

Date Mailed September 25, 1998

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Frontier Communications of Wisconsin, Inc., for
Authority to Implement a Regulatory Method Alternative to
Traditional Rate-of-Return Regulation

6050-TI-101

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL ORDER**

Proceedings

On March 26, 1998, Frontier Communications of Wisconsin, Inc. (Frontier), filed an alternative regulatory plan under § 196.195(12), Stats. Subsequent to the filing, Commission staff (staff) and representatives of Frontier held discussions to address various issues regarding the plan. As a result, Frontier filed a revised plan (Plan) on July 14, 1998, which is attached as Appendix B to this order.

A Notice of Investigation, Assessment of Costs, and Telephonic Hearings was issued on July 29, 1998. Hearings were held on August 13, 1998, in Clintonville, Wisconsin, before Hearing Examiner, Donna L. Paske.

Attached as Appendix A is a list of persons who are considered to be full parties to this docket for purposes of judicial review under §§ 227.52 and 227.53, Stats. A proposed order was mailed to parties for comment. All comments received have been considered in approving this final order.

FINDINGS OF FACT

THE COMMISSION FINDS:

Applicant is a corporation organized and existing under the laws of the state of Wisconsin. Applicant provides telecommunications services to approximately 25,300 access lines in the following exchanges: Bear Creek, Bowler, Clintonville, Gresham, Keshena, Marion, Neopit, Shawano, Tigerton, and Cecil. Applicant is a telecommunications utility as defined in § 196.01(10), Stats., and is a small telecommunications utility as that term is defined in § 196.01(8), Stats.

Background

In 1993 Wisconsin Act 496 (Act 496), the legislature enacted a new regulatory model to manage the transition to a competitive telecommunications marketplace. Act 496 allows telecommunications utilities to file a regulatory method alternative to traditional rate-of-return regulation, as specified in § 196.195(12), Stats. The purpose of this investigation is to determine whether it is in the public interest to approve the proposed alternative regulatory method set forth in the Frontier Plan.

Also relevant to this proceeding is the enactment of the Telecommunications Act of 1996 (Federal Act) which was signed into law on February 8, 1996. The Federal Act promotes competitive communications markets, with new statutes governing interconnection, pricing standards for interconnection and network elements, procedures for negotiation of interconnection agreements, removal of barriers to entry, possible rural exemptions, and provisions for universal service.

Section 251 of the Federal Act (§ 251) specifies the duties and obligations of a local exchange carrier (LEC) to interconnect its network to competing providers. Section 251(a) provides that a telecommunications carrier has the duty to interconnect directly or indirectly with another carrier of telecommunications services. Section 251(b) requires that each LEC has the duty to allow resale of its services, to provide number portability, dialing parity, access to rights-of-way, and to establish reciprocal compensation arrangements for transport and termination of telecommunications. Section 251(c) imposes additional obligations on each incumbent LEC regarding the provision of interconnection and unbundled network elements. Section 251(f)(1) provides that § 251(c) shall not apply until the company receives a bona fide request for interconnection and the state commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with § 254, Universal Service, of the Federal Act. Section 251(f)2 allows a LEC considered a rural carrier to petition the state commission for a suspension or modification of the requirements of § 251(b) or (c). Section 252 of the Federal Act (§ 252) sets forth the procedures for negotiation, arbitration, and approval of agreements upon receiving a request from a competing provider for interconnection, services, or network elements pursuant to § 251.

Evaluation of Whether the Plan is in the Public Interest

In determining whether the Plan is in the public interest, § 196.195(12)(b)1, Stats., requires that the Commission identify in a Plan all of the following:

- a. The goals of the Plan.
- b. The incentives authorized and how the incentives help achieve the goals.
- c. Measurements to evaluate attainment of goals.
- d. The extent of contributions to the Wisconsin Advanced Telecommunications Foundation (WATF).

The proposed Plan includes goals of promotion of competition, continued deployment of telecommunications infrastructure, increased consumer choice, universal service, and maintenance of service quality levels. The Plan also includes the incentives authorized and how the incentives will help achieve the goals, and measurements to evaluate attainment of the goals. In addition, Frontier has committed to make material contributions to the enhancement of the WATF. These goals are consistent with the allowable goals for an alternative regulatory plan, and largely duplicate the factors which must be considered in determining what is reasonable and just or in the public interest.¹

The Plan includes a number of significant commitments that Frontier is making to receive approval to move from traditional rate-of-return regulation. These commitments are as follows and are consistent with the allowable goals for an alternative regulatory plan:

1. Promotion of competition--Frontier commits to complying with § 251, including the duty to interconnect facilities, not prohibit resale, provide dialing parity and number portability, afford access to rights-of-way, establish reciprocal compensation arrangements, and, upon receiving a bona fide request, negotiate in good faith in accordance with § 252, provide interconnection per § 251(c)(2), provide unbundled access to network elements, and file tariffs offering for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers. Wholesale rates shall be determined pursuant to the Federal Act.

Frontier reserves the right to petition for any suspensions or modifications pursuant to § 251(f)(2), subject to the Commission terminating the Plan. Frontier also reserves its rights to a hearing in any certification proceeding for a competing provider in its service territory pursuant to § 196.50, Stats. Finally, Frontier reserves its rights as a rural telephone company under § 251(f)(1) for exemption from § 251(c), subject to the waiver of these rights by the Commission. In addition, Frontier has made available as of August 1, 1998, one plus intraLATA equal access to all providers certified by the Commission.

These commitments will promote competition in the Frontier service territory by giving the Frontier customer immediate choices of intraLATA toll providers and the potential for choice of local service provider in the future.

2. WATF--Frontier commits to provide cash and in-kind contributions to the WATF. Such contributions are not mandatory but may be made on a voluntary basis. In addition, if certain service quality standards are not met, Frontier has committed to make additional cash and in-kind contributions to the WATF. Also, after the duration of the Plan, the company shall provide in-kind contributions in its service territory or contribute to the WATF for any under-spending of its infrastructure commitment.

3. Service quality standards - Frontier shall not be allowed to implement 100 percent of the scheduled rate increases for local residential/business rates shown in Appendix B if it fails to

¹ See, §§ 196.03(6) and 196.195(12)(b)1.a., Stats.

achieve any two or more of the service quality indices in its Service Quality Guarantee. If any two of the service quality indices are missed, the annual local rate increase will be reduced by 25 percent. If any three or more of the indices are missed, the annual local rate increase will be reduced by 50 percent. In addition, the Service Quality Guarantee provides for certain individual customer guarantees. Frontier also pledges to maintain high-quality service and to comply with all current Commission service quality rules (ch. PSC 165, Wis. Admin. Code) and any future changes to these rules.

4. Infrastructure deployment--Frontier commits to undertaking all infrastructure spending necessary to provide high-quality services to all customers. In this regard, Frontier commits to spending no less than an average of \$87.50 per access line per year calculated over the life of the Plan in total telecommunications capital investment including fiber optic design where practicable. This spending level represents an increase over past average spending levels. As part of this commitment, Frontier will eliminate analog carrier by the end of the Plan. The company will annually file its capital budget, highlighting those projects which are more than routine. After the duration of the Plan, the company shall provide in-kind contributions in its service territory or make cash contributions to the WATF for any under-spending of the total dollar commitment.

5. Customer choice--Increased customer choice of services will be fostered by Frontier's deployment of infrastructure consistent with universal service requirements. In addition, the promotion of local competition and introduction of one plus intraLATA equal access as discussed above will give the Frontier customer immediate choices of intraLATA toll providers and the potential for choice of local service provider in the future.

Reasonableness of Rates

Frontier's Plan reflects rate rebalancing of its local service, access service and other rates. Under rate rebalancing, increases in revenues due to changes in local service and other rates are offset by decreases in revenues due to changes in access service rates paid by long distance companies to Frontier.

Section 196.03(6), Stats., lists those factors the Commission shall consider in determining what is reasonable and just, reasonably adequate, convenient, and necessary or in the public interest. A second test of the reasonableness of basic local residential rates is a comparison to the weighted-average basic single-party residential monthly rate for all telecommunications utilities in this state as calculated by the Commission pursuant to § 196.215(7)(b), Stats., (benchmark rate for residential customers). This amount is currently calculated by the Commission at \$12.91.

While a number of customers filed comments objecting to the size of the increases in residential rates over the life of the Plan, no one disputed staff's testimony that Frontier will maintain reasonable local rates under the Plan. Staff testified that to obtain added flexibility, the goals of Frontier's Plan include four of the factors used in determining what is reasonable and

just, reasonably adequate, convenient and necessary, or in the public interest. These factors are promotion of competition, the continued deployment of telecommunications infrastructure, increased consumer choice, and universal service.

In addition to meeting the factors for determining that rates are reasonable and just, Frontier will be able to achieve rebalancing of its local and access service rates and still maintain rates that are below the benchmark rate for residential customers. The maximum residential one-party rate under the Plan is \$12.75. Frontier commits that its residential one-party rate will not exceed the benchmark rate for residential customers over the life of the Plan. Frontier also commits that the business one-party rate will not exceed two times the benchmark rate for residential customers.

The schedule of proposed access service charges included in the Frontier Plan reflects decreases in access service rates toward the benchmarks established in docket 05-TR-103. In testimony, AT&T recommended that the Commission not approve the Frontier Plan without the following modifications: (1) elimination of noncost based intrastate charges with no other substitute charges, and (2) reduction of intrastate switched access traffic sensitive charges to mirror interstate switched access traffic sensitive charges. Currently, Frontier's interstate switched access traffic sensitive charges are below the 05-TR-103 benchmark rates. In recommending that noncost based intrastate charges should be eliminated, AT&T referenced a similar provision in § 196.196(2), Stats.

Both Frontier and staff agree with AT&T that rates for access service should be cost based. However, in approving an alternative regulation plan, Frontier and staff maintain that the Commission must balance the interests of all parties and that the Frontier Plan as proposed does this. Regarding AT&T's recommendation to eliminate noncost based rates, staff noted that the statute section referenced by AT&T applies to companies who elect price regulation and not companies filing an alternative regulation plan pursuant to § 196.195(12), Stats. In addition, the total elimination of noncost based rates in § 196.196(2), Stats., only applies to companies with over 150,000 access lines in use in the state. Finally, for companies with over 150,000 access lines in use in this state, § 196.196(2), Stats., applies to access service rates in any regulatory plan approved under §196.195(12), Stats. In Act 496, companies such as Frontier with fewer than 150,000 access lines in use in the state were specifically excluded from this provision. Therefore, under AT&T's proposal, Frontier would have to take action which is not required under state law.

While Frontier's proposed rates for access service under its Plan remain above the levels that AT&T believes are reasonable, the proposed access rates are set at a level which represents a proper balancing of the interests of basic local exchange service customers and intrastate access customers. Therefore, the schedule of access service charges contained in the Frontier Plan is reasonable.

Monitoring of Frontier's Operations

Staff provided uncontested testimony that to properly monitor the Plan, the following review procedures should be completed on an annual basis:

(1) Frontier's overall service quality. This annual review will allow staff to determine: (a) if Frontier has met its seven service quality standards to implement the entire scheduled local rate increase, and (b) if Frontier has complied with all current or future PSC service standards.

(2) Frontier's overall capital investment. This annual review will allow staff to adequately monitor the progress of Frontier's infrastructure deployment over the life of the Plan.

ULTIMATE FINDINGS OF FACT

THE COMMISSION FINDS:

1. Applicant is a "small telecommunications utility" as defined by § 196.01(8), Stats.
2. Frontier's proposed telecommunications services and rates, as set forth in the Plan, are just and reasonable and in the public interest.
3. The Plan contains sufficient incentives designed to achieve the Plan's stated goals, maintains just and reasonable rates, and, consequently, is in the public interest. Specifically, the Commission finds:
 - a. It is reasonable to authorize the Plan to continue for four years after the effective date of the Plan.
 - b. It is reasonable to base annual infrastructure commitments at \$87.50, times the estimated access lines for Plan year end. That at the completion of the Plan, Frontier shall provide in-kind contributions in its service territory or make cash contributions to the WATF for any under-spending of the total dollar commitment. Such contributions will be in addition to the amounts specified in order point 9.
 - c. It is reasonable to limit the prices charged to R-1 customers to the benchmark rate for residential customers as determined under § 196.215(7)(b), Stats.
 - d. It is reasonable to limit the prices charged to B-1 customers to two times the benchmark rate for residential customers.
 - e. It is reasonable for Frontier to file its capital budget with the Commission on an annual basis. Such budget shall highlight those projects which Frontier believes are more than routine.
 - f. It is reasonable to not allow Frontier to implement 100 percent of the increases shown in Appendix B for local service rates for any year it fails to achieve any two of the components listed in the Service Quality Guarantee shown in Exhibit A to Appendix B.
 - g. It is reasonable that Frontier shall continue to comply with all current Commission service quality rules (ch. PSC 165, Wis. Admin. Code) and any future changes to these rules.
 - h. Frontier shall conform to § 251 of the Federal Act as set forth in Appendix B.

i. Frontier reserves its rights (1) to request a hearing in any certification proceeding for a competing provider in its service territory under § 196.50, Stats., subject to the elimination of the obligation to be provider of last resort, (2) as a rural telephone company under § 251(f)(1) for exemption from § 251(c), subject to a determination by the Commission that a bona fide request is not unduly burdensome, is technically feasible, and is consistent with § 254 (other than subsections (b)(7) and (c)(1)(D) thereof), and (3) to petition under § 251(f)(2) for any suspensions or modifications of §§ 251(b) and (c), subject to the Commission's right to terminate this Plan if it is determined that any such exemptions or suspensions materially affect the transition to competition in Frontier's exchanges.

j. Wholesale rates shall be determined pursuant to the standards set forth in the Federal Act.

k. As of August 1, 1998, Frontier provides one plus intraLATA equal access for all providers certified by the Commission.

l. It is reasonable to suspend §§ 196.05, 196.12, 196.196(1), 196.196(5), and 196.20 (except 1m), Stats., in accordance with § 196.195(12)(a), Stats.

m. It is reasonable for Frontier to provide cash and in-kind contributions to the WATF of approximately \$27,300 annually during the term of the Plan.

n. It is reasonable to process any proposed rate changes for exogenous changes in costs including mandates or tax increases as described in Appendix B.

4. It is reasonable for staff to annually review Frontier's overall service quality and capital investment to adequately monitor the Plan.

5. The Plan shall take effect on November 1, 1998. Frontier should file revised tariffs not later than November 15, 1998. Rate increases for the remainder of the term of the Plan will become effective on the anniversaries of the Plan, after giving 60 days notice to all customers and the filing of revised tariffs with the Commission. Rate decreases will become effective within one day of filing revised tariffs with the Commission.

6. Within ten days after approval of the Plan, the staff and Frontier will develop a mutually agreed upon format of a notice to customers to be used throughout the duration of the Plan without subsequent Commission approval.

7. This is a Type III action under § PSC 4.10(3), Wis. Admin. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under § 1.11, Stats., nor an environmental assessment is required.

CONCLUSION OF LAW

THE COMMISSION CONCLUDES:

It has jurisdiction under §§ 196.01, 196.02, 196.03, 196.195(12), 196.26, 196.28, 196.37, and other provisions of chs. 196 and 227 Stats., as may be pertinent hereto, to issue an order that approves a regulatory method alternative to rate-of-return regulation, provides a method of implementation, makes findings of fact, and takes all other action as provided herein.

ORDER

THE COMMISSION ORDERS:

1. This order will be effective upon issuance.
2. November 1 shall be the anniversary date for purposes of the effective date of allowable price changes.
3. The Plan shall be authorized for the period November 1, 1998, through October 31, 2002.
4. Effective on the first billing date subsequent to the effective date of this order and subsequent to the date upon which the newly authorized rates are posted in all offices of the utility where customer payments are accepted, Frontier is authorized to place in effect the local exchange service rates, access service rates, and other service rates shown in Appendix B, whereupon the Plan shall remain in effect for four years after the effective date, unless terminated or modified as provided by this order or any applicable statutes.
5. All actions of the applicant shall be in accordance with the terms of the Plan (Appendix B) to the extent not inconsistent with this order except that first-year rate changes may be made effective as soon as practicable, pursuant to ordering point 2 above.
6. Frontier shall commit to annual infrastructure deployment in the amount of \$87.50 times the estimated number of access lines in service at Plan year end. At the completion of the Plan, Frontier shall provide in-kind contributions in its service territory or make cash contributions to the WATF for any under-spending of the total dollar commitment. Such contributions will be in addition to the amounts specified in order point 9.
7. Frontier shall file its capital budget with the Commission on an annual basis. Such plan shall highlight those projects which Frontier believes are more than routine. The first such filing shall be made on or before January 1, 1999.

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8. In accordance with § 196.195(12)(a), Stats., §§ 196.05, 196.12, 196.196(1), 196.196(5), and 196.20 (except 1m), Stats., are hereby suspended.

9. Frontier shall provide a funding commitment of approximately \$27,300 annually to the WATF during the term of the Plan.

10. This order is effective only for the exchanges presently served by Frontier. If Frontier subsequently expands its service territory, whether by merger, acquisition, or other means, the application of this plan to the additional exchanges shall be considered a Plan modification and subject to further Commission approval.

11. Jurisdiction is retained.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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Attachments

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91

APPENDIX A

To comply with s. 227.47, Stats., the following parties who appeared before the agency are considered parties for purposes of review under s. 227.53, Stats.

Public Service Commission of Wisconsin
(Not a party but must be served)
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Mr. Grant B. Spellmeyer, Attorney
Axley Brynson
P.O. Box 1767
Madison, WI 53701-1767

WISCONSIN STATE TELECOMMUNICATIONS ASSN.

by
Mr. Scott Girard
6602 Normandy Lane
Madison, WI 53719

AT&T COMMUNICATIONS OF WISCONSIN, INC.

by
Mr. John J. Reidy, III, Attorney
AT&T Corporate Center
227 West Monroe Street, Suite 1300
Chicago, IL 60606

MS. GRACE KIRCHNER
140 North Main Street
Clintonville, WI 54929

MS. PATRICIA M. GIPP
707 East Fifth Street
Shawano, WI 54166