

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of a Commission Inquiry
into the Service Quality, Customer
Service, and Billing Practices of
Frontier Communications

**STATEMENT IN SUPPORT OF
PROPOSED STIPULATION OF
SETTLEMENT**

Introduction

On February 15, 2019, the Minnesota Public Utilities Commission issued its ORDER EXTENDING DEADLINE FOR FRONTIER'S RESPONSE AND PROPOSING MEDIATION In this docket.¹ Frontier Communications of Minnesota, Inc.'s and its affiliate, Citizens Telecommunications of MN, LLC's (collectively, Frontier), the Minnesota Department of Commerce (Department), and the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division (OAG) agreed to the Commission's proposal for mediation. This matter was then referred to the Minnesota Office of Administrative Hearings where I was assigned to serve as the mediator.

I have met with these parties many times since mediation efforts began and they have met separately several times. I offer this Statement to explain to the Commission why the mediation took over five months to develop the proposal that the Department and Frontier have submitted. I am also providing this Statement to explain my reasons for finding the proposed Stipulation of Settlement Pursuant to Minn. Stat. § 237.076 [Stipulation of Settlement] reasonable and in the public interest.²

Background

On April 26, 2018, the Minnesota Public Utilities Commission (Commission), issued its ORDER INITIATING INVESTIGATION AND REFERRING MATTER FOR PUBLIC HEARING.³ I was the Administrative Law Judge assigned to conduct the public hearings.⁴ I held seven public hearings in five different locations within Frontier's Minnesota service area. The public hearings were well attended. On November 16, 2018, I submitted a report summarizing the comments made at the hearings.⁵

¹ (eDocket No. 20192-150322-01).

² The OAG participated in all of the mediation sessions but has not joined in the Stipulation of Settlement.

³ Docket No. P-407, 405/CI-18-122 (Apr. 26, 2018) (eDocket No. 20184-142397-02).

⁴ Minn. Rules 1400.5950 subpart 3A (2017).

⁵ REPORT ON PUBLIC HEARINGS (Nov. 18, 2018) (eDocket No. 201811-147899-01) [*ALJ Report*].

The great majority of speakers spoke of problems they had experienced with Frontier's services, including both its internet access services and its telephone services.

Following the *ALJ Report*, the Department issued its 133-page Report of the Minnesota Department of Commerce [*Department Report*] on January 4, 2019. In addition to the report itself, the Department submitted numerous attachments. The Department Report considered the testimony given at the public hearings together with "[o]ver a thousand consumer complaints and statements [that] were submitted in this investigation." The Department Report was also informed by Frontier's responses to Department Information Requests [IRs].⁶ The Department Report alleged that Frontier had violated numerous state laws and regulations governing telephone service.

On January 11, 2019, Frontier, with the concurrence of the Department and OAG, filed a Request for Extension of Time to File Response by Frontier Communications.⁷ Frontier disagreed with the Department Report's allegations. Frontier contended that its records demonstrated that its telephone service is highly reliable in contrast to the Department's conclusions.⁸ Frontier pointed to its compliance with the service quality standards set out in its AFOR (Alternative Form of Regulation) agreements (one for each Frontier affiliate).⁹ Frontier explained that:

the volume and complexity of the Department Report make it impossible to provide even a sufficient and meaningful initial response within 30 days. The Department Report includes 133 single-space pages of text plus over 300 pages of attachments. It addresses no less than 30 topics and makes no less than 130 Recommendations, many of which have multiple subparts.¹⁰

On January 18, 2019, Frontier submitted a letter to the Commission's Executive Secretary responding to the Decision Options proposed in Commission staff's briefing papers.¹¹ In this letter, Frontier indicated it anticipated requesting that the Commission propose mediation in Frontier's response to the *Department Report*.

⁶ Report of the Minnesota Department of Commerce at 1 (eDocket No. 20191-148899-01) [*Department Report*]. The Department Report was informed by Frontier's responses to 72 Information Requests. Request for Extension of Time to File Response by Frontier Communications at 2 (eDocket No. 20191-149118-01).

⁷ Request for Extension of time to File Response by Frontier Communications at 2 (Jan. 11, 2019) (eDocket No. 20191-149118-01).

⁸ *Id.* at 1.

⁹ *Id.* at 10-17.

¹⁰ *Id.* at 2.

¹¹ Letter from Richard J. Johnson, Moss and Barnett, to Daniel Wolf, Executive Secretary dated Jan. 18, 2019 (eDocket No. 20191-149380-01).

On February 14, 2019, the Commission requested mediation services from the Office of Administration Hearings.¹² On February 15, 2019, the Commission granted Frontier's request for an extension of time to respond to the *Department Report*, subject to a requirement to submit such additional data as the Executive may Secretary request, and to make a compliance filing "outlining the remedies it offers to customers consistent with Minnesota state law, including customers identified in Frontier's records as having a medical condition in the household."¹³ Shortly thereafter, Chief Judge Pust assigned me to conduct the mediation.

On March 4, 2019, Frontier submitted its Compliance Filing, outlining the remedies under Minnesota Statutes and Rules for seven types of service problems.¹⁴

The Office of the Attorney General – Residential Utilities and Antitrust Division (OAG) submitted comments on the Department Report on March 5, 2019.¹⁵ The OAG agreed with the Department Report. Both agencies concluded that Frontier was failing to provide its Minnesota customers adequate telephone service. The agencies urged the Commission act to resolve the many outstanding consumer complaints and to ensure that Frontier's customers received adequate telephone service in the future.

Frontier filed its 73-page Response to the Report of the Department of Commerce on March 5, 2019.¹⁶ Frontier's response reasserted Frontier's overall compliance with the service quality standards in its AFOR agreements and identified more specifically what Frontier considered to be very substantial defects in the facts and analysis presented in the Department Report. Frontier asserted that the Department Report relied extensively on unsubstantiated anecdotal evidence for many of its conclusions, that the Department's over-generalizations turned telephone service molehills into mountains, and that the Department made numerous unreasonable interpretations of service quality standards.¹⁷ Frontier maintained that it did provide adequate and reliable telephone service to the vast majority of its customers and had been in substantial compliance with the conditions of its AFORs during their terms.¹⁸ Because of the many material facts in dispute between the Department Report and Frontier's own performance data,

¹² Letter from Daniel P. Wolf, Executive Secretary, to Chief Judge Pust dated Feb. 14, 2019 (eDocket No. 20192-150282-01).

¹³ ORDER EXTENDING DEADLINE FOR FRONTIER'S RESPONSE AND PROPOSING MEDIATION (Feb. 15, 2019) at 2 (Feb. 15, 2019) (eDocket No. 20192-150322-01).

¹⁴ Compliance Filing (Mar. 4, 2019) (eDocket No. 20193-150830-01).

¹⁵ Reply Comments of the Office of the Attorney General (Mar. 5, 2019) (eDocket No. 20193-150874-01).

¹⁶ (eDocket No. 20193-150871-03) [Frontier Response].

¹⁷ *Id.* Frontier's response accords with the criticisms of the Department's interpretations of several regulations made by the MTA (set out in footnote 28 *infra*).

¹⁸ *Frontier Response* at 10-17.

Frontier asserted that a contested case proceeding would be necessary unless the parties could enter into a settlement.¹⁹

Frontier stated that it had arranged for experienced customer service representatives to attend the public hearings and assist customers in resolving their outstanding issues.²⁰ Frontier had “implemented procedures to systematically direct calls from Minnesota customers to a select group of experienced service representatives,” and prioritize telephone repair service troubles.²¹ Frontier also took steps better inform its customers of “the steps they can take to be eligible for Frontier’s medical priority services.”²² Frontier implemented additional training for its customer service representatives.²³ As settlement negotiations commenced, Frontier continued to implement these measures and has also been reporting to the Commission the status of customer complaints received from the Commission’s Consumer Affairs Office (CAO).²⁴

The Minnesota Telecom Alliance (MTA) filed comments on March 5, 2019.²⁵ While not a party to this proceeding, the MTA expressed its concern that in resolving this matter, the Commission could adopt several interpretations of Minnesota rules relating to telecommunications advanced in the *Department Report* with which the MTA disagreed. In subsequent proceedings, parties might invoke these interpretations as precedential. The MTA regarded this as unfair to all of the entities potentially affected by these interpretations because they had no notice or opportunity to offer the Commission their contrasting views of the rules.²⁶

¹⁹ *Id.* at 26-34.

²⁰ *Id.* at 6-9.

²¹ *Frontier Response* at 3.

²² *Id.*

²³ *Id.* at 7.

²⁴ *See, e.g.*, Letter from Scott Bohler, Manager, Government and External Affairs to Mr. Wolf, Executive Secretary dated July 1, 2019 (reporting on status of complaints received by the CAO during June. (eDocket No. 20197-154036-01).

²⁵ Minnesota Telecom Alliance Comments (Mar. 6, 2019) (eDocket No. 20193-150853-01).

²⁶ *Id.* at 1. Specifically, the MTA asserted that the Department Report offered overly expansive interpretations of a number of Minnesota rules, specifically:

1. Obligation to inform Commission of service disruptions to a substantial number of customers (Minn. R. 7810.0600) – The Department suggests that the obligation applies to an outage that involved 38 customers (Department Report, 43).
2. Complaints – The Department advocates that any time a customer expresses dissatisfaction, it should be treated as a complaint thereby imposing record- keeping, tracking and customer contact obligations under Minn. R. 7810.1100, 1200 and 5200 (Department Report, 40-41; 52-55).
3. Out of Service 24 Hours – The Department Report suggests that Minn. R. 7810.3800 imposes requirements related to preventing emergency situations rather than responding to such events.
4. Obligation to furnish a cell phone or satellite phone for outages – The Department broadens Minn. R. 7810.5800 to impose an obligation to provide a mobile phone in unplanned outages (Department Report, 23, 108, 111).

The Mediation

I was appointed to mediate this matter on February 17 and contacted the parties with all agreeing to meet on February 21, 2019. The Department provided an 83-page issues matrix to Frontier and the OAG on March 4, 2019. The parties met on March 15 to begin discussions.²⁷ Frontier then provided a proposal for a settlement framework on March 19, 2019 which the parties met to discuss on March 21. I was unavailable for meetings March 28 to April 11. Another mediation session was held on April 12. On April 13, the Department circulated another draft revision.

Between spring school breaks and the Easter weekend, the parties and I were unable to meet again until May 6, 2019. Following that session, Frontier revised the draft proposal and circulated it on May 13, 2019. The Department responded to it on May 24. Another mediation session was held parties on May 29. Frontier then prepared another redline and sent it to others on June 5 and a mediation session was convened the following day. After the June 6 meeting, Frontier circulated another revision of the draft proposal on June 11. A mediation session was held on June 13 to discuss it. The Department took the draft settlement document and its redline was circulated on June 21. The parties held a conference call on June 26 and met again on July 2 after which the Department circulated another revision of the draft settlement proposal on July 10. The parties met again for a mediation session on July 16. The parties held a telephone conference occurred without my participation on July 23. On July 24, a final mediation session was conducted. The Department and Frontier subsequently reached agreement on the remaining open issues and submitted the Stipulation of Settlement on August 2, 2019.

Three times the parties have requested, and been granted, additional time to develop a settlement proposal for the Commission's consideration.²⁸ The Department and Frontier were diligent in making and responding to proposals. From my vantage point, the length of the mediation was principally due to the difficulty of working out acceptable and practical resolutions of issues raised in the investigation.

The Commission should not underestimate the time necessary to arrive at practical solutions to the many issues addressed in the Stipulation of Settlement. To arrive at mutually acceptable solutions, both the Department and Frontier had

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5. Prioritization – The Department suggests that prioritization of technician time constitutes discrimination (Department Report, 130-131). *Id.* at 2.

²⁷ I attended all but three of the many mediation meetings. The meetings were held both in-person and by telephone.

²⁸ *Notice of Extended Comment Period and Request for Additional Information* (Mar. 27, 2019) (eDockets No. 20193-151437-01); *Notice of Second Extended Comment Period* (May 9, 2019) (eDockets No. 20195-152818-01); *Notice of Comment Period* (June 25, 2019) (eDockets No. 20196-153828-01).

to carefully consider each other's objections to proposals and creatively respond. This back and forth process continued without let up throughout the mediation.

In the course of the mediation, the initial draft settlement proposal grew from 15 pages to 29. The Commission will note that the Stipulation of Settlement is a complex document that requires much of Frontier: assignment of highly skilled and experienced customer service personnel to Minnesota telephone service calls; remedies for past and future violations of telephone service standards; numerous reporting obligations which will shed light on important dimensions of customer service (answer times, billing, installation, repair, restoration of service, medical emergency assistance, outside plant maintenance, etc.).

I urge that the Commission not take the parties to task for taking five months to develop their proposed settlement. The Stipulation of Settlement covers an extraordinarily wide range of specific commitments by Frontier. The breadth and complexity of the Stipulation of Settlement required very substantial efforts by the settling parties and those efforts required significant time.

Support for the Stipulation of Settlement

To my knowledge, it is not common practice for mediators to issue statements in support of a settlement proposal. Nor has the Commission requested my opinion of the Stipulation of Settlement. I offer it because it may be of some value to the Commission in light of my background and my prior participation in this investigation.

As an Assistant Attorney General from 1996 through 1999, I represented what was then the Department of Public Service, since merged into the Department of Commerce, in many telecommunication regulatory matters. From 2000 through 2011, I served as executive general counsel for Eschelon Telecom and subsequently for its acquirer, Integra Telecom. In that capacity, I was responsible for regulatory compliance in the fourteen states, which included Minnesota. In Minnesota, we conducted both competitive local exchange carrier operations as well as operated an incumbent local exchange carrier, the Scott-Rice Telephone Company.²⁹ Thus, I have been employed as counsel for a regulator as well as for a regulated entity. Consequently, I have some familiarity the kinds of service issues presented in this docket and with the parameters within which the parties negotiated this settlement.

²⁹ In the interest of full disclosure, I have had professional relationships with the parties and with several of the participants in the mediation sessions. I worked with Mr. Doyle of the Department when I was an Assistant Attorney General. Ms. Bonnie Johnson of the Department was a member of the legal and regulatory department I headed at Eschelon Telecom and then at Integra Telecom. Mr. Rick Johnson's firm of Moss & Barnett, and then partner Commissioner Lipschultz, represented both Eschelon and Integra Telecom in a number of matters before this Commission. Both Eschelon Telecom and Integra Telecom were wholesale customers of Frontier in several states, including Minnesota.

In addition to conducting the seven public hearings and preparing the ALJ REPORT, I have read the pleadings and other filings of the parties and many of the public comments filed in this docket. As the conductor of the public hearings, I listened to many people speak of receiving poor service from Frontier. It would be difficult for any person exposed to the distress of numerous Frontier customers to be indifferent to their experiences. The public hearings and the public comments were affecting. Like the parties, I too believe the Stipulation of Settlement is a fair and reasonable way to deal with the multitude of service quality issues raised by Frontier's customers in this proceeding, and the sooner the Commission reviews and approves the proposal, the better for Frontier's customers.

The alternative to the Stipulation of Settlement is a contested case. In my view, the parties' resources are better directed to implementing the Stipulation of Settlement, thereby providing customer remedies and improving service, than to litigating. A contested case would undoubtedly be a prolonged and expensive undertaking.

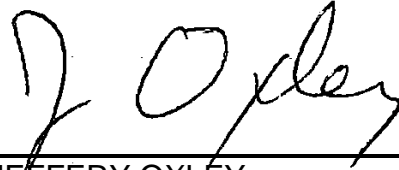
I encourage the Commission to approve the Stipulation of Settlement as the most expeditious way to: (1) provide Frontier's customers with remedies for inadequate telephone service they experienced under the most recent AFORs commenced (March 1, 2015 for Frontier Communications of Minnesota, Inc. and November 1, 2015 for Citizens Telecommunications of MN, LLC.) and for one remedy for claims of inadequate telephone service arising since January 1, 2017, which are not contemplated by the AFORs but are instead set out in Minnesota rules;³⁰ (2) provide specific remedies for poor service until the conclusion of the Stipulation of Settlement's term; and (3) establish detailed and comprehensive reporting requirements and performance standards to provide improved visibility into Frontier's telephone service quality and ensure good service quality going forward. For these reasons, the Stipulation of Settlement is reasonable and in the public interest.

³⁰ In all cases, customers who have already received the required remedy for a valid claim of poor telephone service are not eligible for an additional remedy for that same claim.

Conclusion

I respectfully recommend that the Commission approve the Stipulation of Settlement.

Dated: August 2, 2019

A handwritten signature in black ink, appearing to read "J Oxley". The signature is written in a cursive style with a large "J" and "O".

JEFFERY OXLEY
Administrative Law Judge

August 2, 2019

See Attached Service List

Re: *In the Matter of the Mediation of Frontier Service Quality*

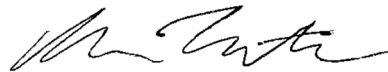
**OAH 19-2500-35946
MPUC P-407, 405/CI-18-122**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **STATEMENT IN SUPPORT OF PROPOSED STIPULATION OF SETTLEMENT** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7857, ian.lewenstein@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



IAN LEWENSTEIN
Legal Assistant

Enclosure

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Mediation of Frontier Service Quality	OAH Docket No.: 19-2500-35946
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Ian Lewenstein certifies that on August 2, 2019, he served the true and correct **STATEMENT IN SUPPORT OF PROPOSED STIPULATION OF SETTLEMENT** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No
Brent	Christensen	bchristensen@mnta.org	Minnesota Telecom Alliance	1000 Westgate Drive, Ste 252 St. Paul, MN 55117	Electronic Service	No
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes
Ron	Elwood	relwood@mnlsap.org	Mid-Minnesota Legal Aid	2324 University Ave Ste 101 Saint Paul, MN 55114	Electronic Service	No
Shannon	Heim	shannon.heim@lawmoss.com	Moss & Barnett A Professional	150 S. 5th Street, Suite	Electronic Service	No

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			Association	1200 Minneapolis, MN 55402		
Katherine	Hinderlie	katherine.hinderlie@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota St Suite 1800 St. Paul, MN 55101- 2134	Electronic Service	No
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Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	No
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