

Decision **PROPOSED DECISION OF ALJ CLARK** (Mailed 5/10/2013)

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

In the Matter of the Application of Frontier Communications Corporation, and Citizens Telecommunications Company of California Inc. (U1024C), and Frontier Communications West Coast Inc. (U1020C) to Authorize the Merger of Frontier Communications West Coast Inc. (U1020C) into Citizens Telecommunications Company of California Inc. (U1024C).

Application 12-12-019  
(Filed December 18, 2012)

**DECISION ADOPTING SETTLEMENT AND GRANTING  
APPLICATION TO CONSOLIDATE AND MERGE**

**Summary**

Pursuant to Public Utilities Code Section 854, this decision authorizes the consolidation of two Incumbent Local Exchange Carriers (ILECs) owned by Frontier Communications Corporation (Frontier) by merging the smaller ILEC, Frontier Communications West Coast Inc., (Frontier-West Coast) into the larger ILEC, Citizens Telecommunications Company of California Inc. dba Frontier Communications of California (Frontier-California). This proceeding is closed.

**1. Description of the Parties and Transaction**

Frontier is the ultimate parent company of Frontier-California and Frontier-West Coast. Frontier is a Delaware corporation, with its principal place of business at Three High Ridge Park, Stamford, Connecticut 06905.

Frontier-California and Frontier-West Coast are corporations organized under the laws of the State of California and authorized to do business in California.

Frontier-California operates as a mid-sized Incumbent Local Exchange Carriers (ILEC) in Elk Grove, serving approximately 113,300 access lines in central, northern and southern California. Frontier-California operates under the Commission's Uniform Regulatory Framework (URF), as outlined in Commission Decision (D.) 06-08-030 and other decisions in Rulemaking (R.) 05-04-005. The Frontier-California service territory is open to competition.

Frontier-West Coast operates as an ILEC, serving approximately 9,350 access lines in Del Norte and Humboldt counties. Frontier-West Coast operates under a rate-of-return regulatory structure and its service area is not open for competition. Under the proposal, Frontier-West Coast would be regulated under URF.

Frontier, Frontier-California and Frontier-West Coast (or Joint Applicants) state in their Application that the purpose of consolidating the companies is to:

- a) Increase operational efficiencies and enable the companies to operate under a consistent regulatory framework.
- b) Create advantages through these efficiencies for the companies, for their customers and for the Commission's regulation of these companies.
- c) Open the merged companies' service areas to competitive local exchange carrier (CLEC) competition, which the Joint Applicants assert is advantageous for Frontier's customers and communities.

With the granting of this application, the service territory of Frontier-West Coast will be incorporated into the service territory of Frontier-California and both companies will operate under URF and be subject to competition.

The shareholders and management of Frontier-California and Frontier-West Coast have authorized the proposed merger transaction.

Following approval by the Commission, the Plan of Merger and other supporting documents will be filed with the California Secretary of State.

Once consolidated, the new Frontier-California will serve approximately 123,950 access lines in 50 exchanges covering 8,120 square miles. Following the merger, Frontier-California will continue to be regulated as an URF ILEC. Under URF, the combined entity will adhere to URF requirements and guidelines. Joint Applicants will initially integrate Frontier-West Coast into Frontier-California's tariff and price list. Frontier-California will complete the tariff and price list 120 days after the merger is effective.

### **3. Financial Qualifications and Technical Expertise**

Pursuant to Pub. Util. Code § 852,<sup>1</sup> no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility organized or existing under the laws of this state, without prior Commission authorization. In addition, § 854 requires Commission authorization before a company may "merge, acquire, or control any public utility organized and doing business in this state." The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and take such action, as a condition of the transfer, as the public interest may require.<sup>2</sup>

#### **3.1. Financial Qualifications**

Frontier's consolidated financial statements are contained in Exhibit 4 to the Joint Application. Financial statements of Frontier-California, and

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<sup>1</sup> All code references are to the Public Utilities Code, unless otherwise stated.

<sup>2</sup> See, *San Jose Water Co.* 10 CRC 56, 63 (May 10, 1916).

