

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of The Nova)	
Telephone Company,)	
)	
Complainant,)	
)	
v.)	Case No. 13-2443-TP-CSS
)	
Frontier North, Inc.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On December 27, 2013, Nova Telephone Company (Nova) filed a four-count complaint against Frontier North, Inc. and its predecessors, Verizon North, Inc. and GTE North Incorporated (collectively Frontier). Nova states that it is primarily a rural incumbent local exchange carrier. Nova alleges that Frontier has breached certain terms in its extended area service (EAS) agreement with Frontier. The subject of Nova's complaint concerns the rental of repeater equipment provided by Frontier to Nova. According to Nova, the repeater equipment was used in conjunction with copper transmission lines. Nova points out that the EAS agreement provided that charges for the equipment are subject to adjustment for changes in the amount or type of carrier repeater equipment being furnished by Frontier to Nova.

Nova alleges that, in December 1997, it replaced its copper facilities with fiber optic facilities. The change in facilities, asserts Nova, rendered the repeater equipment unnecessary, and so it discontinued use of the equipment. In Count One of its complaint, Nova alleges that, since January 1998, Frontier has invoiced Nova for the use of the repeater equipment and continued to invoice Nova for the equipment until May 2013. Nova claims that the charges for the period total \$47,430.30. Of this amount, Nova claims that it has paid \$42,302.70 inadvertently. Nova alleges that Frontier has failed and

refused to write-off or credit the unpaid balance or refund the amount inadvertently paid.

- (2) In Count Two of the complaint, Nova states that Frontier has provided services to its residential and UNE-P CLEC customers using Nova's network. Nova claims that Frontier has refused to pay the requisite charges for access to Nova's network.
- (3) In Count Three of the complaint, Nova alleges that Frontier has failed and refused to provide Nova with data and usage reports that are needed to charge Frontier for use of Nova's facilities. Without such information, Nova states that it cannot accurately bill for services.
- (4) Count Four of the complaint claims that Frontier has violated the policy set forth in R.C. 4927.02 by failing or refusing to refund unlawful charges, pay invoices, and submit usage reports. In doing so, Nova contends that Frontier has failed or refused to promote fair competition.
- (5) On January 16, 2014, the parties filed an agreement to grant Frontier an additional 14 days to plead in response to Nova's complaint. Frontier filed an answer and counterclaim on February 3, 2014. Finding no prejudice to any party or undue delay, Frontier's pleading shall be accepted as timely filed.
- (6) In its answer and counterclaim filed on February 3, 2014, Frontier declares that Nova has breached the EAS agreement. In Count One of its counterclaim, Frontier alleges that Nova has failed and refused to pay for services under the EAS agreement since October 2011. It is Frontier's position that Nova should have provided a request or notice to discontinue the use of the repeater equipment. As a consequence of Nova's failure of notice, Frontier claims that it was denied the ability to gain revenue from reuse of the equipment.
- (7) In Count Two of its counterclaim, Frontier alleges that Nova breached the EAS agreement by failing to pay for the additional fiber facilities and interexchange services that Frontier has provided to Nova. Frontier points out that it was required to deploy fiber at a greater distance; therefore, Frontier seeks to recover the additional costs of fiber deployment. Frontier adds that Nova was obligated to pay for

the copper interexchange facilities that Nova failed to terminate.

- (8) In Count Three of its counterclaim, Frontier contends that Nova has been unjustly enriched by receiving and failing to pay the additional charges for the expanded fiber interexchange services that Frontier has provided. The charges would have exceeded the repeater charges.
- (9) In Count Four of its counterclaim, Frontier refers to two circuits for services that are not related to the EAS agreement. Frontier claims that Nova has refused to pay the charges related to the two circuits since October 2011. The unpaid balance, according to Frontier, exceeds \$15,000.
- (10) In Count Five of its counterclaim, Frontier accuses Nova of including inaccurate and incomplete data in its calculations of billings for Frontier. Frontier contends that the data led to Nova charging and being overpaid for traffic exchanged between Frontier and Nova.
- (11) On February 3, 2014, Ms. Michele Noble, on behalf of Mr. Kevin Joseph Saville, filed a motion for appearance pro hac vice to participate as counsel in the above-captioned proceeding. Mr. Saville states that he is licensed to practice law in the State of Minnesota and that he has met the requirements of Rule XII, Section 2(A)(3) of the Supreme Court Rules for the Government of the Bar of Ohio (Gov. Bar Rules).
- (12) To complete the motion, Mr. Saville has provided a copy of the affidavit required by Gov. Bar Rule XII, Section 2(A)(6) and a copy of his Certificate of Pro Hac Vice Registration issued by the Supreme Court of Ohio Office of Attorney Services.
- (13) The attorney examiner finds that the motion pro hac vice fulfills the requirements of Gov. Bar Rule XII, Section (2). Consequently, the motion should be granted. Mr. Saville shall be permitted to appear and participate as counsel or co-counsel in this matter on behalf of Frontier.
- (14) At this time, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary

hearing. In accordance with Ohio Adm.Code 4901-1-26, any statement made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible in future proceedings in this case or be admissible to prove liability or invalidity of a claim. Nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference. An attorney examiner with the Commission's Legal Department will facilitate the settlement process.

- (15) Accordingly, a settlement conference shall be scheduled for April 9, 2014, at 10:00 a.m., in Room 1247, at the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215. If a settlement is not reached at the conference, the attorney examiner may conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.
- (16) Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the parties shall investigate the issues raised in the complaint and counterclaim prior to the settlement conference, and all parties participating in the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties participating in the settlement conference should have with them all documents relevant to this matter.
- (17) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

It is, therefore,

ORDERED, That a settlement conference be held on April 9, 2014, at 10:00 a.m. in Room 1247 in the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215. It is, further,

ORDERED, That, in accordance with finding (13), the motion pro hac vice be granted. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ L. Douglas Jennings

By: L. Douglas Jennings
Attorney Examiner

jrj/vrm

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3/13/2014 11:03:00 AM

in

Case No(s). 13-2443-TP-CSS

Summary: Attorney Examiner Entry scheduling April 9, 2014, settlement conference and granting motion pro hac vice; electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio