

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



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In the Matter of the Joint Application of Frontier )  
Communications Corporation, Frontier )  
Communications of America, Inc. (U5429C), )  
Verizon California, Inc. (U1002C), Verizon Long )     Application 15-03-005  
Distance LLC (U5732C), and Newco West )     (Filed March 18, 2015)  
Holdings LLC for Approval of Transfer of )  
Control Over Verizon California, Inc. and )  
Related Approval of Transfer of Assets and )  
Certifications )

**California Emerging Technology Fund Reply to  
Frontier Response to CETF Petition to Modify Decision No. 15-12-005**

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Exhibit 17

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**Frontier Response to CETF Petition to Modify Decision No. 15-12-005**

Pursuant to a Ruling from the Assigned Administrative Law Judge dated June 29, 2018 and Rule 16.4(g) of the Commission's Rules of Practice and Procedure, the California Emerging Technology Fund (“CETF”) files this Reply to the Frontier Communications Corporation’s Response to the CETF Petition to Modify D. 15-12-005, filed on June 28, 2018, (“Frontier Response”) in the above referenced docket.

**I. Frontier Has Failed to Comply with the Obligations of the MOU.**

CETF and the Commission relied on the explicit commitments of Frontier to provide tangible public benefits for both broadband deployment and adoption as a specific condition of the transfer of control of certain landline systems of Verizon California, Inc. (“Verizon”) to Frontier. These public benefits achieved by various consumer groups including CETF were a significant consideration in the approval of the Frontier-Verizon transaction. Thus, the overriding obligation by Frontier is to fulfill these obligations in full by timely actions and in good faith action to achieve the bargained-for results. Despite Frontier’s claim it is in full compliance with the entire CETF Frontier Memorandum of Understanding (“MOU”), the facts are clear that Frontier has been out of compliance with its MOU obligations for more than a year, and has been notified at the most senior levels on multiple occasions by CETF leadership. As set forth in CETF’s Petition to Modify Decision No. 15-12-005 to Compel Frontier Communications to Comply with Memoranda of Understanding (“CETF Petition”), far from complying with its

MOU obligations, Frontier has stalled implementation of 50 public location identification and construction for access by low-income persons, given vague infrastructure plans that are so high level as to be of no planning use to CETF and other broadband stakeholders, and engaged in a year of discussions over an improved affordable offer but then attempted to get CETF to agree to give up all other MOU commitments in order to offer the revised plan to low-income families. Instead of embracing its MOU obligations, Frontier executives now are attempting to evade them as the facts show.

In summary, Frontier has failed to provide a detailed infrastructure plan for all their public benefit deployment obligations. Frontier failed to timely comply with its 50 public location obligation to identify and construct them. Frontier's original bundled affordable offer with Lifeline eligibility is non-viable in the marketplace delivering only 4.5% of the mutually-agreed upon goal of 200,000 low-income households, an oft-cited MOU goal that Frontier also disclaims. Frontier claims to be a good citizen and offer three affordable plans for low-income households, but not a single one of the plans appear on its public website.<sup>1</sup>

CETF is grateful for the opportunity to reply to Frontier's Response. CETF hereby provides specific facts of how Frontier has failed to comply with the MOU, contrary to Frontier's false assertions that it has complied fully with the MOU.

**A. Frontier Has Failed to Provide a Detailed Infrastructure Plan for Its Public Benefit Broadband Deployment Obligations.**

Under Covenant 11 of the MOU on pages 5-6, Frontier was obligated to present “a framework of a plan no later than October 31, 2016 to upgrade the 77,402 locations, augment the broadband speeds for 250,000 households, and deploy broadband to an additional 100,000 households. A more detailed plan will be shared on or before December 1, 2016.” Contrary to the assertions by Frontier on pages 16-18 of its Response, CETF has not received a detailed infrastructure plan to date. What little Frontier shared with CETF is so high level as to be useless to perform any planning by CETF, Regional Broadband Consortia, and other stakeholders such as local agencies, to determine how to get the AB1665 goal of 98% deployment of broadband in each region of the state.

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<sup>1</sup> <https://internet.frontier.com/plans-pricing.html>

Under Covenant 10 of the MOU on page 5, Frontier was obligated to meet with the Regional Consortia, elected officials, and other regional and community stakeholders in the six Northeast Counties<sup>2</sup> no later than July 1, 2016 and present the framework of a plan to reach as many of the unserved and underserved households of the 6 counties. This plan has not been received. See Exhibit 12, where CETF CEO McPeak states in a Memorandum to Jacqueline Kinney of Frontier, dated March 5, 2018, “As we have communicated on August 9, 2017 and February 12, 2018, we consider Frontier to be out of compliance on the MOU, beginning with Frontier’s failure to provide a detailed plan of deployment by December 1, 2016. As I said then and reiterate, CETF will not take a position on specific projects proposed by Frontier for CASF funding until we have a reasonable detailed plan for all that you are doing in order to determine relative priorities and compliance. We have also underscored that the highest deployment priority for CETF to work in collaboration with Frontier is in the Northeast Region and we are disappointed in the continuous delays by Frontier on moving forward.” Thus, this infrastructure plan obligation has not been met and there is no way to determine which of the infrastructure deployment public benefits are being achieved.

**B. Frontier Has Failed to Comply with the Obligation to Provide Fifty Public Locations for Low-Income Areas.**

Frontier also has failed to fully comply with Covenants 9 and 9a. on page 5 of the Memorandum of Understanding<sup>3</sup> which required it to identify by April 2017 50 public locations in low-income areas to install broadband so users may access the Internet. At these 50 locations, 1,250 concurrent users should be able to access the internet as speeds of no less than 10 Mbps down and 1 Mbps up across these 50 public locations. The purpose of this section is made clear at the beginning of Covenant 9 – to bring badly needed broadband to very rural areas where network builds are costly and there is no FCC Very High Cost Connect America Fund support. Frontier was to consult with CBO partners to evaluate whether public locations could also be useful in low-income urban neighborhoods. As set forth in CETF’s Petition, this identification and consultation has not been completed. Further, the fact that Frontier was able to construct only 10 public locations by the January 2017 deadline is not disputed, but it was clearly contemplated that all 50 should be constructed as soon as possible, given the purpose of the

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<sup>2</sup> These counties are Modoc, Shasta, Lassen, Plumas, Siskiyou and Tehama. See MOU at page 4.

<sup>3</sup> A copy of the MOU is found at Exhibit 1, Attachment A, to CETF’s Petition.

public locations to bring broadband to those with no access to broadband at all. As noted at CETF's Petition at page 6, only 17 of the 50 public locations have been constructed, and Frontier failed to identify all 50 locations by the MOU deadline of April 2017. Thus, Frontier is out of compliance with the MOU on this covenant.

**C. Frontier Has Failed to Comply with Broadband Adoption Obligations, Including a Timely Plan, a Plan that Will Achieve the Mutual Goal of 200,000 Subscribed Low-Income Households, and Providing \$3 Million to Community-Based Organizations (CBOs) and 50,000 Internet-Enabled Devices for Low-Income Families.**

Under Covenant 19, Frontier contractually was bound to develop a mutually-agreeable plan to CETF (after consultation with community based organizations (CBOs) no later than June 30, 2016) to achieve broadband adoption by 200,000 low-income households with the aspirational goal being no longer than three years. This plan has not been completed. To be clear, CETF expected that this plan would include an enunciated workable strategy to achieve the mutually-agreed upon broadband adoption goal of 200,000 households, with a viable offer, a device program, and a communications plan with advertising and other communications strategies to the target low-income communities. This has never occurred, and, not unexpectedly, the results from the Frontier affordable offer program are dismal, standing at a mere 4.5% of the goal. Given that both CETF and the Commission relied upon the good faith of Frontier that it was sincere about attempting to achieve 200,000 adoptions, when it became apparent that the corporation was not going to come near that goal, it was incumbent upon Frontier to revise its approach and work with CETF and CBO grantees to develop a mutually-agreed upon viable plan to strive to accomplish the public benefit commitment.

Further, in the MOU under Covenants 20, 21, and 22 on pages 7-8, Frontier agreed to fund the purchase of 50,000 Web Wi-Fi capable tablets, each of which will be Wi-Fi capable to connect to a public internet service or private Wi-Fi and support low-income broadband service, as part of the adoption initiative, over a two year period. It was clear in Covenant 20 that these devices would be processed and distributed by CETF's CBO partners. Further, it is clear in Covenants 21 and 22, that "the web capable devices will be available to all eligible households within the Frontier service areas *but may be distributed to both Frontier and non-Frontier customers who subscribe to broadband service at home.* . . . Under Covenant 24 on pages 8-9,

Frontier also agreed to fund \$3 million for grants to CBOs to achieve 50,000 adoptions, of which only \$1 million has been provided to date.