Frontier-West Coast are contained in Exhibit 5 to the Joint Application. These documents show that Joint Applicants meet the Commission's financial standards applicable to parties seeking control of facilities-based carriers.

### **3.2. Technical Qualifications**

Joint Applicants assert that Frontier currently owns ILEC and other telecommunications subsidiaries serving telephone access lines in 27 states. Joint Applicants assert that Frontier has the expertise, experience and personnel resources to provide a full range of excellent quality telecommunications services to all of its affiliates' customers.

Joint Applicants assert that Frontier's California subsidiaries have been providing telecommunications services for more than 75 years, that these entities have a positive history and strong reputation in the telecommunications industry for providing state of the art telecommunications service in rural communities, and that Frontier-California operates 44 exchanges throughout California covering 7,902 square miles, and serving 113,300 access lines.

Joint Applicants assert that Frontier-West Coast operates six exchanges in Del Norte and Humboldt counties covering 218 square miles and serving 9,350 access lines.

Joint Applicants assert that they anticipate that they would continue to rely upon the local operational and management staff of Frontier-California and Frontier-West Coast as augmented by personnel and resources of its other Frontier affiliates to manage the merged companies following the consummation of the proposed merger transaction.

In this case both the company being acquired and the acquiring company hold CPCNs in California. The acquiring company, Frontier-California submitted significant information relative to the technical expertise of both

companies in a filing in compliance with a March 20, 2013 ruling of the assigned Administrative Law Judge (ALJ). Joint Applicants represent that no persons associated with or employed by Joint Applicants as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order. Nothing before us contradicts that assertion.

#### **4. Discussion**

The Application was noticed in the Commission's Daily Calendar on December 27, 2012. On January 10, 2013, Resolution ALJ 176-3307 preliminarily categorized the Application as rate-setting.

Division of Ratepayer Advocates (DRA) filed its Protest of Application (A.) 12-12-019 on January 28, 2013. The protest filed by DRA focused on insuring that customers continue to receive a high degree of service quality, in particular, in the areas of installation intervals and customer complaints, in addition to other areas DRA was continuing to investigate and discuss with Frontier.

The Joint Applicants filed a response to DRA's protest on February 7, 2013. The response addressed the concerns raised in the protest.

Frontier-California, Frontier-West Coast and DRA held several meetings to discuss DRA's concerns and to discuss settlement language that would address these concerns.

A formal Settlement Conference was noticed for February 26, 2013 with all interested Parties invited to participate. During the conference on February 26, 2013, DRA and the Joint Applicants agreed to terms of a settlement

and to move forward with finalizing a Joint Settlement Agreement. No other party was present at the conference.

Joint Applicants received approval from the Commission's Public Advisors office for a customer notice, included as Exhibit A, regarding the proposed merger. Joint Applicants sent the customer notice to all Frontier-West Coast customers in March 2013.

Joint Applicants sent a notice, approved by DRA, on March 4, 2013 to all parties included on the service lists in the Service Quality (Rulemaking (R.) 11-12-001) and High Cost Fund B (R. 09-06-019) dockets regarding Joint Applicants' merger application, describing that the merger Application will seek a finding that the companies being merged will be part of Frontier-California's service area open to competition.

Joint Applicants and DRA reached agreement on all matters reflected in their Joint Motion for Adoption of the Settlement and in the accompanying Settlement Agreement.

#### **4.1. The Settlement Agreement**

This decision adopts a Settlement Agreement negotiated between the DRA and Joint Applicants, the only Parties to this proceeding. The Settlement Agreement is appended to this decision as Attachment A. Under the Settlement Agreement, the Parties agreed that:

- a) Frontier-California will continue to participate in the High Cost Fund-B program on a stand-alone basis, but the territory of Frontier-West Coast will not be included in the High Cost Fund B claims process until the Commission concludes its review of the B-Fund as ordered in Decision (D.) 07-09-020, specifically the resolution of the remaining issues contained in Ordering Paragraph 13. If the High Cost Fund-B docket (R.06-06-028, R. 09-06-019) remains open upon

conclusion of the completed review of the B-Fund, Frontier-West Coast will be allowed to participate in the B-Fund claims process. Notwithstanding the foregoing, Frontier-West Coast will be allowed to participate in a trial reverse auction and/or permanent reverse auction ordered by the Commission prior to conclusion of the review as ordered in D. 07-09-020.

