

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint and)	
Investigation of Staff of the Public)	
Utilities Commission of Ohio,)	Case No. 19-1582-TP-COC
)	
)	
Complainant,)	
)	
v.)	
)	
Frontier North Inc.,)	
)	
)	
Respondent.)	

STIPULATION AND RECOMMENDATION

I. Introduction

Rule 4901-1-30 of the Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. This Joint Stipulation and Recommendation (“Stipulation”) sets forth the understanding and agreement of the parties that have signed below (“Signatory Parties”). The Signatory Parties recommend that the Public Utilities Commission of Ohio (“Commission”) approve and adopt this Stipulation, which resolves all of the issues raised by Staff of the Public Utilities Commission of Ohio (“Staff”) against Frontier North Inc. (“Frontier”) in this Commission proceeding, as identified by Staff in its Complaint filed in this proceeding on August 14, 2019 (“Complaint”).

The Signatory Parties, all of whom are represented by capable and knowledgeable counsel, have engaged in lengthy, serious, arm's length bargaining in an effort to reach a mutually acceptable resolution that would address the concerns raised in this proceeding. This Stipulation is supported by adequate data and information and as a package, the Stipulation benefits customers and the public interest; represents a just and reasonable resolution of all issues in this proceeding; violates no important regulatory principle or practice; and complies with and promotes the policies and requirements of Title 49 of the Ohio Revised Code.

This Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and, though not binding on the Commission, is entitled to careful consideration by the Commission. The primary objective of this Stipulation is to resolve the violations and service issues identified in this proceeding and alleged in the Complaint, and to implement process and operational changes to prospectively improve the provision of service to Ohio consumers. In joining in this Stipulation, the Signatory Parties recognize that it is not in the public interest to subject the Signatory Parties and the Commission to the burdens associated with litigating the issues raised in the Complaint when a reasonable and acceptable outcome can be achieved through a settlement.

II. History

- A. On August 14, 2019, the Commission initiated this proceeding based upon an August 13, 2019 Staff letter outlining alleged violations of the Ohio Revised Code and the Ohio Administrative Code by Frontier regarding basic local exchange service ("BLES") being provided to its customers throughout Ohio. Specifically, the Staff letter outlined issues concerning extended outage restoral timeframes and repeat trouble tickets that had restricted the customers' ability to place outbound

calls, including calls to 911 and emergency service providers. The Commission found that Staff had provided sufficient justification in the August 13, 2019 letter for the opening of a complaint and investigation proceeding. Accordingly, the Commission directed Staff to file a complaint. Staff filed the Complaint on August 14, 2019.

- B. On September 9, 2019, Frontier filed its answer to the Complaint admitting to some and denying other allegations set forth in the Complaint. Among other things, Frontier recognized that it has had customer service complaints related to its BLES service and that it has not been able to restore BLES service for all its customers within 72 hours. While Frontier averred that it is in material compliance with Ohio laws, the Company indicated that it has recently undertaken numerous actions to improve the service it is providing to customers, especially out of service BLES customers.
- C. Also, on September 6, 2019, the Office of the Ohio Consumers' Counsel ("OCC") filed a motion to intervene in this proceeding, which was granted on January 14, 2020.
- D. The Signatory Parties have engaged in settlement negotiations with the understanding that Frontier has and continues to make progress on the violations and service issues alleged in the Complaint and has agreed to this Stipulation, which the parties believe resolves all of the issues raised in the complaint.
- E. On April 14, 2020, Frontier filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

F. On May 26, 2020, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) approved an *Order Authorizing and Establishing Procedures for the Compromise and Settlement of De Minimis Claims* [Docket No. 386] (the “Settlement Approval Order”), whereby the Bankruptcy Court authorized Frontier to settle certain claims and causes of action brought by or against Frontier in a judicial, administrative, arbitral, or other action or proceeding subject to the requirements specified in the Settlement Approval Order.

III. Recitals

WHEREAS, all of the related issues and concerns raised by the parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues;

WHEREAS, this Stipulation is the product of the discussions and negotiations of the Signatory Parties and is not intended to reflect the views or proposals that any individual party may have advanced acting unilaterally;

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in this matter;

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

IV. Joint Recommendation of Signatory Parties

The Signatory Parties agree that, for purposes of settlement and in consideration of the terms and mutual promises set forth herein, the Commission should approve this Stipulation without modifications as follows:

1. Frontier avers that it has already implemented changes to its processes for handling its installation and repair load in a timely manner. Frontier has re-prioritized these processes so that repair of BLES and non-BLES tickets take precedence over installation and internet requests. Moreover, repair tickets that are not completed on a given day are prioritized for the next day rather than going to the back of the line, as they were previously. Frontier commits to continue with these implemented changes and continue to monitor its processes for handling its installation and repair load in order to optimize service for its customers and maintain service levels.
2. Total Capital Investment
 - a. Frontier shall make capital expenditures, at a minimum, \$25 million in calendar years 2021, 2022 and 2023, which shall be in addition to Connect America Fund Phase II capital expenditures.
 - b. Frontier shall provide a written report of its capital expenditures quarterly to Staff and OCC, commencing on the first reporting quarter subsequent to the required approvals. Said report shall include, at a minimum, expenditures in the reporting period along with estimates of expenditures for the remainder of the year or following year, as appropriate. Frontier shall maintain documentation of all capital expenditures and provide such documentation to Staff and OCC upon request.

