



February 4, 2014

PUC Filing Center  
P.O. Box 1088  
Salem, OR 97308-1088

RE: UM 1677 – Frontier’s Motion in Opposition to the League of Oregon Cities Petition to Intervene

Dear Filing Center,

Please find enclosed the original and five copies of Frontier’s motion to oppose the League of Oregon Cities petition to intervene in the above mentioned docket. Please contact me at (503) 645-7909 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Renee M. Willer". The signature is written in a cursive style.

Renee Willer  
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Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1677**

In the Matter of the Petition of  
Frontier Communications Northwest Inc.  
For Approval of Price Plan Pursuant to  
ORS 759.255

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OPPOSITION OF  
FRONTIER COMMUNICATIONS  
NORTHWEST INC. TO THE LEAGUE  
OF OREGON CITIES' PETITION TO  
INTERVENE

Frontier Communications Northwest Inc. ("Frontier") opposes the petition of the League of Oregon Cities ("League") to intervene in this proceeding, and as grounds states the following:

**I. Introduction.**

On November 27, 2013, Frontier filed a petition to be regulated under a price plan pursuant to ORS 759.255. Subsequent to that petition, the Citizens Utility Board of Oregon ("CUB"), Integra Telecom of Oregon, Inc. ("Integra"), and PriorityOne Telecommunications, Inc. ("PriorityOne") all filed unopposed petitions to intervene, and those petitions were granted. Representatives of Frontier, Commission Staff, CUB, Integra, and PriorityOne participated in a prehearing conference ("PHC") on December 30, 2013. tw telecom also attended the PHC, but to date has not filed a petition to intervene. ALJ Kirkpatrick presided over the PHC and issued a procedural schedule the same day which included two workshops for the purpose of exploring the possibility of settlement of the issues in the case and the potential for filing of a stipulation among the parties above (who may be referred to below as the "Joint Parties"). In accordance with the procedural schedule, the Joint Parties held publicly noticed workshops/settlement conferences on January 13<sup>th</sup> and January 29<sup>th</sup>, 2014. The League did not choose to attend either workshop.

## **II. League Petition to Intervene.**

The League filed the standard petition to intervene on January 28, 2014, and the following day filed a related document styled “Comments”. The League cited Commission rule OAR 860-022-0042 as the nature and extent of their interest in the proceeding and noticed its intent to raise issues related to the partial waiver of the cited rule. The League went on to claim special knowledge and expertise that would assist the Commission in resolving the issues before it because of its having “consistently advocated on behalf of a city’s right to receive compensation for the use of its right of ways.” The League’s Comments went on to state two grounds for its objection to the proposed partial rule waiver, advocating that the Commission does not have authority to grant partial waiver of one of its own rules without following a mandated procedure, and that the requested partial waiver will not receive a “full vetting”.

## **III. The League’s Petition for Intervention Should be Denied.**

This proceeding comes before the Commission on Frontier’s petition to be regulated under ORS 759.255, which permits a local exchange telecommunications utility to file a plan under which the Commission regulates prices charged by the utility without regard to the rate of return on the utility’s investments. In short, this is a docket seeking approval of a proposed retail price plan, and is not in any way an examination of, or a challenge to, a city’s right to receive compensation for use of its rights of way under ORS 221.515.

The League appears to suggest that ORS 183.335(5) requires the Commission to comply with that subchapter’s requirements in this instance. Frontier argues that the cited statutory provision does not apply in this case, because the Commission is not being asked to adopt, amend or suspend a rule. Frontier’s petition asks only for a waiver of a portion of the rule for a stated period of time (i.e., during the term of the retail price plan). Beyond that, the cited portion of the statute refers to the

instance where an agency is adopting, amending or suspending a rule without prior notice or hearing, or with abbreviated notice and hearing. Those procedural postures are not present in this docket. Neither Frontier nor any other party has asked for or received any expedited treatment in this proceeding. It has been noticed publicly at each procedural step, as have the workshop/settlement conferences. There should be no concern about the vetting process to date or in the future, which has included a standard petition filing without request for expedited treatment, entry of all pleadings and rulings in the docket on the eDocket portion of the Commission website, timely interventions by interested parties, a prehearing conference, numerous informal contacts between the Joint Parties, two publicly noticed and open workshops/settlement conferences, and which has another prehearing conference scheduled February 13, 2014. ORS 183.335(5) simply does not apply in this proceeding. The ALJ and Commission have undoubtedly complied with all reasonable interpretations of their responsibilities regarding administrative due process in this proceeding, and there is no request from any party for them to do otherwise throughout the remainder of the case. Furthermore, the process of requesting and receiving a grant of full or partial waivers to Commission rules in a retail price plan petition is not a novel undertaking. Qwest asked for and was granted a number of such waivers in the Final Order in Docket UM 1354, approved by the Commission on August 8, 2008. There is simply no foundation for the pronouncement that the requested waiver has not or will not receive a full vetting in this docket.

Frontier submits that, given the advanced progress of the docket, granting intervention to the League would unreasonably broaden the issues to include an examination of the power of cities to receive compensation for the use of its right of ways. That issue has not previously been raised by any of the Joint Parties. Nor does it relate in any direct (or indirect) way to the consideration of whether a retail price plan ensures prices for telecommunications services are just and reasonable, ensures high quality of existing services and makes new services available, maintains the appropriate balance between regulation and competition, and simplifies regulation (ORS 759.255). The League's

failure to connect its claimed special knowledge and expertise to the statutory considerations in a price plan docket is a valid reason to deny its intervention.

Frontier is additionally concerned that granting intervention on an unrelated issue at this advanced date will unreasonably delay the proceedings. The Joint Parties have attended the workshops and worked diligently to achieve an agreement in principle to stipulate to a resolution of all issues in the Docket. Granting intervention by the League at this point means, at a minimum, the reopening of negotiations with a new party and a potential extension of the procedural schedule to accommodate those negotiations. Given the opportunity the League had to intervene earlier and participate in the workshops, such delay would be unreasonable.

In an effort to accommodate the League's concerns, Frontier would not object to allowing the League's comments to be entered into the record as public comment, and does not consider that would burden the record unduly. It would also constitute an appropriate condition on the League's participation in the docket within the meaning of ORS 756.525(2), balancing the unreasonable broadening of the issues concern and the unreasonable delay concern.

#### **IV. Conclusion.**

Frontier respectfully requests that the ALJ deny the League's petition to intervene in this case because such a grant will unreasonably broaden the issues and unreasonably delay the proceedings for the reasons stated above.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE  
UM 1667

I certify that on this 4th day of February, 2014, I served the foregoing Motion of Frontier in Opposition to Motion to the League of Oregon Cities Petition to Intervene to the following persons via electronic and U.S. Mail (to filing center only).

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