

STATE OF OHIO  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

IN THE MATTER OF:

)  
)  
Frontier North Inc., Frontier )  
Communications of Michigan, Inc., )  
Frontier Communications Corporation; )  
Frontier Communications Parent, Inc., and )  
Frontier Communications of America, Inc., )  
DBA Frontier Communications )

**RECEIVED**  
ATTORNEY GENERAL OF OHIO

**JUL 09 2021**

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

**ASSURANCE OF VOLUNTARY COMPLIANCE**

In 2017, the Ohio Attorney General's Office ("OAG") commenced an investigation on behalf of the state of Ohio into the sales and advertising practices related to high speed internet offered and sold to consumers by Frontier North Inc., Frontier Communications of Michigan, Inc., Frontier Communications Corporation, and Frontier Communications of America, Inc. ("Frontier") pursuant to the Ohio Consumer Sales Practices Act R.C. 1345.01, *et seq.* ("CSPA"). The following Assurance of Voluntary Compliance ("Assurance") addresses the allegations raised in the OAG's investigation and the relief agreed to by the OAG and Frontier, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").

**JURISDICTION**

1. The OAG commenced this investigation pursuant to the CSPA in October 2017. Specifically, the OAG used the powers afforded to it under R.C. 1345.06, *et seq.* to initiate an investigation into the sales and advertising practices of Frontier.

2. The CSPA, R.C. 1345.06(A) specifically provides the OAG with the power to

an admission of or evidence of any alleged wrongdoing, liability, commission or omission by Frontier in any civil, criminal, administrative or arbitration proceeding by a party other than the OAG.

22. While the courts have held that Frontier Internet customers are bound to arbitrate their claims individually pursuant to the terms and conditions of their contracts/service agreements with Frontier, the OAG maintains that it is not bound by such terms in the exercise of the powers afforded to it under R.C. 1345.06, et. seq., in its ability to receive and process consumer complaints and inquiries regarding conduct governed by those laws referred to in rule 109:4-1-02 of the Administrative Code, or to carry out the objectives of the office of the Ohio attorney general, consumer protection section, as provided in O.A.C. 109:4-1-03.

23. The OAG's acceptance of this Assurance is in the public interest and reflects a negotiated agreement among the Parties that aims to benefit Ohio citizens and consumers by the funding of Internet infrastructure improvements and consumer protection improvements in Frontier's advertising and disclosure and customer service practices, as set forth herein.

#### **COMPLIANCE PROVISIONS**

24. Therefore, the OAG is willing to accept this Assurance in lieu of commencing a statutory proceeding for violations of the CSPA, R.C. 1345.02(A) and (B)(1), (B)(2), and (B)(6), and O.A.C. 109:4-3-02(A), (C), and (D), based on the Covered Conduct described above.

#### **Frontier Advertisements**

25. Frontier shall not engage in conduct in violation of any applicable laws, including but not limited to the CSPA, R.C.1345.02(A) and (B)(1), (B)(2), and (B)(6), and O.A.C. 109:4-3-02(A), (C), and (D), and expressly agrees and acknowledges that any such conduct in violation of such applicable laws relating to advertising is a violation of this Assurance, and that the OAG

thereafter may commence a civil action or proceeding related to the violation of such applicable laws, in addition to any other appropriate investigation, action, or proceeding.

26. No later than 90 days after the Effective Date of this Assurance, in Frontier's advertisements of Internet Service speeds, Frontier shall make clear and conspicuous disclosures that comply with applicable Federal Trade Commission guidelines and Ohio law.

27. Specifically, in all advertising of Internet Service speeds, Frontier shall provide a link or a website location to a clear and conspicuous disclosure (a) that the maximum speed in a tier is the highest speed a consumer may obtain; (b) that average speed may be slower; (c) that actual speed is subject to multiple factors; and (d) that actual speed may vary based on the customer's location.

28. In all advertising of Internet Service speeds, Frontier shall provide a link or a website location to a clear and conspicuous disclosure that actual internet speed experienced in the home environment might vary as a result of (a) the effect of the customer's wireless internet; (b) multiple users on the customer's network; (c) device limitations; and/or (d) network congestion.

