

**STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY**

THE SOUTHERN NEW ENGLAND	:	DOCKET NO. 20-04-31
TELEPHONE COMPANY D/B/A	:	
FRONTIER COMMUNICATIONS OF	:	
CONNECTICUT (SNET) BANKRUPTCY	:	
PROCEEDING AND CHANGE OF	:	
CONTROL	:	November 23, 2020

**BRIEF OF WILLIAM TONG, ATTORNEY GENERAL
FOR THE STATE OF CONNECTICUT**

William Tong, Attorney General of the State of Connecticut (“Attorney General”), hereby submits his brief in the above-referenced matter. In this brief, the Attorney General submits that the Public Utilities Regulatory Authority (“PURA” or the “Authority”) cannot reasonably approve the proposed petition for a change of control (“Petition”) filed by Frontier Communications Corporation (“Frontier”) and the Southern New England Telephone Company d/b/a/ Frontier Communications of Connecticut (“SNET,” together with Frontier, the “Applicants”) based on the record presented. The evidentiary record developed in this proceeding does not permit a conclusion that the petitioners application meets the statutory requirements of Conn. Gen. Stat. § 16-47, that they possess the suitability and responsibility to provide safe, adequate or reliable service to the public, or that the transaction is in the public interest. In the event the Authority approves the change of control, it should only do so after imposing meaningful conditions on the operation of the company to best ensure that SNET customers are not negatively impacted by the change in control.

I. INTRODUCTION

On May 22, 2020, pursuant to Conn. Gen. Stat. § 16-47 and R.C.S.A. §§ 16-47-1 et seq., the Applicants submitted a joint application to the Authority for approval of a new holding

company structure to effectuate the Applicants' pre-arranged plan of reorganization (the "Plan," and the transactions contemplated thereunder, the "Restructuring") under chapter 11 ("Chapter 11") of title 11 of the United States Code (the "Bankruptcy Code").

Frontier claims that "[t]he Plan provides for a comprehensive restructuring of Frontier's obligations, preserves the going-concern value of Frontier's business, maximizes Frontier's future financial flexibility, and preserves thousands of jobs." Application, 3. Frontier further claims that:

there will be a newly formed parent company owning the existing stock of SNET, although for all practical purposes, the Restructuring will be imperceptible to SNET customers. There will be no transfer or assignment of assets, authorizations, certificates, or customers of SNET as a consequence of the Restructuring. SNET will continue to provide service to its existing residential, business and wholesale customers pursuant to its existing rates, terms and conditions and will continue to comply with its regulatory commitments, tariffs, and contract obligations.

Id. As Frontier's Executive Vice President Mark Nielsen testified, the principal benefit of the change in control is the company's ability to shed burdensome debt. "Well certainly on a qualitative basis, as we have indicated, you know, a Company that is able to shed over \$10 billion of debt and associated interest expense is a stronger, is a financially stronger sustainable Company that is better positioned to look after all of its financial responsibilities." Transcript ("Tr."), 195.

II. STANDARD OF REVIEW

In reviewing an application pursuant to § 16-47(c), the Authority must consider the financial, technological and managerial suitability and responsibility of the corporation that will become a holding company with control over a telephone company. Conn. Gen. Stat. § 16-47 provides in relevant part:

(d) The Public Utilities Regulatory Authority shall investigate and hold a public hearing on the question of granting its approval with respect to any application made under subsection (b) or (c) of this section and thereafter may approve or disapprove any such application in whole or in part and upon such terms and conditions as it deems necessary or appropriate. . . in each proceeding on a written application submitted under said subsection (b) or (c), the authority shall, in a manner which treats all parties to the proceeding on an equal basis, take into consideration (1) the financial, technological and managerial suitability and responsibility of the applicant, [and] (2) the ability of the gas, electric distribution, water, telephone or community antenna television company or holding company which is the subject of the application to provide safe, adequate and reliable service to the public through the company's plant, equipment and manner of operation if the application were to be approved. . .

Additionally, the Authority is charged with ensuring that the transfer of ownership is in the public interest as set forth in Conn. Gen. Stat. § 16-22, which states in relevant part:

At any hearing involving a rate or the transfer of ownership of assets or a franchise of a public service company, the burden of proving that said rate under consideration is just and reasonable or that said transfer of assets or franchise is in the public interest shall be on the public service company...

