

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

AMENDED ANSWER AND AFFIRMATIVE DEFENSES OF FRONTIER NORTH INC.

Frontier North Inc. (“Frontier”), through its counsel, respectfully answers the Amended Complaint (“Complaint”) filed by American Broadband and Telecommunications Company (“AMBT”) with the Public Utilities Commission of Ohio (“Commission”) in the above-captioned matter on October 12, 2012, and raises its affirmative defenses thereto as follows:

A. ANSWER

1. Frontier lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint.
2. Frontier admits the allegations of Paragraph 2 of the Complaint.
3. Frontier admits the allegations of Paragraph 3 of the Complaint.
4. Frontier admits the existence of an Interconnection Agreement entered into under Sections 251 and 252 of the Telecommunications Act of 1996 (the “Act”) that was approved by the Commission by operation of law on July 22, 2003, in Commission Case No. 03-1030-TP-NAG (the “Interconnection Agreement”). Further answering, Frontier states that it succeeded to

the rights and obligations of Verizon North, Inc. under the Interconnection Agreement effective July 1, 2010, and that Frontier has substantially performed all obligations owing to AMBT under said agreement. Frontier also admits that it provides certain services and unbundled network elements (“UNEs”) to AMBT pursuant to the Interconnection Agreement. Frontier states that the Interconnection Agreement speaks for itself. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 4 of the Complaint.

5. Frontier admits the allegations of Paragraph 5 of the Complaint.

6. Frontier admits the allegations of Paragraph 6 of the Complaint with respect to the Commission’s jurisdiction with respect to disputes arising under the Interconnection Agreement and service provided pursuant to tariffs on file with the Commission.

6 [SIC]. Frontier admits the allegations of Paragraph 6 of the Complaint with respect to the Commission’s jurisdiction with respect to disputes arising under the Interconnection Agreement and service provided pursuant to tariffs on file with the Commission.

7. Frontier admits the allegations of Paragraph 7 of the Complaint to the extent they relate to UNEs provide by Frontier in Ohio pursuant to the Interconnection Agreement. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 7 of the Complaint.

8. Frontier admits that AMBT purchases certain wholesale services from Frontier pursuant to the Interconnection Agreement and that AMBT resells certain of those services to other parties in Ohio. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 8 of the Complaint.

9. Frontier admits that certain charges imposed on AMBT by Frontier have been governed by the Interconnection Agreement and applicable Frontier tariffs on file with the

Commission. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 9 of the Complaint.

10. Frontier admits that AMBT has disputed various charges since the November 2007 billing cycle, related to services provided pursuant to the Interconnection Agreement and tariffs on file with the Commission. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 10 of the Complaint.

COUNT ONE

11. Frontier incorporates the answers, denials, and averments of Paragraphs 1 through 10 of this Amended Answer as though fully restated and set forth herein.

12. Frontier admits that from time to time AMBT purchases certain wholesale services from Frontier pursuant to the Interconnection Agreement that involve AMBT submitting loop and port orders to Frontier. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 12 of the Complaint.

13. Frontier admits that it from time to time accepts certain loop and port orders submitted to it by AMBT. To the extent that paragraph 13 seeks to characterize Frontier's obligations under the Interconnection Agreement, Frontier denies that the characterization is complete and accurate. Further answering, Frontier states that such documents speak for themselves. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 13.

14. Frontier admits that for a customer to switch service from Frontier to AMBT, it is necessary for that customer to request service from AMBT and execute a letter of authority to transfer service. Frontier admits that in the course of a customer's switching service from Frontier to AMBT, AMBT from time to time submits a loop and port order to Frontier to switch

an end users account to AMBT. To the extent that paragraph 13 seeks to characterize Frontier's obligations under the Interconnection Agreement, Frontier denies that the characterization is complete and accurate. Further answering, Frontier states that such documents speak for themselves. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 14.

15. The Complaint fails to name specific customers, telephone numbers and accounts for which AMBT claims it submitted orders to Frontier. Consequently, Frontier lacks knowledge or information sufficient to form a belief as to the whether the allegations contained in Paragraph 15 are true and accurate. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 15.

16. The Complaint fails to name specific customers, telephone numbers and accounts for which AMBT claims it submitted orders to Frontier. Consequently, Frontier lacks knowledge or information sufficient to form a belief as to whether allegations contained in Paragraph 16 are true and accurate. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 16.

17. The Complaint fails to name specific customers, telephone numbers and accounts for which AMBT claims it submitted orders to Frontier. Consequently, Frontier lacks knowledge or information sufficient to form a belief as to whether allegations contained in Paragraph 17 are true and accurate. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 17.

18. The Complaint fails to name specific customers, telephone numbers and accounts for which AMBT claims it submitted orders to Frontier. Consequently, Frontier lacks knowledge or information sufficient to form a belief as to whether allegations contained in

Paragraph 18 are true and accurate. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 18.

19. Frontier denies the allegations of Paragraph 19 of the Complaint.

20. The Complaint fails to name specific customers, telephone numbers and accounts for which AMBT claims it submitted orders to Frontier. Consequently, Frontier lacks knowledge or information sufficient to form a belief as to whether allegations contained in Paragraph 20 are true and accurate. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 20.

21. Frontier denies the allegations of Paragraph 21 of the Complaint.

22. Frontier denies the allegations of Paragraph 22 of the Complaint.

23. Frontier admits that certain software issues previously existed that impacted AMBT related to loop and port order, but those issues were addressed. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 23.

24. Frontier denies the allegations of Paragraph 24 of the Complaint.

25. Frontier denies the allegations of Paragraph 25 of the Complaint.

26. Frontier admits that AMBT had discussions with Frontier personnel and Commission Staff regarding purported problems with loop and port orders. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 26.

27. Frontier denies the allegations of Paragraph 27 of the Complaint.

28. Frontier lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint.

29. Frontier denies the allegations of Paragraph 29 of the Complaint.

30. Frontier admits that the Complaint accurately quotes R.C. § 4905.22.

- 31. Frontier denies the allegations of Paragraph 31 of the Complaint.
- 32. Frontier denies the allegations of Paragraph 32 of the Complaint.
- 33. Frontier admits that the Complaint accurately quotes R.C. § 4905.35.
- 34. Frontier denies the allegations of Paragraph 34 of the Complaint.
- 35. Frontier denies the allegations of Paragraph 35 of the Complaint.

COUNT TWO

36. Frontier incorporates the answers, denials, and averments of Paragraphs 1 through 35 of this Amended Answer as though fully restated and set forth herein.

37. Frontier lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of the Complaint with respect to AMBT's total reconciliation payments for services under the Ohio Interconnection Agreement and services provided pursuant to tariffs on file with the Commission. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 37.

38. Frontier lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint with respect to payments posted to AMBT's accounts for services under the Interconnection Agreement and services provided pursuant to tariffs on file with the Commission. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 38.

39. Frontier denies the allegations of Paragraph 39 of the Complaint.

40. Frontier states that it is unable to understand what is meant by the allegations of Paragraph 40. Frontier denies that it fails to properly apply late fees for non-payment. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 40.

41. Frontier admits that Section 9.4 of the Interconnection Agreement contains the

language quoted in Paragraph 41 of the Complaint. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 41.

42. Frontier denies the allegations of Paragraph 42 of the Complaint.

COUNT THREE

43. Frontier incorporates the answers, denials, and averments of Paragraphs 1 through 42 of this Amended Answer as though fully restated and set forth herein.

44. Frontier admits undertaking certain transitions with respect to billing systems during 2011 and 2012. To the extent that Paragraph 41 seeks to characterize any such transitions, Frontier denies that the characterization is complete and accurate.

45. Frontier denies the allegations of Paragraph 45 of the Complaint.

46. Frontier admits that it has provided invoices in electronic format to AMBT. Frontier notes that Paragraph 46 of the Complaint does not identify the particular invoice allegedly produced in the incorrect format. Consequently, Frontier is without information sufficient to form a belief as to the truth of that allegation in Paragraph 46. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 46 of the Complaint.

47. Frontier states that it does not know what is meant by the phrase “invoices by AMBT” as it is used in Paragraph 47 of the Complaint. Further answering, Frontier states that Paragraph 47 of the Complaint fails to identify particular invoices or alleged errors or late fees contained therein. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 47 of the Complaint.

48. Frontier admits that AMBT has contacted Frontier with questions regarding certain invoices. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 48 of the Complaint.

49. Frontier denies the allegations of Paragraph 49 of the Complaint.

50. Frontier denies the allegations of Paragraph 50 of the Complaint.

51. Frontier denies the allegations of Paragraph 51 of the Complaint.

COUNT FOUR

52. Frontier incorporates the answers, denials, and averments of Paragraphs 1 through 51 of this Amended Answer as though fully restated and set forth herein.

53. Frontier notes that Paragraph 53 of the Complaint does not identify specific invoices or demands for payment. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 53 of the Complaint.

54. Frontier admits having had communications with AMBT regarding certain issues with respect to invoices and charges. Frontier notes that Count Four does not identify the specific charges at issue. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 54 of the Complaint.

55. Frontier admits to having had communications with AMBT regarding certain issues with respect to invoices and charges. Frontier notes that Paragraph 55 fails to identify specific disputes. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 55 of the Complaint.

56. Frontier admits to having had communications with AMBT regarding certain issues with respect to invoices and charges. Frontier notes that Paragraph 56 fails to identify specific disputes. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 56 of the Complaint.

57. Frontier notes that Paragraph 57 fails to identify specific invoices or charges. To the extent that any further answer is required, Frontier denies the allegations of Paragraph 57 of

the Complaint.

