

Decision **PROPOSED DECISION OF ALJ O'DONNELL** (Mailed 4/10/2007)

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

Application of Citizens Telecommunications  
Company of California Inc. (U-1024-C) dba  
Frontier Communications of California to  
Review its New Regulatory Framework.

Application 03-04-002  
(Filed April 1, 2003)

**OPINION ADOPTING SETTLEMENT RESOLVING AUDIT-RELATED ISSUES**

**1. Summary**

By this decision, we adopt an unopposed settlement, included as Appendix A to this decision, that resolves issues related to a New Regulatory Framework (NRF) audit for 2001-2003 of Citizens Telecommunications Company of California Inc. dba Frontier Communications of California (Frontier) performed by the Division of Ratepayer Advocates (DRA). This proceeding is closed.

**2. Procedural History**

Frontier filed this application for its triennial NRF review on April 1, 2003. On February 11, 2004, the Commission issued Decision (D.) 04-02-010 addressing the application. The decision directed DRA to perform the audit and ordered Frontier to reimburse the Commission for DRA's consultant costs up to \$300,000. Frontier was authorized to recover its reimbursement of DRA's consultant costs in its next NRF proceeding. The decision also directed Frontier to file its next NRF review no later than 90 days after issuance of a final decision in Rulemaking (R.) 01-09-001/Investigation (I.) 01-09-002 (the NRF reviews for Pacific Bell

Telephone Company and Verizon California Inc.). DRA conducted the audit and issued its audit report in August 2005.

On March 30, 2005, Frontier filed a petition to modify D.04-02-010 to allow it to file its NRF review application prior to a final decision in R.01-09-001/I.01-09-002. It requested that DRA's audit results and recovery of DRA's audit costs be addressed in that proceeding. On April 29, 2005, DRA filed a response to Frontier's petition stating that it did not object to Frontier's request. On May 20, 2005, Frontier filed an amendment to its petition seeking an immediate end to its sharing mechanism. DRA opposed the amendment. On May 25, 2006, DRA filed a Petition to modify D.04-02-010 to provide additional audit funds to utilize its consultants if hearings are held on the audit report.

In 2005, Frontier and DRA began negotiations aimed toward settling the outstanding issues. These discussions were not successful. In 2006, Frontier and DRA again entered into negotiations and reached a settlement. A formal settlement conference, pursuant to Rule 12.1 (b) of our Rules of Practice and Procedure, was noticed by DRA for March 12, 2007.<sup>1</sup> DRA and Frontier were the only parties at the conference. DRA and Frontier now propose the Commission's adoption of the settlement.

### **3. Scope and Issues**

The issues to be addressed herein are:

- When Frontier should be allowed to file its next NRF review,
- DRA's audit results, and
- Frontier's recovery of DRA audit costs.

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure.

On August 24, 2006, the Commission adopted D.06-08-030 which, among other things, closed R.01-09-001/I.01-09-002 and eliminated NRF for Frontier. Thus, the issue of when Frontier should be allowed to file its next NRF review is moot. However, NRF was still in effect prior to D.06-08-030. Therefore, the remaining two issues are relevant and ripe for resolution.

#### **4. Settlement Terms**

The settlement provides as follows:

- Frontier will issue customer credits totaling \$4 million to satisfy its NRF related obligations including sharable earnings for 2002-2003 and any potential sharable earnings for 2004 -2006.<sup>2</sup>
- Frontier will forego recovery of all audit-related expenses incurred by Overland Consulting on behalf of DRA for which Frontier previously reimbursed the Commission.
- Frontier's sharable earnings obligations under NRF are terminated.
- Frontier shall have no further obligation to file a triennial NRF review for 2004-2006 and need not file a sharable earnings report for 2006.
- Frontier will not "increase its intrastate rates for the sole purpose of offsetting the \$4.0 million customer credits."<sup>3</sup>

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<sup>2</sup> The customer credits will be implemented as a surcredit applicable to the recurring intrastate retail basic exchange local access line service rates associated with end-user services.

<sup>3</sup> Settlement Agreement, p. 4. We interpret this to mean that Frontier will not attempt to recover the \$4 million customer credits as part of any rate increase. Our approval of the settlement is contingent upon this interpretation of the settlement language.

## 5. Discussion

### 5.1. Standard for Approval of a Settlement

Rule 12.1(d) provides:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. (Emphasis added.)

Thus, in order to approve the settlement, we must find it reasonable in light of the whole record, consistent with law, and in the public interest. We address below whether the settlement meets these three requirements.

### 5.2. Reasonable in Light of the Whole Record

DRA hired a consultant, Overland Consulting, to perform an audit of Frontier for 2001-2003. Based on the audit, DRA concluded that Frontier owes ratepayers approximately \$7 million in additional sharable earnings. DRA did not perform an audit of 2004-2006 and Frontier would dispute DRA's claim if the matter went to hearings. The settlement provides that Frontier will provide customer credits over a 12-month period totaling \$4 million and forego recovery of DRA's audit costs (up to \$300,000). The settlement resolves disputed issues related to DRA's audit, the associated impact of the audit on sharable earnings for 2001-2006 and recovery of DRA's audit costs. Having reviewed the audit report, we find that the proposed settlement is within the range of reasonable findings if the matter had been fully litigated. Therefore, we find the settlement reasonable in light of the whole record.

**5.3. Consistent With Law**

Nothing in the settlement contravenes any applicable statute or Commission decision or rule, and the settlement process was consistent with Rule 12.1(b). Therefore, we find the settlement consistent with applicable law.

**5.4. In the Public Interest**

There is no guarantee that litigation would have had a result acceptable to both parties. The settlement saves time and resources, and achieves results within the range of reasonable litigation outcomes.

In order for the Commission to find the settlement to be in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the matters being settled. DRA, through the performance of its audit and earlier participation in this proceeding, has a thorough understanding of the issues addressed in the settlement. Frontier is familiar with its own operations, has experience under NRF, and bears the burden of proof in this proceeding. Thus, the parties have a sound and thorough understanding of the matters being settled.

For the above reasons, we find the settlement to be in the public interest.

**6. Conclusion**

The settlement is reasonable in light of the whole record, consistent with law, in the public interest and we adopt it.

**7. Comments on Proposed Decision**

The proposed decision of the administrative law judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a). Comments were filed by Frontier on April 26, 2007 that supported the proposed decision and pointed out a typographical error. No other comments or reply comments were filed.

**8. Assignment of the Proceeding**

Michael R. Peevey is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

**Finding of Fact**

The unopposed settlement is reasonable in light of the whole record, consistent with law and in the public interest.

**Conclusions of Law**

1. The settlement satisfies the requirements of Rule 12.1(d) and should be adopted.
2. A.03-04-002 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The attached settlement, included as Appendix A, is adopted.
2. Application 03-04-002 is closed.

This order is effective today.

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