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

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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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JOINT RESPONSE 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”)

THE PUBLIC ADVOCATES OFFICE AT THE CALIFORNIA PUBLIC UTILITIES COMMISSION (“PUBLIC ADVOCATES OFFICE”) AND

THE UTILITY REFORM NETWORK; THE COMMUNICATIONS WORKERS OF AMERICA; THE GREENLINING INSTITUTE; AND THE CENTER FOR ACCESSIBLE TECHNOLOGY (“JOINT PROTESTORS”)

TO JULY 6, 2020 RULING SETTING TELEPHONIC PREHEARING CONFERENCE AND DIRECTING PARTIES TO MEET AND CONFER

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1 **I. INTRODUCTION.**

2 As directed in Administrative Law Judge (“ALJ”) Wercinski’s July 6, 2020 Ruling Setting
3 Telephonic Prehearing Conference and Directing Parties to Meet and Confer (“Ruling”),
4 Applicants¹ initiated a meet and confer process with each of the other active parties to discuss the
5 scoping and scheduling items enumerated in the Ruling. All parties participated, including the
6 Public Advocates Office, The Utility Reform Network (“TURN”), the Communications Workers
7 of America, District 9, (“CWA”), The Greenlining Institute, and the Center for Accessible
8 Technology (“CforAT”) (collectively, “Intervenors”). In accordance with the Ruling, the parties
9 hereby submit this response, which reflects the results of the meet and confer process and provides
10 the parties’ positions on the subjects in the Ruling.

11 The meet and confer discussions were productive, and the parties were able to reach
12 agreement on most of the scoping and scheduling and narrow their differences to a limited number
13 of issues. With respect to these, the parties continue to have different positions, which are
14 summarized here and will be presented in more detail at the PHC. Nevertheless, to assist the
15 Commission’s review of the scope and schedule, the parties agreed to submit this joint response,
16 which identifies the areas of agreement and disagreement on each of the subjects in the Ruling.
17 The parties each reserve the right to further clarify or elaborate upon their positions at the Pre-
18 Hearing Conference (“PHC”).

19 **II. SUMMARY OF MEET AND CONFER EFFORTS.**

20 The meet and confer process in response to the Ruling was initiated via an email from
21 Applicants’ counsel to Intervenors on July 7, 2020.² Each party expressed interest in a conference
22 call to discuss the scope and schedule, and an initial call took place on July 13, 2020. An
23 exchange of proposals followed this call, leading to a second call on July 16, 2020. A further
24 email exchange occurred on July 17, 2020. This response describes the parties’ positions based on

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26 ¹ Applicants are: Frontier Communications Corporation; Frontier California Inc. (U 1002 C); Citizens
27 Telecommunications Company of California Inc. (U 1024 C); Frontier Communications of the Southwest
28 Inc. (U 1026 C); Frontier Communications Online and Long Distance Inc. (U 7167 C); and Frontier
Communications of America, Inc. (U 5429 C).

² While the meet and confer process related to the Ruling began on July 7, 2020, Applicants and the Public
Advocates Office have been discussing the scope and the schedule for this proceeding for several weeks.

1 those efforts, but the parties will continue to consider these topics in advance of the PHC and look
2 for ways to reach further consensus, if possible.

3 **III. PARTIES' POSITIONS ON THE SCOPE AND SCHEDULE.**

4 Following the meeting and confer efforts described above, the following areas of
5 agreement and disagreement exist between the parties. Where the parties do not agree, each
6 party's position is presented, but those aspects of this response should be attributed only to the
7 party whose position is stated. The following list tracks the organization of the Ruling, addressing
8 each issue and providing the parties' views:

9 **1. The proceeding schedule.**

10 As reflected in the initial pleadings, Applicants and Intervenors have approached the
11 schedule for this proceeding from different perspectives. The Applicants expect the Bankruptcy
12 Court to confirm its Plan of Reorganization on August 11, 2020 and are concerned with the
13 extended period Frontier will remain in Chapter 11 while the Commission's regulatory review
14 proceeding remains ongoing. The Intervenors are concerned about having sufficient time to
15 complete their review under Public Utilities Code Sections 853 and 854. However, following
16 significant meet and confer efforts, the parties are now in a position to propose a consensus
17 schedule as to most of the events in the proceeding, with the understanding that the ultimate
18 determination lies with the Commission.

19 Each of the major dates for the proceeding, including testimony, a status conference,
20 hearings and post-hearing briefing, have been agreed upon in the proposal below. The only
21 scheduling issue the parties continue to have different positions regarding the possibility of Public
22 Participation Hearings ("PPH") and whether to include an outside date by which the Commission
23 will issue a final decision. Applicants believe that PPHs are not required or necessary.
24 Intervenors would like to include and have proposed three PPHs. The substance of this
25 disagreement is set forth in the discussion of Item 5, below. However, for ease of reference, the
26 following schedule includes the three dates proposed by Intervenors.