58. Frontier denies the allegations of Paragraph 58 of the Complaint.

59. Frontier admits that Section 9.4 of the Interconnection Agreement contains the language quoted in Paragraph 59 of the Complaint. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 59.

60. Frontier denies the allegations of Paragraph 60 of the Complaint.

COUNT FIVE

61. Frontier incorporates the answers, denials, and averments of Paragraphs 1 through 60 of this Amended Answer as though fully restated and set forth herein.

62. To the extent that Paragraph 62 seeks to characterize R.C. §4927.02 and the policies of the state of Ohio, Frontier denies that the characterization is complete and accurate, and respectfully refers the Commission to R.C. §4927.02 and the policies of the state of Ohio, which speak for themselves. To the extent any further answer is required, Frontier denies the remaining allegations of Paragraph 62.

63. Frontier denies the allegations of Paragraph 63 of the Complaint.

Frontier denies that Complainant American Broadband and Telecommunications Company is entitled to any of the relief requested on pages 11 and 12 of the Complaint.

B. AFFIRMATIVE DEFENSES

1. **No violation of R.C. §4905.22.** The Complaint fails to state grounds for a complaint against Frontier pursuant to §4905.22 because it fails to allege specific examples supported by documentation of the violations it alleges.

2. **No violation of R.C. §4905.35.** The Complaint fails to state grounds for a complaint against Frontier pursuant to §4905.35 because it fails to allege specific examples supported by documentation of the violations it alleges.

3. **No violation of the Interconnection Agreement.** The Complaint fails to state grounds for a complaint against Frontier for violating terms and conditions of the Interconnection Agreement in Ohio because it fails to allege specific examples supported by documentation of the violations it alleges.

4. **No violation of Frontier's tariffs.** The Complaint fails to state grounds for a complaint against Frontier for violating the terms and conditions of Frontier's tariffs on file with the Commission because it fails to allege specific examples supported by documentation of the violations it alleges.

5. **Requested relief has already been provided.** To the extent that the Complaint seeks certain credits for billing disputes, and other changes, Frontier has already provided such credits and made such changes.

6. **Lack of Jurisdiction.** AMBT's Complaint does not reference, cite or allege any violations or damages stemming from the Wholesale Advantage Services Agreement, dated January 1, 2005 and amended January 1, 2008 (the "Wholesale Advantage Agreement"), between Frontier, as the successor of Verizon Services Corp., and AMBT. Despite asserting no such allegations, to the extent that AMBT attempts to introduce any evidence or testimony regarding any alleged violations or damages stemming from the Wholesale Advantages Agreement, the Commission would lack jurisdiction over any such claims, as such claims are subject to a binding arbitration provision requiring binding arbitration before the American Arbitration Association. The arbitration provisions contained within the Wholesale Advantages

Agreement are enforceable under the Federal Arbitration Act, and, as such, are not proper for adjudication before the Commission.

7. **Mandatory Arbitration.** To the extent that AMBT attempts to introduce any evidence or testimony regarding any alleged violations or damages stemming from the Wholesale Advantages Agreement, any such claims are subject to a binding arbitration before the American Arbitration Association. The arbitration provisions contained within the Wholesale Advantages Agreement are enforceable under the Federal Arbitration Act, and, as such, are not proper for adjudication before the Commission.

8. **Waiver.** AMBT has waived its right to any of the relief requested in the Complaint by failing to timely notify Frontier of the claims set forth therein and/or by failing to timely and properly seek resolution thereof.

9. **Laches.** The claims set forth in the Complaint are barred by the equitable doctrine of laches insofar as Frontier has been prejudiced in its ability to defend these claims by Frontier's failure to present them in a timely manner.

10. **Lack of Jurisdiction.** To the extent that AMBT is asserting claims or allegations regarding service or invoices for services outside of Ohio, this Commission lacks jurisdiction.

11. **Limitations of Liability.** To the extent that AMBT claims monetary damages for services rendered under the Interconnection Agreement, Frontier is limited by the Limitation of Liability clauses, Section 25 of the Interconnection Agreement.

12. **Billing and Payment Disputes.** To the extent that AMBT claims monetary damages due to timely submitted invoices or correct invoice format, AMBT is limited by Section 9 of the Interconnection Agreement.

13. **AMBT's Material Breach.** AMBT's claims are barred by its own material

breaches of the Interconnection Agreement, including but not limited to the requirement that AMBT's payments were required to be transmitted by electronic funds transfer (EDI, ACH or Wire).

14. **Statue of Limitation.** AMBT's claims are barred by the applicable statute of limitations.

For all of the foregoing, Frontier requests that the Complaint filed by American Broadband and Telecommunications Company be dismissed with prejudice.

Respectfully submitted,

Dated: January 7, 2013

Frontier North Inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below, by electronic service and U.S. mail, this 7th day of January, 2013.

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Summary: Answer Amended Answer and Affirmative Defenses of Frontier North Inc.
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