29. For television and radio ads that identify specific Internet Service speeds, Frontier shall clearly and conspicuously disclose that the advertised speeds may not be available in a consumer's area.

30. For internet ads that appear when a consumer has provided his or her address, Frontier shall not advertise specific Internet Service speeds to consumers in excess of what is available in those consumers' zip codes.

31. For internet ads, Frontier shall clearly and conspicuously disclose that speeds may vary based on the consumer's physical location.

32. For mailer advertisements, Frontier shall not advertise speeds in excess of what is available, based on consumers' geographic areas or neighborhoods, to the consumers who receive such advertisements.

33. For new Internet Service customers, no later than 120 days after the Effective Date of this Assurance, for Internet Services in which a product speed is advertised, Frontier shall clearly and conspicuously disclose, at or before the point of sale, the range of speeds the customers are expected to receive, and the impact such speeds may have on access to various internet services, e.g., streaming video. Within ten business days of enrolling and provisioning such new Internet Service customers, Frontier shall provide a written notice to such customers that clearly and conspicuously discloses the speed at which the customers are provisioned and, in conjunction with such notice, shall offer those customers who are provisioned at a speed less than 90% of the maximum speed of the range for the tier level they are subscribing to the options to (a) continue with their current service plan; (b) discontinue service with no additional fee or charge for disconnection; or (c) move to a different service package with a lower service speed, if available, with no additional fee.

34. No later than 150 days after the Effective Date of this Assurance, Frontier shall issue a written notice to each of its current Internet Service customers who is provisioned at less than 90% of the maximum speed of the range for their speed tier. Such notice shall be in the form of a separate mailing to each customer and an email to each customer for whom Frontier has an email address. Such notice shall inform customers of the speed at which they are provisioned, the range of speeds they are likely to achieve, and the impact such speeds may have on their access to various internet services, e.g., streaming or gaming. In conjunction with such notice, Frontier shall offer those customers the options to (a) continue with their current service plan; (b) discontinue service

with no additional fee or charge for disconnection; or (c) move to a different service package with a lower service speed, if available, with no additional fee. Frontier shall inform the OAG when it will issue this notice and provide the OAG with a copy of the notice at least ten business days prior to transmission.

35. Beginning 90 days after the Effective Date of this Assurance or later, if any Internet Service customers contact Frontier to inquire about their provisioned internet speeds, Frontier shall disclose the speed at which the customers are provisioned, if available, and, for customers who are provisioned at a speed less than the maximum speed of the range for the tier level they are subscribing to, Frontier shall offer such customers the options to (a) continue with their current service plan; (b) discontinue service with no additional fee or charge for disconnection; or (c) move to a different service package with a lower service speed, if available, with no additional fee. For purposes of this paragraph, a customer inquiry "about their provisioned internet speed" shall be interpreted broadly to include any and all attempts by a customer to ask Frontier why they are not receiving the maximum speed for their purchased service plan.

36. In advertising of Internet Service speed, where internet speeds for particular speed tiers are specified, including but not limited to communications with existing customers, Frontier shall specify the range of speeds actually available for that tier, e.g. "6.1 Mbps to 12 Mbps download." In other words, Frontier shall not advertise "up to" or maximum speeds that are not available because of provisioning limitations.

37. Frontier shall not unilaterally discontinue Internet Service to consumers in Ohio solely on account of entering into this Assurance.

#### **Substantiating Advertised Internet Speeds**

38. No later than 120 days from the Effective Date Frontier shall provision customers

subscribing to new Internet Service plans at a minimum of 90% or higher of the maximum speed of the range for the tier level to which they are subscribing. If such customers cannot be provisioned at 90% or higher of the maximum speed of the range for the tier level they are subscribing to, Frontier shall notify customers that they cannot be provisioned at 90% or higher and Frontier shall offer to move customers, for no additional fee, to the next lower product tier, if available, in which they can be provisioned at 90% or higher of the maximum speed of the range for the tier.

39. Should any consumers wish to subscribe to Frontier's Internet Service in an area served by a DSLAM in which Frontier provisions them at 3 Mbps or lower, Frontier shall clearly and conspicuously disclose that limitation on its Internet Service and that such limitation may impact the consumers' ability to "stream" services.

40. Beginning 12 months and concluding 36 months after the Effective Date of this Assurance, Frontier shall credit one half the monthly Internet Service charge to individual customers for all such months in which (a) Frontier fails to provision such customers at least 90% of the highest speed of the range of the tier level to which they are subscribed unless the customer has been advised in writing of the option to discontinue Internet Service or subscribe to a lower speed tier, if available, and elected not to subscribe to the lower speed tier level service or (b) Frontier fails to provision such customer at least 100% of the speed at which they were informed they were provisioned.

41. The customer credits described in Paragraph (40) above are not fines, penalties, or disgorgements of funds. Frontier further stipulates that such customer credits are injunctive, as opposed to monetary, relief and further waives any right to contend otherwise in future bankruptcy or other action in state, federal, administrative and/or bankruptcy court or tribunal.

### **Training, Customer Service, and Sales Practices**

42. Frontier shall prepare training materials and a training program for its customer service representatives, field technicians, and sales force agents that accurately and comprehensively cover:

- a. all requirements of this Assurance, including both prohibited practices and affirmative requirements, and the meaning and application of those requirements to the Internet Services Frontier is providing and its practice of provisioning;
- b. the effect of provisioning on the customer's Internet Service, and the rights of the customer to discontinue service or move to a lower tier for no additional fee;
- c. the factors that affect residential customer experience in the home, including the effects of wireless internet and multiple users on experienced internet speed;
- d. that Frontier customer service representatives, field technicians, and sales force agents may not suggest to customers or prospective customers that they need a particular higher speed for certain activities or applications, or that a particular speed is particularly well suited for certain activities or applications, where lower speeds would suffice for such activities or applications; and
- e. that Frontier customer service representatives, field technicians, and sales force agents may not suggest to customers that they need a particular higher speed for certain activities or applications, or that a particular speed is particularly well suited for certain activities or applications, where those

customers are provisioned at a speed lower than the maximum speed available for their tier level.

#### **Capital Expenditure Commitments**

43. Frontier agrees to make an investment of \$15 million in capital expenditures to provide or enhance internet services in Ohio and for Ohio consumers over a period of four years from the Effective Date of this Assurance.

44. The investment of \$15 million in capital expenditures agreed to herein shall be made separate and apart from the settlement between Frontier and the Public Utilities Commission of Ohio (PUCO) in August 2020, pursuant to which Frontier agreed to make capital expenditures of \$25 million each in calendar years 2021, 2022, and 2023, which will be in addition to Connect America Fund Phase II capital expenditures.

45. To the extent Frontier makes capital expenditures in excess of \$25 million in any of the calendar years 2021, 2022, or 2023, any expenditures related to providing or enhancing internet services in Ohio above the \$25 million threshold will apply against the \$15 million commitment. However, to the extent Frontier incurs capital expenditures related to any of the following activities those expenditures will not apply against the \$15 million commitment in this Agreement: (a) completing the Federal Communications Commission's Connect America Fund build out requirements and deployment milestones, (b) completing any Federal Communications Commission's Rural Digital Opportunity Fund build out requirements and deployment milestones, (c) completing any State or local government grant for internet broadband funding build out requirements, and (d) completing all existing cable TV franchise commitments in Ohio. Frontier shall fulfill the \$15 Million capital expenditure according to the following schedule: (a) expend \$7.5 Million within two years after the Effective Date; and (b) expend a total of \$15



Million within four years after the Effective Date. Frontier shall not seek to recover the \$15 million in expenditures through any increase in its Internet Infrastructure Surcharge solely applicable to Ohio Internet service customers.

46. The \$15 Million capital expenditure investment described in Paragraphs 43-45 above is not a fine, penalty, or disgorgement of funds. Frontier further stipulates that such investment is a form of injunctive relief, as opposed to monetary relief. Frontier waives any right to contend otherwise in its motions or filings that seek approval of this Assurance to the Bankruptcy Court or in any other action in state, federal, administrative, and/or bankruptcy proceeding.

#### **MONITORING**

47. Upon the execution of this Assurance, Frontier shall immediately commence fulfillment of the requirements set forth herein and unless otherwise provided herein shall comply with Paragraphs 25 through 42 no later than 90 days from the Effective Date of this Assurance.

48. For a period of four years from the Effective Date, Frontier shall provide the OAG with a semi-annual written report detailing its compliance with the requirements set forth in Paragraphs 26-42 of this Assurance. The first report shall cover the six-month period following the Effective Date of this Assurance and shall be provided to the OAG within 60 days after the conclusion of that six-month period, and then semi-annually thereafter. Such reporting shall include, at a minimum:

- a. A report and representative copy of all notices that were sent to customers in accordance with Paragraphs 33-35 and 38-41;
- b. A report and representative copy of all disclosures provided to customers in accordance with Paragraphs 27-32, 36, and 37; and

- c. A summary of all training activity that took place in accordance with Paragraph 42 and its subparts, including a representative copy of training materials.

49. For a period of four years from the Effective Date, Frontier shall also provide the OAG with semi-annual reports detailing its compliance with the requirements set forth in Paragraphs 26-46 of this Assurance. The first report shall cover the six-month period following the Effective Date of this Assurance and shall be provided to the OAG within 60 days after the conclusion of that six-month period, and then semi-annually thereafter. Such reporting shall include, at a minimum:

- a. Capital expenditures that were made during the reporting period pursuant to this Assurance, including amount spent, location where spent, capital improvements that were made, and a summary of the effect of such improvements on the number of consumers receiving new or improved internet access service; and
- b. A representative sample of all advertising of internet speed and/or reliability made during the reporting period.

50. Frontier must create and retain the following records in connection with the advertisement and sale of its goods and services to Ohio consumers after entry and approval of this Assurance and shall retain such records for four years and shall make available to the OAG upon request:

- a. All written records of consumer complaints, whether received directly by Frontier from a consumer or received indirectly by Frontier from government agencies or the Better Business Bureau related to the Covered Conduct addressed in this

Assurance, and shall include, but not be limited to, available Ohio consumer contact information, date of complaint, source of complaint, category of complaint, and the outcome of the complaint;

- b. All records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to the State; and
- c. A copy of each unique advertisement or other marketing material created, produced, or approved by Frontier that was disseminated to Ohio consumers for Internet Services.

51. In any case where the circumstances warrant, the OAG may require Frontier to submit an interim report of compliance upon 30 days' notice.

#### **MONETARY PAYMENT**

52. No later than 30 days after the Effective Date, Frontier shall pay the sum of Eight Hundred Twenty-Five Thousand Dollars (\$825,000) to the OAG. The wiring instructions shall be provided to Frontier no later than seven days after the Effective Date. Said payment to the OAG shall be used for reimbursement of attorneys' fees and other costs of investigation, including payment to outside counsel; distribution or application to any applicable consumer protection enforcement funds, including future consumer protection enforcement, consumer education, litigation or local consumer aid, or revolving funds; defraying the costs of the inquiry leading hereto; or any other lawful purpose, at the sole discretion of the OAG.

#### **GENERAL PROVISIONS**

53. By accepting this written Assurance, the OAG agrees to terminate its current investigation into the Covered Conduct occurring prior to the date of this Assurance. Furthermore, the OAG resolves and releases Frontier, its respective directors, officers,

employees, representatives, agents, affiliates, and subsidiaries, from any and all civil claims and causes of action, including claims for fines, fees, restitution, disgorgement, penalties, other monetary relief, injunctive relief or declaratory relief, arising from the subject matter of the Covered Conduct, that the OAG, whether directly, indirectly, representatively, derivatively, in its sovereign enforcement capacity, or as *parens patriae* on behalf of state citizens or in any other capacity, could have asserted, before or as of the Effective Date, against Frontier that may be released relating to the subject matter of the Covered Conduct, including under the Consumer Sales Practices Act or under any other Ohio or federal statutes or common law claims concerning unfair, deceptive, or unconscionable practices relating to consumer transactions.

54. Frontier understands and agrees that this Assurance applies to any related owners, partners, principals, officers, directors, agents, representatives, salespersons, employees, subsidiaries, affiliates, consultants, independent contractors, under Frontier's direction and control and to any successors and assigns.

55. This Assurance shall be governed by the laws of the State of Ohio.

56. This Assurance does not constitute approval by the OAG of any of the Frontier's business practices, and the Frontier shall not represent directly or indirectly, or in any way whatsoever, that the OAG has sanctioned, condoned or approved any part or aspect of its business practices.

57. This Assurance sets forth the entire agreement between the OAG and Frontier and supersedes any and all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel regarding the subject matter hereof. This Assurance may be amended by written agreement of the Parties, subject to any further requirements under state law.

58. The Parties hereto acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

59. This Assurance constitutes a public record and shall be filed in the Public Inspection File pursuant to R.C. 1345.05(A)(3).

60. This Assurance shall in no way exempt Frontier from any other obligation imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices they have engaged in other than those specifically addressed by this Assurance.

61. Nothing in this Assurance shall in any way preclude any investigative or enforcement action(s) against Frontier under any legal authority granted to the OAG:

- a. With respect to the transactions which are the subject of this enforcement action if the terms of this Assurance are not fully obeyed, or,
- b. With respect to transactions or occurrences which are not the subject of this Assurance.

#### **PENALTIES FOR FAILURE TO COMPLY**

62. The Attorney General may assert any claim that Frontier has violated this Assurance in a separate civil action to enforce the terms of this Assurance against Frontier and the Court shall apply applicable standards of law to determine damages for any subsequent violations which may include any and all remedies available to the OAG pursuant to R.C. 1345.07.

63. Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the CSPA and its Substantive Rules, by Frontier. Evidence of a

violation of an Assurance of Voluntary Compliance, though, is prima facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 *et seq.*, if presented after the violation in an action brought under the CSPA, R.C. 1345.01 *et seq.*

#### **COMMUNICATIONS**

64. All notices, reports, requests, and other communications required pursuant to this Assurance must reference, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

- a. Kevin Saville, Senior Vice President and General Counsel  
Frontier Communications  
401 Merrit 7  
Norwalk, CT 06851  
203-614-5030
- b. Perry Rowthorn, Partner  
Jepsen Rowthorn LLP  
9 Cumberland Road  
West Hartford, CT 06119  
860-922-3285
- c. Melissa Wright  
Consumer Protection Section  
Office of Ohio Attorney General Dave Yost  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215

**WHEREFORE**, the Parties hereto affix their signatures in recognition and acceptance of the terms contained herein and warrant and represent that by affixing their signatures below they have the legal right to do so.

SIGNATURES

Accepted:

**DAVE YOST**  
**OHIO ATTORNEY GENERAL**

By: \_\_\_\_\_  
**Melissa Wright**, Section Chief  
Consumer Protection Section  
Office of Ohio Attorney General Dave Yost  
30 E. Broad St., 14<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-8169 / (866) 528-7423 (fax)  
[Melissa.wright@OhioAGO.gov](mailto:Melissa.wright@OhioAGO.gov)  
*Counsel for the Ohio Attorney General*


Date: June 17, 2021

By:  \_\_\_\_\_  
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**Frank Bartela**  
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*Special Counsel for the Ohio Attorney General*

Date: 17 JUNE 2021

Accepted:

**FRONTIER NORTH INC., FRONTIER COMMUNICATIONS OF MICHIGAN, INC.,  
FRONTIER COMMUNICATIONS CORPORATION; FRONTIER  
COMMUNICATIONS PARENT, INC., AND FRONTIER COMMUNICATIONS OF  
AMERICA, INC., D/B/A FRONTIER COMMUNICATIONS**

By:  \_\_\_\_\_  
**Mark D. Nielsen**  
Executive Vice President & Chief Legal Officer  
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Date: June 16, 2021