27 The parties also note that the following schedule does not include dates for the Proposed
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1 Decision or Final Decision in this proceeding. These events were omitted from the consensus
 2 schedule with the understanding that the parties have different views on whether they should be
 3 specified. Applicants believe, for all the reasons stated in their Reply to Protests and their
 4 Application, that time is of the essence and that the target end date for this proceeding should be
 5 specified as February 15, 2020, if not resolved sooner. Applicants believe this is achievable with
 6 the agreed-upon schedule, and that a Proposed Decision in early to mid-January would be
 7 appropriate to make this timeline possible. Intervenors do not wish to specify a Proposed
 8 Decision or Final Decision date, as they prefer to defer to the Commission regarding these events.

9 With these clarifications, the consensus schedule is as follows:

Event	Date
PHC	07/24/2020
Scoping Memo	07/31/2020
Applicants' Testimony	08/04/2020
Confirmed Plan of Reorganization Filed with Commission	08/14/2020
	09/03/2020
	09/08/2020
Public Participation Hearings ³	09/09/2020
Intervenors' Testimony	09/23/2020
Applicants' Rebuttal Testimony	10/05/2020
Status Conference	10/13/2020
	10/26/2020
	10/27/2020
Hearings (up to 3 days)	10/28/2020
Opening Briefs	11/18/2020
Reply Briefs	12/10/2020

19 **2. The necessity for evidentiary hearings.**

20 The parties have agreed to reserve three days for evidentiary hearings. However, Frontier
 21 notes that it is not clear what facts, if any, will be disputed. Accordingly, the scope, character, and
 22 extent of hearings cannot be fully presented or agreed upon in this response. To that end, the
 23 parties have included a Status Conference in the schedule, which can be utilized to further refine
 24 an approach to potential hearings, including whether three days are necessary. The parties defer
 25 their views on the scope and duration of hearings until a later date, including but not limited to the

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27 ³ As noted above, and as explained below, Applicants do not support PPHs in this case. However, if PPHs
 28 are scheduled, the dates that Intervenors have identified are available and they could take place on those
 dates.

1 Status Conference, when the disputed factual issues in the case will be better understood.

2 **3. Discovery.**

3 Applicants have already responded to some initial discovery from Intervenors, and
4 Applicants will make all reasonable efforts to respond promptly to discovery requests. The parties
5 agree that, in general, data requests should have deadlines of 10 business days from the date they
6 are served, consistent with the Commission’s standard practice.⁴ However, specific circumstances
7 may make either a shorter or a longer response time reasonable. The parties will work together on
8 establishing reasonable deadlines for such responses that befit the specific questions posed and the
9 timelines implicated by the questions.

10 A significant issue regarding discovery is confidentiality, as some documents requested
11 from Applicants may be competitively sensitive or proprietary materials. In anticipation of this
12 possibility, Applicants are in the process of executing Non-Disclosure Agreements (“NDA”) with
13 two of the Intervenors. Public Advocates can receive confidential information without an NDA
14 based on the application of Public Utilities Code Section 583.

15 To ensure the efficient and timely flow of information between the parties, Applicants have
16 a specific proposal for how to handle the exchange of confidential information in discovery, which
17 would involve the adoption of a limited Protective Order. No other party has a position on this
18 proposal. However, Applicants believe this proposal is merited in light of the heightened need to
19 exchange confidential information expeditiously in this proceeding. Applicants’ proposed
20 Protective Order would have the following elements:

21 a. All confidential materials provided in discovery would be provisionally
22 held under seal as long as they comply with the specific marking requirements of General Order
23 (“G.O.”) 66-D, Section 3.2(a). Specific legal justifications and officer declarations, which would
24 otherwise be required by G.O. 66-D, Sections 3.2(b) and 3.2(c), would not be needed in
25 connection with these discovery responses.

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27 ⁴ See

28 https://docs.cpuc.ca.gov/word_pdf/report/117475.pdf#:~:text=Commission%20discovery%20practice%20generally%20does%20not%20use%20formal,a%20longer%20response%20period%20is%20acceptable%20to%20it (retrieved on July 17, 2020).

1 b. If the confidential materials provided in discovery are tendered to the
2 Commission for inclusion in the record, either through testimony, a request to accept an exhibit, or
3 any other means, Applicants will have seven business days to submit a pleading supporting the
4 confidentiality of the specific confidential items that have been presented.

5 c. The materials provided in discovery that are marked as confidential, but not
6 presented for inclusion in the record, would remain under seal without the need for the specific
7 legal justifications and declarations otherwise required by G.O. 66-D, Sections 3.2(b) and 3.2(c).

8 d. If any party believes that the materials marked as confidential should not be
9 confidential, they would retain the right to request that the items be made public. Similarly, the
10 Commission would retain ultimate discretion over what is confidential and could seek to make
11 confidentially marked documents public, after giving Applicants an opportunity to be heard.

12 If adopted, this requested Protective Order would increase the free flow of information and
13 reduce the burdens of the discovery process. Applicants understands that the parties do not
14 oppose, or have no position on, this proposal, and Frontier will be prepared to further explain this
15 proposal at the PHC.

16 **4. Testimony subject matter and timing of submission.**

17 The parties agree that the testimony in this proceeding will address the statutory standards
18 in Public Utilities Code Section 854, with the understanding that Frontier will also argue that an
19 exemption from Section 854 is merited under Public Utilities Code Section 853(b). The timing of
20 testimony is addressed by the schedule set forth in Item 1, above.

21 **5. The utility of workshops or public participation hearings and, if so, the subject
22 matters, number of days, and proposed dates.**

23 At this time, no party believes that workshops should be scheduled in this proceeding.
24 Regarding PPHs, there continues to be a disagreement between Applicants and Intervenors.
25 Applicants believe, given the technical nature of the financial restructuring and the limited nature
26 of the parent company level transfer of control---in which the existing group of public
27 shareholders is intended to be replaced by another group of public shareholders, no one of which

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1 will had a controlling interest in the post-bankruptcy company---PPHs are not likely to produce
2 meaningful input that would assist the Commission’s application of the statutory standard.
3 Applicants will address their concerns regarding PPHs in more detail at the PHC.

4 By contrast, Intervenors believe that the public should have an opportunity to provide its
5 views on the public interest factors in Public Utilities Code Section 854. Intervenors propose
6 three days of PPHs, on the dates indicated above.

7 In light of the public safety concerns surrounding COVID-19, the parties agree that if
8 PPHs take place, they should either be telephonic or facilitated through an online portal. The
9 parties also agree that if PPHs occur, they should be scheduled before Intervenors’ testimony, but
10 as soon as possible.

11 **6. The issues in scope, including a discussion of the following:**

12 The parties agree on the overall scope of the proceeding, which is to evaluate the
13 Application according to the statutory standards in Public Utilities Code Section 854, if the
14 Commission determines that Section 853 exemption should not apply. With respect to the specific
15 scope, the parties have some areas of disagreement, as set forth below.

16 **a. The applicability of Public Utilities Code Sections 851, 852, 853, and 854.**

17 Based on the Application, the parties agree that Public Utilities Code Sections 851 and 852
18 are not within the scope of the proceeding. In this case, any analysis under Section 851 is
19 subsumed within Section 854, and no issues appear to exist that implicate Section 852. This
20 proceeding concerns the application of Public Utilities Code Sections 853 and 854.

21 **b. The applicability of each subsection and subpart of Public Utilities
22 Code Section 854, including their applicability in light of Applicants’
gross annual California revenues.**

23 The parties agree that, if an exemption is not granted pursuant to Public Utilities Code
24 Section 853, the standards in Public Utilities Code Section 854 would apply. However, Frontier
25 continues to believe that an exemption under Section 853 is in the public interest. Even if a full
26 Section 853 exemption is not granted, Frontier believes that the Commission should still provide a
27 limited exemption from Section 854(b)(3), which would otherwise require a cumbersome and

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1 unnecessary report from the Attorney General regarding the impact of the transaction on
2 competition. Intervenors oppose Applicants' Section 853 exemption and believe that Section 854
3 should apply in full.

4 **c-g. Other Decisions, Resolutions and Proceedings.**

5 The applicability of Decision (D.) 15-12-005; D. 19-03-017; Resolutions T17631, T17652,
6 and T17629; Resolutions T17671 (Northeast), T17668 (Taft), T17660 (Weimar), T17613 (Lytle
7 Creek), and T17614 (Desert Shores); and Order Instituting Investigation 19-12-009, including the
8 proposed settlement in that proceeding.

9 As described above, the parties agree that Public Utilities Code Section 853 and Section
10 854 apply to this matter, but the parties differ as to the relevance of prior Commission decisions
11 and other proceedings. As reflected in their Reply to Protests and the Application, Applicants
12 believe that the scope of the proceeding should be limited to evaluating, under Sections 853 and
13 854, the proposed change in ownership of the Frontier parent company and the financial
14 restructuring contemplated by the Chapter 11 Plan of Reorganization. Intervenors believe that
15 some or all of the decisions and resolutions listed in sub-Items (c) through (g) may bear upon the
16 application of the statutory standards and are therefore relevant to the Commission's determination
17 of whether, on balance, the restructuring is in the public interest. Applicants do not believe that
18 prior Commission decisions or resolutions should be stated as part of the scope of a proceeding
19 that involves a forward-looking financial structure and an ownership change at the parent
20 company level. All parties agree that, regardless of their differences, the statutory standards in
21 Public Utilities Code Sections 853 and 854 should be used to measure the sufficiency of the
22 Application.

23 **h. The applicability of any other criteria in the determination of whether**
24 **approval of the application is in the public interest.**

25 The parties agree that no other criteria, aside from those under the applicable statutory
26 review, are applicable to the transaction contemplated by the Application.

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i. Facts regarding the issues in scope to which the parties can stipulate.

The parties have not stipulated to any facts at this time, but should the parties stipulate to any facts, they would do so in advance of hearings.

IV. CONCLUSION.

The parties appreciate the opportunity to address the scope and schedule of this proceeding in advance of the PHC. The parties look forward to participating in the PHCs and to further articulating their views on the matters expressed herein.

Executed at San Francisco, California on this 20th day of July 2020.⁵

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⁵ Pursuant to Commission Rule 1.8(d), counsel for Applicants is authorized to sign this Joint Response on behalf of the parties to Proceeding A.20-05-010.