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

Order Instituting Rulemaking
Regarding Broadband Infrastructure
Deployment and to Support Service
Providers in the State of California.

R. 20-09-001
(September 10, 2020)

**OPENING COMMENTS OF
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 OF AMERICA, INC. (U 5429 C)
("FRONTIER")**

ON ORDER INSTITUTING RULEMAKING

Mark P. Schreiber
Patrick M. Rosvall
Sarah J. Banola
Aaron P. Shapiro
William F. Charley
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Phone: (415) 433-1900
Fax: (415) 433-5530
E-mail: sbanola@cwclaw.com

Attorneys for Frontier

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I. INTRODUCTION.

Pursuant to Rule 6.2 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), and in accordance with the initial procedural schedule for this proceeding adopted in the Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California (“OIR”), Frontier California Inc. (U 1002 C) (“Frontier-California”), Citizens Telecommunications Company of California Inc. (U 1024 C) (“CTC-California”) and Frontier Communications of the Southwest Inc. (U 1026 C) (“Frontier-Southwest”) (collectively, “Frontier”) offer these opening comments on OIR. Through these comments, Frontier also enters a special appearance for Frontier Communications of America, Inc. (U 5429 C) (“Frontier-America”), a long-distance carrier that does not have a broadband network or provide broadband service. Frontier believes that Frontier-America was named as a Respondent this proceeding in error, and Frontier asks that Frontier-Southwest be added as a party in place of Frontier-America.

Frontier supports the “core purpose” of this rulemaking, which is to “accelerate the deployment of and access to quality, affordable internet for all Californians.” *OIR* at 1. As California continues to navigate the COVID-19 pandemic and the accompanying economic downturn, these broad policy goals are more important than ever. Frontier’s three Incumbent Local Exchange Carrier (“ILEC”) entities, Frontier-California, CTC-California, and Frontier-Southwest, are actively involved in deploying broadband infrastructure across a diverse geographic and demographic footprint that spans all corners of the state, including urban, suburban, and rural areas. Based on this experience, Frontier is acutely aware of the challenges of delivering broadband in high-cost and difficult to serve areas.

For the Commission’s broadband policy to be successful, it should be pragmatic and focused. The Commission should recognize that broadband adoption is a complicated problem that implicates a host of technological, demographic, digital literacy, economic, and cultural factors. Only some of these variables are within the Commission’s purview, and several of them involve broad societal issues that demand more comprehensive solutions than would be possible

1 in the context of a Commission rulemaking. Similarly, the Commission should recognize that
2 carriers do not have unlimited resources, and many of California's rural areas include rugged
3 terrain with low population density. In some areas, there is simply not a business case for a full
4 fiber build-out, and broadband expansion availability and sufficiency of high-cost support and
5 grant funding. Frontier appreciates the visionary language of the Governor's Executive Order,
6 but it is not feasible to deliver 100 Megabits per second ("Mbps") to all locations. *See OIR* at 2
7 (citing O.P. 1 of Executive Order).

8 Frontier appreciates the Commission opening a rulemaking to develop its broadband
9 policy directly, rather than approaching the issue indirectly through a series of balkanized
10 proceedings or carrier-specific applications. As part of this rulemaking, the Commission should
11 identify the tools at its disposal to spur broadband *deployment*, while recognizing that it does not
12 regulate broadband *service*. It should refine its role and acknowledge its jurisdictional and
13 statutory limitations so that it can work cooperatively with other agencies, legislators, and
14 service providers to advance the state's broadband vision through the appropriate channels. In
15 some cases, statutory change may be needed to pursue desired initiatives. Frontier looks forward
16 to participating in this rulemaking and to thinking creatively and constructively about how to
17 optimize broadband resources to reasonably advance the goals of the OIR.

