

Public Service Commission of West Virginia

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March 31, 2020

03:24 PM MAR 31 2020 EXEC SEC DIV

Connie Graley
Executive Secretary
Public Service Commission
PO Box 812
Charleston, WV 25323

Re: ¹⁸⁻⁰²⁹¹ CASE NO. ~~19-0291~~-T-P
FRONTIER WEST VIRGINIA INC. AND CITIZENS
TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA

Dear Ms. Graley:

Enclosed is an original and twelve (12) copies of the "Staff's Response to Motion for Confidential Treatment of Frontier West Virginia Inc., and Citizens Telecommunications Company of West Virginia." by the Staff of the Public Service Commission of West Virginia in the above-referenced proceeding.

A copy has been served upon all parties of record in this proceeding.

Sincerely,

Christopher L. Howard (7/1)

CHRISTOPHER L. HOWARD
WV State Bar I.D. No. 8688

CLH/dt

Enclosures

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

**CASE NO. 19-0291-T-P
FRONTIER WEST VIRGINIA INC. AND CITIZENS TELECOMMUNICATIONS
COMPANY OF WEST VIRGINIA**

**STAFF'S RESPONSE TO THE MOTION FOR
CONFIDENTIAL TREATMENT OF FRONTIER WEST VIRGINIA INC. AND
CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA**

NOW COMES, the Staff of the West Virginia Public Service Commission (Commission Staff) and respectfully requests the Commission deny parts of the Motion for Confidential Treatment filed by Frontier West Virginia Inc., and Citizens Telecommunications Company of West Virginia (Frontier), dated March 25, 2020. Frontier seeks confidential treatment for previously filed Focused Service Quality Management Audit Report by the Auditor, Schumaker and Company (Auditor) filed on March 18, 2020.

Frontier in its filing notes several areas where it believes should be given confidential treatment. Staff will address each of these areas as follows:

**I. Non-Confidential data and details of Frontier's Internet Service
Business**

Frontier contends that information regarding its internet service business was provided, as a courtesy to the auditor, and this information involves a service outside the

Commission's jurisdiction and was not ordered to be provided in the audit. Staff would note that the Commission during the course of the audit has received a large amount of comments from impacted customers throughout the State of West Virginia. A large number of these comments involve Frontier's provisioning of internet services throughout the state and the speeds of internet service provided. Staff asserts this information is important to the Commission's review of the Company and its overall provisioning of needed services in the state. Further, the information regarding internet service is West Virginia specific and does not mention any other areas in the nation where Frontier is offering services, so it is hard to contemplate how the information regarding internet service, including federal programs which provide federal funding sources for the provisioning of broadband services and are readily available to other telecommunications providers, would pose any threat to a trade secret essential to Frontier's operations.

II. Specific detailed, non-public data about Frontier's workforce and processes

Frontier again puts forth the argument that revealing this data would give competitors special non-public insight into Frontier's business strengths and weaknesses and provide competitors with an unfair advantage. Staff notes this information in large part is the demographic oversight of the current Frontier workforce in West Virginia, involving the breakdown of the number of employees, their positions and job duties. Staff would contend this information is again West Virginia specific and given that Frontier is the carrier of last resort and the main Incumbent Local Exchange Carrier

(ILEC), this information would not provide some competitor with some unfair advantage. There are some Competitive Local Exchange Carriers (CLECS) in West Virginia, but none that could pose any threat to Frontier's dominance of the West Virginia telecommunications market. Further, it is perplexing to understand how numbers that are specific to Frontier's West Virginia workforce would provide any advantage to a competitor of Frontier in another state, where workforce demographics would most certainly be different.

In terms of Frontier's argument it needed to redact the information because certain employee's ages and other personal information were listed, Staff would agree that if a specific employee was discussed that information should be redacted; however, overall ages and demographics of the entire workforce should not be redacted.

III. Non-public data from which competitors might infer Frontier's investment strategies and capabilities

Frontier is putting forth the position that if its investments in the network were revealed it would provide competitors with important information, which could lead them to make their own capital investment determinations that would create an unfair advantage. Staff would note this information again would be specific to the West Virginia network and would involve those investments that would provide needed repairs to the West Virginia network. Staff reasserts Frontier is the carrier of last resort and the main ILEC, and this information would not provide some competitor with some unfair advantage, as there are some CLECS in West Virginia, but none that could pose any threat to Frontier's dominance of the West Virginia telecommunications market. Further,

these investments are specific to Frontier's West Virginia network and would not provide any advantage to a competitor of Frontier in another state, where network investments would most certainly be different.

IV. Non-public confidential data on Frontier's network and system

Frontier notes its detailed non-public information on the deployment, location, nature, age and amount of equipment and investment throughout its network, details on the proprietary computer and other systems that Frontier uses to manage it, and the practices, management tactics and organizations that Frontier uses. Frontier believes disclosure of this information would give competitors insight into Frontier's network deployment and business strategies, organization, and system strengths and weakness.

Staff would agree with the redaction of that information, involving some management tactics and computer systems are proprietary; however, information involving the deployment, location, nature, age and amount of equipment and investment throughout its network is again West Virginia specific and should not be entitled to such protection.

The legal standard for "trade secret" information which is exempted from the public disclosure requirements of FOIA is governed by W. Va. Code § 29B-1-4(a). The code defines "trade secrets" as follows:

Trade secrets, as used in this section, which may include, but are not limited to, [1] any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information [2] which is not patented [3] which is known only to certain individuals within a commercial concern [4] who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other

substances, [5] having commercial value, and [6] which gives its users an opportunity to obtain business advantage over competitors;

General Investigation into the Actions of WVAVWC in Reacting to the Jan. 9, 2014 Chemical Spill, Case No. 14-0872-W-GI, order entered December 11, 2015, citing and enumerating W. Va. Code § 29B-1-4(a).

The Commission has referred to the legal standard it must apply when considering a motion for protective treatment and granting exemption from FOIA disclosure, stating, in pertinent part,

[the telephone utilities] need to make a “particular and specific demonstration of fact” as to how they will be injured by each disclosure. Although a utility is not required to prove “actual harm” to a certainty in order to obtain a protective order, a utility must make a credible showing of likely harm to justify a protective order.

‘However, the PSC is not a court, but an administrative agency. As an administrative agency, the PSC has a responsibility to disclose as much information to the public as it can. The PSC's standard for determining the likely harm from disclosure is governed by the Freedom of Information Act, W.Va. Code, 29B-1-1, et seq. [1977]. The general policy of this act is to allow as many public records as possible to be available to the public.’

The party claiming that certain information is protected by this exception has the burden of making a credible showing that a trade secret, expansively defined, is in jeopardy.

Id. at Pages 7-8, quoting AT&T Communications v. Public Serv. Comm'n, 423 S.E.2d 859, 862.

Under the standard set forth in AT&T, a public utility seeking protective treatment from the Commission must make a credible showing of likely harm to justify a protective treatment. For purposes of protective treatment, AT&T effectively requires a showing that the WV FOIA “trade secret” exemption has been satisfied. Id. at Page 7,

Appalachian Power Company and Wheeling Power Company, Case No. 16-0239-E-ENEC (2016 ENEC), Order entered August 5, 2016, at Page 12. The determination of whether a trade secret exists should not merely rely on the six factors established by State ex rel. Johnson v. Tsapis, 187 W. Va. 337,419 S.E.2d 1 (1992), although these factors may be helpful when considering the issue. AT&T is clear that because the Commission is a public agency rather than a court, W. Va. Code § 29B-1-4(a) is the standard for the Commission in determining whether to grant a motion for a protective treatment for information claimed to be a trade secret.

Staff contends Frontier based on Staff's positions noted *supra* has failed to demonstrate a credible showing exists for protective treatment under W. Va. Code § 29B-1-4(a) and AT&T Communications v. Public Serv. Comm'n, 423 S.E.2d 859. Frontier bears the burden to persuade the Commission that the information should be protected as a trade secret. The Motion filed by Frontier is insufficient for the Commission to find the information is a trade secret. Therefore, Legal Staff recommends Frontier's Motion for Confidential Treatment be denied in part. Frontier's Motion states only that disclosure of the information would materially damage its competitive and financial position. This reasoning lacks the necessary evidence and legal support to warrant a Commission Order granting protective treatment.

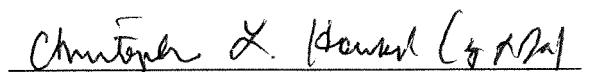
Frontier has not provided a convincing legal analysis that this motion meets the standards, noted *supra*. The Commission is required to make this information public as part of the record of the proceedings in this matter, in accordance with the Freedom of Information Act and its rules and regulations previously discussed.

THEREFORE, based on the Commission's rules and regulations, Commission Staff recommends the Commission enter an Order deny in part Fronter's Motion for Confidential Treatment.

Respectfully submitted this the 31st day of March 2020.

**STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST
VIRGINIA**

By Counsel,



**CHRISTOPHER L. HOWARD, Staff
Attorney**

West Virginia State Bar I.D. 8688

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

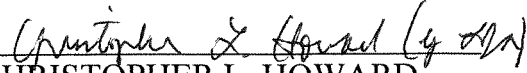
**CASE NO. 19-0291-T-P
FRONTIER WEST VIRGINIA INC. AND CITIZENS TELECOMMUNICATIONS
COMPANY OF WEST VIRGINIA**

CERTIFICATE OF SERVICE

I, Christopher L. Howard, Counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Staff's Response to the Motion for Confidential Treatment of Frontier West Virginia Inc., and Citizens Telecommunications Company of West Virginia" by the Staff of the Public Service Commission of West Virginia has been served upon the following parties of record by First Class, United States Mail; postage prepaid this the 31st day of March 2020.

Mr. and Mrs. Benny G. Jones
1094 South Sandbranch Road
Mt. Hope, WV 25880

Joshua A. Johnson, Esq.
Counsel, Frontier Communications
1500 MacCorkle Ave., S.E.
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