

**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.

Application 20-05-010
(Filed May 22, 2020)

PROTEST OF THE UTILITY REFORM NETWORK, THE COMMUNICATIONS WORKERS OF AMERICA, THE GREENLINING INSTITUTE, AND THE CENTER FOR ACCESSIBLE TECHNOLOGY OF THE APPLICATION OF FRONTIER COMMUNICATIONS CORPORATION, *ET AL.* FOR DETERMINATION THAT CORPORATE RESTRUCTURING IS EXEMPT FROM OR COMPLIANT WITH PUBLIC UTILITIES CODE SECTION 854

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JOINT PROTEST OF THE APPLICATION OF FRONTIER COMMUNICATIONS CORPORATION, ET AL. FOR DETERMINATION THAT CORPORATE RESTRUCTURING IS EXEMPT FROM OR COMPLIANT WITH PUBLIC UTILITIES CODE SECTION 854

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission’s Rules of Practice and Procedure, The Utility Reform Network, the Communications Workers of America, District 9, The Greenlining Institute, and the Center for Accessible Technology (the Joint Protesters) protest the above-captioned *Application of Frontier Communications Corporation, et al. for Determination That Corporate Restructuring is Exempt from or Compliant with Public Utilities Code Section 854* (“Application”). The Application was filed on May 22, 2020, and first appeared on the Commission’s Daily Calendar on May 28, 2020. Pursuant to Rule 2.6(a), this protest is timely filed.

II. IDENTIFIED ISSUES

Each of the Joint Protesters is currently reviewing the Application. This Protest and the identified issues discussed below are based on an initial and limited review of the Application and related filings. Joint Protesters, collectively or individually, may identify and develop other issues as further discovery and analysis is completed to identify issues that will directly involve the interests of their groups. In conducting a public interest evaluation of the proposed restructuring, the Commission should specifically ensure that all Frontier employees and residential customers served by Frontier in California, including rural and low-income communities, and communities of color, receive benefits from the restructuring. This may require that the Commission craft targeted mitigation measures to prevent adverse consequences from the restructuring that would specifically affect these stakeholders.

As discussed below, the Application lacks sufficient California-specific data and information to support a public interest finding pursuant to either Public Utilities Code Section 854 or to grant an exemption under Section 853(b). The Application assures the Commission that the proposed reorganization currently pending before the federal Bankruptcy Court will not directly impact the management structure or day to day operations of Frontier's California affiliates. However, it does not sufficiently support its claims that under this complete ownership change at the parent company level, that California's second largest incumbent carrier can continue to honor its current regulatory commitments or make good on the Application's promises of improved service quality, competitive service offerings, customer service, and broadband investment to millions of California consumers from downtown Long Beach, to the Eastern slopes of the Sierras and the Oregon/California border.

The Application includes hundreds of pages of federal bankruptcy filings that are still in draft form, and fails to include other key federal filings, all of which present a detailed and complicated picture of a reorganized Frontier with a completely new, and as yet unidentified or fully defined ownership structure. This Commission must further investigate claims and references in these federal filings regarding additional regulatory tools that are not sufficiently addressed in the Application, but appear to be part of the bankruptcy and reorganization process, including possible sale of exchanges and other key assets, new business plans, and revised priorities for budgets, modernization, service quality improvements, broadband and fiber investment, and employee benefits — all of which will require creditor approval. As such, the Commission should set a realistic timeline, coordinated with the federal proceedings, for its thorough review of Frontier's Application.

A. Standard of Review

1. *The Commission has broad authority to review requests for approval of restructuring under Section 854 and should deny the request for an exemption*

Under Public Utilities Code section 854(a), changes in control of public utilities must be approved by the Commission.¹ “The Commission has broad discretion to determine if it is in the public interest to authorize a proposed transaction pursuant to Public Utilities Code section 854, subdivision (a)” and the Commission exercises this discretion on a case by case basis.² The Commission has found that a “change in control” occurs when a person or corporation acquires “control” of a utility, such as when the acquiring entity’s interest will be greater than 50% or when the acquiring entity will have the power to appoint direct management of the utility.³ While it would be impractical for the Commission to view individual stock purchases as a change in control, the Commission has found that Section 854 review is applicable where a group of shareholders acts in concert with the ability to exercise control.⁴

The Applicants acknowledge that this transaction will result in a “change in control” and, therefore, properly falls under Section 854, thus requiring the Commission to conduct a public interest review of the transaction.⁵ However, the Applicants urge the Commission to grant an exemption, pursuant to Section 853(b), from the requirements under Section 854.⁶ Joint

¹ D.06-02-003 (PacificCorp/MidAmerican) at p. 23.

² D.11-04-013 (Lake Alpine), (“the Commission has assessed the applicability of Pub. Util. Code § 854 on a case by case basis”); D.03-06-099 (Wild Goose), (“case-by-case basis”).

³ D.08-12-021 (Warburg Pincus); *see also*, D.10-08-018 (Lodi Gas) (same factors).

⁴ *See, e.g.*, D.02-11-051 (U.S. TelePacific Corp) (concluding that an acquiring entity that held a large minority of the equity in the utilities at issue could not exercise control as a result of its equity stake, but would be able to exercise de facto control by virtue of its “management arrangements with other investors”).

⁵ Application at p. 4 (request review through “one of two regulatory vehicles”); *See also* Exhibit C (Draft Plan) at p. 41 (Agreeing to “diligently prosecute” state PUC Applications for transactions contemplated by the approved Plan); Exhibit D (Adrianopoli Declaration at p. 23 (in certain state jurisdictions the proposed reorganization may be considered a ‘transfer of control’ and may be subject to approval based on public interest standards).

⁶ Application at p. 2-4.

Protesters urge the Commission to deny this request and to conduct a full public interest review pursuant to Section 854.

