STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

DOCKET NO. 14-01-46

JOINT APPLICATION OF

FRONTIER COMMUNICATIONS CORPORATION AND AT&T INC.

FOR APPROVAL OF A CHANGE OF CONTROL

MOTION TO COMPEL AND

MEMORANDUM IN SUPPORT OF CL&P's MOTION TO COMPEL

OFFICE OF CONSUMER COUNSEL

May 24, 2014

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RE:	JOINT APPLICATION OF FRONTIER COMMUNICATIONS CORPORATION AND AT&T INC. FOR APPROVAL OF A CHANGE OF CONTROL	:	DOCKET NO. 14-01-46
		:	MAY 20, 2014

THE OFFICE OF CONSUMER COUNSEL

MOTION TO COMPEL AND MEMORANDUM

IN SUPPORT OF CL&P's MOTION TO COMPEL

I. Introduction

The Office of Consumer Counsel (OCC) hereby submits to the Public Utilities Regulatory Authority (PURA or the Authority) its **Motion To Compel And Memorandum In Support Of CL&P's Motion To Compel** in the above-captioned Docket. The OCC is designated by Connecticut law to represent the residential and business consumers of all public utility services in Connecticut before the Authority, other state agencies, and federal and state courts.

II. It Is Critical That The Transfer Of This Essential Public Service Utility Be Thoroughly And Critically Examined By The Statutorily-Empowered Utility Regulator.

The OCC is compelled to notify Public Utilities Regulatory Authority ("PURA" or

"Authority") of its concerns regarding the extent that the AT&T Inc. ("AT&T") and Frontier Communications Corporation ("Frontier") (collectively the "Applicants") are being unresponsive to the interrogatories issued to date by PURA, the OCC, and many of the intervenors to this Docket, which serves to determine whether the public interest will be served by a stock transfer of AT&T's wholly-owned subsidiary, The Southern New England Telephone Company (the business to be transferred pursuant to this Docket, "SNET") to Frontier. SNET is over a century-old public utility in this state, serving nearly all the wireline residential customers across the state and the great majority of its businesses and communities. In addition to being required by state laws, it is simply obvious that the transfer of this essential public service utility be thoroughly and critically examined by the statutorily-empowered utility regulator.

The Applicants have made much of their goal to rapidly dispose of this Docket and their mutually-claimed inability to respond to questions until after PURA has issued a positive order for the stock transfer to proceed, but their conduct during the discovery phase is the central cause for a potential dismissal of their petition due to insufficient evidence in the public record. Such a dismissal may be necessary if the Applicants fail to remedy the quality and quantity of their responses, necessitating multiple technical meetings and the formation of a working group to force the companies to meet their burden of proof in this Docket.

This lack of bona fide evidence not only hampers OCC's ability to provide PURA with an informed opinion or properly advocate for the state's wireline telephone consumers in this proceeding, but the lack of legally sufficient information and data from the Applicants may ultimately force PURA to take action later in the year to terminate this Docket when it

becomes apparent that an inadequate evidentiary record for an order is found to exist. PURA needs to immediately and directly address this unusually vigorous game of playing "hide the ball" by both Applicants, which constitutes an express abuse of the statutory review process that mandates PURA's role in this administrative process.

Due to its statutory mandate, in the absence of the required level of objective record evidence, PURA will have no choice but to rule against this purchase or alternatively, due to statutory period limits for consideration of the initiating petition, terminate this Docket and order that the Applicants refile their petitions. The Applicants will then have the opportunity to reconsider the quantity and quality of evidence they are willing to provide the record in a refreshed docket in order to meet the high burden of proof required of them to prove their claims that this deal is in the public interest.

Accordingly, the OCC urges the Authority to grant the Motion to Compel filed with PURA on May 5, 2014 by the Connecticut Light & Power ("CL&P") because the OCC shares CL&P's concerns regarding the multitude of non-responsive answers that are repeated over and over again in response to the interrogatories filed in this Docket by PURA Staff, the OCC, and many intervenors to this Docket. The Applicants have not reached out to the parties to explain their non-responsive tactics, but they are on notice regarding our complaints: CL&P's Motion served as notice to the Applicants that their responses were less than adequate, and the OCC has discussed this issue and the possibility of this OCC Motion with attorney's for Frontier as well.

The OCC also very much shares CL&P's goal of implementing a Single Pole Administrator, a question which is before PURA and is presently awaiting the issuance of a draft decision in Docket 11-03-07. It is essential in this Docket that the legitimate and

reasonable interrogatories filed with the Applicants receive valid responses in order to ascertain that Frontier will be both able and willing to provide for the performance of SNET's existing and future pole custodian, pole administration, and vegetation management and expense obligations. PURA must be certain that Frontier will cooperate in every respect in performance of PURA-mandated pole custodian obligations to be presently ordered. It is thus entirely appropriate for PURA and the parties to inquire of AT&T about the current status of these obligations and to inquire of Frontier about its capabilities and intentions going forward.

III. PURA Has A Statutory Obligation To Develop A Comprehensive Record

Officials at PURA, who have to review purchases like this pursuant to state statutory mandates to safeguard the concerns of consumers, business and residential, and communities, as well as the telecom market itself, need to determine to a certainty that all such consumers are not left worse off by these deals. To perform its statutory obligations, PURA must develop a comprehensive record detailing how the facts pertaining to this transaction support the public policy goals clearly expressed in the various pertinent statutes controlling whether this transaction should go forward, or be delayed until sufficient information and data is amassed and studied, or be denied for failure to meet the statutory standards.

As the state's public utility regulator, PURA has a statutory and public policy obligation to carefully analyze this acquisition for its impact on the telecommunications market for all the services that Frontier is proposing to maintain and offer the Connecticut market by its purchase of SNET from AT&T. The ability of PURA to evaluate the merits of the proposed transfer and its potential impact on consumers is directly impeded by the failure

of Applicants to provide meaningful responses to relevant questions.

Questions about Frontier's practices in other jurisdictions, about its specific plans for Connecticut, about the condition of the network it proposes to acquire for $2 billion, and about such matters as synergies and the parties' evaluation of their deal are hardly irrelevant to this proceeding. Indeed, based on the deficient record provided by the Applicants to date in this administrative docket, PURA will lack a legally sufficient basis for fulfilling its statutory mandate to determine whether the proposed stock transfer of the incumbent wireline provider of "telephone service" across nearly all the state, will satisfy the public interest in the absence of the information requested by the OCC and intervenors to this Docket.

The Authority has consistently required that applicants in a contested proceeding bear the burden of proof pursuant to various statutes and regulations, most particularly Conn. Gen. Stat. § 16-47 which requires, among many critical elements, that the Authority to take into consideration the financial, technological and managerial suitability and responsibility of the applicant, and its ability 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.

This Connecticut statutory power also includes fulfillment of the public policy goals pertinent in the complete universe of Title 16 obligations imposed on the Authority, including requiring that the Applicants must demonstrate that the public interest is served by an Authority approval of its Application, or a denial of that Application must result.

But, § 16-47 does not exist alone in the requirements imposed upon the Authority for its examination of a transfer of the nature of this Docket, but § 16-47 is inextricably linked to other statutes that expressly impose obligations on the respondents of interrogatories to

provide the public record amassed by PURA in this type of docket with essential data and information. It is thus clear that an applicant's financial, technological and managerial suitability is but one consideration, and that many other statutory obligations may play a role in the Authority's decision-making, particularly relating to the clear statutory responsibility imposed on the Authority to protect the public interest that is inherent in Title 16.

For instance, the Authority also must fully rely upon Conn. Gen. Stat. § 16-11 to keep fully informed of the operations and property of all public service companies provide that the Authority's and state's full powers are harnessed to regulate public service companies such as AT&T and Frontier, by the exercise of local control of the public service companies of this state.

In addition, Conn. Gen. Stat. § 16-22 requires the Applicants in a docket like this involving the transfer of ownership of assets to demonstrate that the proposed merger is in the public interest, with the Applicants assuming the burden of proving that said transfer of assets or franchise is in the public interest. The many diverse intervenors and OCC as a party in this Docket have been shortchanged by the scanty or non-existent answers provided in the bulk of the Applicants' responses, and accordingly PURA has the responsibility to step in at this point and order complete answers in order to create a record with the content necessary upon which a well-founded decision may ultimately rest.

PURA cannot merely rely on unsubstantiated promises from Frontier, it must gather and fully analyze the record evidence, including through cross examination by itself and the interested parties that have intervened into this Docket, before making an informed decision as to whether to allow this purchase, and what conditions must be imposed (if any) to balance the equities of the state's consumers and these incumbent monopoly providers of telecom

services.

IV. The Burden Of Proof Required By State Law To Demonstrate To PURA By Objective Evidence That The Applicants' Claims Are True Rests Entirely Upon The Applicants

The interested parties have all issued specific and concise discovery interrogatories critical to providing PURA with the legal foundation necessary to fulfill its statutory mandate to determine whether or not Frontier is truly capable of and committed to undertaking its public service company obligations of serving Connecticut's consumers. Consistent with efficient administrative practice, OCC has not repeated the questions propounded by other intervenors, but instead is relying on receiving copies of the information they requested, all of which will form the record evidence of this Docket to serve as the legal foundation for PURA's eventual order. Thus, to the extent that other parties to the Docket, including PURA's staff, receive unresponsive or inadequate answers to interrogatories, the OCC's ability to perform its statutorily-mandated advocacy in favor of the state's residential and business consumers, is impaired.

The Applicants have made many claims that the purchase of AT&T's wireline network in Connecticut by Frontier, SNET, will be good for consumers, communities, and the telecom market itself, but the burden of proof required by state law to demonstrate to PURA by objective evidence that these claims are true rests entirely upon those companies to persuade the state regulators to rule favorably upon the deal as proposed in the Applicants' petition. Unfortunately, the standards articulated in the Connecticut General Statutes and in PURA precedent have not been even remotely honored to date by the responses of both AT&T and Frontier.

Today, when the discovery phase of this Docket is already well along, neither of the Applicants has yet made a convincing case, primarily because they have failed to introduce objective record evidence as demanded by all cases such as this. The OCC began to observe common non-responsiveness in the Applicants' earlier answers to CWA, and this approach is now also evidenced in their responses to CL&P and other intervenors, and most recently to OCC. In addition, without seeking specific authorization from PURA, the Applicants have repeatedly avoided answering questions on the grounds that they are purportedly "overly broad, burdensome, premature and not relevant to the Authority's review under Conn. Gen. Stat. §16-47," or similar language.

If PURA cannot gather basic information about these companies to build the public record evidence required as foundation for an eventual decision in this Docket, based on a deep probe of the managerial and financial abilities of Frontier to meet the statutory public policy goals enacted to protect the state's residents, businesses, and community, then PURA will not be able to meet its statutory obligations. The interrogatories thus far submitted in this Docket all serve to advance that goal by developing the comprehensive record required by the state statutes. The companies are mocking those statutory protections with an unusually large percentage of brazenly non-responsive answers to interrogatories from all the parties, including PURA itself.

What is transpiring in this Docket is a serious abuse of the discovery process otherwise routinely enforced by PURA. The parties and PURA itself have been repeatedly thwarted when attempting to develop a body of objective and verified evidence supporting the claims and predictions of the Applicants required of the parties. In the absence of such a record of evidence, PURA cannot meet its statutory obligations under state law in a case as

complex as this stock transfer valued at $2 billion of an incumbent public utility telephone company with vast market power in terms of demographics and services provided to a wide array of customers, retail and wholesale.

This denial of access for all parties submitting questions to obtain basic information about the critical transaction before PURA in this Docket is regrettably not restricted to occasional or rare instances for these two companies in this Docket: it is the rule, the common response, and if permitted by PURA, will produce a wholly inadequate record of evidence for the Authority to make its statutory determination whether this transaction can be consummated or must be rejected. The sleight of hand practiced by the Applicants in this Docket that purport to answer most questions with 200-word disclaimers, but which are merely vacuous non-responses does not fool anyone. As stated earlier in this Motion, PURA needs to immediately and directly address this unusually vigorous game of playing "hide the ball" by both Applicants.

A. Responses to OCC interrogatories

The OCC issued three sets of discovery to the Applicants (on April 15, April 22 and May 1, 2014). The OCC has received and reviewed the responses, the last of which were received on May 15, 2014, and found there to be numerous answers that are unresponsive to questions that are (contrary to the Applicant's assertions) fully within the scope of this proceeding and highly relevant to OCC's intervention on behalf of consumer interests. The direct and indirect failure to provide the requested information is detrimentally affecting OCC's opportunity to participate fully in this proceeding on behalf of Connecticut consumers. And, as noted in detail above, this failure to build a sufficient public record of

verified evidence will force PURA to seriously consider terminating this Docket and proposing the Applicants revise their approach to supplying evidence, or simply ruling against the transaction for lack of supporting evidence.

In light of the short interval between when OCC received many of these responses and the due date for testimony under the current schedule, OCC will address non-responsive answers by category and list the interrogatories to which these categories of non-responsiveness apply.

B. Responses that erroneously claim the information requested is "beyond scope"

AT&T repeatedly responds to OCC interrogatories with the objection that the information requested:

> is not relevant to the Authority's consideration of the proposed transaction under Conn. Gen. Stat. §16-47 because the requested information does not concern the financial, technological and managerial suitability of the acquirer, the ability to provide safe, adequate and reliable service to the public, or the effect of approval on the location and accessibility of management and operations and on the proportion and number of state resident employees.

In some instances, AT&T nonetheless gives perfunctory responses, often using references to information that the OCC would have to track down (e.g., on websites, in other proceedings).

AT&T's view of relevancy is overly restrictive and will deprive PURA of information vital to its review of the proposed transfer. The current status of SNET's operations in Connecticut is highly relevant to assessing the financial, technological and managerial challenges Frontier will face and to evaluating whether it has resources and competencies required, going forward, to fulfill its public service obligations.

Nonresponsive answers from AT&T falling generally under this category include: OCC-9 (revenue streams from AT&T services that will be available to Frontier); OCC-12 through OCC-14, OCC-15(c), OCC-22, and OCC-28, (all of which pertain to service quality and the condition of SNET's network facilities); OCC-16 (customer service); and OCC-49 (infrastructure)

Other questions that AT&T dodges based on this objection include interrogatories that explore services that AT&T affiliates offer in Connecticut and that will continue to be offered in competition with SNET (e.g., OCC-11). This question (and also OCC-10) goes to the issue of the potential revenue streams that Frontier may or may not be able to derive post-transaction.

It is important to recognize that AT&T is not pulling up stakes in Connecticut. Instead it may become a formidable competitor to Frontier, among other things: it will continue to serve the large enterprise customers it will retain; AT&T Wireless will make well-financed competitive efforts to erode Frontier's revenues through customers' "cord-cutting"; if AT&T's proposed purchase of Direct TV goes through, that satellite service could compete with Frontier's U-verse and possible use of satellite to provide broadband to rural consumers; and AT&T's offering of a fixed wireless service could also erode Frontier's revenues. The OCC requires a complete picture in order to assess the potential impact of the proposed transaction on customers. If Frontier is not financially healthy, and if Frontier has underestimated the impact of AT&T as a competitor, then Frontier's customers likely will bear the consequences through raised prices or lower service quality. Similarly, questions regarding U-verse and DSL subscription and pricing (e.g., OCC-4 and -5, OCC-31) relate to potential revenue streams available to Frontier after the proposed transfer, upon which it

depends for sustaining its business plans.

Another problem with many of the responses that fall generally into this category is that AT&T, after objecting, provides selective partial responses, without explaining the basis for its selection. For example, in response to OCC-66, AT&T provides "Mean Time To Repair (MTTR) for out-of-service troubles," but does not break the information down, as requested, by residential and business customers. This renders this partial response far less than useful since the distinction between these services is not idle curiosity, especially in light of AT&T's penalties for its decade-long failure to meet some of its service quality requirements, and thus this response has profound ramifications for both companies. PURA has a duty to verify that Frontier does not intend to continue the AT&T tradition of treating service quality penalties as merely a cost of doing business.

C. Responses that claim that the request is "overly broad" (reasonable efforts should be required)

Both Applicants use the excuse that a question is "overly broad" as the basis to provide no useful information at all. For example, in response to OCC-22, which states, "Please identify the individuals by name and job title at AT&T and AT&T Connecticut responsible for the quality of local service offered to households," AT&T claims that "it is impractical to answer the question because thousands of employees share responsibility for customer service quality."

This question is expressly looking for "responsible" individuals, and AT&T could certainly have provided the names and titles of key senior managers with responsibilities in this area, without having faced an "overly broad" response. OCC requests that AT&T be directed to respond to OCC-22 by providing the names and titles of the ten highest-ranking

(by job classification or salary, at its discretion) individuals responsible for the quality of the repair and installation of residential basic local exchange service.

D. "Thousands of documents"

Along the same lines, in response to several OCC requests that attempt to understand Frontier's due diligence with respect to evaluation of various aspects of SNET's operations, rather than answering with any specifics, Frontier refers to having reviewed "thousands of documents."

We refer to Frontier's responses to OCC-20 (requests audits, surveys, reviews relative to due diligence in assessing status of outside plant; asks for scope of analysis; persons responsible for supervising); OCC-88 (asks for all documents, studies, memoranda, data, or other materials reviewed by or on behalf of Frontier (or provided to Frontier by AT&T) regarding the level of competition in Connecticut; OCC-98 (all information sought by Frontier regarding AT&T employees in Connecticut).

Frontier asserts generally that these questions are "overly broad," but rather than attempt to provide any meaningful answer, it simply gives an overly broad and completely useless response. At a minimum, Frontier should be required to identify the documents it relied on in its review and to provide key documents that correspond to the information requested in each specific question. OCC would accept as responsive the production of the 10 most pertinent documents for each question (or subpart, where applicable).

E. Vague and general responses to questions requesting specifics

Many of Applicants' responses are perfunctory or vague and do not provide the specific information requested (or directly state that the information is unavailable or non-

existent). For example, OCC-21 asks Frontier to:

> describe fully any and all service quality metrics that Frontier reviewed as part of its due diligence, and specify (a) the time period associated with the metrics reviewed; and (b) the level of geographic disaggregation of the information reviewed. Also indicate whether metrics for residential customers were reviewed separately from those for business customers . . .

Frontier disingenuously responds that it is "aware" of SNET's compliance filings in Docket No. 99-07-28 and recent service quality performance and "engaged in on-going discussions" with AT&T regarding the status of service quality issues and network operation issues. (Frontier's additional cross-reference to OCC-20 does not add any meaningful information to this response).

AT&T's response to OCC-51 references Ehr testimony at 3, but the information at that location does not provide the specific information requested (i.e., specifics on switch types and when deployed).

AT&T's response to OCC-61 is also too broad to be useful: the question asks:

> With respect to its Connecticut operations, does AT&T rely on an internal rate of return or other financial benchmark for determining when and where to make capital investments in its network? If so, please describe fully and provide examples of recent investments, including the corresponding business case analyses . . .

AT&T's response simply states that "many factors influence its capital expenditure plans, from market demands and macro-economic conditions to the cost of capital and the internal rate of return." In other contexts, OCC consultants have been provided information of a more specific nature pertaining to ILEC investment decision-making criteria. Other non-responsive, vague/general answers include: AT&T response to OCC-65.

F. Responses referencing other dockets

In numerous cases, rather than provide the requested information, both AT&T and Frontier simply refer OCC to information ostensibly available in other PURA dockets. For example, in response to OCC-3, AT&T twice references information in other dockets. In response to subpart (a), it references the AT&T response to TE-27 in Docket 13-01-07; in subpart (h), it references the AT&T response to TE-4 in Docket 13-01-07, *PURA 2013 Annual Report to the General Assembly on the Status of Telecommunications in Connecticut*.

OCC asked a direct question and good practice would dictate that if there is information that is responsive, AT&T should have to produce the response itself, not merely a citation to another source. OCC and its consultants should not have the burden of tracking down documents from other dockets when the respondent obviously has the greater and more efficient access to the responsive information. Creating a hurdle to the parties to this Docket, including PURA itself, is sharp practice and hardly a showing of good faith by the Applicants. It is, in short, a negative action toward developing the record evidence that PURA requires to provide foundation for an eventual order.

Moreover, at least one of the cross-referenced documents (e.g., AT&T response to TE-4) is subject to protective order in the referenced docket and thus the requested information is immediately unavailable to OCC's consultants in this proceeding without further burdensome and unnecessary efforts by OCC or other parties qualified to view such information.

There are numerous other responses that suffer from this same defect, including AT&T responses to OCC-13, OCC-23, OCC-28.

V. Conclusion

The lack of bona fide evidence generally provided by the Applicants in this Docket not only hampers OCC's ability to provide PURA with an informed opinion or properly advocate for the state's wireline telephone consumers in this proceeding, but the lack of legally sufficient information and data from the Applicants may ultimately force PURA to take action later in the year to terminate this Docket when it becomes apparent that an inadequate evidentiary record for an order is found to exist. PURA needs to immediately and directly address this unusually vigorous game of playing "hide the ball" by both Applicants, which constitutes an express abuse of the statutory review process that mandates PURA's role in this administrative process.

Respectfully submitted,

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By: _____
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Principal Attorney

I hereby certify that a copy of the foregoing has been mailed, electronically filed, and/or hand-delivered to all known parties and intervenors of record this May 20, 2014.

_____
William L. Vallée Jr.
Commissioner of the Superior Court