18 **II. FRONTIER-AMERICA SHOULD BE DISMISSED AS A RESPONDENT AND**
19 **FRONTIER-SOUTHWEST SHOULD BE ADDED IN ITS PLACE.**

20 The OIR names three Frontier entities as Respondents, along with various other ILECs
21 and facilities-based carriers. However, the OIR also identifies Frontier-America as a
22 Respondent, even though Frontier-America does not have a broadband network and is not
23 engaged in broadband deployment. Frontier-America is an interexchange carrier, and should be
24 dismissed from this rulemaking. The inclusion of Frontier-America may have been intended for
25 Frontier-Southwest, which is an ILEC and an owner of various broadband-capable facilities.
26 The Commission should correct the apparent error in the OIR and substitute Frontier-Southwest
27 for Frontier-America.

1 **III. THE RULEMAKING SHOULD FOCUS ON BROADBAND DEPLOYMENT AND**
2 **ON LEVERAGING THE COMMISSION’S PUBLIC PURPOSE PROGRAMS,**
3 **NOT ON BROADBAND SERVICE, WHICH THE COMMISSION DOES NOT**
4 **REGULATE.**

5 To maximize the value of this proceeding, the Commission should focus on topics that
6 are within its regulatory authority. Despite the sweeping statements in the OIR, it is not true that
7 the “Commission has comprehensive jurisdiction over deployment of high-quality advanced
8 communications services” *OIR* at 3. Rather, the Commission’s jurisdiction is focused on
9 public utilities and the regulated services that they provide, including telephone service. Pub.
10 Util. Code §§ 216 (defining “public utility” to include “telephone corporation”); 234 (“telephone
11 corporation” refers to companies owning, controlling, operating or managing any telephone line
12 for compensation within the state”). The Commission’s public utility authority extends to the
13 infrastructure over which “telephone service” is delivered. Pub. Util. Code § 233 (defining
14 “telephone line” to include “conduits, ducts, poles, wires, cables, instruments, and appliances,
15 and all other real estate, fixtures and personal property [used] to facilitate communication by
16 telephone”). Given the multi-use nature of modern telecommunications networks, “telephone
lines” include some, but not all, of the broadband-capable infrastructure in California.

17 While the Commission has a role in fostering the deployment of broadband *facilities*, it
18 does not regulate broadband *services*. As a matter of federal law, Broadband Internet Access
19 Service (“BIAS”) is an unregulated information service. *See In the Matter of Restoring Internet*
20 *Freedom*, WC Docket No. 17-108, *Report and Order, et al.*, FCC 17-166 (rel. Jan. 4, 2018)
21 (“*Restoring Internet Freedom Order*”) at ¶ 20 (“[w]e reinstate the information service
22 classification of broadband Internet access service.”), *vacated in part on other grounds by*
23 *Mozilla Corp. v. FCC*, 940 F.3d 1, 35 (D.C. Cir. 2019) (upholding “information service”
24 classification). This classification means that BIAS must remain free from “common carrier”
25 regulations. *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967,
26 975 (2005) (“The [Telecommunications] Act regulates telecommunications carriers, but not
27 information-service providers, as common carriers.”). If the Commission were to extend its
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1 regulatory reach beyond broadband deployment and attempt to prescribe or restrict the
2 operations or services provided by Internet Service Providers, it would conflict with federal law
3 and invite preemption. *See Geier v. American Honda Motor Co.*, 529 U.S. 861, 873 (2000)
4 (state laws that present obstacles to federal policy will be invalidated regardless of their form—
5 whether they “go[] by the name of conflicting; contrary to; repugnance; difference;
6 irreconcilability; inconsistency; violation; curtailment; interference; or the like.”). Regulations
7 of BIAS would also run afoul of state law, as ISPs are not “public utilities” and broadband
8 service is subject to interstate authority. *See Restoring Internet Freedom Order*, ¶ 199
9 (confirming interstate nature of BIAS), *vacated in part on other grounds by Mozilla Corp. v.*
10 *FCC*, 940 F.3d 1, 35 (D.C. Cir. 2019) (vacating portion of the 2018 Order that expressly
11 preempts “any state or local requirements that are inconsistent with [its] deregulatory
12 approach.”); Pub. Util. Code § 202 (restricting Commission authority over “interstate
13 commerce”).

14 While the OIR focuses on broadband deployment, specific directives in the OIR reflect
15 an attempt to regulate information services or impose requirements on ISPs. In particular, the
16 OIR states that it “may also promulgate rules that affect any affiliate of the above-named utilities
17 providing broadband Internet access *service* in California.” *OIR* at 15 (emphasis added). To the
18 extent that this statement signals and intent to impose regulations directly on ISPs, or adopt
19 policies that restrict or prescribe their operations, it is incorrect and unlawful. Frontier does not
20 disagree that discussions about deployment and management of Commission public policy
21 programs could “affect” unregulated operations in a general sense, but if the OIR’s intent is to go
22 further into specific broadband service regulations, it will exceed the Commission’s jurisdiction.
23 Likewise, the Commission has no authority to compel participation in this proceeding by
24 unregulated service providers, even if they happen to be affiliated with telephone corporations.
25 For the same reasons, the Commission cannot compel regulated entities to respond “on behalf
26 of” their affiliates, as the OIR purports to do. *OIR* at 15.

27 To ensure that this proceeding is constructive and focuses on the Commission’s role in
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1 advancing the state’s broadband objectives, the Commission should stay within its jurisdictional
2 purview and not use this proceeding as a fulcrum to regulate entities and services that the Federal
3 Communications Commission (“FCC”) has deemed unregulated. There are ample policy issues
4 to address within the Commission’s jurisdiction, including how to foster broadband-capable
5 facilities deployment and how to best manage the Commission’s public policy funds with
6 broadband implications, such as the California Advanced Services Fund (“CASF”) and the
7 California Teleconnect Fund (“CTF”). The Commission should focus on solutions that are
8 within its authority and resist attempts to open up this proceeding to distracting and tangential
9 subjects that could take away from efforts to advance the Governor’s Executive Order.

10 **IV. RESPONSES TO SPECIFIC QUESTIONS RAISED IN THE OIR**

11 The OIR poses a series of specific questions, with a focus on strategies that the
12 Commission could pursue within 12-18 months to advance the broadband objectives in Governor
13 Newsom’s Executive Order N-73-20. Frontier hereby addresses the specific questions presented.

14 **A. Infrastructure Deployment Models and Strategies.**

15 **1. Implementing E.O. N-73-20, OP #8. What business models could the** 16 **California energy Investor-Owned Utilities (IOUs) employ to make** 17 **their existing and future fiber infrastructure more available in rural,** **urban and Tribal areas? What are the critical requirements and** **incentives for these models to be effective?**

18 Frontier has no position on this question, which is focused on potential business models
19 for energy utilities to pursue in the broadband arena. Frontier reserves the right to respond to
20 other parties’ suggestions on this subject in reply comments on the OIR.

21 **2. What strategies, incentives or standards can improve open access in** 22 **deploying fiber and wireless infrastructure to be utilized by multiple** 23 **carriers, particularly in rural and Tribal areas? Specifically, how can** 24 **communication providers better share their assets and build planning** **(e.g. points of presence, carrier hotels, trenches, conduit, towers,** **poles, etc.)**

25 Frontier is not certain what the Commission intends by the term “open access” in the
26 context of fiber infrastructure. Telecommunications companies are private enterprises and their
27 networks are private property, so it would not be appropriate or lawful to force companies to
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1 give away access to their networks for free. Rather, network access is governed by agreements
2 between service providers or through the delivery of tariffed services, which allow third parties
3 to purchase access to telecommunications networks for a price. Federal law also has a detailed
4 paradigm governing “unbundled access” and “resale at wholesale rates,” but fiber loops are
5 exempt from these requirements. *See* 47 U.S.C. §§ 251(c), 51.319(a)(3). To the extent that the
6 concept of “open access” contemplates a broader requirement to facilitate public or third-party
7 use of telecommunications networks without charge, the proposal would be unlawful and
8 potentially destabilizing to existing service providers.

9 A reasonable goal would be to create greater awareness and foster coordination regarding
10 efforts to utilize available facilities. In this regard, Frontier notes that Commission is already
11 pursuing a database of poles and conduits to allow for a more informed consideration of
12 available network access opportunities. *See* I.17-06-027. Regarding “build planning,” carriers
13 should be encouraged to take advantage of open trenching opportunities and other mechanisms
14 to coordinate their deployments and develop business arrangements and interconnection for their
15 mutual benefit. In addition, municipalities and Caltrans should prioritize and expedite review of
16 broadband projects. Frontier has experienced great disparities in “district by district” procedures
17 used to review projects. It would be more efficient to develop statewide procedures, as opposed
18 to relying on a patchwork of localized procedures.

19 **3. How can the Commission use its licensing, permitting and CEQA**
20 **responsibilities to further the goals of this OIR? Are there areas of the**
21 **CEQA process which can be streamlined while still meeting the**
22 **statutory requirements?**

23 CEQA review has become an inordinately expensive and costly process, even where no
24 material environmental impact is foreseeable from the construction. CASF projects may be
25 significantly delayed because of the requirements for a separate CEQA approval process and
26 Commission decision. The Commission should implement a streamlined process and eliminate
27 the time-consuming, separate approval process. The Commission could also assist the process
28 by interpreting the categorical and statutory exemptions more broadly, which would allow many

1 projects to proceed without an extensive or costly process.

2 **B. Economic Vitality and Recovery Strategies.**

3 **1. What requirements, if any, should the Commission impose on**
4 **communications service providers and IOUs to facilitate the**
5 **construction of fiber when restoring facilities after a disaster such as a**
6 **fire?**

7 Restoration of facilities in an emergency is critical, and reconnecting fiber transport or
8 distribution lines should be a top priority. Given the dynamic and devastating nature of the
9 recent wildfires in California, facilities restoration poses many challenges. In many cases, access
10 to the affected areas is unavailable and restoration efforts may not be safe for long periods of
11 time. Each situation is different, and each may call for a different timeline or restoration
12 strategy.

13 Disasters are too varied and too fast-moving for the Commission to impose any
14 prescriptive guidelines for fiber restoration. However, the Commission should encourage
15 utilities to coordinate regarding access to burn areas to ensure that restoration can occur as
16 efficiently and safely as possible. Utilities should also be careful to observe “call before you
17 dig” protocols during emergencies, as the fast-paced nature of these situations can cause
18 unintended fiber cuts, which can exacerbate the problem.

19 **2. How can the Commission partner with other state agencies to**
20 **effectively address the infrastructure and affordability gap for**
21 **communications services in California? How can the Commission**
22 **assist in the implementation of E.O. N-73-20, OP #7?**

23 The Commission should look for ways to tailor its CASF and CTF programs to leverage
24 funding that may be available through the California Department of Education to facilitate
25 Internet connections for households engaged in distance learning. With regard to Ordering
26 Paragraph No. 7 of the Executive Order, Frontier agrees that it would assist the functionality and
27 resiliency of California’s overall telecommunications backbone to equip “strategic corridors”
28 with high-bandwidth middle mile and digital transport facilities. In some cases, the Commission
may be able to assist with this objective through appropriately-tailored projects through the

CASF program. Frontier has been a regular participant in that program, and Frontier will be actively looking for viable projects to bring before the Commission in the future.

3. How should the Commission address access to existing infrastructure for those communities where there is infrastructure going through a community but they are not served by it?

Frontier does not believe that any specific rules are necessary to address the possibility that facilities transit a community but do not serve it. Frontier is aware of situations where communities have expressed frustration that they cannot connect to infrastructure that they perceive is available to serve end users. In many cases, these anecdotes are premised on incomplete information.

There are many reasons why a provider might direct a communications line through a community, but not make it available for use. First, not all infrastructure is designed for distribution; some is purely for long-haul transport, so even if it is present, it may not be usable to deliver service to end users without a major reconfiguration. Second, capacity on certain circuits may be limited or specific facilities may be dedicated for specific purposes, such as E911 trunking, which make it impracticable to divert or dilute their use. Greater communication with the community in these situations would be appropriate, but Commission rules are not needed.

4. How should the Commission consider the role of communications in serving all households in a community and concerns about digital redlining?

The Commission should be careful not to define “digital redlining” too broadly. The term “redlining” implies a systematic discrimination in service against certain types of customers, generally on the basis of race or ethnicity. Such a practice would certainly be reprehensible, but Frontier is not aware of any evidence that this is occurring amongst Commission-regulated entities. Deployment is generally driven by cost considerations, including the nature of the terrain, the distance between customer locations, and the likely number of customers within the area.

Frontier notes that it is Carrier of Last Resort in each of its ILEC areas, and it is required to fulfill all reasonable requests for service within that footprint. Frontier’s facilities are multi-

1 use; they provide both voice service and access to the advanced services of a customer’s choice.
2 Given this context, Frontier’s objective is to serve “all households in a community” wherever
3 feasible.

4 **C. Strategies to Support Specific Communities and Uses.**

5 **1. What further strategies, if any, should the Commission utilize to**
6 **facilitate broadband internet access service for low-income, high fire**
7 **threat, and/or low adoption communities, primary school students**
8 **and institutions, libraries, and public safety communications?**

9 The Commission should evaluate whether a broader use of the CASF adoption program
10 could be pursued to provide funding for students engaged in distance learning during the
11 pandemic. CASF support is limited, but it could be paired with other funding sources to help
12 develop a coordinated approach to ensure that low-income households and students have the
13 broadband service, broadband-enabled devices and knowledge base to meaningfully access
14 digital resources.

15 **2. How should the Commission use the roughly \$1 million in the Digital**
16 **Divide Account to help schools and students?**

17 Public Utilities Code Section 280.5 clarifies that the Digital Divide Account should be
18 administered as part of the CTF program. This funding is designed to promote “community
19 technology programs” that focus on technology training, youth multimedia training, local content
20 development, and e-government. Pub. Util. Code § 280.5(e). This funding should be focused on
21 improving digital literacy in low-income populations, and that effort should include “schools and
22 students,” as the prompt of this question suggests.

23 **3. What are the strategies and models that Tribes can pursue for**
24 **communications infrastructure and what are the means through**
25 **which the Commission can support them?**

26 These questions have been raised in several different proceedings, including the
27 California High Cost Fund-A (“CHCF-A”) rulemaking and the CASF proceeding. Many
28 suggestions have been made in those contexts, including Tribes requesting Certificates of Public
Convenience and Necessity (“CPCN”) to provide regulated telecommunications service directly.

Obtaining CLEC authorities could assist Tribal leadership with negotiating access to conduits and rights-of-way, both with telecommunications carriers and with energy utilities.

4. What are the strategies and models that public entities can pursue for communications infrastructure and what are the means through which the Commission can support them?

In Frontier's experience, public entity models are not the most efficient means for deploying communications infrastructure. Nevertheless, public entities are free to develop communications networks, and some have done so. The Commission should not establish policies that confer a favored status on public entities or give them regulatory advantages over existing providers.

V. CONCLUSION.

This proceeding addresses timely, important policy issues in response to Governor Newsom's Executive Order. Frontier looks forward to providing its perspectives as the Commission establishes the scope and agenda for the proceeding.

Executed at San Francisco, California on this 12th day of October 2020.

Mark P. Schreiber
Patrick M. Rosvall
Sarah J. Banola
Aaron P. Shapiro
William F. Charley
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Phone: (415) 433-1900
Fax: (415) 433-5530
E-mail: sbanola@cwclaw.com

By: /s/ Sarah J. Banola
Sarah J. Banola

Attorneys for Frontier