

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	

COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION
on the
FURTHER INQUIRY INTO TWO UNDER-DEVELOPED ISSUES IN THE OPEN
INTERNET PROCEEDING

Frontier Communications Corporations (“Frontier”) hereby submits the following comments in response to the Federal Communications Commission’s (“Commission”) *Public Notice* requesting comment on two issues that it found to be under-developed in its open internet proceeding.¹

INTRODUCTION

Frontier, which operates a telecommunications network across 27 states, is the largest provider of communications services focused on rural America. Accordingly, Frontier is committed to doing its part to deploy broadband in furtherance of the Commission’s broadband

¹ Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding, GN Docket No. 09-191, WC Docket No. 07-52, *Public Notice*, DA 10-1667 (rel. Sept. 1, 2010) (“*Public Notice*”).

deployment goals.² To this end, Frontier is investing hundreds of millions of private dollars to deploy broadband in predominantly rural areas; the areas that the Commission found are most likely to lack service.³ Frontier is able to make such significant investment through sound business decisions and shareholder support. While Frontier and its shareholders believe in the promise of a broadband future in rural America, the confidence in this business can be shaken by the specter of unwarranted regulation, and even further chilled when those regulations would create a competitive disadvantage for the deployment of wireline facilities.

As an initial matter, Frontier objects to the implicit characterization that providers have accepted the need for a regulatory regime governing the management of wireline broadband. The *Public Notice* states that discussion on the Commission’s Open Internet proceeding “appears to have narrowed disagreement” on a number of items that include network management regulation “at least on fixed or wireline broadband platforms.”⁴ Frontier strongly objects to the need for this type of regulation on its provision of broadband services because it is the current deregulated environment that has allowed Frontier to invest in deployment in areas that other providers have found undesirable due to low population densities. Even though the average home density in Frontier’s legacy territories is just 13 homes per square mile, Frontier’s high-

² *In re: Joint Statement on Broadband*, GN Docket No. 10-66, *Joint Statement on Broadband*, 25 FCC Rcd. 3420 (rel. Mar. 16, 2010) (“Every American should have a meaningful opportunity to benefit from the broadband communications era—regardless of geography, race, economic status, disability, residence on tribal land, or degree of digital literacy.”) (“*Joint Statement*”).

³ *In re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 10-159; 09-51, *Sixth Broadband Deployment Report*, FCC 10-129 at ¶ 28 (rel. July 20, 2010) (“*Sixth Broadband Deployment Report*”) (“Based on our analysis, we conclude that broadband is not being deployed to all Americans in a reasonable and timely fashion. Our analysis shows . . . approximately 14 to 24 million Americans do not have access to broadband today. [This] group appears to be disproportionately lower-income Americans and Americans who live in rural areas.”).

⁴ *Public Notice* at 1.

speed broadband service is available to 92 percent of the homes and businesses in these territories. Frontier recently completed a transformational transaction with Verizon through which it added millions of new customers in rural America.⁵ As with its legacy territory build out, Frontier plans to aggressively expand broadband service to these new customers. In fact, Frontier has formally committed to extending broadband service of 3 Mbps download speed to at least 85 percent of all homes and businesses in its expanded territory by 2013.⁶ Additionally, and consistent with the goals of the National Broadband Plan, Frontier has committed to bring download speeds of 4 Mbps to 85 percent of the households in its new territories by the end of 2015.⁷

The Commission must consider the effects that its policies will have on investment and other deployments, which will transform the lives of so many rural Americans. As explained below, Frontier objects to further development of the majority of the policies explored in the *Public Notice* because they will retard the deployment of broadband.

DISCUSSION

I. REGULATION OF SPECIALIZED SERVICES IS UNWARRANTED AND WILL HINDER INNOVATION AND INVESTMENT

The specialized services market is in its infancy, likely to undergo many transformations before it can be clearly defined. To date, Frontier is unaware of any known problems that would

⁵ See *in re*: Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Docket No. 09-95, *Memorandum Opinion and Order*, 25 FCC Rcd. 5972 (rel. May 21, 2010) (“*Frontier Merger Order*”). Frontier completed its merger with Verizon on July 1, 2010.

⁶ See *id.* at Appendix C.

⁷ *Id.* In addition to these commitments, Frontier will not increase residential rates for voice services in the acquired markets for 18 months from the date of closing and former Verizon residential customers can continue with their existing tariffed price plans if they do not wish to take advantage of the new pricing bundles that will be offered by Frontier.

necessitate regulation of the market for specialized services before it takes shape. The Commission notes in the *Public Notice* that “in light of rapid technological and market change, enforcing high-level rules of the road through case-by case adjudication is a better policy approach than promulgating detailed, prescriptive rules that may have consequences that are difficult to foresee.”⁸ Yet the Commission proceeds to suggest six policy approaches for solving speculative “general areas of concern”⁹ that would very likely lead to unintended consequences. While Frontier believes that there is no need for any action at this time, it offers the following evaluation of the Commission’s six policies:

Definitional Clarity: The Commission proposes to “[d]efine broadband Internet access service clearly and perhaps broadly,”¹⁰ with a corollary definition of “specialized services” as those services, “which do not meet the definition of broadband access service.”¹¹ Undertaking this definitional exercise now would be premature; the best course is not to set a sweeping definition that may intrude into what evolves to become a “specialized service,” and in the process create unintended consequences. Frontier instead supports the Commission’s suggestion that it should proceed carefully, preferring that it “address the policy implications of such services if and when such services are further developed in the market.”¹² Indeed it seems strange that the Commission would follow any other course than to adopt a regulatory regime based upon the realities of the market rather than projections.

⁸ *Public Notice* at 1.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.*

Truth in Advertising and Disclosure: Frontier endeavors to provide its customers with full and fair information sufficient to enable them to evaluate the quality of its services. As such, Frontier supports making reasonable disclosures to its customers on its network practices. Yet, truth in advertising and disclosure is very different from the Commission’s proposal to “require providers to offer broadband Internet access service as a stand-alone service, separate from specialized services, in addition to any bundled offerings.”¹³ This is equivalent to a service mandate. Frontier has no clear picture at this time as to what specialized services are and what the market for such services looks like. It is premature to contemplate a service mandate that could affect this marketplace before it develops. The Commission should reject this type of prospective regulation, which it acknowledges could have unforeseen consequences.

Non-exclusivity in Specialized Services: While Frontier supports a competitive marketplace, it is again too early to fully understand what effects requirements of non-exclusivity in specialized services would have in the market. In fact, premature regulation could result in a less competitive marketplace, rather than in promoting competition, as intended. The Commission should promote such competition that ultimately provides consumers with more choices to find the services that best fit their needs instead of flattening the marketplace. The effects of such a rule are impossible to contemplate before the marketplace has had a chance to develop.

Limit Specialized Service Offerings: The Commission has stated that it endeavors to promote innovation and investment in America’s technology future.¹⁴ Accordingly, the idea of

¹³ *Id.*

¹⁴ See, e.g., *Joint Statement* at ¶ 3 (“Continuous private sector investment in wired and wireless networks and technologies, and competition among providers, are critical to ensure vitality and innovation in the broadband

limiting a marketplace before it develops, thereby preventing untold innovation which would bolster the possibilities for America's technological and economic future, is untenable. Such regulation not only decides competitive winners and losers in the broadband marketplace but also halts the development of an entire class of service enhancements that offer so much potential. This idea is antithetical to any notion of innovation and should be flatly rejected.

Guaranteed Capacity for Broadband Internet Access Services: The Commission lacks any authority to “require broadband providers to continue providing or expanding network capacity allocated to broadband Internet access service, regardless of any specialized services they choose to offer.”¹⁵ As noted above, Frontier is investing hundreds of millions of dollars in private funding into deploying broadband throughout its territories. In doing so, it is maximizing its offerings to its customers based upon its resources; the capacity of a network is necessarily limited by available investment. Simply put, the government cannot mandate expanding networks without also funding it beyond any levels currently contemplated in programs such as the Universal Service Fund. Any attempts to mandate private expenditures would most certainly chill investment in broadband deployment, harming our nation's broadband development.

The Commission seeks policies that “will best protect the open Internet and maintain incentives for private investment and deployment of innovative services that benefit consumers.”¹⁶ Frontier believes that the majority of the policy approaches the Commission suggests here would, at a minimum, chill both innovation and investment, and in some cases completely kill them altogether. The Commission should avoid any effort to regulate an

ecosystem and to encourage new products and services that benefit American consumers and businesses of every size.”).

¹⁵ *Public Notice* at 4.

¹⁶ *Id.*

undeveloped market based on mostly speculative or one-off scenarios, risking untold benefits to consumers in the name of protecting them.

II. ANY BROADBAND NETWORK MANAGEMENT REGULATION SHOULD BE APPLIED TO ALL PLATFORMS TO AVOID DISTORTING THE COMPETITIVE LANDSCAPE

The *Public Notice* seeks comment on the “application of open Internet principles to mobile wireless platforms”¹⁷ and seems to have already drawn the conclusion that wireless broadband access should be regulated differently than wireline. Frontier continues to assert that no regulatory intervention is necessary at this time, but should the Commission choose to do so, providing different rules for wireless and wireline networks is a mistake that will alter the competitive landscape of broadband deployment, harming innovation and investment.

Stating that “new business models may reduce mobile broadband providers’ incentives to employ more restrictive network management practices that could run afoul of open Internet principles,” the Commission then seeks comment on issues that presuppose a different regulatory regime for wireless technologies. For example, the *Public Notice* seeks comments on the transparency of a wireless provider’s disclosures to its consumers about its network management and how such practices affect use of devices and applications on a managed network. Frontier will not explore the answers to such questions because it rejects the basic premise that wireline and wireless broadband technologies should be regulated differently.

In many of its markets, Frontier competes directly with wireless broadband offerings. Allowing one platform to maximize its revenue potential via network management practices while saddling its competitor with regulations that prohibit it from also doing so would completely distort the competitive marketplace. Frontier believes that regulation, if applied,

¹⁷ *Id.*

must be technologically neutral. Neutrality is essential to ensuring that wireline broadband, with its own unique benefits that often include providing the backbone for wireless networks, can remain a viable competitor for providing broadband services.

Any wireline-wireless competitive distortion would become particularly important in rural America, the heart of Frontier’s operations. The National Broadband Plan proposes changes to Universal Service funding that would limit funds to a single provider in a given area and do so on a technologically-neutral basis.¹⁸ Specifically, the National Broadband Plan states that “[t]here should be at most one subsidized provider of broadband per geographic area” and the “eligibility criteria for obtaining support . . . should be company and technology-agnostic so long as the service provided meets the specifications set forth by the FCC.”¹⁹ Frontier believes that its service offerings compare favorably with wireless offerings, yet if the Commission eschews regulatory parity in favor of wireless networks then Frontier and other similarly situated companies that have demonstrated a commitment to rural deployments would be put at a competitive disadvantage.

Frontier also questions the premise upon which the Commission seems to have decided that network management regulation is not necessary for wireless networks: because of the introduction of tiered pricing based upon usage. The *Public Notice* states that “[m]obile broadband providers . . . have recently introduced pricing plans that charge different prices based on the amount of data a customer uses.”²⁰ It is on this basis that the Commission has decided wireless providers may no longer have incentive to employ restrictive management practices and

¹⁸ See FCC, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, GN Docket No. 09-51 at 145 (2010).

¹⁹ *Id.* (Noting that all broadband providers, including incumbent telephone companies and mobile wireless providers should be eligible for funding.)

²⁰ *Public Notice* at 4.

therefore should be subject to a different regulatory regime that favors wireless. This begs the question of whether a wireline provider that also employs usage-based pricing should also be excluded from regulations on its network management. If the Commission is interested in establishing a competitive landscape, then deference given to wireless providers for introduction of tiered pricing must also be given to wireline providers as there is no fundamental difference in the service provided. Frontier urges the Commission to evaluate this question before it moves forward with rules that would dramatically, and harmfully, alter the competitive landscape.

CONCLUSION

Frontier respectfully requests that the Commission carefully consider the problems described herein with establishing a proscriptive and unnecessary regulatory regime that may distort the broadband marketplace to the ultimate detriment of the American consumer.

Respectfully submitted,

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