

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17734
October 07, 2021**

RESOLUTION

RESOLUTION T-17734. Approves the adoption of an Enforcement Program to ensure compliance with the requirements, terms, and conditions pursuant to Decision 21-04-008 by Frontier Communications Corporation and its California local exchange and long-distance subsidiaries.

SUMMARY

This Resolution approves the adoption of an Enforcement Program under the administration of California Public Utilities Commission (CPUC or Commission) Staff. The Enforcement Program aims to ensure Frontier Communications Corporation and its California local exchange and long-distance subsidiaries namely 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), and Frontier Communications Online and Long Distance Inc. (U-7167-C) (collectively “Frontier”) comply with its obligation to all of the requirements, terms, and conditions pursuant to Decision (D.) 21-04-008 that approved its transfer of control. This Resolution establishes the rules and processes when Frontier fails to fulfill its obligations pursuant to D. 21-04-008. Additionally, this Resolution describes various roles and responsibilities for implementing this Enforcement Program. Nothing in this Resolution affects the Commission's existing constitutional and statutory authority to pursue enforcement actions for non-compliance by public utilities with any Commission order and requirement.

In November 2020, the Commission adopted Resolution M-4846 establishing guiding principles on enforcement approaches and actions to advance the goals of consistent, firm, meaningful, transparent, and timely enforcement. Resolution M-4846 reinforces the Commission’s long-standing history of enforcing statutes, rules, orders, and other regulations applicable to regulated entities for the betterment of the residents of California.¹ This Enforcement Program uses Resolution M-4846’s guiding principles.

¹ See Resolution M-4846 at 2.

BACKGROUND

On April 14, 2020, Frontier filed for Chapter 11 bankruptcy, which proposed to reorganize its corporate structure among other things (corporate reorganization). On May 22, 2020, Frontier filed an application to transfer the control of its companies. California law requires the Commission to weigh in on situations when there may be a transfer or encumbrance of utility property. The Commission thus opened a proceeding, Application (A.) 20-05-010, to review Frontier's application and decide whether to reject or approve it. During this proceeding, the Yurok Tribe, California Emerging Technology Fund (CETF), Communications Workers of America District 9 (CWA), The Utility Reform Network (TURN), and the Commission's Public Advocates Office (CAL Advocates) (collectively, "Settling Parties") entered into settlement agreements (collectively, "Settling Agreements") with Frontier.

On April 15, 2021, the Commission adopted Decision (D.) 21-04-008 that approved with conditions the request of Frontier for approval of its corporate restructuring. The Commission has identified that the approval with conditions of Frontier's request is in the public interest, and therefore, satisfies the requirements to transfer utility property under California Public Utilities Code (PU Code) § 854.

Frontier's fulfillment of its obligations from D. 21-04-008 will assure that the transfer of control will benefit Californians. These obligations cover a host of issues, including, but not limited to the following: ensuring Frontier timely restore service outages, upgrading the speed of Frontier's broadband Internet access service offerings, expanding Frontier's network infrastructure, and increasing Frontier's engagement with the communities it serves.

The Commission has broad regulatory authority as set forth in PU Code §§ 701, 702, 2101, and 2107. PU Code § 7 states that a public officer of the Commission may authorize Staff to exercise powers and perform duties granted to the officer unless expressly provided otherwise.² These may include the investigation of facts preliminary to agency action, and the issuance of citations for violations, up to specified amounts, subject to appeal to the Commission. Consistent with these state laws, the Commission specifically delegated the responsibility, in Ordering Paragraph 4. (f) of D. 21-04-008, to develop a meaningful and effective enforcement program that includes enforcement

² The term "Staff" refers to the portion of the Commission's Staff designated by the Executive Director to carry out the particular function involved.

and penalty authority above and beyond the requirements in D. 21-04-008 (inclusive of the Settling Agreements). The Commission explicitly indicated this enforcement program will have no limitations and can cover “Frontier’s reporting requirements, service quality requirements, infrastructure investment requirements, and the terms of the Settlement Agreements.”³ This Resolution adds an enforcement structure and penalties as allowed under the Commission’s regulatory authority, including its enforcement authority. The Commission has authority to establish any penalty scheme it deems appropriate either in conjunction with or parallel to any existing Settlement Agreements.

This Resolution establishes an Enforcement Program associated with Frontier’s corporate reorganization as specified in Ordering Paragraph 4. (f) of D. 21-04-008.

DISCUSSION

The Commission needs to establish and communicate the consequences for Frontier in the instances where Frontier does not fulfill its obligations. Except as outlined in the section immediately below, if Frontier does not fulfill its obligations, including those from the Settlement Agreements, the monetary fine for Frontier will not exceed \$14 million a month for each obligation it fails to meet. All of the consequences in this Resolution are in addition to any existing or future Commission requirements and to the Settlement Agreements.⁴

This Resolution also lays out the enforcement-related processes for the purposes of clarity and transparency. Staff can take more immediate action to address and correct Frontier’s non-compliance, while simultaneously providing a clear process for Frontier to contest or appeal violations. This Enforcement Program explicitly gives the parties

³ See Ordering Paragraph 4.(f) of D. 21-04-008, which states, “The Commission’s CD shall draft a Resolution reflecting an enforcement program that covers compliance with the terms of this Ordering Paragraph, including, without limitation, Frontier’s reporting requirements, service quality requirements, infrastructure investment requirements, and the terms of the Settlement Agreements. The proposed enforcement program will specify a citation amount for each term and proposed remedies for lack of compliance and shall be put before the Commission for consideration. The Commission’s CD shall explore penalty mechanisms, including monetary fines and community investment mechanisms. Enforcement program appeals will be pursuant to Resolution ALJ-377 or its successor.”

⁴ For example, this Resolution does not alter commitment #6 within the settlement agreement between Frontier, Cal Advocates, TURN, and CWA. This Resolution also does not alter the requirements under General Order (G.O.) 133-D section 9. This Resolution simply adds another set of consequences among the panoply of other consequences for which Frontier will be responsible. As a hypothetical example, Frontier would be accountable for the sum of nine million dollars for failing to restore 90 percent of service outages within 24 hours under the following simultaneous scenario: a) one million dollars pursuant to a fine assessed under GO 133-D, b) two million dollars in reinvestment monies per commitment #6 within the settlement agreement between Frontier, Cal Advocates, TURN, and CWA, and c) one million dollars pursuant to a fine assessed per this Resolution.

that settled with Frontier the opportunity to influence the appropriate remedies (except as already determined by this Resolution in the section called, “Consequences of Not Fulfilling Obligations,” immediately below), as applicable, for the Commission to choose when Frontier does not fulfill an obligation.

This Enforcement Program also ensures that the Commission properly notify Frontier in writing of compliance problems. In addition, Frontier will have the opportunity to satisfy the consequence of its failure to fulfill an obligation, to bring itself into compliance, and to advise the Commission (and the parties that settled with Frontier) of any error(s) in an evaluation and conclusion of compliance (or lack thereof). Frontier also will have the chance to appeal the violation and the applicable consequence pursuant to Resolution ALJ-377.

Frontier may also request an extension of a deadline to achieve compliance for each obligation. Staff can grant a one-time extension of up to 60 calendar days for additional time for Frontier to achieve compliance with an obligation if Frontier makes a written request to the Director of the Communications Division (CD) 30 calendar days before the expiration of the compliance deadline.

Staff cannot automatically grant a request to extend the deadline to comply with an obligation. Frontier must demonstrate good cause for the additional time requested to correct a violation and show a good-faith effort to correct the violation for which Frontier requested an extension. If Staff grants an extension to fulfill an obligation, then Staff will set a new compliance deadline. Otherwise, Frontier must pay the monetary fine for the violation by the due date as stated in the “Notice of Violation,” as applicable, if Frontier failed to fulfill an obligation.

I. Consequences of Not Fulfilling Obligations

A. *Timely Restoring Service Outages*

Restoring outages in a timely manner is critical in the provision of high-quality and reliable communications services. The Commission established uniform minimum standards of service to be observed in the operation of public utility telephone corporations. A key measure the Commission uses to determine the quality of service provided by a telephone corporation is the “Out of Service (OOS) Repair Interval.” The OOS Repair Interval measures the average interval between the time a telephone corporation responds to an OOS trouble report and the restoration of the telephone service. The Commission defined a telephone service outage in G.O. 133-D section 1.3.r. as a telephone line without a dial tone. The Commission set a standard for the telephone corporation to restore a minimum of 90% of their OOS trouble reports within

24 hours (excluding all or parts of outages occurring on Sundays, federal holidays, and catastrophic events and widespread outages that are beyond a telephone corporation's control). If telephone corporations fail to meet the service quality standards in GO 133-D, they are subject to fine or re-investment as corrective action.

Determining whether Frontier failed to resolve a minimum of 90% of OOS trouble reports within 24 hours will be based on the OOS results of each of these telephone corporations, Frontier California Inc. (Frontier CA) (U-1002-C), Citizens Telecommunications Company of California Inc. (Citizens CA) (U-1024-C), Frontier Communications of the Southwest Inc. (Southwest) (U-1026-C). Each of these three telephone corporations separately submits service quality reports.⁵ In Ordering Paragraph 4. (m), the Commission specifically required quarterly reports regarding performance with the OOS Repair Interval as additional reporting requirements. The Commission will separately evaluate the performance of each of these three telephone corporations, Frontier CA, Citizens CA, and Southwest, for the purposes of determining whether Frontier timely restored service outages pursuant to this Resolution. Calculating the applicable fine for each of these three telephone corporations will be proportional to the percentage of access lines that each telephone corporation had during the relevant month. The maximum penalty for failing to timely restore service outages for these three telephone corporations combined is thirty-six million dollars annually (i.e., three million dollars per month or nine million dollars per quarter). As a hypothetical example, if each of these three telephone corporations had an OOS Repair Interval of less than 60% for each of the three months during the last quarter of 2021 with the same monthly percentage of access lines of ninety percent, nine percent, and one percent for Frontier CA, Citizens CA, and Southwest, respectively, then the corresponding penalties would be \$8.1 million, \$810,000, and \$90,000, respectively.

If a quarterly report shows that less than 90 percent of the service outages had a restoral time of more than 24 hours for any month between October 1, 2021, and September 30, 2025, then the relevant monthly monetary fines in this section of the Resolution will apply.⁶ The monthly monetary fine equals to \$2,100,000 if the OOS Repair Interval is at least 80 percent but less than 90 percent. The monthly monetary fine increases to \$2,400,000 if the OOS Repair Interval is at least 70 percent but less than 80 percent. The monthly monetary fine rises to \$2,700,000 if the OOS Repair Interval is at least 60 percent but less than 70 percent. The monthly monetary fine becomes \$3,000,000 if the OOS Repair Interval is less than 60 percent.

⁵ See <https://www.cpuc.ca.gov/about-cpuc/divisions/communications-division/telecommunications-carriers-service-quality-reports> (Last visited September 3, 2021).

⁶ See Appendix A of this Resolution for some example calculations.

Payment regarding the sum of these relevant monthly amounts will be due by the last day of the calendar quarter following the quarter in which the obligation arose. For example, payment for obligations that arise in July, August, and September 2021 shall be due by December 31, 2021. Most importantly, all of these payments will go to the California General Fund instead of Frontier's network infrastructure.

Staff will also need to adjust a quarterly payment if the sum of the penalty from this Resolution and the penalty from GO 133-D is more than \$36 million. For the fourth quarter of 2021, staff will not need to perform this adjustment. For calendar years 2022 to 2024, staff may need to perform this adjustment for each of the fourth quarters of these three calendar years.⁷ For the third quarter of 2025, staff may need to adjust the quarterly payment associated with having an OOS Repair Interval of less than 90 percent for the last quarter in which this specific penalty structure within this Enforcement Program applies.

If the Commission, subsequently, (i.e., after the adoption of this Resolution) alters the rules related to ensuring the quality and reliability of communication services in a successor Commission rulemaking or decision(s), the Commission can choose, at that time, to maintain the service quality related provisions adopted in this Resolution or to rely upon the new service quality and reliability related rules. If the Commission chooses to rely upon a successor rulemaking or decision(s) instead of the requirements pursuant to this section of this Resolution, then Frontier will instead be accountable for the requirements from that successor rulemaking or decision.

B. Timely Reporting⁸

When a utility submits a document late, the Commission has previously defined a monetary consequence of the utility paying \$1,000 a day per document.⁹ Timely reporting by Frontier is important in adequately monitoring Frontier's post-

⁷ As a hypothetical example, staff will adjust the penalty associated with fourth quarter 2022 pursuant to this Resolution for failing to restore 90 percent of service outages within 24 hours under the following simultaneous scenario: a) one million dollars pursuant to a fine assessed under GO 133-D and b) thirty-six million dollars for the sum of the penalties for the four quarters in calendar year 2022 assessed per this Resolution *absent an adjustment*. Under this hypothetical scenario, to perform the adjustment, staff will decrease the penalty associated with fourth quarter 2022 from nine million to eight million dollars. The adjustment will then result in the sum of thirty-six million dollars instead of thirty-seven million dollars for the fines assessed under GO 133-D and this Resolution for calendar year 2022. For a point of reference, thirty-six million dollars is about 0.4 percent of Frontier's nationwide annual revenues since Frontier acquired Verizon California's assets. See Communications Division's report called, *Stats about Frontier*, available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M351/K388/351388057.PDF>.

⁸ See Appendix B of this Resolution for information about some recurring reports.

⁹ See Resolution T-17601 at 4 and A-1.

restructuring activities. Frontier will be fined \$1,000 per day per utility number for each late or incomplete submission of a report.

Frontier will have a grace period of five calendar days after the relevant report's deadline. The Commission will not conclude Frontier has failed to fulfill a reporting requirement until after the grace period. Frontier has to pay the applicable payment amount within 30 calendar days of filing the complete report along with a cover letter. Within this cover letter, Frontier will provide the utility number, the proceeding number of A.20-05-010, the report's name, the number of calendar days beyond the deadline of the report, the amount enclosed if the report is late or incomplete, and a statement recognizing the late or incomplete submission (as applicable).

C. Fully Completing and Submitting Timely Responses to Data Requests

The Commission routinely needs to issue requests for information to utilities such as Frontier. Moreover, the settlement agreement between Frontier, Cal Advocates, TURN, and CWA includes an obligation that "Frontier and its California subsidiaries will provide data requested by the Communications Division, Cal Advocates, TURN and CWA subject to the Commission's discovery rules, to verify compliance with the conditions in the Agreement."¹⁰ A data request typically contains several questions to which the Commission requires corresponding responses from a utility.

Timely and complete submission of information by Frontier is important in adequately monitoring Frontier's post-restructuring activities. Frontier shall pay \$1,000 per day for each of its utility numbers for each late or incomplete submission of responses to a data request. For the purpose of determining compliance to the obligation associated with a data request, the Compliance Monitor will evaluate the entirety of the responses to a data request. The Commission will not assess the penalty of \$1,000 per day per utility number on each question within the data request. Instead, the Commission will assess the penalty of \$1,000 per day per utility number per data request (i.e., a set of questions for which the Commission seeks answers).

Frontier will have a grace period of five calendar days after the relevant data request's deadline. The Commission will not conclude Frontier has failed to fully and timely complete and submit a response to a data request until after the expiration of the grace period. Frontier has to pay the applicable amount within 30 calendar days of submitting the completed data request response along with a cover letter. Within this cover letter, Frontier will provide the utility number, the proceeding number of A.20-05-010, the

¹⁰ See commitment #41 in the settlement agreement between Frontier, Cal Advocates, TURN, and CWA.

data request's name or number, the number of calendar days beyond the deadline of the data request response, the amount enclosed if the data request response is late or incomplete, and a statement recognizing the late or incomplete submission (as applicable).

D. Timely Payments

The Commission has also created an existing practice of assessing the utility a monthly late payment fee of 10 percent for each late payment.¹¹ Timely submission of payments by Frontier is critical in our meaningful and timely enforcement actions. Staff will separately provide instructions to Frontier for submitting the payments. The Commission will assess a monthly late payment fee of 10 percent. Payment will be considered late if it is received after the applicable due date. As necessary, the Commission may consider additional enforcement actions.

II. Processes Related to Implementing the Enforcement Program

*A. Compliance Monitor*¹²

At the expense of Frontier, the Commission's Communications Division will hire an independent monitor (Compliance Monitor) to assist in reviewing Frontier's compliance with the terms, requirements, and conditions of D. 21-04-008. Within 15 days after receipt of notice from the Staff, Frontier will provide the amounts specified by Staff reflecting the fees and expenses of the Compliance Monitor. Within 45 days after the end of each calendar quarter, Frontier shall submit to the Compliance Monitor and to cdcompliance@cpuc.ca.gov compliance reports in a format designed by Staff that will be treated as public information.¹³

The Compliance Monitor will meet with Staff at least four times per year and at other times as requested by Staff to report on Frontier's compliance with the terms, requirements, and conditions of this Decision and will submit recurring (e.g., semi-annual) and ad-hoc reports to Staff regarding Frontier's compliance with the requirements and conditions of this Decision.

If Frontier is not in compliance with any requirement or condition, the Compliance Monitor will recommend a penalty to bring Frontier into compliance and forward findings and a recommendation to the Commission's Communications Division's Director at cdcompliance@cpuc.ca.gov. The Compliance Monitor can take into consideration these three items: 1) input from the parties that settled with Frontier, 2)

¹¹ See Resolution T-17601 at 6.

¹² See Appendix C of this Resolution for the scope of work associated with the Compliance Monitor.

¹³ See GO 66-D and D.16-08-024 regarding the Commission's process for handling claims of confidentiality.

guidelines from M-4846, and 3) the consequences delineated in this Resolution, in devising its recommendations to the Commission's Communications Division's Director.

B. Involvement of Parties Settling with Frontier

The Settlement Agreements established in detail the roles and responsibilities of the Settling Parties in terms of monitoring, collaborating, and engaging with Frontier. We encourage the Settling Parties to independently resolve their issues to the best of their abilities. Settling Parties also have the option of suggesting consequences to the Compliance Monitor for each obligation that Frontier has not fulfilled beyond those consequences as specified above. When suggesting additional consequences to the Compliance Monitor, these Settling Parties would need to provide supporting documentation and justification to the Compliance Monitor. The Compliance Monitor will then verify the assertion of Frontier's failure to fulfill the corresponding obligation.

The Settling Parties also have the ability to pursue remedies of their own accord with the Commission instead of with the Compliance Monitor, as they deem appropriate.¹⁴ If Frontier fails to perform its respective obligations under any of the Settlement Agreements, after reasonable notice and opportunity to cure its default, any other Party to the Settlement Agreements may come before the Commission to pursue a remedy, including enforcement. As duly recognized in each of the Settlement Agreements, the Commission has plenary authority to enforce the Settlement Agreements and its own rules.

C. Notifying Frontier of Payments that are Due¹⁵

Staff will primarily use written communications to notify Frontier of payments that are due.¹⁶ Staff may issue a Warning Letter or email, citation, Notice of Violation or refer a case for other enforcement action.

1. In-Person or Telephone Communications

Staff may, but is not required to, inform regulated entities in person or by telephone of violations or of violations that must be corrected. Staff may also orally inform regulated entities of weaknesses, safety concerns, or opportunities for improvement that are not violations but should be corrected to avoid a violation or to reduce the safety risk. Staff will keep a detailed written record of such oral communications with the regulated

¹⁴ See each of the settlement agreements attached in D. 21-04-008.

¹⁵ See Resolution M-4846 regarding the guidelines for a notification process.

¹⁶ Staff may delegate this minor task to the Compliance Monitor as appropriate.

entity in the case file. The minimum requirements for documenting an oral communication with a regulated entity are:

- a) Date and time of the communication;
- b) The name of the Staff member[s] and the representative[s] of the regulated entity involved in the communication;
- c) The violation, weakness, safety concern, or opportunity for improvement that was discussed;
- d) Actions for correcting the violation or addressing the weakness, safety concern, or opportunity for improvement that were discussed, including required timeframes for completing such actions;
- e) The regulated entity's response to the communication of the violation, weakness, safety concern, or opportunity for improvement; and
- f) The evaluation of whether the response is sufficient and/or warrants a follow-up investigation.

All oral communications will be memorialized in a warning email or letter, Notice of Violation, or other written communication. Oral communications are not required in every case.

2. Warning Letter or Email¹⁷

Staff may send a regulated entity a letter or an email that identifies program weaknesses, safety concerns, or opportunities for improvement. A Warning Letter or Email should only be sent to a regulated entity to address issues that are not being cited as violations but should be corrected to avoid a citation or Notice of Violation or to reduce the safety risk. Staff will verify delivery of the Warning Letter or Email using a Proof of Service form. A Warning Letter or Email will be placed in the regulated entity case file and recorded in the enforcement database¹⁸ and will include the following:

- a) The date the letter or email was sent;
- b) The date Staff identified the situation or condition at issue;
- c) The circumstances under which Staff identified the situation or condition at issue (e.g., during an inspection or by consumer complaint);
- d) Actions recommended to address the situation or condition at issue, including any recommended timeframes to complete such actions; and
- e) Request for Information.

¹⁷ *Id.* See also Resolution M-4846 regarding the guidelines for a notification process upon which this Resolution's notification process is based.

