from forcing the disgorgement of this information through the regulatory process and handing it over to competitors. *See* Cal. Gov. Code § 6255. This would undermine the functioning of a competitive market and harm consumers by producing market outcomes that are the product of unfair competition and an abuse of the regulatory process to obtain confidential information.

For the aforementioned reasons, this information is marked as confidential and provided subject to the protections of Public Utilities Code Section 583, G.O. 66-D, Section 3.2(b), Government Code Sections 6255(a) and 6254(k), Civil Code Section 3426.1(d), and Evidence Code Section 1060.

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As the above discussion demonstrates, the data submitted are confidential and protected by law from disclosure. Each of the confidential data are specifically marked as confidential pursuant to Commission General Order 66-D, Section 3.2 and should be protected pursuant to Public Utilities Code Section 583. Should questions arise regarding these data, please direct them to me by email at wcharley@cwclaw.com or by phone at 415-765-0320.

Very truly yours,

COOPER, WHITE & COOPER LLP

/s/

William F. Charley

WFC:dl

cc: Service List for A.20-05-010

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