

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Petition of Rochester Telephone Corporation for  
Approval of Proposed Restructuring Plan – Status of  
Frontier Telephone of Rochester, Inc.'s Open Market  
Plan

Case 93-C-0103

Petition of Rochester Telephone Corporation for  
Approval of a New Multi-Year Rate Stability  
Agreement

Case 93-C-0033

NEW YORK STATE CONSUMER PROTECTION BOARD'S  
STATEMENT IN SUPPORT OF JOINT STIPULATION AND AGREEMENT

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Dated: August 6, 2008  
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STATEMENT IN SUPPORT OF JOINT STIPULATION AND AGREEMENT

On April 5, 2005, Frontier Telephone of Rochester, Inc. (“Frontier”) filed a petition with the Public Service Commission (“PSC” or “Commission”) seeking termination of the remaining provisions of the Open Market Plan (“OMP”), the regulatory plan applicable to the Company since 1995 (“Petition”). On July 23, 2008, a Joint Stipulation and Agreement resolving all issues in connection with that Petition, was submitted by Frontier, all of its affiliated incumbent local telephone companies (collectively, “Citizens NYS ILECs”), the New York State Consumer Protection Board (“CPB”) and Staff of the Department of Public Service (“Joint Stipulation”). The Joint Stipulation would provide consumer benefits including a new incentive for the Citizens ILECs to provide high quality telephone service, thereby helping enhance public health, safety and welfare. The CPB submits this statement in support of the Joint Stipulation, and urges the PSC to approve the agreement in its entirety.

In its April 2005 Petition, Frontier requested elimination of provisions of the OMP that were designed to address concerns at that time about a new holding company structure. Those requirements are permanent unless modified by the Commission.<sup>1</sup> The CPB was the sole party to submit comments on Frontier's Petition. We explained that the Company's request would modify a negotiated and balanced agreement in a one-sided manner without providing any apparent consumer benefits, and that the Commission should ensure that Frontier has appropriate incentives to provide high quality telephone service.<sup>2</sup> The PSC took no action on that matter for almost one year, at which time it invited further comments on Frontier's Petition. Again, the CPB was the only party to respond. Our filing further explained and reinforced the recommendations we made in 2005.<sup>3</sup> Settlement negotiations on these matters commenced in January 2007, and the CPB participated in every meeting or conference call in an attempt to negotiate a resolution of these matters.

Throughout this proceeding, the CPB's objectives have been to enhance the incentive that Frontier and the Citizens NYS ILECs have to provide high quality telephone service, as well as to streamline and eliminate regulations that are no longer necessary or appropriate. The Joint Stipulation, for the reasons discussed below, achieves the CPB's objectives and satisfies the PSC's

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<sup>1</sup> Petition, p. 3.

<sup>2</sup> Cases 93-C-0103, 93-C-0033, Comments of the New York State Consumer Protection Board, July 11, 2005.

<sup>3</sup> Cases 93-C-0103, 93-C-0033, Comments of the New York State Consumer Protection Board, July 24, 2006.

Settlement Guidelines. Therefore, we recommend that the Commission approve it in its entirety.

I. THE JOINT STIPULATION PROVIDES SIGNIFICANT BENEFITS FOR RATEPAYERS.

The CPB continues to advocate policies that promote high quality telephone service to protect the public's health, safety and welfare. The State continues to have an important role in ensuring reliable telephone service, notwithstanding advances in technology and increased competition in the telecommunications industry. As the PSC recently concluded:

the existence of competition, even if it is effective and thriving, may not ensure reliable networks, and there is too much at risk for the people and the State to conclude otherwise. Protecting public health, safety and welfare remains essential and requires that we continue monitoring and enforcing network reliability, consistent with our responsibilities under the Public Service Law.<sup>4</sup>

The PSC also concluded that the Customer Trouble Report Rate ("CTRR") is a "critical indicator" of network reliability.<sup>5</sup>

The Joint Stipulation would help achieve the CPB and PSC's objective by creating a new financial incentive for Frontier and the Citizens NYS ILECs, which together serve more than 670,000 access lines in New York, to provide high quality telephone service. In particular, it would establish a Performance Threshold, under which 90% of Citizens' central offices must have a CTRR of 3.3

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<sup>4</sup> Case 05-C-0616, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Statement of Policy on Further Steps Toward Competition in the Provision of Telecommunications Services, April 11, 2006, p. 90.

<sup>5</sup> Id.

reports per hundred lines (“RPHL”) or less over a rolling 12-month average. In the event that this Performance Threshold is missed, Citizens will:

- (1) provide a customer rebate equal to 25% of the monthly basic service charge to all retail and business and residential customers in the affected central offices;
- (2) provide a customer rebate of 50% of the monthly basic service charge to customers in each office where the CTRR measurement exceeds 5.5 RPHL;
- (3) establish a “Service Quality and Infrastructure Protection Fund” (“SQIPF”) in the amount of \$15 million, within 30 days of the date the Performance Threshold is missed; and,
- (4) submit a detailed service improvement plan for PSC review within 30 days after funds are transferred into the SQIPF.

