

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Valerie Means
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Inquiry into
the Service Quality, Customer Service, and
Billing Practices of Frontier Communications

ISSUE DATE: January 22, 2020

DOCKET NO. P-407, 405/CI-18-122

ORDER APPROVING SETTLEMENT
AS MODIFIED

PROCEDURAL HISTORY

On April 26, 2018, the Commission initiated an investigation into alleged violations of requirements or standards governing customer service, service quality, or billing practices by Frontier Communications of Minnesota, Inc., and Citizens Telecommunications of MN, LLC (collectively, Frontier).¹ The Commission asked the Office of Administrative Hearings (OAH) to assign an administrative law judge (ALJ) to convene public hearings throughout Frontier's service area, and directed Frontier to tell its customers about the hearings.

On November 16, 2018, the ALJ filed his report on the public hearings.

On January 4, 2019, the Minnesota Department of Commerce (the Department) filed its report on the investigation.

On February 15, 2019, the Commission issued an order granting Frontier additional time to respond to the Department's report, and proposing that the parties ask the OAH to assign an ALJ to serve as mediator to help resolve the issues identified by the Department.

On March 5, 2019, Frontier filed its response to the Department's report.

On August 2, 2019, the Department filed a Proposed Stipulation of Settlement Pursuant to Minn. Stat. § 237.076. The ALJ filed a statement in support of the proposed settlement.

By September 4, 2019, the Commission had received comments, replies, or both, from Frontier, the Department, and the Office of the Attorney General (OAG).

On October 17, 2019, the Commission met to consider the matter.

¹ Order Initiating Investigation and Referring Matter for Public Hearings (April 26, 2018).

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission will approve the proposed settlement, modified to provide additional procedural clarity and transparency, thereby providing greater assurance to all interested parties regarding Frontier's performance.

II. Background

A. Regulation of Local Exchange Carriers, and Frontier's AFOR Plans

Local exchange carriers such as Frontier are subject to regulation under Minn. Stat. Ch. 237 and Commission rules, which establish certain service quality standards.

But under Minn. Stat. §§ 237.761–.765, carriers may negotiate with the Commission to establish a plan for an alternative form of regulation (AFOR). As part of these plans, companies must include provisions for measuring and reporting service quality performance to the Commission, and for providing appropriate remedies for service quality failures.² Companies must also commit to making specific investments in their telecommunications infrastructure.³

The Commission approved AFOR Plans for Frontier in 2015.⁴ These plans provided for regular reporting on various measures of Frontier's service quality, and for remedies that went beyond what statute provides. In particular, Frontier agreed to pursue upgrading its Digital Subscriber Line Access Multiplexers (DSLAMs) in the exchanges of Balaton, Belle Plaine, Delano, Ely, Elysian, Henderson, Janesville, Mound, Ranier, and Watertown. This technology provides for internet speeds of up to 40 megabits per second.⁵

When the plans expired in 2018, Frontier did not renew them and instead reverted to being regulated under Minn. Stat. Ch. 237 and Commission rules.

B. Initiation of the Current Proceeding

The Commission's Consumer Affairs Office reported receiving an increasing number of consumer complaints from Frontier's customers beginning around 2017. After roughly a year of seeking to address these concerns on an individual basis, the Commission opened this proceeding by issuing a request for comments on Frontier's service quality.

² Minn. Stat. § 237.765.

³ Minn. Stat. § 237.761, subd. 8.

⁴ *In the Matter of a Petition by Frontier Communications of Minnesota, Inc. for Approval of its Revised Alternative Regulation Plan*, Docket No. P-405/AR-14-735, Order Approving Adoption of Existing AFOR Plan (February 23, 2015); *In the Matter of a Petition by Citizens Telecommunications Company of Minnesota LLC to Adopt an Existing Alternative Form of Regulation Plan*, Docket No. P-407/AR-15-388, Order Approving Adoption of Existing AFOR Plan (October 19, 2015).

⁵ See Settlement Attachment 5, Citizens Alternative Form of Regulation plan (AFOR) ¶¶ VI.B and Frontier AFOR ¶¶ VI.B.

C. Public Hearings and the ALJ Report

The ALJ convened six public hearings throughout Frontier’s service area, and filed a report on the hearings. The ALJ noted that 53 people signed in during the hearings in Ely, 57 in McGregor, 95 in Wyoming, 41 in Slayton, and 74 in Lakeville.

The ALJ reported that customers complained about the following topics, among others:

- Problems dealing with customer service (long hold times, resolution requires multiple calls, lost record of prior complaint calls, etc.);
- Frequent service disconnections and outages;
- Failure to maintain, repair, and update network equipment;
- Billing errors, and resistance to issue refunds; and
- Inconvenient periods for making repairs, missed repair appointments, and repairs that offer only temporary service improvements.

These complaints allege a failure to comply with Minn. R. 7810.1400, 7810.3300, 7810.5200, and 7810.5800, among other rules. The ALJ also noted problems with matching complaints raised during the hearings with Frontier’s record of complaints, concluding that this reflected failures in Frontier’s recordkeeping.

In addition, customers raised concerns about their internet service—a matter beyond the scope of the investigation.

D. Department Report and Frontier’s Reply

On January 4, 2019, the Department filed a report based on its analysis of more than one thousand customer complaints and comments from throughout the state, alleging violations of at least 35 statutes and rules. The Department also found fault with Frontier’s recordkeeping.

On March 5, 2019, Frontier filed a reply disputing the Department’s conclusions and seeking a contested case proceeding to develop the factual record.

With the help of an ALJ, the Department, Frontier, and the OAG entered into mediation.

III. Proposed Settlement

On August 2, 2019, the Department and Frontier filed a proposed settlement.

A. Summary of Proposed Settlement

The proposed settlement provides three main remedies to customers. First, it provides a proposed process under which Frontier will offer customer remedies for past service quality lapses, from the period of the AFOR plans until 90 days following this order. Second, it establishes steps Frontier will take to improve future service quality, customer service, and billing practices,

including regular reporting. Third, it provides for ongoing service quality performance with metrics that provide for customer remedies if the standards are not met. In particular, the proposed settlement sets forth customer-specific remedies for the following issues:

- Denied or delayed installation of local telephone service;
- Delays in fixing phones that are out of service;
- Disconnection without required notice;
- Missed repair appointments;
- Failure to make timely permanent repairs of electrical faults or poor transmission characteristics;
- Problem on a line recurring within 30 days;
- Failure to maintain records of customer's problems; and
- Billing errors related to directory assistance or 411 calls, late payment, three-way calling, request for to receive a paper bill, vacation rates, early termination, late termination, or reconnection.

In support of these remedies, Frontier agrees to file a maintenance plan, training materials, and ongoing reports about ten measures of service quality. Frontier also agrees to send each subscriber a self-addressed, prepaid postal form for reporting current or past service quality problems, to send a similar form via email, and to provide a bill insert informing customers of these opportunities to seek redress. Finally, Frontier agrees to establish a 1-800 telephone number for taking Minnesota-specific service quality complaints.

The settlement provides for the Department to review these filings, and to ask the Commission to suspend the filings and take other remedial action as appropriate. All reports must be filed by Frontier's state operations director, who will be responsible for the report's accuracy. The settlement permits the Commission to require reports to be audited, at Frontier's expense, to verify accuracy.

Frontier's reporting requirements may end two years after the settlement is implemented—but only if Frontier has fulfilled each service quality standard for at least six out of the prior eight quarters. If it fails to meet this test for any measure of service quality, Frontier will have to continue reporting on its service quality for that measure—though every six months Frontier will have another opportunity to demonstrate whether it has met the standard in six out of the prior eight quarters. Throughout this period, Frontier will have to maintain its Minnesota-specific 1-800 trouble reporting line.

Nothing in the proposed settlement requires Frontier to surrender any objections it has about any specific allegation against its current or prior service quality. Neither does the settlement

constrain the actions of either the Commission or the Department regarding issues that are not resolved, including “reserved matters” and matters excluded from the settlement.

B. Administrative Law Judge

The ALJ filed a statement supporting the proposed settlement as reflecting the result of substantial effort over the span of five months. Rather than focus on documenting disputed allegations about alleged shortcomings in Frontier’s past conduct, the ALJ recommends that the parties focus on implementing the uncontested agreement about what Frontier’s future conduct should be.

C. Office of Attorney General

While the OAG participated in mediation proceedings with the other parties, it did not join or oppose the proposed settlement. While the OAG did not oppose the settlement, it raised some issues for the Commission to consider in evaluating whether the settlement should be approved. For example, the OAG notes that the proposed settlement does not include a stipulation of facts, and recommends that the Commission acquire additional information and concessions from Frontier before determining whether the settlement is supported by substantial evidence as required by Minn. Stat. § 237.076, subd. 2.

The OAG cautions the Commission about the legal challenges of approving a settlement providing for remedial relief, citing a court decision finding that Minn. Stat. §§ 237.081, 237.461, and 237.763 do not grant the Commission this authority.⁶ Likewise, the OAG questions whether the proposed settlement complies with Minn. Stat. § 16A.151, which generally provides for the proceeds of settlements to accrue to the state rather than to private parties.

The OAG questions whether the magnitude of the proposed settlement’s penalties are commensurate with the extent of the service quality lapses set forth in the Department’s report, especially when compared with the aggregate amount of penalties set forth in a service quality settlement with US West Corporation (now CenturyLink).⁷ The OAG suggests that the Commission require Frontier to deposit funds into an account to pay damages, with any unspent balance to be used to upgrade service to schools, libraries, and rural health care centers, and establish stipulated penalties payable to individual customers and the state, as done in a prior docket.⁸

The OAG also cautions the Commission against entering into a settlement wherein the Commission would surrender its authority to monitor and enforce Frontier’s service quality, noting that prior settlement agreements included terms expressly reserving the Commission’s jurisdiction.

⁶ *Qwest Corp. v. Minnesota Pub. Utilities Comm’n*, 427 F.3d 1061, 1064–67 (8th Cir. 2005).

⁷ *In the Matter of the Investigation into US West Communications, Inc.’s Service Quality*, Docket No. P-421/CI-95-648, Order Accepting Settlement with Modifications (May 2, 1996).

⁸ *Id.*

Finally, the OAG recommends that the Commission establish timelines for how issues unresolved by the proposed settlement will be addressed.

D. The Department and Frontier

The Department and Frontier each support the proposed settlement. They deny that the settlement is in any way inconsistent with Minnesota statute or rules. To the contrary, they note how the proposed settlement's terms match the terms of prior Commission-approved settlements.

The Department argues that the proposed settlement is well supported by substantial evidence, including thousands of pages of customer complaints, the Department's own report (including Frontier's answers to information requests), Frontier's filed response, transcripts of the public hearings, and the ALJ's report. The Department also opposes the OAG's proposal to link approval of the proposed settlement to a timeline for resolving issues expressly excluded from the settlement.

While Frontier retains its right to contest specific allegations, it affirms its commitment to improve its service quality for the benefit of its Minnesota customers. Frontier agrees with the OAG that the Commission lacks the authority to compel the company to compensate individual customers for service quality lapses, but argues that the company may agree to such terms as part a settlement. Indeed, Frontier argues that this feature of the settlement—granting relief that would otherwise be beyond the Commission's power to grant—is part of the strongest evidence that the settlement is in the public interest. However, Frontier disputes the need to compel the company to deposit money into an account to fund remedial payments and credits; Frontier noted that its AFOR plans did not provide for such an account, yet Frontier offered \$180,000 in remedial payments under those plans.

IV. Commission Action

A. Commission Analysis

The Commission oversees the operations of regulated utilities throughout the state through the process of reviewing annual reports and evaluating customer feedback that arrives at its Consumer Affairs Office. Throughout the course of these proceedings, the Commission has received comments from Frontier's customers alleging a concerning array of lapses in service quality. These comments were bolstered by the ALJ's and the Department's reports.

The Commission takes service quality seriously. Especially outside of Minnesota's large metropolitan areas, the landline service provided by local exchange carriers remains a citizen's crucial and life-sustaining link to the rest of the world. Home-bound patients relying on remote health monitors, business requiring constant availability to their customers, and friends exchanging greetings are all entitled to reliable service from a responsive public utility.

The parties did not reach agreement about the details of every past dispute, and the Commission makes no presumption about them. Instead the parties, with the assistance of the Office of Administrative Hearings, focused initially on the most immediate concern: Frontier's conduct going forward. And in this endeavor, they have achieved some success.

The Commission appreciates the work of all parties to this proceeding. The record of problems is long, and the search for practical remedies difficult. The Department, Frontier, and the ALJ all found that the cost and delay of litigating about the past may not be worth sacrificing the opportunity to fashion a clear policy going forward—a policy that would include the opportunity for subscribers to seek remedies for Frontier’s past shortcomings. The Commission concurs, and will therefore approve the proposed settlement—albeit with modifications and clarifications, discussed below.

The Commission acknowledges that Minn. Stat. § 237.076, subd. 2, authorizes the Commission to accept settlements when in the public interest and supported by substantial evidence. But the Commission is not persuaded that this statute requires each settlement to include a formal stipulation of facts. Indeed, the most substantial piece of evidence in the record supporting the proposed settlement is the fact that so many issues remain contested, and litigating these issues would entail substantial delay in implementing terms governing Frontier’s conduct going forward. These terms specify remedies for Frontier’s past shortcomings. Moreover, the proposed settlement stipulates that approval would not preclude the Department or the Commission from continuing to scrutinize Frontier, and from seeking to redress matters not resolved by the settlement. In short, disputes about Frontier’s past conduct are not a reason to delay implementing a settlement governing its future conduct.

The proposed settlement incorporates service quality standards required by statute and rule, but also the stricter standards previously established in Frontier’s AFOR Plans. The Commission previously found these plans to be in the public interest and supported by substantial evidence.

The OAG raises concerns that the proposed settlement might violate Minn. Stat. § 16A.151. That statute states that, subject to exceptions:

(b) A state official may not commence, pursue, or settle litigation, or settle a matter that could have resulted in litigation, in a manner that would result in money being distributed to a person or entity other than the state.

(c) Money recovered by a state official in litigation or in settlement of a matter that could have resulted in litigation is state money and must be deposited in the general fund.

The Commission finds that the settlement will not conflict with § 16A.151 because the settlement does not award to any entity or person specific monetary damages or penalties. Rather, the settlement allows customers to file a claim for refunds directly with Frontier, and Frontier commits to compensating customers directly.

The OAG correctly observes that Minn. Stat. §§ 237.081, 237.461, and 237.763 do not grant the Commission unilateral authority to require a telephone company to provide remedial relief. But the Commission has frequently approved settlements where, as here, a company has agreed to

provide that relief.⁹ The fact that Frontier is willing to commit to granting relief only bolsters the conclusion that the settlement is in the public interest.

Similarly, the OAG notes that the Commission has previously approved a settlement that provided for a telephone company to fund an account for paying future penalties, with the understanding that any unpaid balances would be used to upgrade services to schools, libraries, and rural medical facilities. While such a fund may help reduce a utility's resistance to pay penalties, it also reduces a utility's incentive to avoid penalties by capping the cost to the company. In any event, the Department and Frontier did not incorporate such a fund into their proposal, and the Commission is not persuaded that the value of the proposal warrants upsetting the terms of the proposed settlement.

The OAG questions whether the magnitude of the proposed settlement's penalties are commensurate with the extent of the service quality lapses set forth in the Department's report, especially when compared with the aggregate amount of penalties set forth in a service quality settlement with US West Corporation. However, the Department finds the magnitude of the settlement penalties to be appropriate. And the Commission notes that the magnitude of aggregate penalties assessable against for US West Corporation were appropriate to a firm of its size—the largest telephone company in the state. Frontier is a smaller firm with fewer subscribers, so the Commission finds no reason to expect that the penalties for Frontier's service quality lapses would be comparable to the penalties for US West's lapses.

The OAG also cautions the Commission against entering into a settlement whereby the Commission might waive its statutory authority to enforce service quality standards. The Commission observes that the proposed settlement reserves the jurisdictions of both the Commission and the Department as follows:

VII. GENERAL TERMS

. . . .

F. Authority of Department and Commission: This Proposed Settlement and any Commission Order accepting it, does not limit or affect the authority of the Department or Commission, in their respective sole discretions, to proceed against Frontier by exercising their authority as to any act, omission, or admission of Frontier as to:

- (1) Non-compliance with the Commission Order accepting this Proposed Settlement;

⁹ Compare *In the Matter of Qwest's Wholesale Service Quality Standards*, Docket No. P-421/AM-00-849, (culminating in a decision finding no authority for the Commission to require a telephone company to prospectively pay restitution to customers for lapses in service quality (*Qwest Corp. v. Minnesota Pub. Utilities Comm'n*, 427 F.3d 1061, 1064–67 (8th Cir. 2005))), with *In the Matter of Qwest's Performance Assurance Plan*, Docket No. P-421/AM-01-1376 (wherein the same telephone company consented to a plan that required such payments).

- (2) Matters excluded from this Proposed Settlement;
- (3) Reserved Matters from this Proposed Settlement;
- (4) Matters raised by individual customers under Section VII(E) above; or
- (5) Other matters not resolved in the Commission Order accepting this Proposed Settlement.

The Commission is not persuaded that the parties' success in resolving issues in a settlement should be undone by the existence of additional issues that remain unresolved. Following approval of this settlement, the parties will remain free to seek resolution of any other issues—including by contested case proceeding or by a separate settlement—as they see fit. Likewise, the Commission will retain its jurisdiction over service quality, and will continue to receive and review customer complaints, as ever.

B. Modifications and Clarifications

While the OAG's concerns do not justify rejecting the proposed settlement, the record of this proceeding persuades the Commission to seek greater procedural clarity and transparency to ensure that all parties and members of the public will be able to see that Frontier is taking the steps established in its agreement. To this end, the Commission specifies as follows:

First, consistent with the discussion during the Commission's meeting, the Commission will require the settlement to clarify that the Commission retains its enforcement authority under Minn. Stat. § 237.461, including the authority under subdivision 2 to assess civil penalties for knowing and intentional violations of any of the settlement's service quality standards or metrics.

Second, to facilitate speedy resolution of disputes about remedial payments to customers, the Commission will require parties to the settlement to waive any objection to the use of an expedited proceeding under Minn. Stat. § 237.61 in lieu of a contested case proceeding. The Commission will authorize its Executive Secretary to refer disputes regarding credit payments to the Office of Administrative Hearings for mediation upon request by Frontier, the Department, or affected customers.

Third, the Commission will direct parties to file plans and reports arising from the settlement in the Commission's electronic filing system in accordance with Minn. Stat. § 216.17, subd. 3, and Minn. R. Chap. 7829, thereby making them available for viewing online in the eFiling system.

Fourth, the Commission will delegate to its Executive Secretary the authority to review and approve reports and plans filed under the settlement. But if the Commission receives an objection to any of Frontier's plans, communications, notices, and training materials under the settlement—including the maintenance plan—within 30 days of their filing, those materials will not take effect pending further action. While the proposed settlement expressly contemplates the Department raising such objections, the Commission will consider objections from any interested party, or on its own motion.

Finally, the Commission observes that various commenters raised concerns about the speed of Frontier's internet service. The extent of the Commission's jurisdiction over internet service is a matter of dispute. However, the parties acknowledge that Frontier, in its AFOR plans, agreed to pursue upgrading its DSLAM technology in a variety of exchanges to provide internet speeds of up to 40 megabits per second. During the Commission's meeting on this matter, Frontier agreed to report on the status of these commitments, and to provide this report to the city governments served by the relevant exchanges. The Commission accepts this offer and memorializes it in this order.

ORDER

1. The Commission approves the proposed settlement arising from this investigation into the customer service, service quality, and billing practices of Frontier Communications of Minnesota, Inc. and Citizens Telecommunications of MN, LLC, (collectively, Frontier) with the following clarifications and modifications:
 - A. The settlement shall state that its terms are enforceable under Minn. Stat. § 237.461, which includes but is not limited to enforcement under subdivision 2 through civil penalties for knowing and intentional violations of any of the settlement's specific service quality standards or metrics.
 - B. Parties to the settlement shall waive objection to the use of an expedited proceeding under Minn. Stat. § 237.61 in lieu of a contested case for Commission resolution of disputes regarding remedy payments to customers.
 - C. Plans and reports arising from the settlement shall be filed in the Commission's electronic filing system in accordance with Minn. Stat. § 216.17, subd. 3, and Minn. R. Chap. 7829.
 - D. If the Commission raises or receives an objection to any of Frontier's communications, notices, and training materials under the settlement—including the Maintenance Plan described in Section III—within 30 days of their filing, those materials shall not take effect pending further action.
2. The Commission delegates to its Executive Secretary the authority to –
 - A. review and approve reports and plans filed by Frontier, and
 - B. refer disputes regarding credit payments to customers to the Office of Administrative Hearings for mediation upon request by Frontier, the Department, or affected customers.
3. Within 10 business days, Frontier shall make a compliance filing that includes both a clean and redlined version of the settlement as modified or clarified by the Commission.

4. Frontier shall file a report on the status of its commitments to upgrade Digital Subscriber Line Access Multiplexers (DSLAMs), providing internet speeds of up to 40 megabits per second, in the exchanges of Balaton, Belle Plaine, Delano, Ely, Elysian, Henderson, Janesville, Mound, Ranier, and Watertown, and shall serve a copy of this report on these cities.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Ryan Barlow
Acting Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.