CETF attempted to work in good faith with Frontier to achieve what Covenant 19 of the MOU clearly states was the mutual goal of 200,000 adoptions<sup>4</sup> in the three-year timeframe. Frontier's dogged insistence to keep offering its unsuccessful Lifeline eligibility plan through June 30, 2019 does not excuse it from working in good faith with CETF and our CBO partners to reach the mutually-agreed upon 200,000 household goal. Further, the fact that the 200,000 goal was "aspirational"<sup>5</sup> does not excuse Frontier from making good faith business efforts to achieve the stated goal, which appears half a dozen times in the MOU. The Frontier affordable low-income plan with the mandated Lifeline eligibility (which it calls "Frontier Affordable Broadband") failed to approach a reasonable percentage of the goal, enrolling only 9,173 subscribers, representing only 4.5% of the goal. Frontier also touts its "FCC Simply Broadband" offer, which provides less than \$10.00 discount off the lowest regular retail Internet rate. At \$19.99, this FCC Simply Broadband offer is higher than other affordable offers from competitors and, thus, is not attractive to consumers. Frontier has not even described the Simply Broadband to the CBOs or promoted the FCC Simply Broadband plan through marketing programs. In its Response, Frontier touts how much it cares about low-income consumers noting, it will now offer three low-income offers.<sup>6</sup> However, a search of the Frontier price plans on its public website<sup>7</sup> does not show any of these three low-income offers, and so low-income consumers have no way to know they even exist.

After the CETF Petition was filed on May 30, 2018, Frontier finally introduced a new Frontier "Fundamental Internet" offer with no Lifeline eligibility requirement. This long promised new plan took more than a year to introduce. While the Fundamental Internet offer removes the Lifeline eligibility and substitutes U.S. Supplemental Nutrition Assistance Program (CalFresh), Supplemental Security Income (SSI), Medi-Cal, and Bureau of Indian Affairs Financial Assistance and Social Services (BIA FASS) for eligibility criteria, it *increases* the

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<sup>4</sup> In fact the MOU mentions the mutually agreed upon 200,000 household goal in multiple places, emphasizing that Frontier well knew and accepted its goal and commitment to the low-income households of the state.

<sup>5</sup> Frontier Response, at footnote 18, claims the 200,000 target was aspirational only and that it has no duty to achieve any specific number of low-income household adoptions.

<sup>6</sup> Frontier Response, at pp. 14-15.

<sup>7</sup> See for example <https://go.frontier.com/internet>

monthly rate from \$13.99 to \$14.99 and imposes a new \$5/month router fee.<sup>8</sup> This \$6.00 monthly rate increase is significant for a low-income household. Further as noted in the CETF Petition, Frontier attempted to pressure CETF to sign an agreement to waive any remaining MOU obligations in exchange for introducing this revised affordable plan, an attempt CETF rebuffed. In a new development, after the CETF Petition was filed, in a letter dated June 30, 2018 but received July 2, 2018, from Frontier’s Deborah Klava to CETF’s Susan Walters, Frontier stated its intention “to provide \$60 [to CBOs] for any new adoption for customers who subscribe to: (i) Frontier Affordable Broadband Service, (ii) Frontier Fundamental [Internet] service, or (iii) another provider’s low-income service in the Frontier footprint.” However, the letter also states that, “Finally, with respect to wi-fi [sic] capable devices, effective June 30, 2018, Frontier intends to provide a free device for new adoptions for Frontier customers subscribing to Frontier Affordable Broadband or Frontier Fundamental service *but will no longer provide a free device to customers of other providers.*” (See Exhibit 17, attached hereto, para. 3 (emphasis added).)

Frontier’s Response<sup>9</sup> and its letter to CETF dated June 30, 2018 (Exhibit 17) makes it clear that after June 30, 2018, Frontier is terminating its device component program for CBO-initiated sign-ups for low-income households that sign-up for affordable broadband offers *provided by other providers in the Frontier footprint.* CETF strenuously objects. This will mean that a CBO will need to steer a household without an existing computing device to a Frontier affordable offer, which is neither technology neutral or nondiscriminatory on the part of the CBO. As background, CETF requires a CBO receiving an adoption grant to provide education and information about *all* affordable broadband offers available to low-income households in a particular geographic area, so the CBO can help consumers choose the right plan for their individual needs. CBOs are *not* corporate sales representatives of Frontier or other Internet service providers. CETF, on principle, does not see the offer under this restriction as a public benefit. In fact, the Commission has spoken on this very issue in Decision No. (D.) 18-06-032, issued June 21, 2018, the Phase I decision on the California Advanced Services Fund rulemaking for the new Broadband Adoption program. In the Broadband Adoption program, the applicants

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<sup>8</sup> <https://frontier.com/offer/fundamental-internet> CETF wants to make clear that this offer does not appear to be linked to the Frontier website, in a way that the public may easily find it. If one does not have the specific link to this site, it is not findable by a consumer.

<sup>9</sup> Frontier Response, at footnote 39 at p. 15.



may only be non-profit organizations,<sup>10</sup> and shall not favor one broadband provider over another in its work with unconnected broadband consumers. See Conclusion of Law 10, at page 40, in D.18-06-032:

It is reasonable for Appendix 1 to address Broadband Adoption Account issues as follows: Include language to require applicants and projects to be technology neutral and not favor one technology or broadband provider over another.

CETF finds it disappointing that Frontier will not voluntarily extend its free device program on a non-discriminatory basis if it has decided to extend the CBO program until June 30, 2019 for both the Affordable Broadband and Fundamental Internet affordable plans. Further, under the non-discrimination and technology neutral policy enunciated in the CASF Phase I decision, the Commission should require Frontier to allow CBOs to offer a device to any low-income household in a Frontier service area, regardless of whether the household subscribes to Frontier or another competing Internet service provider. Finally, the proposed extension by Frontier to June 30, 2019 is inadequate to reach the target low-income households and needs to be extended another year to June 30, 2020 — the full 2-year period originally envisioned in the MOU.

## **II. CETF Reasonably Executed CBO Agreements for the Frontier Program.**

Frontier claims that CETF is requesting it be paid the balance of the \$3 million and deliver the remainder of the 50,000 devices because CETF has encumbered these items through grant agreements with CBOs.<sup>11</sup> This greatly overstates what CETF said at page 28 of its Petition. CETF in fact has entered agreements with CBOs and other non-profit organizations such as school districts to continue the Frontier adoption program under the MOU. This action was reasonable given that Frontier kept promising to bring forward a new affordable offer that delinked eligibility from the Lifeline program, and CETF reasonably assumed that Frontier would continue its CBO program for two years to continue to work towards the 200,000 household goal contained in the MOU. Once Frontier finally made clear in recent months it was going to offer a revised affordable plan delinked from Lifeline eligibility, but would not allow the CBO's to offer it to eligible families unless CETF agreed to waive the rest of the MOU

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<sup>10</sup> D.18-06-032, in CASF Rulemaking No. 12-10-012, at page 17.

<sup>11</sup> Frontier Response, at 12.

commitments, CETF realized that Frontier was intending to end all MOU obligations on June 30, 2018 which it had never explicitly made clear to CETF representatives. Thus, in its Petition, CETF was making the point that CETF is at risk for the failure of Frontier to perform its MOU obligations, not for CETF's benefit but for the *CBOs'* operations and workload planning. These CBOs are eager and ready to perform the broadband adoption work in the communities for low-income families. As noted in the Petition, CETF administers the grant funds to CBOs for their work in achieving broadband adoptions and distributing the 50,000 devices without retaining any of the Frontier money. CETF also manages at no cost to Frontier \$50,000 to reimburse CBOs for travel and other expenses and to run learning community workshops for the CBO grantees pursuant to the Implementation Agreement. Otherwise, CETF has footed the bill for its participation in the Frontier-Verizon docket, overseeing the MOU implementation, and this Petition for compliance with the MOU.

To protect itself given Frontier's cagey responses and over a year delay in bringing forward the new affordable offer, CETF did include new language in the CBO grant agreements to provide that should Frontier not allow the CBO program to continue, CETF could terminate the agreement with a CBO. This does not exhibit any "chicanery" by CETF as alleged by Frontier,<sup>12</sup> but prudent grant management practices.

