

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of:	)	
	)	
Ron Sabatino & T&R Properties, Inc.,	)	
	)	
Complainants,	)	
	)	
v.	)	Case No. 13-1728-TP-CSS
	)	
Frontier Communications, Inc.,	)	<b>Complainant's Amended Complaint</b>
	)	
Respondent.	)	

Complainants, Ron Sabatino and T&R Properties, Inc., submit the following amendment to their original Complaint that was submitted on July 31, 2013. This amendment is being submitted in response to Frontier's response to Interrogatories and Request of Production of Documents.

As the original complaint was filed *pro se*, Complainants now seek to clarify their claim that Frontier Communications, Inc. ("Frontier"), acted unreasonably and unjustly charged for services rendered related to costs and installation of facilities at the Estates at Sherman Lakes Subdivision, Delaware County, OH, pursuant to Ohio Rev. Code §4905.26.

Complainants also seek to amend and add the claim that Frontier committed an unfair or deceptive trade practice in violation of Ohio Rev. Code §4927.06(A)(1) by administering its contract for services in a misleading manner and by failing to honor a material term.

The Complaint was filed because Frontier would not timely answer questions or provide actual cost information about the work performed upon completion of installation services at the Complainant's development site. Frontier did not provide information to allow a fair comparison of Frontier's up-front estimated cost of work to the actual costs of the work completed, as promised in its February 15, 2012 contract (Exhibit A) with Complainants.

Frontier failed, and continues to fail, to supply actual, recorded "man hours", with detailed supporting documentation.

Complainants believed it was not necessary to move existing fiber optic cable as called for in Frontier's estimate, which reduced the costs of the project. Complainants have asked continually for a reconciliation of the estimated project cost with final actual costs. Frontier failed to provide a detailed final actual costs analysis/breakdown since completion. Frontier provided only a general breakdown of cost categories more than six months after project completion. This came after repeated written requests, and threats of legal action. This is unreasonable. Frontier failed to recognize any cost saving as a result of the reduced scope of work for many months, and most recently explained that their own original estimates were inaccurate, thereby eliminating any savings to Complainants. This only raises new concerns about Frontier's work accuracy and performance, as well as the fairness of Frontier's charges.

Because Frontier failed, and continues to fail, to provide Complainants with "man hours" and the detailed cost of said labor, Complainants were forced to file the original complaint to ask the Commission to require Frontier to disclose such information. The

Commission must consider the level of cost information Frontier must share under its contract terms that set an “actual costs” standard in order to allow a meaningful assessment of the reasonableness of Frontier’s costs and performance.

Ohio Rev. Code §4927.06 reads as follows:

**4927.06 Unfair or deceptive trade practices.**

***(A) No telephone company shall commit any unfair or deceptive act or practice in connection with the offering or provision of any telecommunications service in this state. A failure to comply with any of the following requirements shall constitute an unfair or deceptive act or practice by a telephone company:***

***(1) Any communication by the company, including, but not limited to, a solicitation, offer, or contract term or condition, shall be truthful, clear, conspicuous, and accurate in disclosing any material terms and conditions of service and any material exclusions or limitations. The public utilities commission may prescribe, by rule, a commission review process to determine when disclosing such information is not practicable, and therefore nondisclosure does not result in an unfair or deceptive act or practice***

In applying the statute to this situation, Frontier's practice in accepting installation requests from developers is to require an executed contract up-front before performing any work. (See paragraph 4, first page, and paragraphs 2 and 4 of the second page of the Contract Letter dated 2-15-2012 from Chris Avery to Ron Sabatino and T&R Properties, Inc., Exhibit A). To gain installation of telecommunications equipment and service to its subdivision in Frontier's monopoly territory, a developer has no choice but to sign Frontier's contract and agree to its terms before Frontier will do anything.

At the time of contracting for the Estates at Sherman Lakes a total job cost estimate was provided. The contract emphasized that the dollar amount quoted was “ONLY an estimate.” The contract also included the promise of a reconciliation of “final

actual costs” that were to be provided (“billed”) upon completion of work. (See paragraph 6, page one and paragraph 10 of page 2 of the Frontier contract, Exhibit A.)

Paragraph 6 reads:

“Upon job completion, you will be issued either: (1) a refund for any overpayment, or (2) an invoice, if the **final actual costs** exceed the advance payments received. Any unapplied portion of advance payments will be refunded to you within sixty (60) days of the final bill or cancellation of the job.” (emphasis added)

Paragraph 10 reads:

“Please be advised that the price quoted herein is valid for sixty – (60) days from the date of this letter and is **ONLY** an estimate. As stated earlier, you will be billed for **the actual cost** when the work is completed.” (emphasis added)

Frontier’s contract creates a clear expectation that it comes with a procedure to reconcile up front estimated costs with final actual costs identified through a final billing to the customer upon job completion. This is an inducement for the customer/developer to sign the Frontier contract and the only promise of protection in an otherwise one-sided, non-negotiable situation. Under paragraph 6 of page one of the contract (Exhibit A), it is clear that either a refund for overpayment or an invoice for costs exceeding the estimate/advance payment will occur. Such a procedure can only be meaningful and allow an evaluation of actual costs if the details of time and labor work-hours spent, materials quantities and overhead allocations are shared.

Under the plain meaning of the language of the contract, the Complainants reasonably expected that: (1) detailed actual costs would be shared and (2) estimated and actual costs would be reconciled up or down in final billings. The expectation that “final actual costs” were to be provided at the end of the job was a material promise and contract term within the meaning of Ohio Rev. Code §4927.06 (A)(1). The up-front

estimate comes with no details. However, actual cost details are to be provided at completion. This inducement provides at least the ability to ask questions and hold Frontier to some accountability for work performance when actual cost details are shared. On the other hand, the developer agrees up front to pay more if the job takes longer and/or is more complex than the estimate. In both cases, the reconciliation of estimate to actual is the determining factor that protects and insures costs will match the reality of actual work and work site complexity and field conditions encountered. The promise of this procedure is thus mutually beneficial but the outcome must be shared to work and fulfill Frontier's commitment to a reconciliation with "final actual costs" billings.

Promising final actual cost billings at job completion, but then refusing to supply the details to document actual work performance is an unfair and deceptive practice under Ohio Rev. Code §4927.06. With its contract, Frontier failed to disclose that it will not share the details of actual costs to allow a fair evaluation of the services performed. This is a material condition and limitation of Frontier's contract that should be disclosed. The manner in which Frontier's contract is being applied and administered is also unjust and unreasonable under Ohio Rev. Code §4905.26.

### **PUCO Action Requested**

Frontier has established an "actual cost" standard for their work under their contract and promised to reconcile estimates to actual costs. The PUCO should find Frontier's contract means actual project work-hours and detailing of actual costs must be shared. Such a practice would allow a true comparison of final actual costs to up front estimates. The PUCO should find Frontier's promising, but not sharing such

"actual costs" is deceptive and an unfair trade practice. The PUCO should order Frontier to cease this custom and practice. In addition, the PUCO should order Frontier to supply such actual cost information in a timely manner after the completion of future development projects to document and allow a fair evaluation of its up-front estimates to the actual costs of work performed within a reasonable time.

Respectfully submitted,

**Ron Sabatino and T&R Properties, Inc.**

By: /s/  
Thomas L. Hart

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Its Attorney

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Amended Complaint has been served upon all parties listed below, by electronic service, this 25 day of June, 2014.

Michele L. Noble (0072756)  
Thompson Hine LLP  
41 S. High Street, Ste. 1700  
Columbus, OH 43215  
[Michele.Noble@thompsonhine.com](mailto:Michele.Noble@thompsonhine.com)  
Its Attorney

By Respondent:

By: /s/  
Thomas L. Hart (0062715)

2650976.2 : 05636 00006

Date: 2/15/2012

To: T&R Properties Inc.  
Attn: Ron Sabitino  
3895 Stoneridge Lane  
Dublin, OH 43017

RE: 51111-2315814

Dear: Ron

This is in response to your request for Frontier Communications, Inc – Ohio to perform the following work: Relocate existing buried fiber optic cable and copper cable outside the construction limits of the new turn lane being installed for The Estates at Sherman Lakes Subdivision.

In addition to the advance payment listed below, you will be required to provide the following:  
2-4" PVC across property outside the construction limits of the new turn lane.

We have estimated that the cost of this work effort will be \$ 48,018  
Balance due Frontier Communications, Inc. – Ohio \$ 48,018

Please be advised that Frontier's Policy requires that you return this signed agreement, along with full advance payment, before your work will be scheduled.

As circumstances warrant during the performance of the work request, an additional advance payment may be required prior to job completion or additional costs billed upon completion of work, when a revised estimate and/or accumulated charges indicate the final expenditures will exceed the above estimate by more than 20%. This would include instances where: (1) you, the customer, change the scope of the work, or (2) your actions impact our ability to perform the work within the bounds of the original estimate.

Upon job completion, you will be issued either: (1) a refund for any overpayment, or (2) an invoice, if the final actual costs exceed the advance payments received. Any unapplied portion of advance payments will be refunded to you within sixty (60) days of the final bill or cancellation of the job.





If you agree to these terms, please sign below and forward this signed letter of agreement and a check for \$ 48,018 made payable to Frontier Communications, Inc – Ohio, noted with 51111-2315814.

Upon receipt of your signed agreement and advance payment, your work order will be released to our Construction Department for scheduling.

Should you have any questions or concerns regarding these terms, please contact me at 740/383-0551

Please be advised that the price quoted herein is valid for sixty - (60) days from the date of this letter and is ONLY an estimate. As stated earlier, you will be billed for the actual cost when the work is completed. If we do not receive this signed agreement and your advance payment within this sixty (60) day period, we will assume that you do not want the work to be undertaken and the project will be cancelled.

Sincerely,

CHRIS AVERY

Chris Avery – Network Engineer  
Frontier Communications, Inc - Ohio

I agree to the terms of this agreement:

Accepted: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Telephone # \_\_\_\_\_

Date: \_\_\_\_\_

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/25/2014 11:02:11 AM**

**in**

**Case No(s). 13-1728-TP-CSS**

Summary: Amended Application Amended Complaint electronically filed by Mr. Thomas L Hart on behalf of Sabatino, Ron Mr. and T&R Properties, Inc.