

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application 24-10-0062410006

In the Matter of the Joint Application of Verizon Communications Inc., Frontier Communications Parent, Inc., Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc., Frontier Communications Online and Long Distance Inc., and Frontier Communications of America, Inc. for Approval of the Transfer of Control of Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California (U 1024 C), Frontier Communications of the Southwest Inc. (U 1026 C), Frontier Communications Online and Long Distance Inc. (U 7167 C), and Frontier Communications of America, Inc. (U 5429 C), to Verizon Communications Inc. Pursuant to California Public Utilities Code Section 854.

**JOINT MOTION OF THE PUBLIC ADVOCATES OFFICE,
THE UTILITY REFORM NETWORK, AND
CENTER FOR ACCESIBLE TECHNOLOGY
TO AMEND THE SCOPING MEMO AND RULING**

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I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), The Utility Reform Network (TURN), and the Center for Accessible Technology (CforAT) (Intervenor Parties) submits this joint motion to amend (Motion) the *Assigned Commissioner Scoping Memo and Ruling Requesting Additional Information and Ruling on Oral Motion*¹ (Scoping Memo) in the joint application (Joint Application) of Verizon Communications Inc. (Verizon) and Frontier Communications Parent, Inc. (Frontier), and Frontier's California local exchange and long distance subsidiaries,² (Joint Applicants), to request that the Commission authorize the indirect transfer of control of Frontier's wholly owned subsidiaries to Verizon (Proposed Transaction).

In this Motion, Intervenor Parties requests that the assigned Commissioner amend his Scoping Memo to include the following four issues:

1. Whether Public Utilities Code³ Section 851 is applicable to the Proposed Transaction;
2. Whether Frontier violated a Commission condition bestowing a Right of First Offer (ROFO) to purchase Frontier property to tribes and local governments by entering into negotiations with Verizon before notifying rightsholders of its decision to sell its utility property;
3. Reflect Cal Advocates and TURN's request that disputed legal issues be resolved via legal briefs; and
4. Amend the scoping memo to reflect the interests of Verizon ratepayers.

¹ *Assigned Commissioner Scoping Memo and Ruling Requesting Additional Information and Ruling on Oral Motion*, January 13, 2025 (Scoping Memo).

² Frontier California Inc. (Frontier California), Citizens Telecommunications Company of California Inc. (CTC California), Frontier Communications of the Southwest Inc. (Frontier Southwest), Frontier Communications Online and Long-Distance Inc. (Frontier LD), and Frontier Communications of America, Inc. (Frontier America) (Frontier California, CTC California, Frontier Southwest, Frontier LD, and Frontier America).

³ All other code citations are in reference to the California Public Utilities Code.

Section 851 requires a public utility to gain Commission authorization before selling a part or the “whole” of the utility’s “system or property necessary or useful in the performance of its duties.”⁴ The purpose of this proceeding is to review the sale of Frontier, including the whole of its network infrastructure, to Verizon.⁵ The Scoping Memo erroneously excludes review of Section 851 from the scope of this proceeding,⁶ relies on incorrect interpretation of the Commission precedent,⁷ and ignores the plain language of the statute.

In Decision (D.) 21-04-008, the Commission conferred on tribal and local governments an ROFO on the sale of any property by Frontier under Section 851; this is a condition the Commission found necessary to ensure that Frontier’s request for authorization for corporate restructuring following its declaration of bankruptcy would be in the public interest.⁸ By excluding any evaluation of the applicability of Section 851 to this transaction, the Scoping Memo preemptively determines that tribes and local governments’ Right of First Offer does not apply to *this* sale of the whole of Frontier’s system. This is a violation of due process. Due process requires notice and opportunity to be heard before depriving parties of property or rights thereto.⁹ However, the Joint Application was not served on parties to A.20-05-020, the proceeding in which D.21-04-008 was issued. The error of this omission is highlighted by the fact that no tribal or local governments are parties to this proceeding and thus have not weighed in on their ROFO rights.

