

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT AND  
INVESTIGATION OF STAFF OF THE PUBLIC  
UTILITIES COMMISSION OF OHIO,

COMPLAINANT,

CASE NO. 19-1582-TP-COC

v.

FRONTIER NORTH, INC.,

RESPONDENT.

## ENTRY

Entered in the Journal on February 21, 2020

{¶ 1} R.C. 4927.21 states that any person or the Commission may initiate a complaint against a telephone company alleging that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any provisions of R.C. 4927.01 to 4927.20 or a rule or order adopted or issued under those sections.

{¶ 2} Frontier North, Inc. (Frontier or Company) is a telephone company pursuant to R.C. 4905.03 and 4927.01 and is, therefore, subject to the Commission's jurisdiction.

{¶ 3} On August 14, 2019, the Commission initiated this case based upon an August 13, 2019 Commission Staff (Staff) letter outlining a number of alleged violations of the Ohio Revised Code and the Ohio Administrative Code by Frontier regarding the basic local exchange service (BLES) being provided to its customers throughout Ohio.<sup>1</sup> Specifically, the Staff letter outlines issues concerning extended outage restoral timeframes and repeat trouble tickets that would seriously hamper 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

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<sup>1</sup> The Commission directed its docketing division to file a copy of the August 13, 2019 Staff letter in the instant docket.

a complaint in this matter as soon as practicable and directed Frontier to file an answer to the complaint within 20 days of service of the complaint.

{¶ 4} Staff filed its complaint on August 14, 2019.

{¶ 5} 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 believed that it is in material compliance with Ohio law, the Company indicated that it has recently undertaken numerous actions to improve the service it is providing to customers, especially BLES customers that are out of service.

{¶ 6} By Entry issued January 14, 2020, the attorney examiner established the procedural schedule for this matter including a hearing to begin on April 1, 2020, at 10:00 a.m. at the offices of the Commission and an intervention deadline of January 27, 2020. The January 14, 2020 Entry also granted intervention to the Ohio Consumers' Counsel (OCC).

{¶ 7} On February 4, 2020, the Communications Workers of America, AFL-CIO (CWA) filed a motion for leave to intervene in this proceeding pursuant to R.C. 4903.221(A)(2) and (B). CWA requested intervention to provide the Commission with pertinent fact witnesses, including service and installation employees, with direct knowledge of issues identified by the Commission for investigation in this matter.

{¶ 8} By Entry dated February 12, 2020, the attorney examiner, pursuant to Ohio Adm.Code 4901-1-12(B), directed that any memorandum contra to CWA's motion for leave to intervene be filed in the docket by 12 p.m. on February 18, 2020 and any reply be filed by 12 p.m. on February 21, 2020.

{¶ 9} On February 18, 2020, Frontier filed a memorandum contra to CWA's February 4, 2020 motion for leave to intervene. Frontier explains that CWA has not demonstrated "good cause" pursuant to R.C. 4903.221 or any "extraordinary circumstances"

pursuant to Ohio Adm.Code 4901-1-11(F) warranting intervention. According to Frontier, though CWA states it was not in a position by January 27, 2020 to identify witnesses with pertinent, firsthand knowledge of issues under review in this matter, its own public comment, filed on the docket on October 24, 2019, belies this contention. Pointing to the public comment, Frontier notes it was signed by eight individuals, all of whom represented that they were Presidents of Local CWA chapters in Ohio with day-to-day experience with CWA's business decisions. Consequently, Frontier believes CWA was in an adequate position to timely intervene, but failed to do so.

{¶ 10} Further Frontier believes that CWA's late intervention will result in undue delay and prejudice. Frontier states that it has diligently participated in settlement discussions with Staff and OCC and these efforts are likely to result in a stipulation. Frontier argues that CWA's interest in intervention is to achieve ends it did not achieve in appropriate, collective bargaining forums. As such, Frontier believes that if CWA permitted to intervene, undue delay and prejudice will certainly follow. Accordingly, Frontier requests the Commission to deny CWA's late motion to intervene.

{¶ 11} Finally, on February 19, 2019, CWA filed a reply to Frontier's memorandum contra. CWA reiterates that it can provide the Commission with pertinent factual information as to the service issues identified by the Commission, including the testimony of service and installation employees with direct knowledge of such issues. CWA states the proposed testimony is not expected to last beyond half of a business day and as such, no undue delay will occur. In the event the Commission declines full intervention, CWA urges the Commission to grant it limited intervention pursuant to Ohio Adm.Code 4901-1-11(D)(1).

{¶ 12} Upon review, the attorney examiner finds that CWA's motion for leave to intervene should be denied. R.C. 4903.221(B)(1)-(4) and Ohio Adm.Code 4901-1-11(B)(1)-(4) state that the Commission should consider the following criteria with regard to motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

{¶ 13} We find that here, CWA has failed to satisfy the first, second, and fourth criteria identified above. CWA, through its filings, has not established the nature and extent of its interest. In fact, CWA merely states that its members have factual information about service issues. However, CWA fails to explain how its interest is real and direct with regard to the factual allegations contained within the complaint. Further, CWA also does not advance a legal position that relates to the merits of this proceeding. Next, CWA attempts to argue that allowing it to intervene will provide the Commission with valuable insight into this investigation. However, it is not clear if this will lead to the full development and equitable resolution of the factual issues because the Commission may be able to obtain information regarding outages through other sources, namely Frontier's customers. As such, taking into consideration the criteria for intervention set forth in R.C. 4903.221(B) and Ohio Adm.Code 4901-1-11(B), we find that CWA has not demonstrated that it has a real and substantial interest in this proceeding.

{¶ 14} Moreover, as Frontier has noted, we find that CWA has not demonstrated, either in its initial motion or its reply, good cause pursuant to R.C. 4903.221(A)(2) or any extraordinary circumstances pursuant to Ohio Adm.Code 4901-1-11(F) to permit the Commission to grant intervention. CWA has been aware of this proceeding since at least October 24, 2019, when it filed a public comment in the docket for this proceeding. Review of the public comment indicates CWA was prepared, at that time, to provide employee testimony to the Commission. However, CWA did not intervene timely by January 27, 2020.

Furthermore, in its motion for leave, CWA has failed to identify the circumstances pursuant to R.C. 4903.221(A)(2) or Ohio Adm.Code 4901-1-11(F) which prevented it from seeking timely intervention. As such, we find that CWA's motion for leave to intervene should be denied.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That CWA's February 12, 2020 motion for leave to intervene be denied. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Anna Sanyal

By: Anna Sanyal  
Attorney Examiner

AS/kck

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

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Summary: Attorney Examiner Entry Denying CWA's motion for leave to intervene.  
electronically filed by Mrs. Kelli C King on behalf of Anna Sanyal, Attorney Examiner, Public  
Utilities Commission of Ohio