

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET UT-090842
)	
VERIZON COMMUNICATIONS INC.)	
AND FRONTIER)	ORDER 08
COMMUNICATIONS)	
CORPORATION)	
)	ORDER EXTENDING DEADLINE
For an Order Declining to Assert)	TO MEET BROADBAND
Jurisdiction Over, or, in the Alternative,)	TARGETS, REQUIRING UPDATED
Approving the Indirect Transfer of)	REPORTS, AND DISMISSING
Control of Verizon Northwest Inc.)	REQUEST TO CONFIRM
)	CONFIDENTIALITY
.....)	

BACKGROUND

1 By Order 06, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, entered April 16, 2010 (Order 06), the Washington Utilities and Transportation Commission (Commission) approved the multiparty settlement agreement (Agreement) entered into between Verizon Communications, Inc. (Verizon), Frontier Communications Corporation (Frontier), and the Commission Staff.¹ In Commitment 15 of that Agreement, Frontier committed to deploy broadband service in not less than 95 percent of the wire centers in its service territory within two years of closing.² The same commitment also provides a specific target to deploy broadband to 50 percent of the households in each unserved and underserved wire center by the end of 2011. In Commitment 14 of the Agreement, Frontier agreed that if it is technically infeasible to fulfill one or more of the broadband objectives in Commitment 15, it would submit to

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² This transaction closed on July 1, 2010.

the Commission a detailed report identifying the technical infeasibility and proposing an alternative broadband deployment plan.

- 2 On December 23, 2011, Frontier filed a report pursuant to Commitment 14 of the Agreement. The report was designated as highly confidential in its entirety. The report was not accompanied by any motion, petition, or other pleading requesting that the Commission take any action.
- 3 On March 28, 2012, the Commission issued a Notice of *in Camera* Hearing (Notice). The Commission construed Frontier's report as a motion to amend certain provisions of Order 06 and scheduled a hearing to address that motion. In the alternative, the Notice provided that Frontier could file a revised pleading that complied with the Commission's rules on confidentiality, and the Commission would then determine whether the Company had provided sufficient publicly available information to enable the Commission to rule on the motion.
- 4 On April 11, 2012, Frontier filed a response to the Notice. The response included a Request for Acceptance of Revised Broadband Plan Report, Request for Confirmation of Treatment of Highly Confidential Documents Filed, and Request for Clarification of Future Document Handling (Frontier Request) and a Revised Broadband Plan Report, all substantive provisions of which were designated as highly confidential. The Frontier Request asserts that the Company properly designated its Broadband Plan Report as highly confidential and requests that the Commission confirm that designation and Frontier's designation of all confidential and highly confidential documents filed in this docket.
- 5 On April 12, 2012, the Commission issued a Confirmation of *in Camera* Hearing (Confirmation). The Confirmation stated that Frontier had not provided sufficient publicly available information to enable the Commission to issue an order on the Broadband Plan Report without the need for a hearing. In addition, the Company's request for Commission confirmation of Frontier's designation of all confidential and highly confidential documents filed in this docket necessitated a hearing to address that request.

- 6 On April 17, 2012, the Commission conducted the scheduled hearing. Following an *in camera* discussion off the record, the presiding Administrative Law Judge memorialized Frontier's agreement to make a subsequent filing that (a) formally requests Commission adoption of a revised broadband plan, (2) provides additional nonconfidential information in support of that request; and (3) withdraws the request that the Commission confirm the Company's confidential and highly confidential designations.³
- 7 On April 23, 2012, Frontier submitted a letter replacing the previously filed report with a Revised Broadband Plan Report, only selected portions of which were designated as highly confidential. That report includes an Alternative Plan that would modify certain provisions of the plan the Commission approved in Order 06. Frontier did not file a pleading requesting that the Commission adopt the Company's Alternative Plan or otherwise revise Order 06. Nor did Frontier withdraw its request for confirmation of its designations of confidential and highly confidential documents.
- 8 Frontier's Alternative Plan states that it is unable to meet the specific broadband deployment targets set forth in the Agreement for certain specified wire centers. The Company explains that it was required to devote more resources than it anticipated to relieving broadband middle mile congestion before adding last mile capability. Frontier also states that it encountered unforeseen construction and weather difficulties in some locations that have required additional permits and coordination with property owners. Frontier represents that it will meet its broadband construction obligations in the specified wire centers by July 1, 2012. In all other respects, the Company's broadband commitments remain in effect.
- 9 No other party filed comments on Frontier's submission.

DECISION

- 10 As we noted in Order 06 approving Frontier's acquisition of Verizon, our overarching decision was which entity, Frontier or Verizon, was more capable and willing to address the long-term interests of the assets and consumers affected by the

³ TR. at 692:2-17.

transaction.⁴ We concluded that whether to approve or disapprove the transaction was a close call but found, on balance, that Frontier was the preferred entity. Our decision stemmed not only on the safeguards built into the transaction to ensure financial viability, but on “important broadband deployment conditions.”⁵ In approving the transaction, we noted that “a significant feature of the proposed transaction is Frontier’s specific plan to deploy broadband to a greater number of consumers and businesses in unserved and underserved areas” in its predecessor’s service territory.⁶ We face those “important broadband deployment conditions” today in our decision whether to extend the deadline for bringing broadband into unserved and underserved wire centers in Washington.

- 11 Our interest in expanding broadband services to Washingtonians has not diminished. As we noted almost two years ago, “[i]t is evident that broadband service is rapidly becoming an essential service to Washington households and businesses. Increasingly, residents and businesses in this state use broadband connections to access the internet, as a means to expeditiously communicate, obtain access to information and applications, and to conduct transactions, among other activities.”⁷ Therefore, we are concerned that further progress has not been made toward achieving this important goal.
- 12 We have four issues with Frontier’s latest Revised Broadband Plan Report. First, Frontier voluntarily committed to the expansion of broadband to unserved and underserved areas in the Settlement Agreement. That commitment was an important component of our decision to accept the Settlement Agreement and approve the transfer application. We are troubled that the Company cannot fulfill the commitment it set for itself.
- 13 Second, the Company committed to broadband deployment to 50 percent of the households in each unserved and underserved wire center by the end of 2011. Frontier did not meet the December 31, 2011, deadline, and several wire centers are

⁴ Order 06 ¶ 14.

⁵ *Id.*

⁶ *Id.* ¶ 195.

⁷ *Id.* ¶ 193.

well short of the Company's commitment. We continue to believe it is important for all wire centers to achieve the goal in Commitment 15 and are disappointed that the Company was unable to meet that goal by the specified date.

- 14 Third, Frontier's original report notifying us of the technical difficulties in reaching these commitments was not filed until approximately one week before the expiration of the deadline. The Company either knew or should have known well in advance of that deadline that technical difficulties would prevent it from fulfilling its commitment. It should have notified us as soon as these obstacles arose.
- 15 Finally, we disapprove of Frontier's cavalier approach to our procedural rules and requirements. Requests to amend a Commission order should be filed in the form of a motion or a petition, not buried in a report. Even when expressly directed to make such a filing during the April 17, 2012, hearing, the Company failed to do so. Any future filings that Frontier makes that do not conform to Commission rules or orders will be rejected.
- 16 Despite these concerns, our overriding goal is for the Company to fulfill its important commitment to Washington residents and businesses at the earliest possible date. That can best be accomplished by affording the Company the additional time it needs to overcome the technical obstacles it cites in its report in a timely and efficient manner. We trust that Frontier has requested sufficient time to address these obstacles and we expect the Company to achieve its latest commitment.
- 17 Accordingly, we grant the request to extend the deadlines to complete broadband expansion in the specified wire centers to July 1, 2012. To ensure we are fully informed on the status of Frontier's commitments, we also require the Company to file the following updated reports by July 16, 2012:
- An updated report on the status of the wire centers in which Frontier has represented it will complete broadband construction by July 1, 2012;

- An updated report indicating whether Frontier has met the Commitment to deploy broadband service in not less than 95 percent of the wire centers in its service territory; and
- A report on the Company's status in fulfilling the download and upload speed requirements in Commitment 16 to 75 percent of the households in its service area.

18 We must address one additional matter. Frontier agreed at the April 17, 2012, hearing that by April 27, 2012, the Company would make a filing withdrawing its April 11, 2012, request for confirmation of the confidential and highly confidential nature of documents it has filed in this docket with those designations. Frontier made no such filing. However, the April 23, 2012, submission replaced the previously filed report with a Revised Broadband Plan Report that designated only selected portions as highly confidential. We will treat the Company's April 23 filing as a tacit withdrawal of its April 11 filing and consider all of the Company's April 11 requests as now moot.

ORDER

THE COMMISSION ORDERS, That:

- 19 (1) Frontier's request to extend the deadline for expanding broadband service to unserved and underserved wire centers is granted, as more fully discussed in the body of this Order.
- 20 (2) By July 16, 2012, Frontier must file an updated report on the status of broadband expansion to unserved and underserved wire centers.
- 21 (3) By July 16, 2012, Frontier must file a report on its progress in fulfilling the commitment to deploy broadband service in not less than 95 percent of the wire centers in its service territory.
- 22 (4) By July 16, 2012, Frontier must file a report on fulfilling the download and upload speed requirements in Order 06, as more fully discussed in the body of this Order.

- 23 (5) Frontier's request for confirmation of treatment of confidential and highly confidential documents filed and request for clarification of future document handling is dismissed as moot.
- 24 (6) Any future requests to modify or amend Order 06 shall be filed in the form of a motion or petition with sufficient publicly available information to enable the Commission to rule on that request. Any requests that do not conform to these requirements or Commission rules will be rejected.

Dated at Olympia, Washington, and effective May 9, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner