

**BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Complaint of AMERICAN)	
BROADBAND AND TELECOMMUNICATION)	
COMPANY,)	
)	
Complainant,)	Case No. 10-533-TP-CSS
)	
v.)	
)	
FRONTIER NORTH, INC.,)	
)	
Respondent.)	

**AMERICAN BROADBAND AND TELECOMMUNICATION COMPANY’S
AMENDED COMPLAINT**

Pursuant to Ohio Revised Code Section (“R.C.”) 4905.26 and Ohio Administrative Code (“OAC”) Rule 4901-9-01, American Broadband and Telecommunications Company (“AMBT”), respectfully files this Amended Complaint against Frontier North, Inc. (“Frontier”) for violations of R.C. 4905.22, R.C. 4905.35, and other regulatory and contractual obligations, as more fully described herein and set forth in the Interconnection Agreement between the parties (the “Interconnection Agreement”) and Frontier tariffs on file with the Public Utilities Commission of Ohio (the “Commission”). AMBT has been dealing with several issues with Frontier and its predecessor, Verizon North, Inc., since November 2007. Accordingly, for its Amended Complaint, AMBT states as follows:

PARTIES AND JURISDICTION

1. Complainant AMBT is an Ohio corporation whose business address is 104 North Summit Street, 3rd Floor, Toledo, Ohio 43604.

2. Complainant AMBT is authorized by the Commission to provide telecommunications services in the State of Ohio.

3. Respondent Frontier is authorized to operate within Ohio as a “public utility” and “telephone company” as these terms are defined in R.C. 4905.02 and 4905.03(A)(3).

4. Respondent Frontier provides services and unbundled network elements (“UNEs”) to AMBT pursuant to an 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 Commission Case No. 03-1030-TP-NAG (the “Interconnection Agreement”).¹

5. Respondent Frontier also provides services to AMBT pursuant to Frontier’s tariffs on file with the Commission.

6. The Commission has jurisdiction to entertain this Amended Complaint pursuant to R.C. 4905.26, which authorizes the Commission to hear and review the adequacy and reasonableness of any service provided by a public utility upon a complaint that such service is “in any respect unreasonable, unjust, discriminatory, or preferential, or that any service is, or will be, inadequate or cannot be obtained.”

6. The Commission also has jurisdiction over this Amended Complaint pursuant to Sections 251 and 252 of the Act, and R.C. 4927.04.

FACTUAL BACKGROUND

7. Among other things, AMBT provides, through its own facilities in combination with UNEs provided by Frontier, telephone services to various end users, including without limitation, end users located within the service area of Frontier.

¹ The Interconnection Agreement was originally executed under the name of Verizon North Inc. fka GTE North, Inc.

8. Complainant AMBT also resells the retail services offered by Respondent Frontier.

9. The charges imposed on AMBT by Frontier are governed and limited by, among other things, the Interconnection Agreement and applicable Frontier tariffs on file with the Commission.

10. Since the November 2007 billing cycle, AMBT has kept accounts current, but has timely and appropriately disputed approximately \$760,000 in charges through July 2012.

COUNT ONE

Frontier Has Systematically and Purposefully Created a “No Dial Tone” During Loop and Port Orders in Violation of R.C. 4905.22 and R.C. 4905.35.

11. AMBT repeats and realleges, as if rewritten herein, the allegations set forth in Paragraphs 1 through 10 of this Complaint

12. In the process of providing telephone services to its customers, AMBT submits loop and port orders to Frontier.

13. Frontier, upon acceptance of a loop and port order, is obligated to establish a loop or path for voice and data transmissions as well as a port consisting of switching and other facilities to enable dial tone, switching, and access to other services.

14. Switching service from Frontier to AMBT requires, among other things: (i) the customer requesting service from AMBT; (ii) the customer supplying a letter of authority to transfer service; (iii) AMBT submitting a loop and port order to Frontier to facilitate the transfer of the customer's account and caller information from Frontier's network and facilities to AMBT's network and facilities; and (iv) Frontier's timely switching the account to enable telephone calls to originate from and terminate at the customer's assigned telephone number.

15. At all times relevant to this Amended Complaint, AMBT timely submitted complete loop and port orders to Frontier.

16. Beginning in late 2007, and with greater frequency after closure of Frontier's Couer De Lane National Open Market Center, AMBT loop and port order submitted to Frontier began failing.

17. Such orders failed because during the cut-over to AMBT-provided services, prospective customers of AMBT would experience no dial tone for, on average, three (3) days.

18. Without such dial, prospective AMBT customers resulted in a complete inability to make or receive telephone calls.

19. During the times such prospective customers were without dial tones, Frontier failed to fill and adhere to its own protocols and process rules for the provisioning of loop and port orders.

20. Upon receiving dial tone, AMBT customers would receive telephone services differing in type and/or nature from the telephone services ordered by AMBT and/or its customer.

21. As a result, Frontier failed to properly provision customer accounts and provide telephone services to AMBT, as requested and ordered, for resale to AMBT customers.

22. At all times relevant to this Amended Complaint, and with respect to all customer accounts at issue in this Amended Complaint, AMBT provided Frontier with notice of the deficiencies in service and filling of the loop and port orders.

23. Upon receipt of such notice, Frontier acknowledged an ongoing software problem in its facilities.

24. Frontier failed and refused to fix said deficiencies despite the repeated demands of AMBT.

25. Upon information and belief, Frontier continues in its failure and/or refusal to fix the “software problem,” thereby resulting in significant deficiencies in service which are burdensome to AMBT and interfere with AMBT's ability to conduct business.

26. At various times during the period relevant to this Amended Complaint, AMBT personnel met with Frontier personnel and, in some instances, Commission Staff, to discuss the nature and extent of the software problem negatively impacting loop and port orders submitted by AMBT.

27. As a direct and proximate result of Frontier's deficiencies, AMBT's business has been interfered with and negatively impacted.

28. AMBT's prospective customers, many of whom are current Frontier customers canceled their service with AMBT upon experiencing deficiencies in service caused by Frontier, and returned to their former service provider, in many cases Frontier.

29. As a direct and proximate result of Frontier's deficiencies, Frontier has hindered the portability of telephone numbers assigned to prospective customers of AMBT, all to the detriment of AMBT's business and each affected customer.

30. R.C. 4905.22 provides as follows:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in

connection with, any service, or in excess of that allowed by law or by order of the commission.

31. Among other things, by failing and/or refusing to fix the software problem affecting its facilities and failing, Frontier failed and refused, and continues in its failure and refusal, to furnish necessary and adequate service and facilities and to provide adequate, just and reasonable instrumentalities and facilities, all in violation of R.C. 4905.22.

32. Among other things, by failing and/or refusing to fill timely and complete loop and port orders properly submitted by AMBT, Frontier failed and refused, and continues in its failure and refusal, to furnish necessary and adequate service and facilities and to provide adequate, just and reasonable instrumentalities and facilities, all in violation of R.C. 4905.22.

33. R.C. 4905.35 provides, in pertinent part:

No public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.

34. Among other things, in failing and/or refusing to fix the software problem affecting its facilities, Frontier has subjected AMBT and prospective customers of AMBT to undue and unreasonable prejudice and disadvantage, including but not limited to interfering with AMBT's business and interfering with said customer's right to select the service provider of its choice and port said customer's assigned telephone number from Frontier to AMBT, all in violation of R.C. 4905.35.

35. Among other things, in failing and/or refusing to fill timely and complete loop and port orders properly submitted by AMBT, Frontier has subjected AMBT and prospective customers of AMBT to undue and unreasonable prejudice and disadvantage, including but not limited to interfering with AMBT's business and interfering with said customer's right to select

the service provider of its choice and port said customer's assigned telephone number from Frontier to AMBT, all in violation of R.C. 4905.35.

COUNT TWO

Frontier Has Failed to Accurately Post Payments in Violation of R.C. 4905.22 and the Interconnection Agreement.

36. AMBT repeats and realleges, as if rewritten herein, the allegations set forth in Paragraphs 1 through 47 of this Amended Complaint.

37. 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.

38. As of August 31, 2012, AMBT's reconciliation shows payments posted to AMBT's accounts of only \$23.57 million, thereby creating an un-posted payment amount of \$1.089 million.

39. Frontier has failed to properly apply payments made by AMBT.

40. Frontier then charges the accounts for which AMBT submits payments and Frontier fails to properly apply a late fee for non-payment.

41. Section 9.4 of the Interconnection Agreement provides, in relevant part, that "[c]harges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge."

42. Among other things, by failing to properly post AMBT's payment amounts, Frontier failed to charge just and reasonable charges, all in violation of R.C. 4905.22 and Section 9.4 of the Interconnection Agreement.

COUNT THREE

Frontier Has Failed to Produce Invoices in a Timely Manner and in the Proper Format in Violation of R.C. 4905.22, R.C. 4905.35, and the Interconnection Agreement.

43. AMBT repeats and realleges, as if rewritten herein, the allegations set forth in Paragraphs 1 through 54 of this Amended Complaint.

44. Frontier transitioned from Verizon North's billing system to its own billing system beginning in October 2011.

45. AMBT received no invoices from Frontier from October 2011 through December 2011.

46. Frontier eventually produced an invoice in the incorrect format (electronic, specifically BOS-BDT), and sent AMBT paper invoices in January of 2012 that were thousands of pages long and could not be processed by AMBT's billing system.

47. The invoices by AMBT received contained numerous errors and late fees.

48. AMBT has had to repeatedly request invoices from Frontier because the invoices did not arrive on the proper delivery date and/or in the proper format.

49. By failing and/or refusing to submit correct invoicing to AMBT reflecting only lawful charges, in spite of acknowledging AMBT's disputes as justified and allowable, Frontier failed and refused, and continues in its failure and refusal, to invoice and demand only those charges that are just, reasonable and allowed, all in violation of R.C. 4905.22.

50. By failing and/or refusing to correct said invoicing, in spite of acknowledging AMBT's disputes as justified and allowed, Frontier failed and refused, and continues in its failure and refusal, to invoice and demand only those charges that are just, reasonable and allowed, all in violation of R.C. 4905.22.

51. Among other things, in invoicing AMBT and demanding charges that are unjust, unreasonable, and in excess of lawful charges, including without limitation those charges established in the Interconnection Agreement and applicable Frontier tariffs, Frontier has subjected AMBT and AMBT's customers to undue and unreasonable prejudice and disadvantage, including but not limited to interfering with AMBT's ability to conduct business and with the rights of AMBT and AMBT's customers to be free from prejudicial treatment, all in violation of R.C. 4905.35.

COUNT FOUR

Frontier Has Been Unwilling to Provide Credits or Accurately Address AMBT's Disputes in Violation of R.C. 4905.22 and the Interconnection Agreement.

52. AMBT repeats and realleges, as if rewritten herein, the allegations set forth in Paragraphs 1 through 63 of this Amended Complaint.

53. At all times relevant to this proceeding, Frontier has invoiced AMBT and demanded payment of charges in excess of those established by the Interconnection Agreement and applicable Frontier tariffs, including but not limited to: (i) charges relating to local calls and local package bundles; (ii) charges relating to services never provided by Frontier; and (iii) late charges improperly applied by Frontier to AMBT's account.

54. AMBT submitted timely disputes with respect to all charges at issue herein and conducted extensive negotiations with Frontier, and in some instances this Commission.

55. Throughout said negotiations, Frontier, through its authorized representatives, allowed a significant number of disputes, identified by both batch number and amount, and agreed to apply a credit to AMBT's account for said allowed disputes.

56. Following AMBT's repeated requests for written verification of the allowed disputes and credits applied to the AMBT account, Frontier denied said disputes, without justification and without further explanation.

57. Accordingly, Frontier's invoicing to AMBT still contains charges that are incorrect and improper.

58. AMBT's total disputed balance through August 31, 2012 is \$763,300.

59. Section 9.4 of the Interconnection Agreement provides, in relevant part, that "[c]harges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge."

60. By improperly charging late payment charges to AMBT, Frontier failed to charge just and reasonable charges, all in violation of R.C. 4905.22 and Section 9.4 of the Interconnection Agreement.

COUNT FIVE

Frontier's Actions Violate the Policy Set Forth in R.C. 4927.02

61. AMBT repeats and realleges, as if rewritten herein, the allegations set forth in Paragraphs 1 through 72 of this Amended Complaint.

62. Pursuant to R.C. 4927.02, it is the policy of Ohio to ensure adequate telephone service to all end users and to promote fair competition and opportunity among multiple providers of competing and functionally equivalent telecommunications services.

63. Among other things, in failing and/or refusing to fix the software problem affecting its facilities and failing and/or refusing to fill timely and complete loop and port orders properly submitted by AMBT, Frontier has failed and/or refused to promote fair competition and opportunity for AMBT.

CLAIMS FOR RELIEF

WHEREFORE, the Complainant respectfully requests that the Commission provide the following relief:

A. Accept this Amended Complaint pursuant to R.C. 4905.26 and OAC Rule 4901-9-01;

B. Find that Frontier's invoices and demands for charges in excess of those established in the Interconnection Agreement and applicable Frontier tariffs are unjust, unreasonable and in violation of the Telecommunications Act of 1996, Ohio law and the Interconnection Agreement and applicable Frontier tariffs;

C. Find that Frontier's invoices and demands for charges in excess of those established in the Interconnection Agreement and applicable Frontier tariffs constitute anti-competitive practices in direct interference with AMBT's business and financial arrangement with its customers;

D. Require Frontier to correct all invoicing and charges and issue all credits, all in accordance with AMBT's disputes, and further require Frontier forthwith to invoice and demand only those charges that are just, reasonable, and in accord with the Interconnection Agreement and applicable Frontier tariffs;

E. Find that Frontier 's rejection of and/or failure to fill and complete valid loop and port orders and corresponding local number portability requests is a violation of federal law, Ohio law and the Interconnection Agreement and applicable Frontier tariffs;

F. Find that Frontier's rejection of and/or failure to fill and complete valid loop and port orders and corresponding local number portability requests is an anti-competitive practice

and in direct interference with AMBT's business and financial arrangement with its customers, including without limitation prospective customers;

G. Require Frontier forthwith to repair any deficiencies in processes or facilities, including without limitation software problems, and to provide adequate and reasonable processes and facilities to properly fill all loop and port orders submitted by AMBT and protect against any service outages during the cut-over from Frontier to AMBT; and

H. Order any other relief that the Commission deems appropriate, just, and reasonable.

Respectfully submitted on behalf of
AMERICAN BROADBAND AND
TELECOMMUNICATIONS COMPANY



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CERTIFICATE OF SERVICE

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



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Summary: Text Amended Complaint electronically filed by Teresa Orahod on behalf of American Broadband and Telecommunications Company