¹⁸ Staff can use an alternative method of tracking this type of communication until such time as the Commission implements this enforcement database.

Staff is authorized to inspect the accounts, books, papers, and documents of a regulated entity.¹⁹ Staff may request the production of accounts, books, papers, and documents of a regulated entity. Failure to make such records available may lead to the issuance of a subpoena or other enforcement action.²⁰

3. Notice of Violation²¹

When a violation is identified, Staff may issue a Notice of Violation to a regulated entity. Staff will use a Notice of Violation form. Staff will verify delivery of the Notice of Violation using a Proof of Service form. A Notice of Violation will be placed in the regulated entity case file and recorded in the enforcement database²² and will include:

- a) The law or Commission order, decision, or rule violated by the regulated entity;
- b) The facts that form the basis for each violation;
- c) Information related to the potential for additional or ongoing violations;
- d) A directive to correct each violation to avoid additional enforcement action;
- e) A date by which the regulated entity must submit a plan for correcting each violation if a plan is appropriate;
- f) A date by which the regulated entity must certify that each violation has been corrected;
- g) A penalty amount if the Notice of Violation includes a penalty;
- h) Staff contact information; and
- i) Information about how to respond to the Notice of Violation.

A regulated entity that receives a Notice of Violation will be given an opportunity to respond in writing to that Notice of Violation. The response will be provided to the enforcing division within 30 days from the date the Notice of Violation was served upon the regulated entity. The response time may be extended or shortened by Staff, depending on the exigencies of a case. The response will include:

- a) If the regulated entity disputes that a violation has occurred, a statement of the facts upon which the dispute is based;
- b) A plan to correct any undisputed violations;
- c) Confirmation that the regulated entity will correct any undisputed violations by the date(s) specified in the Notice of Violation or a proposal for a later date with an explanation of the need for additional time; and

¹⁹ See PU Code § 312.

²⁰ See PU Code § 311.

²¹ Staff may delegate this minor task to the Compliance Monitor as appropriate. See also Resolution M-4846 regarding the guidelines for a notification process upon which this Resolution's notification process is based.

²² Staff can use an alternative method of tracking this type of communication until such time as the Commission implements this enforcement database

- d) Confirmation that a penalty assessed will be paid within 30 days of the issuance of the Notice of Violation or a proposal for a lower penalty amount with an explanation of why the lower amount is appropriate.

Staff will review the regulated entity's response to a Notice of Violation and consider the regulated entity's explanation or defenses. Staff will determine whether to accept the response or proceed with additional enforcement. The reasons for a determination that the regulated entity's explanation or defenses lack merit should be included in the regulated entity case file. After reviewing the response, Staff may take any appropriate action including any of the following actions:

- i. Request that the regulated entity provide additional information;
- ii. Take the next appropriate enforcement action; and
- iii. Notify the regulated entity that the response resolved one or more violations identified in the Notice of Violation.

D. Stronger Types of Enforcement Actions for the Commission's Consideration

Staff may pursue different levels of enforcement action.²³ In some cases, an enforcement response, such as an oral communication followed by a Warning Letter or Email or a Notice of Violation, will be enough.²⁴ Other cases may warrant a stronger enforcement action in lieu of or in addition to a warning or other initial enforcement response.²⁵ Pursuant to Resolution M-4846, Staff may draft, as applicable, proposed Administrative Consent Orders and Administrative Enforcement Orders, subject to Commission review and disposition. When Staff considers drafting either a proposed Administrative Consent Order and Administrative Enforcement Order, they should follow the guidelines and process in Resolution M-4846.

However, proposed Administrative Consent Orders are unnecessary for those consequences (i.e., the section called, "Consequences of Not Fulfilling Obligations") of this Resolution already, specifically, identifies. The Commission has a finite set of resources, thus Staff does not need to negotiate any proposed settlements or draft any orders as an enforcement action for the consequences described in the section called, "Consequences of Not Fulfilling Obligations," in this Resolution.

Additionally, Staff or the Commission have other types of enforcement actions at its disposal such as the following: a) issuing an Order Instituting Investigation or Order to

²³ See Resolution M-4846.

²⁴ *Id.*

²⁵ *Id.*

Show Cause; b) suspending, altering, amending, or revoking the license or certification of a regulated entity; c) filing a civil or criminal action against the regulated entity.

The Settling Parties may also inform the Commission (or its Staff) of Frontier's failure to fulfill its obligations for the corporate reorganization, and seek action from the Commission (or its Staff) to compel compliance from Frontier.

E. Frontier's Ability to Appeal Violations and the Consequences Associated with Failing to Fulfill its Obligations

Pursuant to Resolution ALJ-377, Frontier may appeal violations and the consequences of its failure to meet any of its obligations.

F. Transparency

Communications Division will publish the following items (excluding information and documents of which the Commission grants confidential treatment consistent with D.16-08-024) related to Frontier's fulfillment of their obligations pursuant to their corporate reorganization on the Commission's Web site at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/frontier-transfer-proceeding>

- a) reports developed by the Compliance Monitor;
- b) recurring and ad hoc reports submitted by each of Frontier's relevant utility numbers;
- c) each instance in which Frontier failed to fulfill their obligations pursuant to their corporate reorganization;
- d) each applicable consequence faced by Frontier; and
- e) other enforcement actions taken by the Commission.

SAFETY CONSIDERATIONS

It is the policy of the Commission that every violation should result in an appropriate enforcement action consistent with the priority of the violation.²⁶ In recognition of its finite resources, the Commission exercises its enforcement discretion to prioritize enforcement actions.²⁷ Enforcement prioritization enhances the Commission's ability to leverage its finite enforcement resources and to achieve the general deterrence needed to encourage the regulated entity to anticipate, identify, and correct violations.²⁸ This

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Resolution establishes the largest monetary consequence for instances when Frontier fails to timely restore service outages. The Enforcement Program prioritizes the importance of ensuring that the communities of which Frontier serves will have reliable access to 911 services, 211 services, and the capability to receive emergency alerts and notifications.

COMMENTS ON PROPOSED RESOLUTION

In compliance with PU Code § 311(g), a notice letter was emailed on July 16, 2021, informing interested parties of the availability of the draft of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov>. This letter also informed parties that the final Resolution adopted by the Commission will be posted and will be available at the same website.

On August 5, 2021, Frontier and TURN timely submitted opening comments. On August 10, 2021, Cal Advocates and Frontier timely submitted reply comments. The parties' comments make certain recommendations, including changes due to alleged legal errors in the Resolution. We have revised this Resolution based upon consideration of these comments.

Frontier challenges the draft Resolution on the grounds that the OOS penalties proposed in the Resolution are unnecessary in light of the Settlement Agreement between the parties, and are excessive. Specifically, Frontier argues: 1) the draft resolution unlawfully and significantly expands the conditions agreed-upon by the parties, including imposing fines for OOS violations;²⁹ 2) the fines for failure to provide data are excessive and unreasonable;³⁰ 3) the fines for failure to meet CASF obligations are excessive and unreasonable;³¹ 4) the fines are inconsistent with CPUC precedent;³² and 5) the fines violate Frontier's due process rights.³³

In response to Frontier's allegations that fines for OOS violations, failure to provide data, and failure to meet CASF obligations are excessive and unreasonable, this Resolution has been modified as described above.

²⁹ Frontier Comments at 1.

³⁰ Frontier Comments at 6.

³¹ Frontier Comments at 7.

³² Frontier Comments at 7.

³³ Frontier Comments at 8.

Frontier argues that D. 21-04-008 “does not provide a generalized authorization to Communications Division staff to create entirely new requirements or enforcement mechanisms beyond the scope of the Decision.”³⁴ We disagree. Ordering Paragraph 4(f) of D. 21-04-008 requires the Communications Division to “draft a Resolution reflecting an enforcement program,” that covers among other things, service quality requirements. Moreover, it states, the Communications Division “shall explore penalty mechanisms, including monetary fines.” This Resolution does not modify the terms of D. 21-04-008 (inclusive of the Settlement Agreement) after the fact. This Resolution complies with D. 21-04-008.

Further, we note that the Commission has authority to impose fines for violations of any “order, decision, decree, rule, direction, demand, or requirement of the commission”, and that each ongoing day of the violation is a separate offense.³⁵ Our authority to create a fine mechanism exists independent of and in addition to penalties in any parties’ settlement agreement(s).³⁶ It is well-established that the Commission has the authority to create citation programs with graduated enforcement levels.³⁷

Frontier argues that the Resolution “upsets the balance” achieved in the Settlement Agreement between Frontier, Cal Advocates, TURN, and CWA.³⁸ However, the fine proposals in the Settlement Agreement and this Resolution are different. The Settlement Agreement between Frontier, Cal Advocates, TURN, and CWA has a cap of \$7 million per year for failure to meet service quality metrics specific to that agreement with the penalty to be reinvested in Frontier’s network. This Resolution states that fines will go to the State’s General Fund. This Resolution does not affect Frontier’s reinvestment option in improving its network per commitment #6 within the Settlement Agreement between Frontier, Cal Advocates, TURN, and CWA, and thus does not alter the terms of this agreement.

³⁴ Frontier Comments at 2.

³⁵ Public Utilities Code Sections 2107 and 2108.

³⁶ See e.g., D.20-04-008, *In the Matter of the Joint Application of Sprint Communications Company L.P. (U5112) and T Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a)*. In that Decision we imposed a compliance monitor to enforce violations and directed CD to propose an enforcement citation program for New T-Mobile, independent of the settlement agreements entered into by New T-Mobile.

³⁷ See e.g., Resolution M-4846.

³⁸ Frontier Comments at 3.

Furthermore, the metrics in the aforementioned commitment #6 are effectively 90 percent and 10 percent below the current GO 133-D OOS Repair Interval minimum of 90%, for calendar years 2021 and 2022, respectively. The Commission has expressed concerns in Resolution T-17743 about Frontier CA's continued failure to meet the minimum OOS Repair Interval every month over the past two years and failure to exit "chronic failure status," despite Frontier proposing to spend \$4,849,913 as part of its two previously approved GO 133-D investment plans in November 2018 and May 2019.³⁹ As indicated in Resolution T-17743, with the exception of September 2020, Frontier CA has failed to meet the minimum OOS Repair Interval every month since April 2016, after the company completed its acquisition of Verizon California.⁴⁰ As a result, Frontier CA has been in "chronic failure status" since the GO 133-D fine mechanism came into effect in January 2017 and continued to incur fines for each month of its substandard service quality performance in the year 2020.

Thus, the record demonstrates that the reinvestment plan approach has failed to improve service quality, and we believe fines are necessary if violations continue to occur. Recently, we indicated our view that reinvestment of fines is not an effective deterrent to ongoing violations, at the August 5, 2021 voting meeting, where we approved Frontier CA's Advice Letter 12857, which involves a fine to the General Fund of \$967,725 for Frontier CA's GO 133-D, Section 9.6 for Frontier's substandard service quality performance in the year 2020.

Frontier further argues that the fines are inconsistent with past Commission precedent. For comparison, Frontier points to a recent OII decision (D.19-09-037) relating to PG&E's improper disconnections, where the Commission approved a settlement agreement requiring PG&E to provide a \$100 bill credit to each customer and to contribute \$637,100 to Relief for Energy Assistance through Community Help ("REACH") program.⁴¹ However, we note that our enforcement OIIs are varied and depend on the circumstances, where fines can range from a few thousand to millions of dollars. Here, inapposite, we are creating an enforcement mechanism, not imposing fines. As yet, we have imposed no fines on Frontier under the proposal in this Resolution. It remains to be seen whether Frontier will have any violations and be

³⁹ Resolution T-17743 at 4.

⁴⁰ *Id.* at 6.

⁴¹ Frontier Comments at 8.

fined. The mere existence of the possibility of a large fine does not make this inconsistent with past precedent.

Finally, Frontier challenges the draft Resolution on the grounds that it does not provide sufficient due process.⁴² However, by its terms⁴³ this Resolution is subject to the appeals processes described in Resolution ALJ-377, which provides for appeals of citations. Nothing in ALJ-377 or this Resolution prohibits Frontier from exercising its rights under PU Code §§ 1731 and 1756 to file an application for rehearing and seek judicial review. Under this Resolution, Frontier's due process rights to appeal citations are not impacted.

TURN's Comments did not allege any errors in this Resolution (factual, technical, and/or legal). However, TURN recommended revising this Resolution to add specific penalties for other obligations (i.e., broadband buildout, tribal commitments, or pricing). We decline to adopt those recommendations. TURN also sought clarifications about several items regarding the following: a) how the enforcement mechanism will function for the reports and data requests, b) the Compliance Monitor's and staff's authority, c) the notification process to notify Frontier, d) the fines in this Resolution related to Frontier's CASF infrastructure projects, and e) the framework of how the penalties in this Resolution will work with the penalties as stipulated in the settlement agreement Frontier, Cal Advocates, TURN, and CWA. As D. 21-04-008 and this Resolution make clear, fines as described in this Resolution are in addition to the fines described in the Settlement Agreement, and are different in nature because they are in different amounts and will go the General Fund rather than reinvestment in Frontier's network.

FINDINGS AND CONCLUSIONS

1. Public Utilities Code § 7 indicates whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.
2. Public Utilities Code § 701 authorizes the Commission to supervise and regulate every public utility in the State. It also authorizes the Commission to do all things,

⁴² Frontier Comments at 9.

⁴³ D. 21-04-008 at 70. "Enforcement program appeals will be pursuant to Resolution ALJ-377 or its successor."

whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

3. Public Utilities Code § 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
4. Public Utilities Code § 2101 mandates the Commission shall ensure that the provisions of the Constitution and statutes affecting public utilities are enforced and obeyed. The Commission must also ensure that violations thereof are promptly prosecuted and penalties due to State, therefore, recovered and collected, and to this end, the Commission may sue in the name of the people of the State of California.
5. Public Utilities Code § 2107 mandates that utilities are subject to a minimum penalty of five hundred dollars (\$500) and a maximum penalty of one hundred thousand dollars (\$100,000) for each offense (i.e., an instance of non-compliance or violation of any provision of the Constitution of this state or any part or provision of any Commission order, decision, decree, rule, direction, demand, or requirement) in cases in which a penalty has not otherwise been provided.
6. An enforcement program will encourage compliance with Commission requirements, provide Staff with an additional tool to address non-compliance, and will allow the Commission to take prompt action.
7. The establishment of an enforcement program does not prevent the Commission from taking other necessary enforcement actions including revoking the utility's Certificate of Public Convenience and Necessity and/or registration licenses.
8. The enforcement program does not affect a subscriber's private right of action.
9. The enforcement program gives the utility the right to appeal (as stipulated in Resolution ALJ-377) notices of violations and consequences for non-compliance.
10. Decision 16-08-024 describes the process for submitting potentially confidential documents to the Commission.
11. Resolution M-4846 establishes guiding principles on enforcement approaches and actions to advance the goals of consistent, firm, meaningful, transparent, and timely enforcement. The enforcement program uses these guiding principles.
12. The Commission e-mailed a Notice of Availability of this Resolution on July 16, 2021, interested parties informing them that the draft of this Resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. On August 5, 2021, Frontier and TURN timely submitted opening comments. On August 10, 2021, Cal Advocates and Frontier timely submitted reply comments.

13. With regards to the proceeding, Application 20-05-010, the Communications Division developed reports and maps about Frontier Communications Corporation and its subsidiaries operating in California. For example, the Communications Division summarized content from Frontier Communications Corporation's annual 10-K filings, which include information about revenues and capital expenditures among other figures. The Web page, <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/frontier-transfer-proceeding>, contains some of these materials. The Commission also sought comments from the proceeding's parties regarding the Communications Division's materials.

THEREFORE, IT IS ORDERED that:

1. The Commission hereby adopts the enforcement program in this Resolution to govern the instances in which Frontier Communications Corporation and its California local exchange and long-distance subsidiaries namely 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), and Frontier Communications Online and Long Distance Inc. (U-7167-C) fails to meet and fulfill their obligations pursuant to their corporate reorganization pursuant to Decision 21-04-008.
2. The Commission authorizes Commission Staff to implement the enforcement program in this Resolution.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on _____. The following Commissioners adopted it:

Rachel Peterson
Executive Director

APPENDIX A

EXAMPLES OF PAYMENTS ASSUMING AN OUT OF SERVICE REPAIR INTERVAL OF LESS THAN 60%												
APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	AMOUNT
1		1		1		1		1		1		= 6 months X \$3 million = \$18 million
1	1	1										= 3 months X \$3 million = \$9 million
					1							= 1 month X \$3 million = \$3 million
			1	1		1	1		1	1		= 6 months X \$3 million = \$18 million
1		1	1	1	1	1	1		1	1	1	= 10 months X \$3 million = \$30 million

END OF APPENDIX A

APPENDIX B

	Frequency of Recurring Report		
	Monthly	Quarterly	Annual
Deadline for Submission of Report	15 calendar days after the end of the reporting month	45 calendar days after the end of the reporting quarter	February 1 after the end of the reporting year (unless otherwise specified in Decision 2104008 or in Attachment 1 of Decision 2104008)
Grace Period After the Deadline	5 calendar days	5 calendar days	5 calendar days
Citation Amount for Late or Incomplete Submission of Report	\$1,000 a day per report and per utility number	\$1,000 a day per report and per utility number	\$1,000 a day per report and per utility number
Deadline for Giving the CPUC the Citation Amount	Within 30 calendar days of filing the complete report along with a cover letter	Within 30 calendar days of filing the complete report along with a cover letter	Within 30 calendar days of filing the complete report along with a cover letter
Content of Cover Letter	a) Utility Number b) A2005010 as the proceeding number c) Number of calendar days beyond the deadline of the report d) Citation amount e) Statement recognizing the late submission	a) Utility Number b) A2005010 as the proceeding number c) Number of calendar days beyond the deadline of the report d) Citation amount e) Statement recognizing the late submission	a) Utility Number b) A2005010 as the proceeding c) Number of calendar days beyond the deadline of the report d) Citation amount e) Statement recognizing the late submission

END OF APPENDIX B

APPENDIX C
STATEMENT OF WORK FOR COMPLIANCE MONITOR
PURSUANT TO DECISION (D). 21-04-008

The Compliance Monitor will be responsible for reviewing Frontier's reports and making findings on Frontier's compliance with, and progress toward, the terms, requirements, and conditions within D. 21-04-008. The Compliance Monitor will also be responsible for reporting these findings to the Communications Division (CD).

The Compliance Monitor will perform the following:

- A. Review all the terms, requirements, and conditions that Frontier is required to meet under D. 21-04-008 and the settlement agreements.
- B. Establish a clear and effective methodology to track and verify all the terms, requirements, and conditions that Frontier is required to meet under D. 21-04-008 and the settlement agreements.
- C. Identify documentation needs for verifying Frontier's progress towards fulfilling each obligation. If the existing reporting requirements are sufficient, then the compliance monitor should state this opinion in writing.
- D. Seek approval of any recommendations, documents, documentation needs, approaches, and processes from Staff.
- E. Work with CD staff to design and establish the compliance report formats that Frontier will use to submit to the Compliance Monitor and to cdcompliance@cpuc.ca.gov.
- F. Collect and retain all documents in an organized and centralized location filed by Frontier in response to the terms, requirements, and conditions that Frontier is required to meet under D. 21-04-008 and the settlement agreements. The centralized location will be secured and accessible to CPUC staff (e.g., shared CPUC network folder).
- G. Develop and retain a log of communications with Frontier and/or the entities settling with Frontier.
- H. Timely report all findings (within 5 days of the deadline) so that the CPUC can ascertain whether Frontier is meeting the milestones and requirements in the decision and settlement agreements and take appropriate action.
- I. Submit progress reports to CD staff on a semi-annual basis and at other times as requested by staff (if staff determines follow-up reports are needed) regarding

Frontier's compliance with the terms, requirements, and conditions of D. 21-04-008.

- J. Develop content for public dissemination on the Commission's Web site about Frontier's compliance with the terms, requirements, and conditions of D. 21-04-008.
- K. Assist the Commission with enforcement of the terms, requirements, and conditions throughout D. 21-04-008.
- L. Develop a rationale for suggesting the consequences by which to hold Frontier accountable.
- M. Implement the Enforcement Program pursuant to the adopted Resolution T-17734.
- N. If and when the Compliance Monitor concludes that Frontier is not in compliance with any requirement or condition of an Ordering Paragraph from D. 21-04-008, the Compliance Monitor may recommend a penalty to bring Frontier into compliance and forward findings and a recommendation to the Commission's CD Director at cdcompliance@cpuc.ca.gov.
- O. Review and validate infrastructure investments that may include but are not limited to performing field/onsite visits and other methods appropriate to assist in ensuring goals are met.
- P. Meet with CD and CPUC Staff to report on Frontier's compliance in terms, requirements, and conditions of the D. 21-04-008.
- Q. Participate and attend external (e.g., community outreach, tribal discussions, CWA/TURN/CalAdvocates, and Frontier) stakeholder meetings (in person or remotely) on behalf of CD.
- R. Ensure close and frequent contact with Frontier as necessary, as well as, with the CPUC, to be able to report to the Commission reasoned findings about Frontier's compliance with the Decision's requirements.

END OF APPENDIX C