The Commission previously has found that an exemption pursuant to Section 853(b) should be the exception and not the rule,⁷ and that it must look to “differing factors, depending upon the particular facts of a case and the situation at hand” to determine whether to grant an exemption.⁸ Other Chapter 11 Bankruptcy proceedings and corporate reorganizations of Commission-regulated communications companies have triggered a public interest review pursuant to Section 854.⁹ The subject Application is more significant to California consumers and the communications marketplace than the prior reorganizations cited by Applicants, and should not be exempt. Frontier is the second largest incumbent carrier in California and serves millions of California customers, including a significant number of low income and rural customers throughout the state.¹⁰ Frontier serves these vulnerable customers with critical basic voice services, and, as an incumbent carrier and Carrier of Last Resort, Frontier is often the only provider of basic local exchange service in the areas that it serves.¹¹ Frontier also serves a vital role in other markets by providing enterprise level broadband and video services throughout its

⁷ D.01-03-079 (2001) at p. 6 (In re: Worldcom/Intermedia) (“Commission precedent indicates that this provision must be applied selectively as it must be the exception and not the rule.”); *See also*, D.03-08-079 (MFN A.03-06-010) (Deny exemption due to complexity of transaction).

⁸ D.01-03-079 at p. 6 (Worldcom/Intermedia); D.06-04-075 (Verizon/MCI) at p. 9 (partial grant of Section 853(b) exemption, but apply Section 854(c) factors.)

⁹ *See*, D.19-12-045 (Fusion Connect, DIP), (Apply 854 public interest test to merger/bankruptcy); D.02-12-061 (XO Communications) (approval of bankruptcy transaction under 854, with no 853 exemption, although uncontested and under revenue limit); D.02-07-018 (Mpower Communications) (approve reorganization and deny company request to blindly approve whatever the bankruptcy court ultimately approves, requires Mpower to come back and modify its transaction with the Commission.)

¹⁰ Application at p. 5; For nationwide data and description of the Frontier core business, see, Application, Exhibit D, Adrianopoli Declaration in Support of Chapter 11 Petitions and First Day Motions at p.17-21, 40 (significant reach in rural service areas).

¹¹ Application at p. 5, Exhibit D Adrianopoli Declaration at p. 23-24 (acknowledging obligation to provide universal service as a carrier of last resort); D.15-12-005 (Frontier/Verizon) at FOF 6 (“Frontier will succeed Verizon California as the dominant provider of landline telephony and fiber to the home in southern California”).

territory, along with wholesale services such as backhaul and middle mile access to California's facilities based wireless and broadband infrastructure providers.¹²

Moreover, Frontier has significant outstanding obligations to many stakeholders including its employees, interconnection partners, and the stakeholders that were part of the proceeding to approve its merger with Verizon in 2015.¹³ Frontier has received millions of dollars through public purpose programs such as LifeLine, California High Cost Fund B, and the California Advanced Services Fund.¹⁴ Frontier plays a major role in the communications marketplace in California, especially after its merger with Verizon. For this reason, the Applicant's discussion of the Worldcom bankruptcy filing in 2003, where the Commission granted a Section 853(b) exemption for the reorganization of a non-dominant interexchange carrier is inapposite.¹⁵ This Commission has a statutory obligation to conduct a full analysis of the impact of this transaction that goes beyond a high level public interest review and to require the Applicants to provide the Commission with more than high level rhetoric and promises.

2. If the Commission grants an exemption, it still must conduct a public interest analysis

Even if the Commission grants the requested exemption, it still must analyze impacts of the transaction on specific sub-categories of customers to ensure that the transaction is in the public interest.¹⁶ To satisfy this statutory obligation to determine public interest, whether under

¹² Frontier Communications First Day Hearing Presentation, April 16, 2020 at p. 5, retrieved from <https://cases.primeclerk.com/fttr/>

¹³ Application at p. 19-21.

¹⁴ Application at p. 21, Exhibit D Adrianopoli Declaration at p. 19 (Company has previously sought and intends to seek state and federal subsidies for expansion and enhancement of broadband.)

¹⁵ Application at p. 3, 13.

¹⁶ Section 853(b), "The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary *in the public interest*. The commission may establish rules or impose requirements deemed *necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision*. These rules or requirements may include, but are not limited to,

Section 854(a) or 853(b), the Commission has used the eight-factor test in Section 854(c).¹⁷ The Commission has found that under the public interest analysis pursuant to §854(a), “it is reasonable for the Commission to assess the public interest factors enumerated in § 854(c) and undertake an analysis of antitrust and environmental considerations [under §854(b)].”¹⁸

The Applicants sweeping and high level assertions that this billion dollar transaction that completely replaces the ownership of the parent company will have no impact on California consumers does not go far enough. As part of this public interest analysis, Joint Protesters urge the Commission to require the Applicants to make a California-specific, affirmative showing, with concrete commitments that can be measured and enforced and that demonstrate how the reorganization will “produce positive and substantive benefits for California ratepayers” as it has in other significant transfer of control cases.¹⁹

3. *The Commission cannot rely on competition or market forces to ensure that the restructuring is in the public interest or that Frontier will flow through benefits to customers*

The Applicants provide an overly narrow interpretation of Commission precedent to support their proposal that the Commission should rely on competitive market forces to deliver

notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.” (emphasis added)

¹⁷ D.07-05-061 (Knight Holdco) at p. 24. *See also*, D.02-12-068 (CalAmerican Water); D.10-10-01(Sierra Pacific Power/ California Pacific Electric); D.05-11-029 (Verizon/MCI) at p. 13, 28.

