

# THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMPLAINANT,

CASE NO. 19-1582-TP-COC

v.

FRONTIER NORTH, INC.

RESPONDENT.

## FINDING AND ORDER

Entered in the Journal on August 12, 2020

### I. SUMMARY

{¶ 1} The Commission finds that the stipulation and recommendation entered into by Staff and Frontier North, Inc. is reasonable and should be approved.

### II. DISCUSSION

{¶ 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} 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 a violation of or in noncompliance with any provisions of R.C. 4927.01 to 4927.20 or a rule or order adopted or issued under those sections.

{¶ 4} 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 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 9-1-1 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 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.

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

{¶ 6} 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.

{¶ 7} 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, and an intervention deadline of January 27, 2020. The January 14, 2020 Entry also granted intervention to the Ohio Consumers' Counsel (OCC).

{¶ 8} By Entry dated February 21, 2020, the attorney examiner denied a motion for leave to intervene in this proceeding, which was filed by the Communications Workers of America, AFL-CIO (CWA). The Commission found that CWA did not timely file for intervention and failed to demonstrate good cause pursuant to R.C. 4903.221(A)(2) or any

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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.

extraordinary circumstances pursuant to Ohio Adm.Code 4901-1-11(F) to permit the Commission to grant intervention.

{¶ 9} On February 28, 2020, OCC filed a motion to extend the procedural schedule and requested expedited consideration pursuant to Ohio Adm.Code 4901-1-12(C). In the motion, OCC requested that testimony be due after the filing of a settlement on March 25, 2020, and a three-week extension of both the testimony due date and the hearing date.

{¶ 10} By Entry dated March 6, 2020, the attorney examiner granted OCC's motion, directed parties to file testimony by April 15, 2020, and set dates for a telephonic prehearing conference and a hearing.

{¶ 11} On March 23, 2020, Frontier filed a motion to extend the procedural schedule. In the motion, Frontier noted that, on March 9, 2020, the Governor of the State of Ohio declared a State of Emergency with Executive Order 2020-01D to protect the well-being of Ohio citizens from the dangerous effects of COVID-19. Because of the ongoing COVID-19 pandemic, Frontier requested that the Commission extend the remaining deadlines by 90 days.

{¶ 12} Pursuant to the Entry dated March 26, 2020, the attorney examiner granted Frontier's motion to extend the procedural schedule. Consequently, the attorney examiner directed parties to file a stipulation, if any, by June 24, 2020, and testimony by July 8, 2020. A telephonic prehearing conference was scheduled to take place on July 15, 2020. Further, the hearing in this matter was rescheduled to begin on July 20, 2020.

{¶ 13} On April 14, 2020, Frontier filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§101-1532.

{¶ 14} On May 26, 2020, the United States Bankruptcy Court for the Southern District of New York approved an *Order Authorizing and Establishing Procedures for the Compromise and Settlement of De Minimis Claims* (Settlement Approval Order), Docket No. 386, whereby the Bankruptcy Court authorized Frontier to settle certain claims and causes brought by or

against it in a judicial, administrative, arbitral, or other action or proceeding subject to the requirements specified in the Settlement Approval Order.

{¶ 15} On June 24, 2020, Staff and Frontier (jointly, Signatory Parties) filed a Stipulation and Recommendation (Stipulation) in the docket for this proceeding, which proposes to resolve all issues in this case.

{¶ 16} On July 20, 2020, Staff and Frontier filed a joint motion to request the admission of documents in order that all amended testimony and the Stipulation be admitted into evidence. Specifically, the parties request that the Stipulation be admitted as Joint Ex. 1, Robert Fadley's Amended testimony be admitted as Staff Ex. 1, Robert Stewart's Testimony be admitted as Frontier Ex. 1, and Robert Stewart's Supplemental Testimony be admitted as Frontier Ex. 2.

{¶ 17} Staff and Frontier also request that the in-person hearing be waived and replaced by a Commission review of the prefiled testimonies and the Stipulation. In support of their request, Staff and Frontier note that Columbus, Ohio remains under the Governor's and Mayor's orders to socially distance and wear masks due to COVID-19. Additionally, Staff and Frontier note that the Stipulation is unopposed.

{¶ 18} Upon a review of the arguments raised, the Commission determines that the joint motion to admit documents into evidence and to waive the in-person hearing is reasonable and should be granted.

#### **A. *Stipulation***

{¶ 19} Ohio Adm.Code 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding.

{¶ 20} Although OCC is not a signatory to the Stipulation, it filed a letter in this docket on June 24, 2020. According to OCC, "[g]iven continuing concerns regarding the service quality that Frontier provides to residential customers, the Consumers' Counsel is

not signing the settlement.” However, the terms of the settlement require Frontier to take ongoing corrective actions to address important customer service quality issues and, for this reason, OCC is not opposing the settlement.

{¶ 21} The Signatory Parties assert that the primary objective of the Stipulation is to resolve the violations and service issues identified in this proceeding and to implement process and operational changes to prospectively improve the provision of service to Ohio consumers. The Signatory Parties state that they are represented by capable and knowledgeable counsel and have engaged in lengthy, serious, arm’s-length bargaining in an effort to reach a mutually acceptable resolution that would address the concerns in this proceeding. According to the Signatory Parties, the Stipulation is supported by adequate data and information and, as a package, 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 R.C. Title 49.

{¶ 22} According to the procedures set forth in the Settlement Approval Order, Frontier served a notice on its creditors regarding its entry into the Stipulation. Under the Settlement Approval Order, objections to the Stipulation were required to be filed with the Bankruptcy Court within 14 calendar days of the Notice. Pursuant to its filing of July 16, 2020, Frontier indicated that no objections to the Stipulation were filed with the Bankruptcy Court and that “[a]ccording to the Settlement Approval Order, Frontier is permitted to enter into the Stipulation and the Stipulation ‘will be binding on [Frontier’s] estate without notice by [Frontier] to any third party or further action by [the Bankruptcy] Court.’”

{¶ 23} The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- (1) Frontier has already implemented changes to its processes for handling its installation and repair load in a timely manner. It has re-prioritized these processes so that repair of BLES and non-BLES tickets take

precedence over installation and Internet requests. Repair tickets not completed on a given day are prioritized for the next day. Frontier commits to 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) Frontier will make capital expenditures, at a minimum, of \$25 million in calendar years 2021, 2022, and 2023, which shall be in addition to Connect America Fund Phase II capital expenditures.
- (3) As part of the capital investment commitment, Frontier will spend a minimum of \$1,000,000 per annum dedicated exclusively to repairing defective plant and battery replacements.
- (4) Frontier shall provide a written report of its capital expenditures on a quarterly basis to Staff and OCC, commencing on the first reporting quarter subsequent to the required approvals.
- (5) Staff may conduct periodic plant and field investigations to evaluate capital expenditure improvements, as well as defective plant and battery replacements.
- (6) 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. 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.
- (7) Frontier must decrease 9-1-1 outages consistent with the terms of the Stipulation.

- (8) In addition to the commitment to implement actions intended to decrease 9-1-1 outages, Frontier shall effectuate and complete, within three years from the effective date of the Stipulation, a 9-1-1 Plan to improve service and reduce outages to Frontier's Public Service Answering Points that Frontier serves. The 9-1-1 Plan shall be submitted to Staff and OCC for review within 75 days of the date of the required approvals of this Stipulation.
- (9) For single-line residential and business telephone customers, Frontier must satisfy specified minimum repair and service restoral criteria for out-of-service, service-affecting, and repeat repair tickets. Consistent with the Stipulation, failure to satisfy the specified metrics will result in the development of a remedial plan and the possibility of additional capital investment or operating expense depending on the period of time that the criteria were missed.
- (10) If Frontier does not meet certain metrics for two consecutive quarters, Frontier will commit an additional \$150,000 in capital investment or operating expense for every year remaining in the term.
- (11) Frontier shall establish an annual program for the education of its customers within 90 days of the date of the required approvals of this Stipulation. The education program shall include, but will not be limited to, informing customers about BLES and their rights regarding service-related issues.
- (12) Frontier shall discontinue the practice of attempting to sell maintenance plans and other services prior to resolving the customer's issue and/or completed scheduling of the repair.

- (13) Frontier shall provide customers reporting a service problem with a description of the Network Interface Device (NID) and an explanation of how to use the NID to test/isolate inside service problems.
- (14) Frontier shall begin to issue out-of-service credits for telephone service not restored within 72 hours of the outage being reported. The credit shall be provided to all customers having a single-line residence or business telephone service, even if such customers subscribe to other Frontier services. The credit will be equal to one month of recurring charges for the single-line service only.
- (15) Frontier intends to comply with the terms of the Stipulation notwithstanding its April 14, 2020 restructuring filing pursuant to Chapter 11 of the United States Bankruptcy Code. The Stipulation binds Frontier's successors and assignees. The Stipulation is subject to approval by both the Commission and the Bankruptcy Court, pursuant to the Settlement Approval Order. If for any reason this Stipulation is not approved by the Bankruptcy Court pursuant to the Settlement Approval Order, the Stipulation is null and void.

(Stipulation at 5-14; Frontier Ex. 2 at 2.)

**B. Commission Conclusion**

{¶ 24} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 25} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas*



*& Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 26} Frontier witness Robert Stewart testified that the Stipulation is a product of serious bargaining among knowledgeable parties and that all of the negotiations were at arm's length. According to witness Stewart, all of the parties were represented by counsel, most if not all of whom have years of experience in regulatory matters before the Commission and who possess extensive information. (Frontier Ex. 1 at 6.) Further, Mr. Stewart and Staff witness Robert Fadley testified that the Stipulation resolves all issues between the parties (Frontier Ex. 1 at 3; Staff Ex. 1 at 8).

{¶ 27} Upon review, we find that the first prong of the test is met.

{¶ 28} With regard to the second criterion, Mr. Stewart explained that in his opinion, the Stipulation benefits the public interest by avoiding litigation and delay in the timely implementation of the benefits to customers. Additionally, Mr. Stewart highlighted that the Stipulation provides a guaranteed minimum capital expenditure for 2021 through 2023

along with five years of service quality metrics, reporting, and penalties for failing to meet metrics to ensure that Frontier's telephone customers receive quality service. (Frontier Ex. 2 at 2.)

{¶ 29} Staff witness Fadley pointed out that, pursuant to the Stipulation, Staff may conduct audits and any annual shortfalls will be assessed in the form of a forfeiture. He also noted that as part of the commitment of a minimum \$25 million expenditure for 2021, 2022, and 2023, Frontier will invest \$1 million in defective plant and battery replacements in an effort to improve the service that is provided to its customers. Mr. Fadley focused on Frontier's commitment to meet certain minimum service standards over the next five years along with the resulting forfeitures if specified metrics are not satisfied. Mr. Fadley discussed Frontier's commitment to develop a plan to decrease 9-1-1 outages in Ohio. He highlighted that Frontier will inform all customers of the circumstances that would require it to apply credits when the customer is out-of-service for more than 72 hours. (Staff Ex. 1 at 4-7.)

{¶ 30} Upon review, we find that the second prong of the test is met.

{¶ 31} Finally, Mr. Stewart and Mr. Fadley testified that the Stipulation does not violate any important regulatory principle or practice (Frontier Ex. 1 at 7; Staff Ex. 1 at 8). Additionally, Mr. Stewart stated that the Stipulation encourages compromise as an alternative to litigation and allows Frontier to address the issues raised in the complaint in a way that will benefit Ohio customers (Frontier Ex. 1 at 7; Frontier Ex. 2 at 2).

{¶ 32} The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice, and, therefore, the Stipulation meets the third criterion.

{¶ 33} Accordingly, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

### III. ORDER

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That the joint motion to admit documents into evidence and to waive the in-person hearing be granted. It is, further,

{¶ 36} ORDERED, That the Stipulation filed in this proceeding be approved and adopted in its entirety. It is, further,

{¶ 37} ORDERED, That Frontier, its successors, and assignees take all necessary steps to carry out the terms of the Stipulation and this Finding and Order. It is, further,

{¶ 38} ORDERED, That Frontier file evidence of any action taken by the Bankruptcy Court relative to the Stipulation. It is, further,

{¶ 39} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation. It is, further,

{¶ 40} ORDERED, That a copy of this Finding and Order be served upon each party of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JSA/kck

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Summary: Finding & Order finding that the stipulation and recommendation entered into by Staff and Frontier North, Inc. is reasonable and should be approved. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio