

**BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Complaint of: AMERICAN)
BROADBAND AND TELECOMMUNICATION)
COMPANY,)

Complainant,)

v.)

FRONTIER NORTH, INC.,)

Respondent.)

Case No. 10-533-TP-CSS

**AMERICAN BROADBAND AND TELECOMMUNICATION COMPANY'S
MOTION FOR LEAVE TO AMEND COMPLAINT**

Now comes Complainant American Broadband and Telecommunication Company ("AMBT"), by and through counsel, and hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Ohio Administrative Code ("OAC") Rules 4901-1-12 and 4901:1-7-08, and Civil Rule 15 and 25 of the Ohio Rules of Civil Procedure, for leave to file its Amended Complaint to substitute Frontier North, Inc. ("Frontier") for Verizon North, Inc. ("Verizon") and include additional claims against Frontier. Attached hereto is a Memorandum in Support of the instant Motion.

Respectfully submitted on behalf of
AMERICAN BROADBAND AND
TELECOMMUNICATIONS COMPANY



Thomas J. O'Brien
J. Thomas Siwo
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2335
Facsimile: (614) 227-2390
E-mail: tobrien@bricker.com
tsiwo@bricker.com

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MEMORANDUM IN SUPPORT

I. ARGUMENT

A. The Commission should Grant Complainant Leave to Amend Its Complaint.

The Commission should grant leave, pursuant to Civil Rule 15, to AMBT to amend its Complaint to substitute Frontier for Verizon and include additional claims against Frontier.

Civ. R. 15(A) provides, in relevant part:

[A] party may amend his pleading only by leave of Court or by written consent of the adverse party. Leave of Court shall be given freely when justice so requires.

Civ. R. 15(B) provides, in relevant part:

Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment.

The Ohio Supreme Court has consistently held that amendments are to be freely granted so that cases can be justly decided on the merits.¹ Therefore, the analysis of whether to permit amendment “should be performed with all inferences in favor of granting the motion.”²

B. The Commission should Grant AMBT Leave to Amend Its Complaint to Substitute Frontier for Verizon.

Ohio Civil Rule 25 allows for the substitution of parties under certain circumstances. Specifically, Civ. R. 25(C) provides, in relevant part:

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

This action was commenced on April 19, 2010, by AMBT, seeking correction of all invoicing and charges, and the issuance of all credits in accordance with the Interconnection Agreement entered into under Sections 251 and 252 of the Telecommunications Act of 1996 (the “Act”) and approved by operation of law on July 22, 2003 in Case No. 03-1030-TP-NAG³ and as subsequently amended. Good-faith discussions between the parties have been ongoing since the date of the initial settlement conference on May 19, 2010, but it appears that an impasse has been reached. Further, between the months of June and July 2010, Frontier became the successor in

¹ See *Hoover v. Sumlin*, 12 Ohio St.3d 1, 5-6, (1984) (“[A] liberal amendment policy provides the maximum opportunity for each claim to be decided on the merits rather than on procedural deficiencies * * * However, the language of Civ.R. 15(A) favors a liberal amendment policy and a motion for leave to amend should be granted absent a finding of bad faith, undue delay or undue prejudice to the opposing party.”); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962) (“Rule 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is to be heeded. * * * In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be ‘freely given.’”).

² *Griggs v. Pace American Group, Inc.*, 170 F.3d 877, 880 (9th Cir.1999). See also Civ.R. 8(F) (“All pleadings shall be so construed as to do substantial justice.”).

³ The Interconnection Agreement was executed under the name of Verizon North Inc. fka GTE North, Inc.

interest to Verizon. Further, Frontier does not oppose the substitution.⁴ Accordingly, substitution of the named Respondent is appropriate and AMBT moves this Commission to substitute Frontier as party Respondent.

C. The Commission should Grant AMBT Leave to Amend Its Complaint to Include Additional Claims Against Frontier.

AMBT requests that it be granted leave to file the proposed Amended Complaint, which is being filed simultaneously with this motion. The claims below are further described in the Amended Complaint.

(1) Frontier Has Failed to Accurately Post Payments.

Beginning in October of 2007, AMBT and Verizon embarked on a month long account reconciliation to balance accounts. The parties entered into the November 2007 billing cycle with a \$0 past due balance. Since this time, AMBT has kept accounts current, and has filed approximately \$760,000, through July 2012, in disputes, for various issues. AMBT conducted monthly reconciliations of its accounts with Verizon and all payments were sent via Fed Ex and tracked as received by Verizon and its successor, Frontier. Further, AMBT attached to every payment, specific account by account instructions and amounts to be posted to each account.

In June of 2010, AMBT's account reconciliation showed that it had approximately \$700,000 in disputes in the Verizon Dispute system and \$187,000 of un-posted payments. As of August 31, 2012, AMBT's reconciliation shows payments sent to Frontier and Verizon, between November 2007 and August 2012 totaling \$24.66 million and payments posted to AMBT's accounts of only \$23.57 million, creating an un-posted payment amount of \$1.089 million. AMBT has cancelled checks proving that Frontier received and cashed the checks and Fed Ex receipts showing proof of on time delivery. Clearly, the un-posted payment issue has increased

⁴ On July 11, 2012, counsel for Frontier filed a Notice of Substitution of Counsel indicating that Frontier was formerly known as Verizon.

almost five-fold since Frontier has taken over AMBT's accounts. This is a very serious issue that is creating additional late fees in Frontier's system. Since Frontier cannot properly apply payments that AMBT sends it, with very specific instructions where to apply the payment, Frontier simply charges the accounts that it fails to properly apply payment to a late fee for non-payment.

(2) Frontier Has Failed to Produce Invoices in a Timely Manner and in the Proper Format.

Beginning in October 2011, Frontier transitioned from the Verizon North billing system to Frontier's own system. The first state that Frontier transitioned for AMBT was Michigan. Beginning in October 2011 and through December 2011, AMBT received no invoices from Frontier. Further, numerous e-mails and calls were sent to Frontier's billing department and it's General Counsel's office to explain the situation. Once Frontier was able to produce an invoice, it was not in the proper format (electronic, specifically BOS-BDT) that was requested on its own Billing Feed Connectivity form, by Frontier employee Teresa Land in February of 2011. Frontier began sending AMBT paper invoices in January of 2012 that were thousands of pages long and could not be processed by AMBT's billing system. Once AMBT received the Michigan invoices in the proper format, the invoices contained numerous errors and late fees, even though they did not and could not render AMBT an invoice for over three (3) months. AMBT went from having ten (10) separate accounts in Michigan to seven (7) accounts with no notification of new account numbers, no mapping of where the account numbers were being transferred to, and no explanation of consolidating AMBT's accounts.

In addition to the issue of not being able to create an invoice for several months, all of the disputes that were handled by the previous system (FUSF charges, Taxes, Late fees etc.) began to appear on the new invoices created by the Frontier system. The same issues also began when Frontier converted the State of Ohio to its system, which began in March of 2012. At that time,

AMBT had twelve (12) Ohio accounts on the legacy Verizon billing system. Frontier, without notice or documentation, converted these accounts into thirty-nine (39) accounts. The invoices were not delivered in the proper format and were delivered past the due date on numerous occasions. Frequently, AMBT had to request the invoices from Frontier because the invoices did not arrive on the proper delivery date or in the proper format.

(3) Frontier Has Been Unwilling to Provide Credits or Accurately Address AMBT's Disputes.

AMBT has eight (8) major dispute types that have been repeatedly billed to it, and have been credited in the past by either Verizon or Frontier. AMBT's total disputed balance through August 31, 2012 is \$763,300. For example, Frontier has received proper forms for tax exemption. However, Frontier's billing group fails to remove taxes from AMBT's monthly invoices. To date, the disputed amount for taxes is \$97,830.

(4) Frontier Has Systematically and Purposefully Created a "No Dial Tone" During Loop and Port Orders.

Frontier has been incorrectly processing AMBT's Loop and Port orders since 2007. The issue creates a no dial tone situation for customers when they attempt to switch to AMBT's service. To be clear, customers cannot make or receive calls and they cannot dial 911. Since AMBT first noticed this issue, it has not only reported the issue to Frontier, but it has escalated the issue to senior positions within Verizon and Frontier.

D. Neither AMBT nor Frontier Will Be Prejudiced if Leave to Amend is Granted.

At this early stage of the litigation, neither party will be prejudiced if leave to amend the Complaint is granted because parties have simply been involved in settlement negotiations.

II. CONCLUSION

Finally, Civ. R. 15 states that "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth

in the original pleading, the amendment relates back to the date of the original pleading.” As noted above, the claims set forth in the Amended Complaint arise from the same conduct, transaction, or occurrence set forth in the initial complaint. For this reason, the filing date of the Amended Complaint relates back to the date of the filing of the initial complaint.

WHEREFORE, AMBT respectfully requests that the Commission grant its motion for leave to amend its complaint against Frontier.

Respectfully submitted on behalf of
AMERICAN BROADBAND AND
TELECOMMUNICATIONS COMPANY



Thomas J. O'Brien (0066249)

J. Thomas Siwo (0088069)

BRICKER & ECKLER LLP

100 South Third Street

Columbus, OH 43215-4291

Telephone: (614) 227-2335

Facsimile: (614) 227-2390

E-mail: tobrien@bricker.com
tsiwo@bricker.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Leave to Amend was served upon the parties of record listed below this 12th day of September 2012 *via* electronic mail or first class mail.



Thomas J. O'Brien

Michele L. Noble
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
Michele.Noble@thompsonhine.com

Kevin Saville
Associate General Counsel
2378 Wilshire Blvd.
Mound, Minnesota 55364
Kevin.Saville@FTR.com

Jay S. Agranoff
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, Ohio 43215
jay.agranoff@puc.state.oh.us

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Summary: Motion for Leave to Amend Complaint and Memorandum in Support electronically filed by Teresa Orahod on behalf of American Broadband and Telecommunications Company