Lastly, the Commission should clarify that Section 854 (b)(2) is included in the scope of this proceeding. While Section 854 (b) is included in the Scoping Memo, the

⁴ Public Utilities Code § 851.

⁵ “[Joint Applicants] submit this Joint Application (“Application”) to request that the Commission Authorize the indirect transfer of control of Frontier’s wholly owned subsidiaries.” Joint Application at 2.

⁶ Scoping Memo at 4-5.

⁷ Scoping Memo at 4-5.

⁸ Decision (D.) 21-04-008, *Decision Approving Corporate Restructuring with Conditions*, issued April 20, 2021 at 70-71 (Ordering Paragraph 4(g)); issued in Application (A.)20-05-020.

⁹ *People v. Western Airlines, Inc.* (1954) 42 Cal.2d 621, 632.

language of Section 854 (b)(2) was omitted. As mentioned in Cal Advocates’ Protest to the Joint Application, Section 854 (b)(2) is applicable to this proposed transaction because review is required in instances where the Commission has ratemaking authority, as is the case with Frontier in this application.¹⁰

II. PROCEDURAL BACKGROUND

On September 5, 2024, the Joint Applicants announced an agreement by which Verizon would acquire Frontier Communications, stating that “[t]he combination will integrate Frontier’s cutting-edge fiber network into Verizon’s leading portfolio of fiber and wireless assets [...]”¹¹ Joint Applicants filed their Joint Application for Commission approval of the acquisition pursuant to Section 854 on October 18, 2024. In a footnote, the Joint Applicants argue that as this transaction involves a parent company transfer of control, it is not a Section 851 transfer of assets.¹² The Application makes no mention of D.21-04-008 or the ROFO held by the tribal and local governments.

Two notices for prehearing conference were issued, on November 27, 2024 and December 4, 2024, setting a prehearing conference for December 9, 2024.

During the prehearing conference, Verizon and Frontier made extensive arguments regarding the applicability of Section 851, D.21-04-008, and the ROFO to this proceeding. Cal Advocates and The Utility Reform Network (TURN) asked the Scoping Memo to set aside determination of any legal disagreements, including Section 851 applicability, until they could be fully addressed in briefs, to ensure that all parties have the opportunity to be properly heard on those issues.

¹⁰ *Protest of the Public Advocates Office to the Joint Application for Approval of the Transfer of Control of Frontier California Inc. (U 1002), Et al to Verizon Communication Inc.*, November 21, 2024 (Cal Advocates’ Protest).

¹¹ Frontier’s Investor website, “News Details: Verizon to Acquire Frontier”, <https://investor.frontier.com/news/news-details/2024/Verizon-to-acquire-Frontier/default.aspx>, (Sept. 5, 2024).

¹² Joint Application at 2, footnote (fn.) 5.

The Scoping Memo excludes the issue of Section 851’s applicability from the scope of the proceeding.¹³

III. DISCUSSION

A. **The Scoping Memo errs in excluding consideration of Section 851 from the scope of this proceeding.**

Section 851 states, in pertinent part:

A public utility . . . shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the *whole or any part* of its railroad, street railroad, *line, plant, system*, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or *by any means whatsoever, directly or indirectly, merge or consolidate* its railroad, street railroad, *line, plant, system, or other property*, or franchises or permits *or any part thereof*, without first having . . . secured an order from the commission authorizing it to do so

The relevant part of this section that applies to the Joint Application is that which refers to the sale of “the whole or any part” of a utility’s system. Verizon is acquiring the whole of Frontier, including the systems “necessary or useful in the performance of its duties.” By the plain reading of the law, Section 851 requires the Joint Application to be reviewed under its terms.

Joint Applicants argue that Section 851 does not apply to the Proposed Transaction because the underlying proposed transfer of control would occur at the parent level,¹⁴ and so Frontier’s California entities will still exist as subsidiaries of Verizon, retaining in control of their infrastructure. But this distinction does not exist in the law. Verizon is purchasing Frontier, including Frontier’s whole utility system, even if Frontier will exist as a subsidiary. By virtue of this acquisition the ultimate ownership of Frontier’s system will change as it will become a subsidiary of Verizon, which triggers Section 851 review.

¹³ Scoping Memo at 4-5.

¹⁴ *Prehearing Conference Transcript*, December 13, 2024 at 16-20, 39-40.

The Scoping Memo’s determination that Section 851 does not apply to the Proposed Transaction is not consistent with the plain reading of Section 851. A review of Section 851 is required for any sale of a utility’s “whole...system.” To exclude the acquisition of an entire company, like Joint Applicants argue here, would render the word “whole” meaningless. To accept Joint Applicants’ interpretation of the statute would mean that a public utility subject to a condition, such as the ROFO, could bypass Section 851 review by creating a subsidiary to control specific portions of its network before later selling that subsidiary (and so those assets).

Furthermore, the facts presented to date require, at a minimum, consideration of whether Section 851 and the ROFR apply. Joint Applicants have publicly touted this deal as beneficial for both companies because of the infrastructure Verizon would acquire.¹⁵ Thus, while Joint Applicants argue here that this is a mere change of control of Frontier, they are publicly selling the deal as a transfer of infrastructure. A transfer of infrastructure falls squarely within Section 851.

Lastly, there are factual questions as to the extent to which the Proposed Transaction will result in “merger or consolidation” of Frontier’s fiber infrastructure with Verizon’s mobile network, which provides additional justification for section 851 to remain in scope.

B. The Scoping Memo relies on dissimilar prior Commission decisions to exclude Section 851 from the scope of this proceeding.

The Scoping Memo erroneously excludes Section 851 from the scope of this proceeding, stating that “[i]n similar transactions, we have only applied Pub. Util. Code Section 854 to these types of transactions but not Pub. Util. Code Section 851, and we do so here.”¹⁶ In support of this assertion, the Scoping Memo cites four instances where

¹⁵ Frontier’s Investor website, “News Details: Verizon to Acquire Frontier”, <https://investor.frontier.com/news/news-details/2024/Verizon-to-acquire-Frontier/default.aspx>, (Sept. 5, 2024).

¹⁶ Scoping Memo at 5.

Section 851 was not included in a Section 854 proceeding.¹⁷ However, none of these decisions are analogous to the current transaction.

Two of the decisions cited, D.21-04-008 and D.98-06-068,¹⁸ involve the corporate restructuring of Frontier and Southern California Water Company following their bankruptcies. These cases did not include the sale, lease, assignment, mortgage, or disposal of any utility assets to a third party, as they involve only the restructuring of existing corporate entities. Such transactions would not fall under Section 851. This is unlike the present case where Verizon is proposing to acquire Frontier Parent and its subsidiaries,¹⁹ and so, inherently, to become the new ultimate owner of Frontier's California assets. The cases are not analogous and cannot be relied upon to support exclusion of Section 851 from this proceeding.

The third decision, D.20-04-008, concerns the merger of Sprint and T-Mobile under Section 854.²⁰ While this transaction might resemble the current application, Section 851's applicability was not raised by any party and was not included in that Decision.²¹ Thus, no determination was made regarding the merits of Section 851's applicability. Section 851 was not included in the scope because no party asked for it to be, unlike the current proceeding.

The final decision, D.93-11-011, is wholly different from the current application. This decision involved a spin-off transaction of an existing company into two separate

¹⁷ Scoping Memo at 5, fn. 5.

¹⁸ D.98-06-068, *Re Southern California Water Company*, June 16, 1998; issued in A.97-12-016.

¹⁹ Joint Application of Verizon Communications Inc., Frontier Communications Parent, Inc., Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc., Frontier Communications Online and Long Distance Inc., and Frontier Communications of America, Inc. for Approval of the Transfer of Control of Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California (U 1024 C), Frontier Communications of the Southwest Inc. (U 1026 C), Frontier Communications Online and Long Distance Inc. (U 7167 C), and Frontier Communications of America, Inc. (U 5429 C), to Verizon Communications Inc. Pursuant to California Public Utilities Code Section 854 at 2.

²⁰ D.20-04-008; *Decision Granting Application and Approving Wireless Transfer Subject to Conditions*, April 16, 2020; issued in A.18-07-011.

²¹ D.20-04-008.

companies- there was no sale involved.²² Additionally, while it is true that Section 851 was found not to apply to that application, it also found Section 854 to not be applicable either.²³ Thus, the decision is not applicable here.

The Scoping Memo states that Section 851 applies in cases where “a proposed transaction ... involve[d] public utility assets leaving any of the California Operating companies, or the consolidation of all of the California operating companies into a single operating unit.”²⁴ However, as explained above, Section 851 does not contain these limitations. Instead, Section 851 plainly states that it must apply to any transaction involving the “whole or any part” of a utility’s system. While Frontier will remain a subsidiary, Verizon has acquired the whole company, including its whole system. This requires a Section 851 review.

In support of their argument that a parent level transfer of control is not subject Section 851, Joint Applicants also cite several Commission decisions which they claim are dispositive.²⁵ However, similar to the decisions cited by the Scoping Memo, these decisions do not support their argument. Prominently, Joint Applicants cite D.16-06-014,²⁶ which does rule that Section 851 is not applicable in the transfer of a gas subsidiary from one parent company to another.²⁷ However, like the proceedings discussed above, in A.14-09-001, the proceeding that was the subject of D.16-06-014, Section 851 was neither raised in the application nor in the protest.²⁸ Additionally, D.16-06-014 does not give a reason for its excluding any discussion of that section.²⁹ In

²² D.93-11-011; *Re Pacific Telesis Group*, November 2, 1993.

²³ D.93-11-011.

²⁴ Scoping Memo at 4.

²⁵ *Joint Applicants’ Reply to Protests*, December 2, 2024 (Joint Reply) at 6-7.

²⁶ Joint Reply at 7.

²⁷ D.16-06-014, *Decision Approving Ownership Transfer of Wild Goose Gas Storage, LLC and Approving in Part, the Request to Remove the Restriction on Communication Between Affiliates of Lodi Gas Storage, LLC and Wild Goose Gas Storage, LLC*, June 13, 2016.

²⁸ D.16-06-014.

²⁹ D.16-06-014.

fact, the Commission mentions Section 851 only once in the entire decision, without an explanation for its exclusion.³⁰

Joint Applicants identify several other decisions³¹ which they claim to support their argument, but each contain glaring errors in their application to the current transaction.³² For example, Joint Applicants cite D.05-11-028, which involved the transfer of the subsidiary AT&T Communications of California from AT&T Corp. to SBC Communications, Inc.³³ However, while that decision does not conduct a Section 851 analysis, it does place Section 851 squarely in the scope of the proceeding, as we are requesting the Commission do here.³⁴ Overall, Joint Applicants have not shown that Commission precedent supports their interpretation of Section 851 in this proceeding.

1. The Right of First Offer makes Section 851's applicability unique.

The inclusion of the ROFO makes this transaction unique relative to past Section 854 transactions. As noted above, the most analogous Decision to the current situation is D.20-04-008, which approved the merger between Sprint and T-Mobile under Section 854.³⁵ However, Section 851 was neither included in the scope of the proceeding nor addressed in that Decision, as it was not raised by any party. This makes sense, despite the technical legal applicability of Section 851 to that transaction, because Section 854 provides a more comprehensive framework for the Commission's required public interest

³⁰ D.16-06-014 at 42.

³¹ Joint Reply at 6-7, fn. 18.

³² In addition to the decisions cited in the Scoping Memo, Joint Applicants erroneously cite and summarize the following decisions: D.16-05-037, which is not a transfer or merger, rather just a reincorporation of an existing company in a different jurisdiction; D.17-10-004, which gives no Section 851 analysis and includes it as part of the Commission's jurisdiction; D.04-05-033, which is a Section 851 review that merely notes that Section 854 would have also been applicable; D.15-10-038, which makes no Section 851 determination; and D.12-10-013 which makes no mention of Section 851 as it was not raised.

³³ D.05-11-028, *Opinion Approving Application to Transfer Control*, November 22, 2005; issued in A.05-02-027.

³⁴ "The scope of this proceeding is governed by Pub. Util. Code §§ 851-856." D.05-11-028 at 9.

³⁵ D.20-04-008, *Decision Granting Application and Approving Wireless Transfer Subject to Conditions*, April 27, 2020.

review.³⁶ To the extent that previous Section 854 transactions have also been Section 851 transactions, the Commission’s public interest determination (required by each) has never before rested on a distinction between the two; the Commission has simply applied the more comprehensive and prescriptive statute – Section 854.

Now, however, due to the existence of the ROFO, the applicability of both sections has become material. In a transfer of control proceedings like the Commission’s review of the Sprint and T-Mobile transaction, a Section 851 analysis would normally not be necessary in a merger or acquisition agreement review by the Commission because Section 854 and 851 are similar, each requiring the Commission to determine whether a proposed transaction is in the public interest. Section 854 provides enumerated public interest factors-concrete guidance for how the Commission should determine whether a transaction is in the public interest and so is the only statute that need be cited for both code sections to be satisfied. Here, however, Section 851 becomes relevant because of the ROFO that was conferred by the Commission in D.20-04-008.

C. Excluding Section 851 from the scope of this proceeding violates the due process rights of tribal and local governments.

The decision to exclude Section 851 lacked adequate notice and opportunity to be heard from the tribal and local governments. The United States and California Constitution prohibit the deprivation of any person “of life, liberty, or property, without due process of law.”³⁷ Due process requires “adequate notice” and an opportunity to be heard, such that a party is reasonably provided an opportunity to prepare for the hearing.³⁸ “Due process as to the commission’s initial action is provided by the

³⁶ Section 851 provides that no public utility “shall ... sell [or] lease...property necessary or useful in the performance of its duties to the public... without first having ... secured an order from the Commission authorizing it to do so.” The Commission has “held that the relevant Section 851 inquiry is whether the proposed transaction is ‘adverse to the public interest.’” *See* Decision (D.)20-03-018 at 7; *see also* D.20-08-038 at 3 (holding that Section 851 “requires the Commission to review the proposed transaction, before it takes place, in order to assure that it is in the public interest, or at the very least, not adverse to the public interest.”)

³⁷ U.S. Const., amend XIV; Cal. Const., article. I, section 7.

³⁸ *Drummev v. State Bd. Of Funeral Directors* (1939) 13 Cal.2d 75, 80-81.

requirement of adequate notice to the party affected and an opportunity to be heard before a valid order can be made.”³⁹

The ROFO conferred on tribal and local governments by the Commission is direct and unique. Neither the Joint Application nor the notice for the Pre-Hearing Conference (PHC)⁴⁰ mention the ROFO requirement ordered in D.20-04-008. Thus, neither document provided rightsholders with adequate notice to ensure these groups could voice their position on whether the ROFO condition has been complied with or applicability of the statute, which violates their due process rights. Before determining Section 851 is not applicable to the Proposed Transaction, a question of material legal dispute, the Commission should have notified the impacted rightsholders.

D. The Scoping Memo erroneously states Cal Advocates position on Section 851 from the PHC.

The Scoping Memo erroneously states that during the PHC, Cal Advocates simply argued that Section 851 be included in the scope of the proceeding.⁴¹ Specifically, Cal Advocates’ assertion during the PHC was that the inclusion of Section 851 is an issue of first impression at the Commission and deserves its own separate briefing to flesh out the legal arguments.⁴² This request was seconded by The Utility Reform Network (TURN).⁴³

E. The Commission should clarify that Section 854(b)(2) is included in the scope of this proceeding.

The Scoping Memo includes Section 854(b) as an issue in this proceeding, along with the following questions:

“Does the proposed transaction satisfy the requirements of Pub. Util. Code Section 854(b)?

³⁹ *People v. Western Airlines, Inc.* (1954) 42 Cal.2d 621, 632.