- b) Frontier-California, Frontier-West Coast and DRA agreed on the content of a written notice and sent it to all customers in March 2013. On March 4, 2013, Frontier-California and Frontier-West Coast also sent a notice to all parties included on the service lists in the Service Quality (R. 11-12-001) and High Cost Fund B (R.09-06-019) dockets regarding Frontier's merger application. Frontier, Frontier-California, Frontier-West Coast and DRA agree that this notice resolves any requirement regarding notifying carriers of Frontier-California's expanded competitive territory following the merger.
- c) The basic primary residential rate for Frontier-West Coast will be capped at the rate in effect on the date of the Commission's order approving the merger, and will remain capped at that rate for 12 months from the date of the Commission's order approving the merger. The basic primary residential rate for Frontier-West Coast will be capped for an additional 12 months at the existing primary residential rate for Frontier-California at the time of the Commission's order approving the merger. Following approval of the proposed transaction by the Commission, Caller ID, call waiting, single line business, directory assistance, non-published listings and inside wire maintenance plan rates for Frontier-West Coast will be capped for 12 months at their current levels as of the date of the Commission's order approving the merger. Thereafter, Frontier-West Coast will be subject to applicable Commission orders governing URF companies.

d.) Following the merger, Frontier-West Coast will be subject to the detariffing option and provisions per D.07-09-018 and shall retain a separate local tariff until a Tier II Advice Letter to detariff is filed. At the time of detariffing, Frontier-West Coast will merge its tariffed services into Frontier-California's local exchange tariff. Frontier and DRA request that the Commission's decision approving the proposed merger transaction include a finding that Frontier and the Merged Affiliate shall retain two separate local tariffs until a Tier II Advice Letter to detariff the Frontier-West Coast territory is filed.

Following the approved date of the merger, the Merged Affiliate will continue to comply with General Order 133-C reporting requirements for small ILECs, which includes the average installation intervals, for two years.

## **5. Standard of Review**

Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that the settlement must be reasonable in light of the whole record, consistent with the law, and in the public interest for the Commission to approve it.

### **5.1. Reasonableness in Light of the Whole Record**

In 2008 the Commission approved the merger of three Frontier rate-of-return regulated ILECs into Frontier-California, which became effective January 1, 2009. The approval of A.08-02-014 allowed these merged properties to operate in the URF environment since they became part of the larger Frontier-California URF provider. Nothing in the record of this proceeding reflects the need to resolve this application differently than A.08-02-014. We therefore find that the Settlement Agreement is reasonable in light of the whole record.

## **5.2. Consistent with Law**

The Settlement Agreement is also consistent with applicable law and in the public interest. In 1997, in implementing competition for local exchange service, the Commission stated:

Pursuant to both state and federal legislative mandates, this Commission has undertaken a comprehensive program to institute competition in the local exchange telecommunications market throughout California. Assembly Bill 3606 (Ch. 1260, Stats. 1994) expresses the California Legislature's intent to open all telecommunications markets to competition (D.97-09-115, 75 CPUC 2d 722, at 725.)

The Settlement Agreement will enhance competition in California because it opens the territory of Frontier-West Coast to competition. Therefore, we find that the proposed merger and the Settlement Agreement is consistent with state and federal mandates.

## **5.3. In the Public Interest**

Under the Settlement Agreement, Frontier-California will be the serving ILEC entity. Frontier-California is currently regulated under the Uniform Regulatory Network. As a result of the merger, the smaller ILEC will become open to CLEC competition, which is advantageous to the customers and communities being served. Also, the merger should allow the consolidated companies to increase operational efficiencies and enable the companies to operate under a consistent regulatory framework. The efficiencies should create advantages for the merged company and its customers. Under the Settlement Agreement, the basic primary residential rate for Frontier-West Coast will be capped at the rate in effect on the date of the Commission's order approving the merger, and will remain capped at that rate for 12 months from the date of the Commission's order approving the merger. The basic primary residential rate