- c. Staff may conduct periodic plant and field investigations to evaluate capital expenditure improvements. Staff will give Frontier advance notice before conducting such investigations.
 - d. If Frontier's year-end reporting reveals the actual amount spent in capital investment is less than the amount committed for that year, Frontier shall pay a forfeiture in an amount equal to the insufficient capital spend. Insufficient capital spend means the difference between the committed yearly capital expenditure and the actual amount spent by Frontier. If Frontier's year-end reporting reveals the actual amount spent in capital investment is greater than the amount committed for that year, the excess amount will be credited to the subsequent year's capital investment. This obligation shall follow for each year of the three-year term of Frontier's commitment.
3. Defective Plant and Battery Replacements
- a. As part of the capital investment commitment in paragraph 2 above, Frontier shall spend a minimum of \$1,000,000.00 per annum dedicated exclusively to repairing defective plant (sub-account 35) and battery replacements (sub-account 33).
 - b. As part of the annual reporting in 2.d., Frontier shall provide a written report of its defective plant and battery replacements expenditures quarterly to Staff and OCC, commencing on the first reporting quarter subsequent to the required approvals. Said report shall include, at a minimum, amounts invested in the reporting period along with estimates of expenditures for the remainder of the year or following year, as appropriate. Frontier shall maintain documentation of all capital expenditures and provide such documentation to Staff and OCC upon request.

- c. Staff may conduct periodic plant and field investigations to evaluate defective plant and battery replacements. Staff will give Frontier advance notice before conducting such investigations.
- d. If Frontier's year-end reporting reveals the actual amount spent in defective plant and battery replacements is less than the amount committed for that year, Frontier shall pay a forfeiture in an amount equal to the insufficient defective plant and battery replacements spend. Insufficient defective plant and battery replacement spend means the difference between the yearly \$1,000,000.00 committed amount identified in Section IV(3)(a) and the actual amount spent by Frontier for defective plant and battery replacements. This obligation shall follow for each year of the three-year term of Frontier's commitment. Unlike total capital investment, Frontier will not receive a credit for any excess amount spent on defective plant and battery replacements.

4. 911 Improvements

- a. In addition to the commitment to implement actions intended to decrease 911 outages set forth in Section 5(a)(v) below. Frontier shall effectuate and complete, within three (3) years from the effective date of the Stipulation, a plan ("911 Plan") to improve service and reduce outages to the Frontier's Public Service Answering Points ("PSAP") that Frontier serves.
- b. The 911 Plan shall outline how Frontier plans to address the most vulnerable PSAPs based on network outages over the last 24 months. As part of the plan, Frontier will meet individually with each PSAP to review service issues and escalation procedures. Frontier will determine premise configuration, examining last mile

plant conditions including cable and batteries. Finally, Frontier will review transport routes for database services and, where needed, create a corrective action plan on faults found. Frontier will also include the costs and alternatives to create diversity, including options for recovery of the associated costs, for the most vulnerable PSAP locations that Frontier serves in Ohio. The 911 Plan shall be submitted to Staff and OCC for review within 75 days of the date of the required approvals of this Stipulation.

- c. Frontier shall maintain documentation of all 911 improvement steps taken and any associated expenditures and provide such documentation to Staff and OCC upon request. Staff may conduct investigations to Frontier's progress on its 911 Plan. Staff will give Frontier advance notice before conducting such investigations.
- d. Any costs for work undertaken as a result of the 911 Plan that are not recovered through another cost recovery or external funding mechanism will be counted toward Frontier's total capital investment commitment, detailed above, but will not be counted toward the minimum \$1,000,000.00 per annum capital investment commitment dedicated exclusively to Frontier's defective plant and battery replacements commitment.

5. Metrics

- a. Frontier agrees to meet the following minimum standards for single-line residential and business telephone customers¹, without regard to other Frontier

¹"Telephone Customer" is defined as a retail subscriber to a "telecommunications" line, as defined by Ohio Revised Code 4927.01(A)(11), that connects Frontier's telecommunications system with the end user. For purposes of this Stipulation, the parties agree that "telecommunications" does not include Internet services or packages including Internet services, or any other service outside the Commission's jurisdiction.

services to which the customer may subscribe, for five years beginning upon required approvals of the Stipulation:²

- i. Frontier must repair and restore at least 80% of Out-of-Service outages within 24 hours, excluding Sundays and legal holidays, of the outage being reported to Frontier in any given quarter.^{3,4}
- ii. Frontier must repair and restore at least 80% of Service-Affecting problems within 48 hours, excluding Sundays and legal holidays of the problem being report to Frontier in any given quarter.⁵
- iii. Frontier must not exceed 10% of repeat repair tickets in any given quarter.
Any account with a repair ticket submitted within ten days, excluding Sundays and legal holidays, of completion of a prior repair ticket shall be counted as a repeat repair ticket.
- iv. In any given quarter, Frontier must affirmatively acknowledge receipt of 99% of urgent PUCO complaints within 24 hours of submission, excluding Sundays and legal holidays. All responses must include an action plan and anticipated timeline to resolve the matter. Frontier must also continue providing timely status updates for the duration of a pending informal complaint.
- v. Frontier must decrease 911 outages as defined by the services provided to each PSAP pursuant to Frontier's Basic Local Exchange Service Tariff,

² Frontier shall report metrics quarterly.

³ Frontier shall continue to make reasonable efforts to repair an outage within 24-hours in all instances, but commits that a definitive repair time within 24-hours will occur for at least 80% of calls each quarter.

⁴ Customer negotiated appointments are excluded from metric reporting if the appointment is outside the hours standard.

⁵ Customer negotiated appointments are excluded from metric reporting of the appointment is outside the hours standard.

P.U.C.O. No. 11, Section 6 and caused by Frontier's service. Frontier must report 911 outages by county on a quarterly basis to Staff and OCC.

Reporting should categorize outages by cause and should include information about outage resolution.

- b. If Frontier's quarterly reporting shows the company has not met Metric 5.a.i., 5.a.ii., and 5.a.iii. above for one quarter, the company shall, within 14 business days of the distribution of the report, present a remedial plan to Staff and OCC showing how it will meet each of the missed metrics and then implement the plan.
 - i. Exemptions shall apply for events outside of Frontier's control for events including, but not limited to, extraordinary weather events, strikes, terrorist attacks, vandalism, pandemics or other force majeure. Frontier will notify Staff and OCC of any major event exempted within 30 days of the event, and Staff and OCC may object within 10 days of the notification. If no objection is made within 10 days, the exemption will be deemed approved. Staff, OCC, and Frontier agree to negotiate the matter in good faith. Any party will be free to petition the Commission if negotiations do not lead to an agreement between the parties.
- c. In years 1 and 2, if Frontier's quarterly reporting shows that it has not met Metric 5.a.i., 5.a.ii., and 5.a.iii. above for two consecutive quarters, Frontier shall commit an additional \$150,000 in capital investment or operating expense for every year remaining in the term. For Years 3, 4, and 5 of the five-year term, if Frontier's reporting shows the company has not met Metric 5.a.i., 5.a.ii., and 5.a.iii. above for two consecutive quarters, Frontier will identify and commit at least \$150,000

to specific capital investment or operating expense projects. Frontier will provide a plan describing how the minimum \$150,000 commitment will be spent and how Frontier will achieve Metric 5.a.i, 5.a.ii., and 5.a.iii. Frontier will provide this plan to Staff and OCC for review and comment. The plan will include an explanation of how the capital investment or operating expense projects will improve service quality for BLES and non-BLES customers in Ohio.

- d. For the entire five-year term, if Frontier's reporting shows the company has not met Metric 5.a.i., 5.a.ii., and 5.a.iii. above for two consecutive quarters, within 30 days of missing the metrics, Frontier will present a plan to the Staff and OCC for review and comment. That plan will describe all actions Frontier will undertake to meet the missed metric by the following quarter. That plan will describe any additional resources necessary and how those additional resources will be obtained and utilized, including review of permanent staff levels and contract staff levels.

6. Customer Education

- a. Frontier shall establish an annual program for the education of its customers within 90 days of the date the required approvals of this Stipulation. This program should include, but not be limited to:
 - i. Information to inform customers about BLES;
 - ii. Information to inform customers of their rights under BLES;
 - iii. Information to explain non-BLES and differences in BLES requirements;
 - iv. Information to remind customers that they need to call Frontier when experiencing service issues;

v. Information to inform customers of their rights to receive credits for failure to repair out-of-service conditions within 72 hours.

b. Frontier shall provide the bill message to Staff and OCC for review within 30 days of the date of the required approvals of this Stipulation.

7. Staff Field Inspections

Frontier shall continue its efforts to make repairs on facilities found during field inspections performed by Staff. Frontier will make reasonable efforts to repair and provide photographic evidence of such repairs to Staff within 30 days on future inspection reports.

8. Maintenance Plans and Other Services

a. Frontier shall discontinue the practice of attempting to sell maintenance plans and other services prior to resolving the customers issue and/or completed scheduling of the repair upon the required approvals of this Stipulation. Maintenance plans or other services can be discussed after the service has been repaired.

b. In accordance with the Commission's rules, and as applicable, Frontier shall provide customers reporting a service problem a description of the Network Interface Device ("NID") and an explanation of how to locate and use a NID to test/isolate inside service problems. Frontier will inform customers of their options for repairing inside wire (if that is where the service problem has been determined to exist).

9. Out-of-Service Credits

Upon the required approvals for this Stipulation, Frontier shall begin to issue out-of-service credits for telephone service not restored within 72 hours of the outage being

reported to Frontier, excluding Sundays and legal holidays. The credit shall be provided to all customers having single line residence or business telephone service, even if such customers subscribe to other Frontier services. The out-of-service credit will be equal to one month of recurring charges for the single line service only.

10. Future Applicability of Stipulation

Frontier acknowledges that this Stipulation represents a valid exercise of the Commission's regulatory police powers to enforce R.C. Chapter 49 and the rules adopted thereunder, is intended to prevent future harm to Ohio customers, and that Frontier intends to comply with the terms of this Stipulation notwithstanding Frontier's April 14, 2020 restructuring filing pursuant to Chapter 11 of the United States bankruptcy code. This Stipulation binds Frontier, its successors, and its assignees. The Signatory Parties requests that any Commission Order approving this Stipulation explicitly so state.

V. Procedural Matters

1. No action taken by the Signatory Parties in connection with this Stipulation shall be deemed or construed to be (i) an admission of the truth or falsity of any claims or proposals made by the other party or (ii) a waiver of any objection or claim in any pleading. The Signatory Parties further agree that by entering into this Stipulation, Frontier does not admit to any violations of law. Neither this Stipulation nor any payment of money or other actions taken pursuant to this Agreement shall constitute or be deemed an admission of liability or guilt on the part of any Party.
2. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Party or the Commission itself. This Stipulation

is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.

3. This Stipulation is subject to approval by both the Commission and the Bankruptcy Court pursuant to the Settlement Approval Order issued by the Bankruptcy Court. Upon execution of this Stipulation by the Parties, the Parties shall promptly seek approval of this Stipulation by the Commission and Frontier will seek approval of the Bankruptcy Court pursuant to the Settlement Approval Order. If for any reason this Stipulation is rejected in its entirety by the Commission or not approved by the Bankruptcy Court pursuant to the Settlement Approval Order, this Stipulation shall be null and void and the Parties shall not be bound under the Stipulation or any documents executed in connection therewith.
4. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, any Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to all parties, in the docket within thirty days of the Commission's entry on rehearing. Other parties to this Stipulation agree to not oppose the withdrawal from the Stipulation by any other party. Prior to the filing of such a notice, the party wishing to withdraw agrees to work in good faith with the other Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Party wishing to withdraw, then the new agreement shall be filed for

Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, and a Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing Party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs as if the withdrawing Party had never executed the Stipulation. Some or all of the Signatory Parties may submit a new agreement to the Commission for approval if the discussions achieve an outcome they believe substantially satisfies the intent of the present Stipulation.

5. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.
6. Unless otherwise specifically agreed to by the parties, all other terms in this Stipulation shall expire five years from the effective date of the Stipulation, except for Frontier's obligations under the law and the Commission's rules.

VI. Conclusion


The undersigned hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 24th day of June 2020.

STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO

By: /s/ Robert Eubanks
Robert Eubanks (0073386), Counsel of Record

FRONTIER NORTH INC.

By: /s/ Michele L. Noble
Michele L. Noble (0072756), Counsel of Record

By: 
Kenneth Mason, Senior Vice President – Federal Regulatory

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 24th day of June 2020, to the following:

/s/ Robert Eubanks

Robert Eubanks

Senior Assistant Attorney General

Parties of Record:

Angela O'Brien

Counsel of Record

David Bergman

Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215

angela.obrien@occ.ohio.gov

david.bergmann@occ.ohio.gov

*Counsel for the Office of the Ohio
Consumers' Counsel*

Michele L. Noble

Squire Patton Boggs (US) LLP
41 S. High Street, Suite 2000
Columbus, OH 43215

michele.noble@squirepb.com

Counsel for Frontier North Inc.

Kimberly W. Bojko

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 N. High Street

Columbus, Ohio 43215

Telephone: (614) 365-4124

bojko@carpenterlipps.com

*Counsel for the Office of the Ohio
Consumers' Counsel*

Joseph Starsick

Associate General Counsel

Frontier North Inc.

joseph.starsick@FTR.com

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Summary: Stipulation of Recommendation electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO