

P-405/AR-95-1048

ORDER FINDING INITIAL AFOR FILING ADEQUATE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Don Storm	Commissioner

In the Matter of a Petition by Frontier
Communications of Minnesota, Inc.
Requesting Adoption of An Alternative
Regulation Plan

ISSUE DATE: December 22, 1995

DOCKET NO. P-405/AR-95-1048

ORDER FINDING INITIAL AFOR FILING
ADEQUATE

PROCEDURAL HISTORY

On May 25, 1995, the legislature enacted and the Governor signed into law Minn. Stat. §§ 237.76 through 237.772 (1995), hereinafter referred to in this docket as the Competition Statute. The new statute gives the Commission the authority to approve alternative forms of regulation (AFORs) for local exchange carriers (LECs) with more than 50,000 access lines.¹ As a result of this statute, four LECs in Minnesota are eligible for filing AFORs: Frontier Communications of Minnesota, Inc. (Frontier), GTE - Minnesota (GTE), U S West Communications, Inc. (USWC), and United Telephone Company (United).

On October 10, 1995, Frontier Communications of Minnesota, Inc. (Frontier) filed an AFOR plan pursuant to the above referenced statute.

On October 31, 1995, the Commission issued a NOTICE OF FILING, ORDER ESTABLISHING PROCEDURES, AND ORDER CONVENING SETTLEMENT CONFERENCE (Order). This Order provided interested persons with 20 days to challenge the adequacy or completeness of the filing.

On November 20, 1995, AT&T filed a challenge to the completeness or adequacy of the filing.

On November 29 and 30, 1995, replies to AT&T's challenge were filed by the Minnesota Department of Public Service (the Department), the Residential Utilities and Small Business Division of the Office of the Attorney General (RUD-OAG), Frontier, and MCI.

On December 11, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

¹ A separate section of the statute applies to LECs with less than 50,000 access lines.

A. Adequacy of Frontier's Filing

The issue addressed by the Commission in this Order is whether Frontier has made an adequate filing as intended by the newly enacted Competition Statute (Minn. Stat. § 237.76 et seq.) and the Commission's October 31, 1995 Order.

1. AT&T's Challenge

In its comments, AT&T asserted that the United AFOR filing is deficient in two major areas with regard to the filing requirements of Minn. Stat. § 237.76 and the Commission's October 31 Order. AT&T indicated that Frontier's plan fails to address how it will facilitate the development of alternatives for customers, and that the plan contains no commitment to implement conditions necessary for local service competition. Additionally, AT&T listed a number of specific areas where it believed the statute required information that had not been provided by the plan.

AT&T did not seek a rejection of the filing, but recommended that the Commission suspend the plan and extend the period for review, during which time 1) Frontier would prepare and submit the additional information required, and 2) questions and interpretative issues regarding the Plan could be addressed by interested persons and decided by the Commission.

2. Frontier's Response

Frontier responded that its plan properly addresses local competition, the issue of cost studies, and possible contingencies. The Company noted that all of AT&T's concerns relate to the merits of the plan, not the adequacy of the initial filing.

3. The Department's Comments

The Department stated that Frontier has at least minimally addressed all the areas required by statute. The Department indicated that while Frontier may not have addressed each area sufficiently to warrant the approval of its AFOR plan at this point, the regulatory process permits the Company to produce additional information and to augment its plan before the Commission makes a final decision on its application. If Frontier chooses not to submit the necessary information, or if the plan is not satisfactory to the Commission, the Commission may reject Frontier's AFOR plan.

The Department agreed with AT&T that more information is needed before a decision can be made whether or not to recommend approval of Frontier's AFOR plan. The Department stated that AT&T has raised valid issues that should be addressed in the substantive review of the plan. However, the Department argued that the filing is neither inadequate as to form, nor does it mean that the process should be suspended pending receipt of the information necessary to address those issues. If Frontier responds timely to information requests, parties should be able to analyze the information and make a timely decision whether or not to recommend approval of the plan.

4. The RUD-OAG's Comments

The RUD-OAG stated that it has reviewed AT&T's filing and recommends that AT&T's request for suspension of Frontier's filing be denied and that Frontier's filing be accepted as complete. While AT&T has raised some valid issues that need to be considered in the approval of the Plan, the RUD-OAG stated that AT&T has not shown that the AFOR plan is incomplete or deficient as to form.

5. MCI's Comments

MCI agreed with the objections raised by AT&T regarding the adequacy of the filing. Specifically, MCI stated:

1. TSLRIC cost data are necessary to determine whether existing and proposed rates for local and access services are fairly priced in relation to their cost; and
2. Frontier's AFOR Plan contains no commitment to implement the necessary conditions for local service competition.

MCI did not recommend that Frontier's Plan be dismissed on these grounds. Instead, MCI stated that Frontier should have the opportunity to modify its plan to address the concerns raised in the AT&T comments.

6. Commission Analysis and Action

The standard for reviewing the adequacy of Frontier's AFOR filing is "substantial compliance" with applicable statutes and rules. As the Commission stated in its October 31, 1995 Order in this matter,

If the Company's filing is not rejected within 50 days of the date of this Order, it will be deemed in substantial compliance with applicable filing requirements.
Order at page 4.

The Commission notes that AT&T's objections to the adequacy of Frontier's filing are exactly the same objections it raised against United's AFOR filing in Docket No. P-430/AR-95-1049. Also, as in the United docket, AT&T clarified at the hearing on this matter that it raised these issues at this time not to delay acceptance of Frontier's filing, but to highlight the issues for development and consideration of the AFOR plans on their merits.

Upon its review, the Commission finds that Frontier has to some degree addressed all areas required by the Competition Statute. On that basis, the Commission determines that Frontier's filing is in compliance with statutory and Commission filing requirements.

However, the commenters are correct in noting that a number of the issues raised by AT&T will need to be further addressed in the substantive review of Frontier's proposed plan, and will likely require the filing of additional information before a decision can be made on approval of the plan. This information may include certain TSLRIC data, necessary to determine whether Frontier's existing rates and rate design are appropriate, and additional service quality information necessary to determine whether Frontier's current service quality substantially

complies with Commission rules.

If the information necessary to make these determinations cannot be made available to interested parties and the Commission in a timely manner, the Commission may consider at that time whether to pursue extending the period of review for Frontier's AFOR plan.

B. The Next Phase of This Proceeding

During the next phase of this proceeding, the discovery phase, the commenters will be sending information requests to Frontier to establish the record for the Commission's decision on the merits of the Company's proposed alternative regulation plan. In a separate Order (PROTECTIVE ORDER) issued contemporaneously with this Order, the Commission establishes the guidelines and procedures which will guide the exchange of confidential information during the discovery phase of this proceeding.

ORDER

1. Frontier Communications of Minnesota, Inc.'s (Frontier's) AFOR filing is accepted as substantially complete.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-1200 (TDD/TTY) or 1 (800) 657-3782.