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April 8, 2020

## Via Electronic Delivery

Connie Graley, Director  
Executive Secretary Division  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301  
[caseinfo@psc.state.wv.us](mailto:caseinfo@psc.state.wv.us)

Re: Case No. 18-0291-T-P  
Frontier West Virginia Inc. and  
Citizens Telecommunications Company of West Virginia  
Focus Management Audit

Dear Ms. Graley:

Enclosed for filing in the above-referenced matter is the *Response of Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia to Commission's April 3, 2020 Order.*

Please file this letter and enclosure and distribute the filing to the appropriate parties at the Commission. As always, we appreciate your assistance in this matter.

Sincerely,



Christopher L. Callas

## Enclosure

cc: Joseph J. Starsick, Esq.  
Vincent Trivelli, Esq.  
Linda S. Bouvette, Esq.  
Christopher Howard, Esq.  
Tom White, Esq.  
Dennis Schumaker

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DIVISION

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 18-0291-T-P**

**FRONTIER WEST VIRGINIA INC.  
AND CITIZENS TELECOMMUNICATIONS  
COMPANY OF WEST VIRGINIA DBA  
FRONTIER COMMUNICATIONS OF WEST VIRGINIA**

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**RESPONSE OF FRONTIER WEST VIRGINIA INC.  
AND CITIZENS TELECOMMUNICATIONS OF WEST VIRGINIA DBA  
FRONTIER COMMUNICATIONS OF WEST VIRGINIA  
TO COMMISSION'S APRIL 3, 2020 ORDER**

Pursuant to the Commission's Order of April 3, 2020, Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia (collectively and individually, "Frontier") hereby file their response to the recent West Virginia Freedom of Information Act ("FOIA") request in this proceeding. On March 25, 2020, Frontier filed a Motion for a Protective Order ("Motion"), detailing why the redacted information in the public version of the Auditor's Report is exempt from disclosure under FOIA. Frontier appreciates the opportunity to provide additional comments for a credible showing that its nonpublic, trade secret and confidential sensitive information should not be publicly disclosed.<sup>1</sup>

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<sup>1</sup> This filing also responds to the "Staff's Response to the Motion for Confidential Treatment of Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia". (The Consumer Advocate Division simply joins in the Staff's Response.) The substance of Frontier's FOIA response is applicable to Staff's (and, presumably, CAD's) similar request for a broader disclosure of Frontier's confidential information and Frontier will augment its response to certain of Staff's arguments in footnotes, as needed.

## Factual Background

Frontier’s business is a far cry from the monopoly rate-base/rate-of-return regulated utilities, like electric or water companies, with which the Commission is more familiar. By contrast, Frontier is in a hotly competitive industry where it enjoys no protected service territory and no guaranteed rate of return whatsoever. Frontier has no “dominance” in the West Virginia market and any assertion to the contrary is flatly absurd.<sup>2</sup> The fact is that Frontier provides less than 15% of all voice connections in West Virginia.<sup>3</sup> Huge out-of-state wireless juggernauts, like Verizon and AT&T, among others, dominate the market. A simple count of the number of phones in one’s family reveals that virtually all are wireless phones. In fact, less than half of West Virginia households even have a landline at this point,<sup>4</sup> and when that landline exists, it is just as likely (if not more) to be provided by a cable company or a landline-based competitive local exchange carrier (“CLEC”).

Yet, Frontier remains the carrier of last resort (“COLR”) in its West Virginia service territory. Contrary to what the Staff implies,<sup>5</sup> the COLR role provides Frontier with no market advantage. To the contrary, Frontier alone is saddled with the requirement to provide service in the most rural and expensive-to-serve areas of the State.

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<sup>2</sup> The Staff Response disappointingly makes such assertions, p. 3.

<sup>3</sup> Based on the Federal Communications Commission’s Voice Telephone Services Report, West Virginia had approximately 2,264,000 voice connections. <https://www.fcc.gov/voice-telephone-services-report> and links (source of data). As of Frontier’s December 2019 annual report, Frontier had 323,572 lines out of that total—about 14% and falling.

<sup>4</sup> National Center for Health Statistics, Wireless Substitution: Early Release of Estimates for the National Health Interview Survey, January-June 2018, [cdc.gov/nchs/data/earlyrelease/wireless201812](https://www.cdc.gov/nchs/data/earlyrelease/wireless201812)

<sup>5</sup> Staff Response, p. 3.

It, therefore, should come as little surprise to any clear-eyed observer that Frontier faces serious operational and financial challenges in West Virginia.

It is with this backdrop, and in the context of the highly competitive telecommunications market, that the Commission should view Frontier's Motion for a Protective Order and the FOIA request in this case. The Commission must proceed very carefully so as not to damage Frontier further by the release of its competitively sensitive information, which is protected from disclosure by FOIA. In part, the redacted information includes nonpublic information about Frontier's broadband business—over which the Commission explicitly has no jurisdiction under state law. This information was included in the report over Frontier's objection and has no bearing on the eight explicit areas the Commission directed the Auditors to examine regarding Frontier's voice telephone service—the subject over which the Commission has jurisdiction to conduct a focused audit.<sup>6</sup> Releasing this information would only serve to harm the Frontier to the benefit of its huge wireless, satellite and cable broadband competitors.

Frontier nonetheless appreciates the role of the press in disseminating information of public interest, and in challenging, where appropriate, unreasonable claims of confidentiality. For that reason, Frontier carefully limited its redactions. The redacted information is limited to trade secrets and other protected information that is truly exempt from disclosure under FOIA. As noted in Frontier's Motion, this protected information, by and large, falls into one or more of the categories below.

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<sup>6</sup> W.Va. Code 24-2-1(e) (explicit lack of jurisdiction). *See* Commission Order (August 30, 2018) (explicit enumeration of areas of focused audit).

## Rationale for Each Redaction

**Nonpublic, confidential data and details of Frontier’s Internet service business.** By law, the Commission has no jurisdiction over Internet service. W.Va. Code § 24-2-1(e). This information was not authorized by the Commission to be in the Audit in the first place. The Commission did not include Internet service as a subject of the audit, and it has no jurisdiction to do so.<sup>7</sup> Accordingly, the nonpublic, confidential information on this aspect of Frontier’s business has been redacted as appropriate. This information included the following:

Page 13-14 – Nonpublic Frontier Internet business information (including exhibit of subscriber levels)

Page 20 through 23 – Exhibit of central office and Internet subscribers served

Page 65 – Nonpublic conclusions regarding DSL customers

**Specific, detailed, nonpublic information about Frontier’s workforce.** This data would give competitors special, nonpublic insight into Frontier’s business strengths and weaknesses, thereby gaining an unfair competitive advantage to Frontier’s detriment. Moreover, some of the information actually includes certain employee’s ages and other personally identifiable information.<sup>8</sup> The Commission has repeatedly held that the names of employees and other personal identifying information is exempt from disclosure under FOIA.<sup>9</sup> It accordingly has been redacted. Specific redactions included the following:

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<sup>7</sup> As a basis for arguing that the Commission should consider this matter over which it has no jurisdiction, the Staff argues that the Commission has received comments about issues related to Frontier’s Internet service. Staff Response, p.2. The simple fact is that even though the Commission may have received complaints about Frontier’s Internet service it has no grant of authority permitting it to resolve those individual complaints—much less to audit or investigate Frontier’s provision of Internet as whole.

<sup>8</sup> The Staff nonsensically argues that the knowledge of the overall age of the West Virginia workforce would not advantage a competitor “in another state”. Staff Response, p. 4. Although it is true that a competitor in another state could make inferences regarding the age of Frontier’s workforce in that state from the age of Frontier’s West Virginia workforce, Frontier is far more concerned about competitors actually in West Virginia, including the large wireless and cable competitors operating in the state. Knowing that figure will allow competitors to infer when Frontier might be most vulnerable due to workforce retirements and plan competitive attacks accordingly.

<sup>9</sup> West Virginia Code § 29B-1-4(a)(2) protects from public disclosure “[i]nformation of a personal nature . . . if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance . . .”. The Commission has cited this FOIA exemption in protecting employee names and other information. *See, e.g., General Investigation into the Actions of WVAWC in Reacting to the Jan. 9, 2014 Chemical Spill*, Case No. 14-0872-W-GI (Commission Order dated March 28, 2016 ) (“WVAWC GI Order”) at 14 (finding that the names of current employees identified within certain policies “were an integral part of the process resulting in commercial value” and protecting such information under §29B-1-4(a)(1));

Page xii, 5, 74, 79, 94 – Attrition based on age of staff  
Page 68 – Organization and description of Field Operations Services Group  
Page 69, 71, 74 - Organization and description of Engineering Organization  
Page 70 – Exhibit of Employee list of Names, title, age and date of hire  
Page 77 – Exhibit of operations, central office and construction organization  
Page 78, 150-152 – Exhibit of technician reporting locations and technician head count (over time)  
Page 151 through 153 – Details of CWA contract.  
Page 154, 155 – Exhibit of union grievances  
End note 154 – Personal information of various individuals

**Nonpublic data from which competitors might infer Frontier’s internal investment and operational strategies and policies.** The nonpublic amounts and types of Frontier’s specific investments in its network and its internal and operational policies would provide competitors with insight into Frontier’s business and investment strategies and would aid those competitors in selecting where and how to target *their* own capital investments, as well as in what amounts and types, rather than do the necessary work to gather whatever information that they might be able to infer from the market. This would give Frontier’s competitors a competitively unearned advantage in the market and, conversely, would place Frontier at an undeserved competitive disadvantage.<sup>10</sup> The Commission has taken care to protect a disclosing party’s pro forma financial information, financial and accounting analyses, and internal budgeting and financial projections where public disclosure of that information could provide a competitor with a business advantage.<sup>11</sup> Accordingly, redacted provisions included the following:

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Kopperston Public Service District v. Oceana Municipal Water Works, Case No. 14-1974-W-C (Commission Order dated March 10, 2015 at 2 (protecting labor study data “to the extent that certain employees are identified by name”).

<sup>10</sup> In arguing for disclosure of this information, the Staff again asserts that the information “specific to the West Virginia network and would not provide an advantage to a competitor of Frontier in another state, which network investment would certainly be different.” Staff Response, p. 4. As noted previously, although competitors operating in other states might be able to make inferences from this information for those states as well, Frontier is more concerned about, as the Commission should be, the unearned advantage that they will receive directly in West Virginia.

<sup>11</sup> *See, e.g., Monongahela Power Co.*, Case No. 09-1352-E-42T (Commission Order dated June 25, 2010) at 11 (granting motion for protective treatment for internal budgeting and financial projections); Morgantown Energy Assoc. v. Monongahela Power Co., Case No. 09-0985-E-C (Commission Order dated June 9, 2010) at 11–13 (granting motion for protective treatment of internal review, financial and accounting analyses, profit distributions, and loan agreement information and noting that the Commission has previously recognized the importance of protecting financial information that may provide a competitor with a business advantage); AES Laurel Mountain, LLC, PSC Case No. 08-0109-E-CS (Commission Order dated April 9, 2008) at 10 (classifying pro forma financial information as a trade secret and granting it protection from public disclosure).

Page xiii, 5,15, 97, 98, 99, 107 – Nonpublic capital spending  
Page 88 through 92, 94 – Frontier’s budgeting and use of overtime, staffing process  
Page 100 – Frontier’s internal budget process  
Page 137 – Nonpublic accounting data  
Page 138 – Pension costs, OPEB Benefits and Cash Interest are not public.

**Nonpublic, confidential data on Frontier’s network and systems.**<sup>12</sup> This includes specific, detailed nonpublic information on the deployment, location, nature, age and amount of equipment and investment throughout Frontier network, Frontier network,<sup>13</sup> details on the proprietary computer and other systems that Frontier uses to manage it, and the practices, management tactics and organizations that Frontier uses. The Commission routinely protects from disclosure internal policies and practices that show a disclosing party’s internal operational procedures as trade secrets.<sup>14</sup> The disclosure of this information would give competitors insight into Frontier network deployment and business strategies, organization, and system strengths and weakness, thereby resulting in likely harm to Frontier.<sup>15</sup> Redacted provisions include the following:

Page xi, 3, 18, 23, 24, 25, 26, 60, 80 – Age and miles of network fiber and copper cable, splices, connection points

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<sup>12</sup> The Staff once again argues that, because the information is “West Virginia specific”, it is not entitled to protection. Staff Response, p. 4. Again, the information is *more valuable* to competitors in West Virginia, and Frontier is *harmed more* in West Virginia, *because* it is West Virginia-specific.

<sup>13</sup> Subsections (15)-(17) of West Virginia Code 29B-1-4(a) also give added protection for the location of facilities. The Commission has relied on this exemption in protecting the location of facilities from public disclosure. *See, e.g., Robert L. Neely, Jr. v. West Virginia-American Water Company*, Case No. 14-0117-W-C (Order dated July 15, 2014) at 7 (ruling that maps depicting company facilities qualified for exemption from public disclosure under W.Va. Code §29B-1-4(a)(17) and that the “plain view” exception to exemption (17) did not apply to utility plant and equipment); General Investigation into the Actions of WVAWC in Reacting to the Jan. 9, 2014 Chemical Spill, Case No. 14-0872-W-GI (Commission Order dated November 25, 2014) at 12 (protecting facility blueprints from public disclosure pursuant to W.Va. Code §29B-1-4(a)(17)).

<sup>14</sup> *See, e.g., WVAWC GI Order* at 23 (determining that information regarding “procedures for tracking and moving inventory” is subject to protection as a trade secret), 26 (protecting “procedures and specific examples that explain and describe processes for initiating, scheduling, monitoring, cancelling, and staffing work projects”), and 27 (protecting “procedures for addressing, managing and resolving communications issues, including public safety emergencies”).