The 50,000 adoptions is a remarkable milestone and commitment to the public good by the CBOs and school districts because the funding for grants provided by Frontier is quite limited even when accompanied by computing devices.<sup>13</sup> Further, Frontier should have booked its original public benefit obligations on its Balance Sheet and should not be allowed to game the Commission and public process for market advantage now by escaping its original public benefit obligations.

### **III. The Petition Relies on the Decision's Specific Direction to Return to the Commission Should Frontier or Verizon Not Perform Their Obligations.**

The Commission should disregard Frontier's arguments that CETF's Petition relies on extra-record matters and fails to identify any material changes in facts that undermine a premise

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<sup>12</sup> Frontier Response, at 13.

<sup>13</sup> CETF's experience is it costs \$250 to obtain a broadband adoption. In the MOU, Frontier agreed to fund only \$60 per adoption.

of the decision.<sup>14</sup> CETF's Petition is well supported by facts of MOU noncompliance that occurred after the record was closed in A.15-03005. Further, the Frontier Verizon Decision itself directs parties to settlements and MOUs approved therein to come back to the Commission should there be noncompliance. (See D.15-12-005, at pp. 71, 74-75.) Thus, Frontier's argument fails to make sense in the context of compliance with an MOU that specifically contemplates actions by the applicants in a post-decision timeframe.

#### **IV. CETF's Petition to Modify Is Timely Filed under D.15-12-005.**

Frontier argues that CETF's Petition was not timely brought within one year of the Decision and thus should be dismissed as a procedural matter.<sup>15</sup> This argument should be rejected. In D.15-12-005, the Commission stated that, "Any party to the Settlement or an MOU may, at any time during the duration of the Settlement or the MOU, as the case may be, apply to this Commission for an order directing Frontier to perform one or more agreements contained in the Settlement or the MOU."<sup>16</sup> Thus it is appropriate for CETF to have filed its petition to modify the underlying decision in compliance with the Commission's own directions in this docket.

Frontier attempts to cast aspersions on CETF's efforts to obtain the MOU's commitments on behalf of low-income consumers, claiming CETF is trying to "rewrite the MOU" and engage in "chicanery." CETF is the only non-profit organization in California whose goal is bridging the Digital Divide in California. CETF went to great effort and expense to secure public benefits from the Frontier Verizon corporate transaction for consumers. CETF's single goal in this proceeding is to ensure that the public benefits promised by Frontier are actually delivered to consumers as promised, otherwise applicants could promise the world to the Commission and then fail to deliver the promised benefits to the detriments of consumers. The Commission should keep Frontier's feet to the fire to ensure it delivers every public benefit promised, instead of ducking and weaving.

CETF attempted to obtain compliance and resolve this matter for over a year with Frontier senior executives. For months, CETF supported Frontier's effort to develop and release

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<sup>14</sup> Frontier Response, at 19.

<sup>15</sup> Frontier Response, at 20.

<sup>16</sup> D.15-12-005, at pp. 71, 74-75.

a revised viable affordable offer for low-income households, and this is why extending the timetable of the CBO and device program makes sense to reach the mutually-agreed upon 200,000 household goal stated throughout the MOU multiple times. CETF went to extra efforts to alert Frontier's corporate executives at headquarters that the MOU was not being honored and to reach a mutually-agreeable compromise. If Frontier spent as much senior executive effort on good faith implementation of the MOU, CETF would not have had to file the Petition and expend significant resources to request compliance from this Commission.

## **V. Conclusion**

It really comes down to this: Either Frontier was sincere in committing to what is in the CETF MOU, including to achieve 200,000 broadband adoptions, upgrade its broadband infrastructure per its commitments, or it wasn't. If Frontier was sincere, it should have done a course correction long before running out the time clock on the MOU. If it was not sincere, the Commission should order the public benefits that were supposed to occur under the MOU, ensure monitoring and reporting, and assess fines to Frontier for its intransigence.

Wherefore, for all the reasons stated above, CETF requests the Commission grant its Petition to Modify Decision No. 15-12-005 to Compel Frontier Communications to Comply with Memoranda of Understanding.

Respectfully submitted,

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## **LIST OF EXHIBITS**

Exhibit 17 Letter from Deborah Klava, Frontier Communications, to Susan Walters, CETF, dated June 30, 2018.