¹⁸ D.05-11-029 (Verizon/MCI) at COL 8; D.07-05-061(Knight Holdco) at p. 24; D.06-02-033 (PacificCorp/MidAmerican Energy) at p. 23; D.10-10-017 (Sierra Pacific Power/California Pacific Electric) at p. 15; D.16-05-007 (Charter/TimeWarner) at p. 20, COLs 2, 3; D.01-06-007 (Citizens/GTE) at p. 22; *Northern California Power Agency v. Public Utilities Commission* (1971) 5 Cal.3d 370, 377 (“antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy.”); D.06-04-075 (Verizon/MCI) at p. 16 (Test for determining whether the transaction is in the public interest is under Section 854(c), “in this Decision, as in certain other decisions granting an exemption, we used the more inclusive eight factors as a guide to make a broad showing that the transaction is in the public interest.”)

¹⁹ D.01-03-079 (Worldcom/Intermedia), p. 9 (citing D.00-05-027 and D.00-05-047); D.10-10-017 (Sierra Pacific Power/California Pacific Electric) at p. 16; D.07-09-005 (Yale Industrial) at p. 2-3 (while the primary standard is whether the transaction will “adversely affect” the public interest, the Commission may also consider if the transaction will serve the public interest).

the benefits of the transaction to California customers and that, accordingly, only a limited review is necessary.²⁰ Indeed, Joint Applicants go too far when they argue that the Commission's duty to analyze the sharing of benefits from the transaction pursuant to Section 854(b) is limited because Frontier is not currently rate regulated.²¹ The statute imposes no such limitation on the Commission nor does it make a direct link between the methodology used to allocate merger savings pursuant to Section 854(b)(2) and authorized ratesetting mechanisms, including the Commission's current forbearance of rate regulation for Frontier.

Historically, the Commission's determination of whether and how to require an allocation of benefits to ratepayers rests on more than a finding of competition or lack of market power and has been fact-specific.²² The Application fails to demonstrate that sufficient levels of competition exist in Frontier's territory, especially specific market segments, to ensure that Frontier will pass through any meaningful level of benefits, in the form of rate stability, employee benefits, or additional incremental investment to support service quality improvements and broadband deployment (i.e., investment over and above the promised levels prior to bankruptcy). Ironically, Frontier points to its Carrier of Last Resort obligations in the high cost and low density rural territories it serves in California as one of the drivers for its current financial struggles.²³ Yet, it is these very characteristics of much of Frontier's territory that discourage competition and call for regulatory intervention. The Application fails to explain how the limited – or non-existent – competitive pressures that exist in the rural parts of Frontier

²⁰ Application at p. 16 (benefits will flow to ratepayers through the operation of market forces).

²¹ Application at p. 16.

²² See, for example, D. 05-11-028 (A.05-02-027 AT&T/SBC) at p. 14; D.06-04-074 (rehearing AT&T/SBC) (conducted a competitive analysis, along with AG Decision, finding sufficient competition through intermodal technologies.); D.00-03-021 (GTE/Bell Atlantic merger); D.15-12-005 (Verizon/Frontier) at p. 48 and COL 5 (making affirmative finding of appropriate sharing of benefits through settlements and conditions).

²³ Application at p. 11.

territory, and in the areas where it is one of the few providers of basic voice wireline service and affordable basic broadband, will be sufficient to ensure that customers that rely on these services are not left behind in the restructuring of management and investment priorities.²⁴

In order to assess whether the transaction will result in benefits for ratepayers that are consistent with the requirements of Section 854, the Commission must have the data and information it needs to verify the promised benefits beyond promises of market forces flowing through to realize the benefits. Vague promises of a financially stronger Frontier, “continued” investment in existing network facilities, and increased broadband penetration do not go far enough to satisfy the fact-intensive and data-driven analysis that the Commission should undertake. With so much at stake, it is not sufficient simply to assume that market forces will flow through the required benefits, and indeed, it would be unfounded to do so.

4. The Commission must conduct its own review, independently from the federal Bankruptcy Court’s review

Applicants urge the Commission to find that a detailed review would be duplicative of the review by the federal Bankruptcy Court.²⁵ However, the Commission has previously found that it cannot rely on the Bankruptcy Court to satisfy its own statutory mandate to independently review these transactions and determine if, as structured, it will be in the interest of California consumers. The Commission has found that Bankruptcy Courts have different motivations and considerations as part of their review of these types of transactions, and that, “a central purpose

²⁴ D.06-08-030 at FOF 68 (finding that market conditions at the time did not support pricing flexibility for rural territory covered by the CHCF-B subsidy money); D.12-12-038 (R.09-06-019) at p. 15, arguing that consumers in urban settings have more choices and less constraints than “those residing in rural or remote regions with fewer or only one choice of provider for basic service.” Retail Communications Services in California (Report of Communications Division Pursuant to D.16-12-025) at p. 24, 30 (most households can only choose between two providers, ILEC and cable, for fixed voice services; further finding high market concentration in most major metropolitan areas in California).

²⁵ Application at pp. 14-15.

of the Bankruptcy Code is to ‘provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life ...’”²⁶ The Commission has also noted that the Bankruptcy Court’s role is limited to “being asked to enforce the reorganization agreement. Nothing more....”²⁷ In contrast, the Commission is, “entrusted to safeguard the compelling public interest in the availability of electric service at reasonable rates. That public interest is no less compelling during the pendency of a bankruptcy than at other times.”²⁸

The Commission must monitor and coordinate its review with the Bankruptcy Court, but its review must determine whether this transaction is in the public interest for a much broader group of stakeholders, including Frontier ratepayers, employees and wholesale customers. Like electric service, the public has a compelling interest in the availability basic telephone service at reasonable rates. It also has an interest in additional obligations that Frontier currently maintains. For example, contrary to what Frontier may seek to imply, the Bankruptcy Court will not be reviewing whether and to what extent Frontier has met its commitments to the Commission from the Frontier/Verizon merger or from its receipt of public subsidy funding, or whether and how Frontier will meet these conditions going forward.²⁹ It goes much too far to suggest, as the Application does, that what is good for shareholders as determined by the

²⁶ D.03-12-035 (PG&E Bankruptcy) at p. 25, citing *Grogan v. Garner* (1991) 498 U.S. 279, 286 and *In re Andrews* (4th Cir. 1996) 80 F.3d 906, 909, (“Put another way, the two overarching purposes of the Bankruptcy Code are: ‘(1) providing protection for the creditors of the insolvent debtor and (2) permitting the debtor to carry on and ... make a 'fresh start.'”)