See, also, Docket No. 12-01-07, Application for Approval of Holding Company

Transaction Involving Northeast Utilities and NSTAR, April 2, 2012, at 9-10.

Conn. Gen. Stat. § 16-11 further states that:

The general purposes of this section and sections 16-19, 16-25, 16-43 and 16-47 are to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Public Utilities Regulatory Authority and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.

See also, Docket No. 14-01-26, Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change in Control, 5-8, 26; Docket No. 98-02-20, Joint Application of SBC Communications Inc. and Southern New England Telecommunications Corporation for a Change of Control, September 2, 1998, at 37 (approving the SNET/SBC merger as consistent with the provisions of Conn. Gen. Stat. § 16- 47(d)); see also Docket No. 10-07-09, Joint Application of UIL Holdings Corporation and Iberdrola USA, Inc. for Approval of a Change of

Control of Connecticut Natural Gas Corporation and The Southern Connecticut Gas Company,
November 10, 2010, at 6-7.

III. DISCUSSION

As noted above, it is the burden of the Applicants to demonstrate the financial, technological and managerial suitability of the acquiring entity to operate SNET and that the proposed transaction is in the public interest. The record evidence in this proceeding, however, is inadequate for the Authority to make any such reasoned determinations. First, Frontier has failed to make any commitments about – or even to identify – its post-restructuring management or directors. The Authority cannot simply assume any future management will be suitable to operate SNET. Second, unlike Frontier’s previous application to acquire SNET’s assets from AT&T,¹ or in fact any change in control proceeding in recent memory, the Applicants refuse to make any commitments to ensure local control, continued capital investment in plant and operation, maintaining Frontier’s corporate headquarters in Connecticut or maintaining quality of service.

Without even the identification of future management, or any commitments to the future investment or operations of SNET, the present application presents too many risks for Connecticut consumers, and PURA cannot determine that the application is in the public interest. As the President of the Local Chapter of the Communications Workers of America stated at the opening of the hearings in this matter, Frontier does not have a good track record of investment in Connecticut, and his comments are worth citing at length.

Over the past four years after Frontier took on billions of debt to buy telecom companies in other states, Frontier set a new course of reduced investment in Connecticut network and workforce. The failed strategy has taken its toll on the

¹ Docket No. 14-01-26, *Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change in Control*.

quality of service we're able to offer Connecticut customers. It was also one of the major factors that contributed to the bankruptcy reorganization that is now before you. Significant cuts in staffing have meant fewer technicians in the field to provide critical maintenance and respond to customer issues. It has meant fewer local customer service reps to take customer calls. In April of 2016 at the time Frontier acquired California, Texas and Florida properties, CWA represented 2,397 employees in Connecticut. Over the last four years, 740 representative positions have been cut, a full 30 percent of the unit. The plan of reorganization under review in this proceeding could provide the funding necessary to address these issues of understaffing and allow Frontier to invest in Connecticut. However, we're concerned about whether Frontier will follow through on its promises to use the new funds to improve service and maintain adequate workforce and how its commitments will be enforced. Specifically, we are concerned about the company's agreements with new owners, which include something called a virtual separation. As we understand it, this plan provides different access to capital for areas that will receive fiber deployment and those that will receive unspecified upgrades and improvements. So far in this proceeding Frontier has not explained what this new business plan will mean for Connecticut. We are concerned that this plan will result in revenues being upstreamed to the hedge fund owners who will then decide how much of the money to keep and how much, if any, will trickle back down to the states to invest in the network and improve service. We do not know what this will mean for Connecticut.

Tr., 11-13.

In the event the Authority were to approve the proposed change in control despite the lack of support in the evidentiary record, it should do so only with the imposition of meaningful conditions to ensure that Connecticut receives appropriate levels of management attention and capital investment. Such commitments should include – at a minimum – a “most-favored nation” clause, allowing the Authority to impose any commitments or obligations upon Frontier’s new management that are approved or imposed in other jurisdictions. The Authority should ensure that any conditions imposed upon the post-emergence Frontier must be firm and enforceable, to be judged by solid metrics that can be evaluated by the Authority, and are adequate to ensure that the public interest is ultimately satisfied.

A. The Authority Cannot Judge the Suitability of a Management That Has Not Been Identified

In order for the Authority to approve any application for a change of control, the applicants must demonstrate the financial, managerial and technical suitability of the acquiring entity. In order to do so, however, the Authority must have the opportunity to examine the acquiring entity in order to determine whether that entity is financially, technologically, and managerially suitable to acquire the Connecticut operating company. This is perhaps the single most important aspect of determining whether the acquiring entity is managerially suitable as required by Conn. Gen. Stat. 16-47, or if the proposed transaction is in the public interest.

This opportunity is entirely absent here. That is because the future “post-emergence” management of the Frontier operations is as yet unknown. As the Company’s witness explained, the new acquiring entity has yet to select a board of directors. “The restructuring support agreement and plan of reorganization stipulates that the existing Frontier board, which is on the next page, 2 of 4 from the same exhibit, that that group will elect a new board of directors that will take office at the time of the effective date. We don't know the identity of those new directors with one exception.” Tr., 45. When asked during cross examination whether existing Frontier management could characterize Frontier’s future management, the witness unsurprisingly demurred.

Q. (Vocolina) . . . [W]e don't have an idea of who is going to be on the board of directors other than the one individual John Stratton you mentioned, the executive chair of the board. How would you characterize, as opposed to the growth strategy that we saw from 2010 through 2016, the board's philosophy going forward, if you can answer that question?

A. (Nielsen) Well, you know, as you point out, with the exception of Mr. Stratton, the board of parent Frontier post-emergence is not presently known.

Tr., 48.

This is not an abstract concern. Evaluation of the character and suitability of the new post-emergence Frontier is an essential prerequisite for determining whether the transaction is in the public interest. As the Company's own witness testified, the new management will have full control over the manner and operation of the telephone company, including investment decisions. Nielsen admitted he "would describe it is that once we emerge with a new board, governance of the parent, of the corporate parent Frontier will be entirely within the hands of the new board." Tr., 49-50. And that board will be the entity to answer the concerns and questions presented by the President of the CWA on the first day of this hearing.

How much money will the hedge fund want to take out of the business? What parts of Frontier will they sell off, and how will that affect the pieces that remain part of Frontier? How much investment will be put into new fiber in Connecticut? What kinds of other improvements are planned for our state? Will Frontier expand and train its workforce in Connecticut to perform the needed improvements?

Tr., 13. These are the kinds of questions the Authority needs answers to before it can approve any change of control as consistent with the public interest.

B. Frontier has Refused to Make any Commitments to Maintaining or Improving Service in Connecticut

Throughout this proceeding, Frontier refused to make any commitments to ensure local control, continued capital investment in plant and operation or maintaining its corporate headquarters in Connecticut. These commitments are essential to ensuring that the proposed transaction is in the public interest, that Frontier's future operations will not be degraded in Connecticut, and that Frontier resources and capital are not diverted to other jurisdictions that did require minimum commitments to future operations in those states. In the absence of the identification of any future post-emergence Frontier management, commitments concerning the

future operation in Connecticut are the only means to protect Connecticut consumers from a loss of local control or future degradation in customer quality of service.

Commitments from acquiring entities to assure the continuity of levels of investment and quality of service and to maintain local control have been an essential element of every major change in control proceeding approved by the Authority over the last twenty years. *See e.g.*, Docket No. 14-01-26, *Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change in Control*; Docket No. 12-01-07, *Application for Approval of Holding Company Transaction Involving Northeast Utilities and NSTAR*; Docket No. 98-02-20, *Joint Application of SBC Communications Inc. and Southern New England Telecommunications Corporation for a Change of Control*; Docket No. 10-07-09, *Joint Application of UIL Holdings Corporation and Iberdrola USA, Inc. for Approval of a Change of Control of Connecticut Natural Gas Corporation and The Southern Connecticut Gas Company*.

For example, when Frontier acquired SNET from AT&T, Frontier made significant commitments to the Attorney General, the Office of Consumer Counsel, and the Authority to ensure the transaction would be in the public interest. Frontier committed to maintaining a significant management, headquarters and jobs presence in Connecticut.

Frontier states that following the closing of the Transaction, most of its senior leadership team will remain located in Stamford and possess a significant management and operations presence in Connecticut, post-Transaction.

The Company maintains that the Transaction will have a positive effect on employment in the state. In addition to the 200 employees who work at the Stamford headquarters, its state workforce will also include approximately 2,700 SNET employees at the time of closing. The existing SNET employees that will carry over to Frontier are employees who are directly involved in providing the services offered by SNET. Additionally, its settlement agreement with the CWA provides in part, the addition of 85 new jobs and a guaranteed workforce size of approximately 2,348 positions in Connecticut. *Id.*, pp. 38-40.

Final Decision, Docket No. 14-01-26, *Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change in Control*, 12. Frontier committed to improved service quality performance, maintaining emergency preparedness and response, maintaining capital expenditures, maintaining jobs, new investment of \$63 million in broadband investment (with \$3 million specifically dedicated to underserved communities), maintaining charitable contributions and creating a VA pilot program, among other things. *Id.*, 12-14, Attachment A.

In this proceeding Frontier was repeatedly asked if it would make any commitments to maintain or improve investment levels or quality of service standards. Frontier repeatedly declined. Frontier even declined where it had apparently made similar commitments in other jurisdictions in order to secure approval for the change of control.

Q. (Novello) And my next question would be, would Frontier make that same concession for the State of Connecticut? Obviously, you said that we're already fiber rich, but how would you handle these other states?

A. (Ellis) I mean, I will just jump in in terms of West Virginia and say that that proceeding is ongoing. There has not been any order with respect to any investment in that state, you know, or fiber deployment. So that is not a settled issue. But, you know, as Mr. Adrianopoli said up front, you know, it is the case that we are in a competitive industry. It is a very capital intensive industry. And as a company, like all companies, we have a finite amount of capital, and we have to make determinations of how to spend that across our entire footprint.

Tr., 72. Frontier declined on the specific ground that the post-emergence Frontier would have limited resources, and that Connecticut would not be first in line, or even an equal priority to other jurisdictions. Nielsen admitted “to the extent that we say yes to everything, we run the risk of defeating the purpose of the whole restructuring exercise, which is to reduce debt, reduce expense, and give the company greater flexibility.” Tr., 75.

Frontier even refused to entertain any commitments to maintain its corporate headquarters in Connecticut, a considerable benefit the Company touted prominently in its 2014

application for a change of control. Final Decision, Docket No. 14-01-26, *Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change in Control*, 12.

Q. (Smith) Okay. And can you elaborate a little bit on, I guess it looks like Frontier has a corporate headquarters in Norwalk, Connecticut? . . . So does that corporate headquarters then, does that provide services to the entire Frontier operation?

A. (Nielsen) Yes. So this is where our CEO and senior management team, most of it, are located. This is the reporting location for myself, for our CEO, for our chief financial officer, a number of the senior executives of the company.

Q. (Smith) Okay. And is the intention to maintain that office then?

A. (Nielsen) Like any company, we evaluate from time to time where our office, our headquarters is to be located. We have no plans to move it, but we've also not made any commitment to keep it. I'd like it to stay.

Q. (Smith) Okay. It seems like after participating in a number of these corporate reorganizations, sometimes there is a commitment to maintain a corporate headquarters location for some duration of time. I guess, is Frontier receptive to that, or are you adverse to making some type of similar commitment?

A. (Nielsen) As I said yesterday, you know, we are not opposed to the consideration of some commitments associated with this approval which we do need to receive. I don't expect that we would entertain a commitment about our headquarters location, but we're not, you know, in principle opposed to any condition whatsoever.

Tr., 273-75.

IV CONCLUSION

The Authority cannot reasonably approve the Petition for a change of control based on the evidentiary record developed in this proceeding. The entire transaction presents substantial risks to Connecticut, including a loss of local control, loss of capital investment, and degradations in the quality of service. The petitioners have not met their burden of demonstrating the new management's suitability to provide safe, adequate or reliable service to the public. In fact, they have not even identified who that management might be. This failure is compounded by the absence of any commitments whatsoever to protect the interests of Connecticut customers or with any demonstration that the transaction is in the public interest. The applicants have simply failed to meet their burden under Conn. Gen. Stat. §§ 16-47, 16-22 and 16-11.

Respectfully Submitted,

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