for Frontier-West Coast will be capped for an additional 12 months at the existing primary residential rate for Frontier-California at the time of the Commission's order approving the merger. Following approval of the proposed transaction by the Commission, Caller ID, call waiting, single line business, directory assistance, non-published listings and inside wire maintenance plan rates for Frontier-West Coast will be capped for 12 months at their current levels as of the date of the Commission's order approving the merger. Thereafter, the Merged Affiliates will be subject to applicable Commission orders governing service rate caps for URF companies. We believe the Settlement Agreement reflects a reasonable compromise on the issues raised by the Parties and offers a certain level of customer rate protection. Accordingly, we find that the Settlement Agreement is in the public interest and should be adopted.

#### **6. California Environmental Quality Act (CEQA)**

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. In this instance, because the proposed merger transaction involves only an indirect change in ownership of stock in Frontier-California and Frontier-West Coast, the transaction does not constitute a "project" within the meaning of CEQA. Also, it can be seen with certainty that there is no possibility that the proposed activity in question may have a significant effect on the environment.<sup>3</sup> As a result, CEQA does not apply to this Application.

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<sup>3</sup> CEQA Guideline § 1506(b)(3).

## **7. Categorization and Need for Hearing**

In Resolution ALJ 176-3307, dated January 10, 2013, the Commission preliminarily categorized this proceeding as Ratesetting, and preliminarily determined that hearings were not necessary. We affirm this finding.

## **8. Comments on Proposed Decision**

No protests, other than that which was filed by DRA and resolved by the settlement, were filed in this proceeding. The parties have stipulated to reducing the period for public review and comment of this proposed decision to five days. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(b) of the Commission's Rules of Practice and Procedure (Rules), the otherwise applicable 30-day period for public review and comment is reduced to five days.

Comments were filed by DRA, Frontier Communications West Coast Inc., and Citizens Telecommunications Company of California Inc., dba Frontier Communications of California.

## **9. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Richard W. Clark is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Frontier-California is a mid-sized ILEC regulated under the Commission's URF, as outlined in D.06-08-030 and other decisions in R.05-04-005.
2. Frontier-West Coast currently operates under a rate-of-return regulatory structure.
3. Joint Applicants request that the Commission issue an order pursuant to § 854, approving the merger of Frontier-West Coast into Frontier-California.
4. DRA filed its Protest of A.12-12-019 on January 28, 2013. The protest filed by DRA focused on insuring that customers continue to receive a high degree of

service quality, in particular, in the areas of installation intervals and customer complaints, in addition to other areas they were continuing to investigate and discuss with Frontier.

5. A Settlement Agreement was negotiated between the DRA and Joint Applicants, the only Parties to this proceeding. The Settlement Agreement is appended to this decision as Attachment A.

6. The Settlement Agreement provides:

- a) Frontier-California will continue to participate in the High Cost Fund-B program on a stand-alone basis, but the territory of Frontier-West Coast will not be included in the High Cost Fund B claims process until the Commission concludes its review of the B-Fund as ordered in D.07-09-020, specifically the resolution of the remaining issues contained in Ordering Paragraph 13. If the High Cost Fund-B docket (R.06-06-028, R.09-06-019) remains open upon conclusion of the completed review of the B-Fund, Frontier-West Coast will be allowed to participate in the B-Fund claims process. Notwithstanding the foregoing, Frontier-West Coast will be allowed to participate in a trial reverse auction and/or permanent reverse auction ordered by the Commission prior to conclusion of the review as ordered in D.07-09-020.
- b) The basic primary residential rate for Frontier-West Coast will be capped at the rate in effect on the date of the Commission's order approving the merger, and will remain capped at that rate for 12 months from the date of the Commission's order approving the merger.
- c) The basic primary residential rate for Frontier-West Coast will be capped for an additional 12 months at the existing primary residential rate for Frontier-California at the time of the Commission's order approving the merger.

- d) Caller ID, call waiting, single line business, directory assistance, non-published listings and inside wire maintenance plan rates for Frontier-West Coast will be capped for 12 months at their current levels as of the date of the Commission's order approving the merger. Thereafter, Frontier-West Coast will be subject to applicable Commission orders governing URF companies.
- e) Frontier-West Coast will be subject to the detariffing option and provisions per D.07-09-018 and will retain a separate local tariff until a Tier II Advice Letter to detariff is filed.
- f) At the time of detariffing, Frontier-West Coast will merge its tariffed services into Frontier-California's local exchange tariff.
- g) Frontier-California and Frontier-West Coast shall retain two separate local tariffs until a Tier II Advice Letter to detariff the Frontier-West Coast territory is filed.
- h) For two years following the approved date of the merger, the Frontier-West Coast will continue to comply with General Order 133-C reporting requirements for small ILECs, which includes the average installation intervals.

7. Frontier-California will be the surviving company and will continue to serve the same service areas previously served by Frontier-California and Frontier-West Coast.

8. Frontier-West Coast is a small rate-of-return ILEC and the Commission has not authorized competition in its service areas. As such, Frontier-West Coast is restricted in its ability to offer bundled services at a discount, and to provide extended special promotions. It also lacks the pricing flexibility of mid-sized ILECs to meet the demands of the market.

9. The combined entity of Frontier-California and Frontier-West Coast Should be able to offer consistent and timely products and services to all of its customers in a more efficient and competitive manner. Also, both companies will have the same regulatory flexibility with respect to providing bundled services at a discount, and extended special promotions and pricing.

10. Granting this application will benefit competition by opening up the Frontier-West Coast territory to wireline competition.

11. The increased efficiencies and streamlined regulatory requirements that will result from the proposed consolidation will benefit ratepayers.

12. The merged companies will continue to operate as an URF ILEC, subject to the Commission's regulation.

13. Frontier sent a written notice of the proposed merger to all Frontier-West Coast customers in March 2013.

14. On March 4, 2013, Frontier-California and Frontier-West Coast sent a notice to all parties included on the service lists in the Service Quality (R.11-12-001) and High Cost Fund B (R.09-06-019) dockets regarding Frontier's merger application. This notice resolves any requirement regarding notifying carriers of Frontier-California's expanded competitive territory following the merger.

### **Conclusions of Law**

1. This is a ratesetting proceeding and no hearing is necessary.
2. DRA and Joint Applicants are the only two parties in this proceeding, and the March 15, 2013, Settlement Agreement (Attachment A) is an all party settlement covering the full range of interests and issues in this proceeding.
3. The Settlement Agreement reflects a reasonable compromise on many items and provides a certain level of customer rate protection.

4. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

5. This application should be approved and become effective immediately because it is not adverse to the public interest.

## **O R D E R**

### **IT IS ORDERED** that:

1. The March 15, 2013 Settlement Agreement between the Division of Ratepayer Advocates and Frontier Communications Corporation, and Citizens Telecommunications Company of California, Inc., doing business as Frontier Communications of California (Frontier-California) (U1024C), and Frontier Communications West Coast Inc. (Frontier-West Coast) (U1020C), appended to this decision as Attachment A, is adopted and the merger of Frontier-West Coast into Frontier-California is approved.

2. Following the merger, the newly merged entity (Citizens Telecommunications Company of California, Inc., doing business as Frontier Communications of California) shall abide by all the provisions set forth in the Settlement Agreement attached as Appendix A (Agreement paragraphs 1 -5) with regard to participation in the High Cost Fund-B, rate caps, tariffs and service quality.

3. Frontier Communications Corporation, and Citizens Telecommunications Company of California, Inc., doing business as Frontier Communications of California, and Frontier Communications West Coast Inc. shall notify the Director of the Commission's Communications Division in writing upon completion of the merger, as authorized herein, within 30 days of completion of the transaction.

4. Following the merger, Frontier Communications Corporation, and Citizens Telecommunications Company of California, Inc., doing business as Frontier Communications of California, and Frontier Communications West Coast Inc. shall be subject to the detariffing option and provisions of Decision 07-09-018 and shall retain two separate local tariffs until a Tier II Advice Letter to detariff is filed.

5. Application 12-12-019 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**  
**Copy of Settlement Agreement**

A.12-12-019 ALJ/RWC/avs