²⁷ *Id.* at p. 36.

²⁸ *Id.* at p. 24, citing to *In re Cajun Elec. Power Co-op., Inc.* (5th Cir. 1999) 185 F.3d 446, 453, quoting with approval Flaschen & Reilly, *Bankruptcy Analysis of a Financially-Troubled Electric Utility*, (1985) 59 Am.Bankr.L.J. 135, 144.)

²⁹ Application at p. 15.

Bankruptcy Court is good for customers and thus any acceptable result to the creditors should suffice for the Commission's review.

Joint Protesters acknowledge that the interests of Frontier's shareholders and other creditors overlap with the interests of customers to some degree and that each has an important stake in ensuring that Frontier is a healthy, viable competitor and provider of basic service. Therefore, this Commission must closely coordinate its review of this transaction with the Bankruptcy Court. Indeed, as discussed below, the Application does not go far enough to provide the Commission with sufficient information about the current Bankruptcy Court review for a proper public interest analysis under Section 854. However, far from being a duplicative use of Commission resources, the Commission is compelled by its statutory obligations to conduct its own independent review.

B. The Commission Must Reject Applicant's Request for an Expedited Review

The Commission must have sufficient time to conduct its necessary analysis pursuant to Section 854. The Applicants present a truncated schedule for the review of this transaction, claiming that its participation in the FCC's Rural Opportunity Development Fund ("RDOF") will be "impacted" and "influenced" by the scope and scale of this proceeding.³⁰ Applicants do not cite to any specific deadlines or processes within the FCC's RDOF program that would require Frontier to obtain approval from California prior to the October bidding window. Moreover, in its federal bankruptcy materials, Frontier claims that its current financial structure and cash reserves, along with its "debtor in possession" financing will be sufficient for it to participate in the upcoming auction.³¹

³⁰ Application at p. 4, 11, 23.

³¹ Application, Exhibit D, Adrianopoli Declaration at p. 43 (DIP letter of credit is necessary to bid in the upcoming RDOF auction); *see also*, Frontier Communications First Day Financing Presentation, April 16, 2020, pg. 6, "Key benefits of the DIP financing include... provides much-needed LC capacity to permit

The Commission has an interest in seeing that Frontier can and will participate in the RDOF bidding process to support its broadband deployment plans here in California, but not at the expense of a full public interest review of this transaction. By rushing this Application process to support Frontier’s RDOF participation, it could appear that the Commission was favoring Frontier’s participation over other stakeholder interests that must be considered in this proceeding. It is also critical for the Commission to conduct a full public interest analysis to ensure that Frontier’s restructuring plan will enable it to fully carry out its obligations that come with the RDOF funding here in California, along with any other public subsidy money it receives through federal and state programs.

Joint Protesters remind the Commission that it was previously put in a similar “expedited” situation by Frontier when it requested an unreasonably tight timeline for the Commission’s review of its 2015 Application regarding the Frontier/Verizon merger. There, the Applicants pushed the Commission to quickly review what was to be one of the biggest mergers in several years in California, so that Frontier could qualify to request Verizon’s share of the Connect America Fund dollars for broadband buildout in California.³² The race to meet the external deadlines caused by Frontier’s merger application was harmful to the parties’ due process rights and to the Commission’s review of that transaction, and ultimately, it was not necessary to meet those deadlines to support CAF Funding.³³ The Commission should use the lessons learned from that process to ensure that it puts the RDOF process in the proper context.

Debtors to bid in the Rural Digital Opportunity Fund (“RDOF”) action [sic].” Retrieved from <https://cases.primeclerk.com/ftf/> .

³² See, Joint Intervenors’ Motion to Modify the Scoping Ruling, July 21, 2015 (A.15-03-005 Frontier/Verizon (discussing the comments made at the PHC and other filings re: deadlines to claim Verizon’s CAF II subsidy funding); see also, (Joint Applicants’ Response to Motion of Joint Intervenors to Modify the Scoping Ruling (A.15-03-005 Frontier/Verizon), p. 4-5.

³³ D.15-12-005 (Frontier/Verizon), Frontier successful claims to CAF II funding despite Commission Decision approving transaction several months after deadline.)

The Commission can work with Frontier to ensure it has what it needs for successful participation, while also protecting the regulatory review process here.

Beyond the claims that the Commission must accelerate its review to meet undefined RDOF deadlines, there is no other indication of any need to finish this review by October. Joint Protesters could not find any reference to an October deadline anywhere within the federal Bankruptcy Court filing and documents presented to the Commission. Frontier's own timeline presented to the Bankruptcy Court has the final milestone of emergence from bankruptcy set for one year from filing, which would be April 14, 2021, and it assigns the period following the Bankruptcy Court's Confirmation Order in August 2020 up to the date of emergence from Chapter 11 to "Receipt of FCC/PUC Regulatory Approvals."³⁴ While Joint Protesters urge the Commission to be mindful of the Bankruptcy Court's proceedings and to coordinate its efforts with all stakeholders at both the state and federal levels, the Commission need not hurry this proceeding to meet Frontier's artificial deadlines at the expense of due process and a meaningful public interest review.

C. The Application Does not Meet the Public Interest Requirements Pursuant to Section 854

Section 854 requires the Commission to identify short and long term benefits for Frontier customers and employees, plus determine its impact on a number of considerations including service quality, quality of the management, fairness to employees, and benefits to local communities.³⁵ On its face, this Application, even with its voluminous attachments, does not provide California-specific data or enough information and explanation of the restructuring and

³⁴ Application at p. 2; Frontier Communications First Day Hearing presentation, April 16, 2020, at page 19, retrieved from <https://cases.primeclerk.com/ftc/>

³⁵ Section 854(c).

subsequent operations of a reorganized Frontier to satisfy the Applicants' burden of proof.³⁶ As discussed below, the materials provided by the Applicant to support its request for an expedited public interest analysis are not final and are subject to changes as a result of a review by the Bankruptcy Court and votes by the Applicants' creditors.³⁷

Even if the Application materials were not subject to change, the Application describes the allocation of benefits between shareholders and consumers in terms that suggest that definable concrete consumer and employee benefits may only come from a "trickle down" effect of an allegedly stronger Frontier, while the benefit to the shareholders and creditors is relatively obvious – they receive the opportunity for dividends and return of investment.³⁸

While the Application requests an exemption from a detailed analysis by suggesting that the reorganization of Frontier will not result in significant changes on the operations of the company, the suggestion that it will be business as usual appears to be an overstatement.³⁹ While technically "the same" corporate box on the organization chart may own Frontier's California operations, Frontier's ultimate shareholders will completely change. Frontier's previous base of shareholders is completely removed in the restructuring and bankruptcy process.⁴⁰ The new shareholders will be the former debt holders with allocated equity under the Plan of

³⁶ D.15-12-005 (Frontier/Verizon) at COL 2 and 3 (Applicants must demonstrate, and prove by a preponderance of the evidence that the requirements of Section 854 have been met.)

³⁷ Application at p. 6 (Plan is designated as a "draft" because subject to confirmation by Bankruptcy Court); *see also*, Exhibit B, Restructuring Support Agreement, p. 27 (lists denial of confirmation of reorganization Plan by the Bankruptcy Court as a "Termination Event" for the RSA); *see also*, Federal Bankruptcy Draft Disclosure Statement, May 14, 2020, at p. 57 retrieved from <https://cases.primeclerk.com/fttr/> (listing changes to the Plan and failure to get approval of the Plan as risk factors for creditors in the federal proceeding.)

³⁸ Application at p. 3, 6, 16-17 (reduction in debt will provide short term and long term benefits to ratepayers by making operating companies stronger competitors; urges Commission to rely on market forces from a stronger Frontier to benefit consumers).

³⁹ Application at p. 2-3 (ownership will remain widely held post reorganization.)

⁴⁰ Application at p. 2, 8-10 (Frontier will be "dissolved" and replaced by new parent company with Senior Noteholders as the new shareholders.)

Reorganization (as it may be confirmed or further amended).⁴¹ The Application, including the attachments, has insufficient discussion of the identity, expertise or interests of these new shareholders in Frontier, for the Commission to conclude that the change of ownership will have no impact on California operations or even that, no single noteholder is anticipated to hold a 10% or greater interest' in the reorganized company. The Application also fails to assure the Commission or confirm that the Noteholders will not (or cannot during this process) enter into agreements that require voting as a block, which could represent more than 10% of the voting power of the reorganized Frontier. Indeed, as discussed below, there are references in the federal filings that the Noteholders, as the new shareholders in Frontier, may have, or could develop, agreements regarding the separation, disposition or investment in specific assets.

The Commission must acknowledge that these institutional investors, in an attempt to protect their financial interests, will have equity ownership thrust on them via the bankruptcy process and will undoubtedly have different institutional investment objectives than investors who decide they want to be involved in owning, operating and managing a public utility for the long term. At a minimum, the Commission must request that the Applicants provide additional information and concrete commitments, including notice of changes to the current ownership structure and interests, to the Commission regarding the following issues before it determines whether this changed public utility ownership structure is in the public interest for California customers and employees.

- 1. The Commission should investigate the status of the Applicant's commitments from its merger with Verizon and from its receipt of public subsidy dollars*

⁴¹ *Id.*; see also, Application, Exhibit D, Adrianopoli Declaration at p. 4, 14-16.

Applicants claim that Frontier will honor all preexisting obligations and they vaguely claim that there will be no impact on customers from this complete reorganization – leaving prices the same, offering the same services, and maintaining management.⁴² At the same time, Frontier claims that this transaction will make Frontier stronger and bring noticeable and substantive benefits beyond the status quo including promises to “improve and enhance” services, “maintain or improve” service quality and broadband availability, “invest more extensively in its network,” and improve engagement with local communities.⁴³ This Commission must investigate these claims and require Frontier to make these vague promises into concrete and enforceable commitments in the public interest.

Five years ago, the Commission adopted a detailed and comprehensive set of conditions that it believed were necessary to find that the then-proposed Verizon/Frontier merger was going to be in the public interest.⁴⁴ Frontier now points to that merger, and the challenges the company has faced in bringing the two operations together, as a factor in its current bankruptcy; at the same time, it commits to honoring those merger conditions.⁴⁵ Some of Joint Protesters, including TURN and the Center for Accessible Technology, participated in that merger review and urged the Commission at that time to more closely review the financial implications of the transaction and the significant work and investment that Frontier was going to have to undertake to bring the merger benefits to consumers.⁴⁶ Now, in light of the subsequent events that bring us

⁴² Application, p. 18-19.

⁴³ Application, p. 3, 16, 20-21.

⁴⁴ D.15-12-005 (Frontier/Verizon).

⁴⁵ Application at p. 11, Exhibit D Adrianopoli Declaration at p. 6-7 (serving the new territories proved more difficult and expensive than the Company anticipated); *but see*, Application at p. 3, 21, commitment to complete broadband buildout commitments by 2022 and to fulfill the other commitments.) Joint Interveners acknowledge that progress has been made toward complying with merger conditions, but the Commission should have a detailed accounting.

⁴⁶ TURN Opening Brief (A.15-03-005), October 5, 2015, at p. 50-62.

to this point, as described by Frontier itself,⁴⁷ the Commission must take the time to closely review the progress Frontier has made to satisfy its obligations, including service quality and customer service improvements and broadband buildout, to determine whether a reorganized Frontier run by institutional investors will have an impact on these obligations.

Beyond its merger conditions, Frontier has other obligations to this Commission and its customers. For example, the Commission should review the status of Frontier's investments of millions of dollars from the California Advanced Services Fund to build out its broadband network in key areas of the state, and its recent request for millions of dollars of additional CASF subsidies.⁴⁸ Specifically, the Commission must determine whether Frontier is serving these communities with affordable, high quality broadband services using its new infrastructure and, if not, a plan to realize those benefits with the promised additional investments from the restructuring. As a recipient of public subsidy dollars, Frontier is a steward of this money and it must make a concrete showing that this restructuring will allow it to properly meet, or possibly exceed, its CASF commitments.

As Frontier promises to meet existing commitments and to increase investment and create a stronger competitive presence in California, the Commission must create a structure to monitor and set clear timelines and expectations to enforce these promises in coordination with the bankruptcy proceeding itself. The Commission can use the lessons learned from the recent merger and its CASF program work to more closely analyze the impacts from the restructure.

⁴⁷ Application at 11, Exhibit D, Adrianopoli Declaration at p.6-7. Some commitments made by Frontier, and approved by the Commission, including increased resources to community outreach offices and a focus on improvements in service quality have not seemed to materialize five years later. For example, the company consistently fails to meet service quality metrics and requirements. *See* Frontier AL 12828 (February 13, 2020) reporting missed compliance with service-related G.O. 133-D metrics in 2019.

⁴⁸ Application at p. 21. Frontier has approximately 18 CASF projects in various stages of completion. Ten of those 18 projects were just requested within the past two months. *See*, CPUC CASF Application Project Summaries page, <https://www.cpuc.ca.gov/General.aspx?id=1040>.

2. *The Application fails to demonstrate that the restructuring is feasible and will provide a long term solution to the current financial problems*

Much of Frontier’s explanation and analysis for its current financial situation are the very elements Frontier previously identified in support of the previous merger with Verizon, including challenges from competitors, regulatory burdens and the costs of its rural exchanges. Now, Frontier is pointing to the merger and the resulting high debt load as one reason for its troubles. The Commission must consider whether this restructuring proposal will mitigate these barriers and make the company stronger, so that these same parties are not back before the Commission requesting further relief and support.

The Commission has previously found that an application for approval of a restructure or a reorganization must demonstrate that the proposed reorganization plan, is “feasible.”⁴⁹ While it is the Bankruptcy Court that closely reviews the proposed reorganization plan, the Commission also has an obligation, looking at California-specific factors, to find that, “a proposed plan must be such that if implemented it will leave the debtor in a situation where it is not likely that the reorganization will be followed by unanticipated liquidation or further reorganization....A necessary corollary of this requirement is the requirement that the provisions of any proposed plan of reorganization can, in fact, be implemented.”⁵⁰ The Commission notes that, sincerity, honesty, and willingness are not sufficient to make the plan feasible, and neither are any

⁴⁹ D.03-12-035 (PG&E Bankruptcy) at p. 39.

⁵⁰ *Id.*, citing to *In re: Pizza of Hawaii, Inc.* 40 B.R. 1014, 1027 (D. Hawaii 1984) (Before the bankruptcy court may confirm a plan of reorganization, 11 U.S.C. § 1129(a)(11) requires that it find that the plan is not likely to be followed by unanticipated liquidation or further reorganization. In other words, the plan must be feasible. Under this feasibility test, the bankruptcy court must look to the plan's projected income, expenses, assets and liabilities and determine whether the plan will leave the estate financially stable. The feasibility test contemplates the probability of actual performance of the provisions of the plan. *In re Clarkson*, 767 F.2d 417, 420 (8th Cir. 1985).

visionary promises.⁵¹ The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts.

Currently the Application, including the attachments from the federal bankruptcy court, contains visionary promises and sincere claims that this transaction will be in the public interest, similar to its settlement agreements with parties to the merger.⁵² Yet, the Application does not sufficiently demonstrate the feasibility of this proposed plan or include sufficient assurances that Frontier won't be back before the Commission with another reorganization in the near future, or, perhaps more likely, that it won't have to resort to other regulatory tools to generate revenue or cut expenses such as raising rates, limiting services, or selling off key parts of its territory here in California.

Even just a cursory review of the federal bankruptcy materials demonstrates that selling off exchanges is a very real possibility that would have significant impacts on California consumers. For example, as part of its federal bankruptcy filing, Frontier cites to its current sale of territory in the Pacific Northwest, as a critical part of its financing strategy to emerge from Chapter 11.⁵³ In the Restructure Agreement Frontier commits to “commercially reasonable efforts to commence evaluation of potential sales of assets (including identifying applicable specified markets to be considered for sale).”⁵⁴ The company has also made public statements

⁵¹ *Id.* at p. 39.

⁵² D. 15-12-005 at p. 54-59, O.P. 13 (summary of Memoranda of Understanding with Intervenors, including Greenlining); Greenlining, a Joint Protester, forged a good faith settlement with Frontier, yet many of the sincere promises have not fully materialized five years later. *See also*, ALJ Ruling Order to Show Cause, October 25, 2018 (A.15-03-005) (CETF enforcement of LifeLine commitments from MOU with Frontier).

⁵³ Application, Exhibit D Adrianopoli Declaration at p. 8 (describing the May 2019 transaction to sell the Pacific Northwest service areas a “significant out-of-court transaction” with the objective of “maximizing optionality” and consideration of strategic restructuring alternatives.); *see also*, Frontier Communications First Day Finance Presentation, April 16, 2020 at p. 8, retrieved from <https://cases.primeclerk.com/ft/> (describing the sale as one of three sources of financing for day to day operations during bankruptcy).

⁵⁴ Application, Exhibit B, Restructure Support Agreement, at p. 15.

about the need to “monetize territories that may be less strategic” and minimize stranded costs within its ILEC business.⁵⁵ While the sale of Frontier exchanges is not currently part of this Commission’s review, it is critical to this Commission’s public interest analysis that it further investigate whether a sale of the higher cost and less profitable service areas here in California, identified in the Application as a factor in this bankruptcy, could be one of the many tools that the company plans to use to support its restructuring and to require the company to provide early notice and information to the Commission if was considering a sale of any of its exchanges.

3. Certain parts of the federal bankruptcy filing need more explanation and suggest that the Commission doesn’t have what it needs for a complete review

There are elements of the federal bankruptcy filing that the Commission must further investigate before it can determine if the proposed restructuring is in the public interest. For example, the Restructure Support Agreement includes something the company calls, “Virtual Separation.” The company defines Virtual Separation as,

a virtual separation under the same ownership structure of select state operations where the reorganized Debtors will conduct fiber deployments (“InvestCo”) from those state operations where the reorganized Debtors will perform broadband upgrades and operational improvements (“ImproveCo”), with such allocation of state operations to be reasonably acceptable to the Company Parties and the Required Consenting Noteholders (the “Virtual Separation”), such that the Reorganized Frontier Board (as defined below) may, at its determination, adopt and implement the Virtual Separation at any time on or after the Plan Effective Date⁵⁶

⁵⁵ Edited Transcript of June 11, 2020 1Q2020 Frontier Earnings Call and presentation, comment by Robert A. Schriesheim, Independent Director, Frontier Communications Corporation, retrieved from <https://www.yahoo.com/news/edited-transcript-fty-earnings-conference-040652715.html> on June 28, 2020.

⁵⁶ Application, Exhibit B, RSA Term Sheet (Business Plan) at p. 9.

It appears that Virtual Separation is a crucial issue, which apparently will be the basis of the company's future internal revenue and cost sharing models.⁵⁷ Yet, this Virtual Separation is not fully defined in either the Application or the federal filing and will not be fully analyzed or implemented until much later in the bankruptcy process. The CPUC needs to take whatever time is necessary to be able to fully consider the details pertaining to Frontier's California operations and the division between those areas that may get fiber deployment versus those that do not, as well as the overall aggregate impact of Virtual Separation on Frontier's operations and financials. The Commission must also ask whether the Virtual Separation that the company designs, and that its creditors must agree is "reasonably acceptable,"⁵⁸ will also be in the public interest in California.

The federal filing also references several detailed business plan reports that will directly address specific initiatives for modernization of Frontier's operations, participation in RDOF, improved quality of service, and assessment of "return requirement thresholds."⁵⁹ The RSA Term Sheet also commits the company to providing its creditors with a "budgetary plan," including plans for the RDOF auction and Virtual Separation, discussed above.⁶⁰ First it appears that these reports will contain commitments and plans to significantly change the company's operations, despite the Application's assurances that Frontier is on track and the restructuring will not impact its current plans. Second, the Commission must acknowledge and factor into its review timeline that these detailed reports will only become available on a timeline that is based

⁵⁷ *Id.*

⁵⁸ Application, Exhibit B, Restructure Support Agreement at p. 21.

⁵⁹ Application, Exhibit B, Restructure Support Agreement at p. 8; Application, Exhibit B, RSA Term Sheet at p. 8-9.

⁶⁰ Application, Exhibit B, RSA Term Sheet at p. 8.

on milestones in the federal bankruptcy review, some of which are not likely to be produced until January of 2021.⁶¹

The Commission must require the Applicants to provide more detail about the substance and impact of these vital business plans and reports, along with a clear timeline for their development and production to allow the Commission to develop a reasonable timeline for review of this Application.

4. The Application is not complete and will not be complete until the Bankruptcy Court moves forward

The Commission must acknowledge that even if it had the information necessary to fully understand the impact of the current Restructuring Agreement and proposed reorganization Plan, that the entire bankruptcy process is in flux and all of these documents are subject to change.⁶² The Plan is not final, the Court has not approved the Disclosure Statement regarding the proposed plan, and voting by the creditors has not yet occurred. The fact that there are so many steps yet to go in the process makes the Application itself incomplete. For example, the impact of this restructure on the thousands of Frontier employees in California should be a significant part of the Commission's public analysis. The federal filing notes that, if approved, the Draft Plan of Reorganization would protect the current collective bargaining agreement and the rights of union members.⁶³ Yet, because this Draft Plan is subject to further negotiations, review, voting and Court approval, it is unclear, how the Commission can meet its own public interest analysis by reviewing the Draft Plan.

⁶¹ *Id.*; Application, Exhibit B, Restructure Support Agreement at p. 16.

⁶² See, *infra* note 37.

⁶³ Appendix B (Draft Plan of Reorganization), p. 44.

An order approving the proposed Plan is expected in August. And the Plan itself contains numerous forward-looking milestones once the Plan is in place that may impact California operations, such as:

- The identity of key management (RSA Milestones, p. 15)
- Base Case Business Plan (RSA Milestones, p. 15)
- Reinvestment sensitivity Case (RSA Milestones, p. 15)
- Alternative Reinvestment sensitivity case (RSA Milestones, p. 15)
- Company evaluation of alternative value maximizing structures including REIT (RSA Company commitments, p. 19)
- RDOF bidding framework (RSA Company commitments, p. 19)
- Allocation of state operations under Virtual Separation commitments and evaluation of potential sale of assets, RSA Company commitments, p. 19)
- Financial Projections, “To Come” (Draft Disclosure Statement, Exhibit E)
- Regulatory review of its video services licenses pursuant to the Digital Infrastructure and Video Competition Act.⁶⁴

Joint Protesters urge the Commission to begin its California-specific review of this transaction and the identity, interests and plans of the new ownership structure, and to work with the Applicants and stakeholders such as Joint Protesters, to gather relevant information and set a path forward for a timely yet thorough state-level review. The Commission must acknowledge that it does not have all of the information, and that what Applicants have put forward is subject to change. Therefore, the Commission cannot grant the Applicant’s request for an expedited review or an exemption pursuant to Section 853 on the proposed schedule.

⁶⁴ Application at p. 4 (regulatory approval related to DIVCA will be handled elsewhere).

III. PROCEDURAL ISSUES

A. Categorization

Joint Protesters take no issue with the Applicants' request to categorize this proceeding as ratesetting.

B. Need for Hearing

As discussed above, the Commission should investigate and make factual findings regarding the impacts of the restructuring, in consideration of the timing of the concurrent Bankruptcy Court proceedings. Joint Protesters believe this would necessarily require a time-period for discovery by the parties, including clarification of the federal bankruptcy documents and the timing of the documents described in the restructuring milestones, and testimony. Once the parties complete an initial fact-finding phase of this proceeding and submit testimony, the Commission should request comments from parties to determine if hearings are needed to clarify or address disputed issues of fact. If the Bankruptcy Court makes significant changes to the proposed Plan, if Frontier's creditors require changes to the restructuring or if the Restructure Support Agreement is changed significantly for other reasons, parties should be given an opportunity to comment or provide testimony on the impact of those changes for California ratepayers. The Commission should schedule hearings for a time frame that will coordinate with the federal bankruptcy docket, but not completely stall this Commission's review.

C. Issues to be Considered

Joint Protesters respectfully request that the Commission consider the following issues in its review of the above referenced Application, along with issues raised by other stakeholders or individual members of the Joint Protesters.

- What additional information does the Commission need to determine if the proposed transaction and resulting "change in control" is in the public interest and should be approved;

- Whether, and if so how and under what timing, will the Bankruptcy Court and Frontier’s creditors exercise control and possibly revise the terms of the restructure and ultimate reorganization of Frontier;
- Whether, and to what extent, will the federal Bankruptcy Court review include priorities and public interest analysis that overlap with the Commission’s statutory obligations under Section 854;
- Whether there are benefits to California consumers if the Commission coordinates the timing of the review of this Application with the FCC’s Rural Digital Opportunity Fund auction process;
- Whether the restructuring and reorganization will be feasible to implement and not be likely to result in a further reorganization subsequent financial hardship that may impact state operations;
- Whether, and if so how, will the change in ownership to institutional investors of a reorganized Frontier create changes in investment priorities, employee benefits, and result in investigations to sell assets that may impact state operations, including rural and low income areas in California;
- Whether, and if so how, will the commitments in the Restructure Support Agreement and the proposed Plan regarding certain milestones, analysis of a “virtual separation structure,” and business and reorganization plan reports have an impact on state operations;
- Whether, and if so how, will the restructure and reorganization produce end-user customer and wholesale customer benefits and, if so, would competition and market forces within Frontier territory require Frontier to fairly and equitably allocate benefits between ratepayers and shareholders;
- How will the proposed restructure and reorganization support stability, training, and benefits for Frontier employees;
- Whether, and if so how, will the restructure and reorganization support, or hinder, Frontier’s efforts to meet its merger commitments from A.15-03-005;
- Whether, and if so how, will the restructure and reorganization support, or hinder, Frontier’s efforts to meet its commitments from various public subsidy programs, including effective use of investment dollars in service quality improvement and broadband buildout;
- How will the proposed restructure and reorganization support Frontier’s effort to improve service quality and customer service throughout its service territory, including rural and low income areas;
- How will the proposed restructure and reorganization support Frontier’s effort to buildout fiber broadband infrastructure and offer affordable broadband services throughout its territory, including rural and low income areas.

D. Proposed Schedule

Joint Consumers respectfully suggests a schedule that will allow the Commission to provide input into the Federal Communication Commission’s investigation. Accordingly, Joint Consumers suggests the following schedule:

Applicant Proposal	Joint Protester proposal	Milestone
May 27, 2020	May 28, 2020	Application in Daily Calendar
June 26, 2020	June 29, 2020	Period for Submission of Protests Expires
July 6, 2020	July 10, 2020	Reply to Protests
July 10, 2020	July 15, 2020	Prehearing Conference
	August 7, 2020	Scoping Memo Issued
	August 17, 2020	Comments on Scoping Memo
	September 14, 2020	Applicant Testimony
	October 19, 2020	Intervenor Testimony
	November 2, 2020	Rebuttal Testimony
	November 17-19, 2020	Evidentiary Hearings
	December 11, 2020	Opening Briefs
	December 21, 2021	Reply Briefs
September 8, 2020	February 22, 2021	Proposed Decision Issued
October 8, 2020	March 25, 2021	Final Decision

IV. CONCLUSION

For the reasons discussed above, Joint Protesters urge the Commission to conduct a full and comprehensive review of the Application to ensure the proposed transaction and resulting change in control is in the public interest.

Dated: June 29, 2020

Respectfully submitted,

/S/

Christine Mailloux
The Utility Reform Network

*On behalf of CWA, Dist 9, CforAT
The Greenlining Institute, TURN*