In addition, in the event that the CTRR level falls below the Performance Threshold for three consecutive months, payment of dividends by the Citizens NYS ILECs to their corporate parent shall be suspended.

The Joint Stipulation would also eliminate certain requirements in the OMP originally intended to minimize potential improprieties under a holding company structure, which are no longer necessary or are duplicative with the PSC’s regulations applicable to all ILECs. Provisions to be removed include: restrictions on the number of members of Frontier’s Board of Directors that may be officers or employees of the holding company, a requirement that Frontier’s legal counsel provide services only to Frontier, a limitation on the amount of

stock of the holding company that can be owned by Frontier's officers and senior managers, and several constraints on transactions with affiliates. Other provisions of the OMP would be maintained or modified. For example, Frontier and all Citizens NYS ILECs will be prohibited from pledging their assets for debt obligations or providing financial guarantees without PSC approval, the total debt of Citizens NYS ILECs cannot exceed 45% of total capitalization, the Companies must file comprehensive reports and analyses with the Commission in the event their credit ratings falls below a specified level, and DPS Staff would continue to have full access to the books and records of Citizens NYS ILECs, their holding company and its affiliates. Overall, safeguards applicable to Frontier that are necessary to ensure the financial integrity of the regulated enterprise would be maintained and extended to Citizens NYS ILECs, whereas many provisions that are no longer relevant would be eliminated.

These proposed changes benefit consumers by establishing strong new incentives for Citizens NYS ILECs to focus on providing reliable telephone service. In addition, by removing restrictions that are no longer necessary to protect consumers, the Joint Stipulation would provide additional flexibility to Citizens NYS ILECs to eliminate unnecessary costs and restrictions and enhance their ability to compete.

II. THE JOINT STIPULATION SATISFIES THE COMMISSION'S SETTLEMENT PROCEDURES AND GUIDELINES.

The Commission has adopted standards to evaluate whether negotiated agreements are in the public interest.<sup>6</sup> Among those Settlement Guidelines are the following:

- a. A desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- b. In judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties.<sup>7</sup>

The Joint Stipulation satisfies these standards.

A. Balance Among Ratepayers, Investors and the Long-Term Viability of the Utility

The Joint Stipulation reasonably balances the interests of ratepayers, investors and the long-term viability of the utility. Ratepayers would benefit since they are provided additional assurances of high quality service from Citizens NYS ILECs, as well as automatic bill credits in the event that service is not reliable. The Commission can reasonably conclude that the Agreement is fair to

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<sup>6</sup> Cases 90-M-0255 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, ("Settlement Guidelines"), Opinion No. 92-2, March 24, 1992.

<sup>7</sup> Id., Appendix B, p. 8.

investors and consistent with the long-term viability of the utility, by virtue of the fact that Citizens NYS ILECs is a signatory.

**B. Consistent with Policies of the PSC and State**

The Joint Stipulation is also consistent with the policies of the Commission and the State. By establishing a powerful additional incentive for Citizens NYS ILECs to provide high quality reliable service, the Agreement would enhance public health, safety and welfare. Further, the alternative to the Joint Stipulation is a litigated proceeding, with an uncertain outcome, and which may not capture the appropriate balance between streamlining regulations and refocusing the Citizens NYS ILECs on issues of importance to consumers. Litigation would also require additional resources by State agencies and the Company.

**C. Within the Range of Reasonable Results from Litigation**

The Joint Stipulation reflects a compromise between the recommendations made in Frontier's 2005 Petition, and the views articulated in the CPB's written comments and by CPB and DPS Staff in negotiations. Accordingly, it is within the range of reasonable results from litigation.

**D. Agreement by Normally Adversarial Parties**

The Joint Stipulation also satisfies the second standard of the PSC's Settlement Guidelines, since it is supported by diverse parties who often hold adversarial positions in PSC proceedings. It has been signed by all parties that



participated actively in negotiations: the CPB, the Citizens NYS ILECs, and DPS Staff. In past proceedings before the Commission, these parties have held competing positions on many policy issues. Indeed, in this proceeding, the CPB submitted two rounds of comments in opposition to Frontier's April 2005 Petition. It is also noteworthy that all parties had an opportunity to participate in negotiations and contribute to the development of the Agreement.<sup>8</sup>

The CPB is not aware of opposition to the Joint Stipulation by any party. The support of all parties that worked on these issues demonstrates that the Agreement is in the public interest.

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<sup>8</sup> E.g., Cases 93-C-0103, 93-C-0033, Notice Regarding Settlement Conference and Active Parties List, January 30, 2007.

## CONCLUSION

For all of the above reasons, the New York State Consumer Protection Board recommends that the Public Service Commission approve the July 23, 2008 Joint Stipulation and Agreement in this proceeding.

Respectfully submitted,

A handwritten signature in blue ink that reads "Mindy A. Bockstein". The signature is written in a cursive style with a large initial "M".

Mindy A. Bockstein  
Chairperson and Executive Director

Douglas W. Elfner  
Director of Utility Intervention

Gregg C. Collar  
Telecommunications Project Manager

Dated: Albany, New York  
August 6, 2008