<sup>15</sup> The Staff finally argues that Frontier has not provided the necessary evidence for why disclosure of the details of its business practices would result in likely harm. Staff Response, p. 6. In the event that the Commission is persuaded by this argument—which it should not be—Frontier will provide whatever additional information that the Commission might require.

Page 4 – Exhibit of nonpublic trouble report rates  
Page 19 – Exhibit of network cable  
Page 20 through 23 – Exhibit of central office and lines served  
Page 24 – Cable asset age profile and counts of plant assets  
Page 27 – # of terminals specific to Kanawha County  
Page 28 – Exhibit of terminals  
Page 29 – # of crossboxes and county specific crossbox counts  
Page 30 – Exhibit of crossbox locations and counts of pedestals  
Page 32 – Counts of pedestals per county counts of sites with batteries  
Page 33 – Exhibit of battery locations and battery replacement evaluation and systems  
Page 34 – Exhibit of battery project status  
Page 36 through 39 – Exhibit of plant preventative maintenance policy and procedure  
Page 40 through 42 – Pole and tower ownership counts and exhibits  
Page 43 – Details of pole records  
Page 44, 63, 66 – Description and exhibit of pole age  
Page 45 – Description of dispatch department, National Forecasting Team and Capacity Team staffing and systems  
Page 47 – Exhibit and description of an internal work management report/system developed and utilized by Frontier  
Page 48 – Exhibit describing how outside workforce is regionally organized  
Page 49 – Exhibit of Frontier proprietary dispatch board  
Page 50 through 54– Exhibit, internal standard operating procedures and description of internal Frontier systems  
Page 55, 8, 155, 156 – Exhibit of internal tool to measure technician productivity and local manager productivity  
Page 56 – Description of internal codes used for trouble ticketing in Frontier’s system  
Page 57, 75 – Nonpublic details of troubles causes within the network  
Page 58 through 61, 75 – Details of trouble rates by wire center  
Page xii, 5, 80, 82, 93 – Description of internal Frontier preventative plant maintenance plan  
Page 72, 83, 84 – Exhibit and description of internal Frontier Defective Cable Reporting (DCR) system and Varraset system.  
Page 73 - Exhibit and description of internal Frontier Outside plant Geographic information System (FROGS) system  
Page 83 – Exhibit of classified contractor work  
Page 85 – Exhibit regarding how Frontier alarm system and how it monitors its network  
Page 87, 88, 93 – Exhibit of Frontier workloads  
Page 114 through 123 – Nonpublic reporting to WV Staff regarding service quality  
Page 129 through 135 – Access line counts by wire center are not public information  
Page 138, 139, 145 – Frontier’s cash management system  
Page 144 – Nonpublic operating income from nonregulated services

## Conclusion

The Commission initiated the management audit due to its concerns about Frontier's perceived voice service quality difficulties, including service in the most rural and difficult-to-serve parts of this State. Since before the start of the audit, Frontier has made significant strides independently addressing voice service quality month over month as its filed service quality results and the audit report demonstrate. However, it still faces daunting challenges at present. Its financial issues are a matter of public record and its management is rightly focused on ensuring connectivity and delivering quality service during these unprecedented times of the COVID-19 pandemic. Permitting the public disclosure of Frontier's competitively sensitive information would further harm Frontier and amplify the competitive advantage that its competitors already enjoy. Such action would also directly conflict with the Commission's core goal in this proceeding—ensuring that Frontier is able to continue to provide high quality, reliable voice service in West Virginia.

For the foregoing reasons, Frontier respectfully requests that the Commission deny the FOIA request and protect Frontier's sensitive, confidential nonpublic information consistent with the redactions set forth in Frontier's Motion for a Protective Order. In the alternative, if the Commission tends to find any of the Staff's arguments persuasive on their face—which the Commission should not—Frontier respectfully asks for an *in camera* hearing before any disclosure so that it might provide whatever additional information that the Commission might require in order to protect the nonpublic nature of Frontier's proprietary data and other information.

FRONTIER WEST VIRGINIA INC. AND  
CITIZENS TELECOMMUNICATIONS  
COMPANY OF WEST VIRGINIA DBA  
FRONTIER COMMUNICATIONS OF WEST  
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By counsel:



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**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 18-0291-T-P**

**FRONTIER WEST VIRGINIA INC.  
AND CITIZENS TELECOMMUNICATIONS  
COMPANY OF WEST VIRGINIA DBA  
FRONTIER COMMUNICATIONS OF WEST VIRGINIA**

**CERTIFICATE OF SERVICE**

I certify service of the foregoing Response on April 8, 2020, by electronic mail, as addressed:

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