⁴⁰ *Administrative Law Judge’s Ruling Setting Remote Prehearing Conference*, December 4, 2024 at 1.

⁴¹ Scoping Memo at 4-5.

⁴² *Prehearing Conference Transcript*, December 13, 2024 at 29-30.

⁴³ *Prehearing Conference Transcript*, December 13, 2024 at 32.

- a. Does the proposed transaction provide short-term and long-term economic benefits to ratepayers?
- b. Does the proposed transaction adversely affect competition?”⁴⁴

While the Scoping Memo clearly includes Section 854(b),⁴⁵ it is unclear if this includes subsection (b)(2) as it does not include the language of (b)(2).⁴⁶ As mentioned in Cal Advocates’ Protest, all of Section 854(b) should be included in the scope of this proceeding, including subsection (b)(2).⁴⁷ Section 854(b)(2) requires the Commission to equitably allocate the economic benefits of a transaction between ratepayers and shareholders in instances “where the Commission has ratemaking authority.”⁴⁸ The compulsory language of the statute (“shall”) makes it clear that this mechanism is not discretionary for the Commission.

The Commission has ratemaking authority over most telecommunication companies, most notably the Incumbent Local Exchange Carriers (ILECs) like Frontier.⁴⁹ To hold otherwise would call into question the Commission’s rate regulation of the Small Local Exchange Carriers - something the Commission should not do, without discussion or justification, in the Scoping Memo of this proceeding. As mentioned above, Section 854(b)(2) requires review in instances where the Commission has “ratemaking authority” and not where it exercises that authority. And while the Commission has not exercised

⁴⁴ Scoping Memo at 3.

⁴⁵ Section 854(b)(2) states that the Commission must find that the Joint Application must:

Equitably allocate, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.

⁴⁶ The Scoping Memo includes in subsection (a) language from 854(b)(1) and in subsection (b) from 854(b)(3).

⁴⁷ Cal Advocates’ Protest at 5-6.

⁴⁸ Cal Advocates’ Protest at 5-6.

⁴⁹ Cal Advocates’ Protest at 5-6.

its ratemaking authority for ILECs like Frontier recently, it undoubtedly maintains the authority to do so.⁵⁰

Furthermore, the Commission found the section to be applicable to the sale of the same ILECs in this proceeding from Verizon to Frontier in 2015.⁵¹ The Scoping Memo provides no justification for not doing so. In sum, the Commission should remove the ambiguity as to the status of Section 854(b)(2) in this proceeding, and follow the law and its own precedent, by including it in this proceeding.

F. The Scoping Memo should be amended to include reference to Verizon ratepayers.

As mentioned above, the Scoping Memo asks the question “Does the proposed transaction provide short-term and long-term benefits to ratepayers?”.⁵² In a footnote to this question, it states that the terms “ratepayers” and “public utility ratepayers” refer to the customers of Frontier.⁵³ This should be amended to include customers of Frontier and Verizon, as both companies are parties to the Joint Application.

IV. CONCLUSION

For the reasons discussed above, Cal Advocates requests that the Scoping Memo be amended to include Section 851 and whether Frontier complied with D.21-04-008 regarding the Right of First Offer. The Scoping Memo should also clarify that Section 854 (b)(2) is included in the scope of this proceeding. Lastly, the Scoping Memo should be amended to correctly reflect that Cal Advocates requested that all disputed legal issues be briefed at the PHC and that Verizon ratepayer interests also be considered.

⁵⁰ D.06-08-030, *Opinion*, August 24, 2006; decided in R.05-04-005.

⁵¹ “We rely on various conditions and requirements set forth herein, including the various settlements and MOUs and the Joint Application, to ensure proper allocations of long-term and short-term benefits to ratepayers as required by A.15-03-005 ALJ/KJB/dc3 - 49 - § 854(b)(2).” D.15-12-005, *Decision Granting Application Subject to Conditions and Approving Related Settlement*, December 3, 2015 at 48-49.

⁵² Scoping Memo at 3.

⁵³ Scoping Memo at 3, fn. 1.

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*Authorized to sign on behalf of The Utility
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