

COMMONWEALTH OF PENNSYLVANIA



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March 31, 2023

Via Electronic Mail Only

The Honorable Steven K. Haas
The Honorable John Coogan
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Office of Consumer Advocate and Office of
Small Business Advocate

v.

Commonwealth Telephone Company,
LLC d/b/a Frontier Communications
Commonwealth Telephone Company
Docket No. C-2023-3037574

Dear Judge Haas and Judge Coogan:

Enclosed please find for electronic service the Office of Consumer Advocate's Motion to Compel Answers to OCA Set II Interrogatories, Nos. 2, 32, 36, 37, 38, 39, and 40 in the above-referenced proceeding. As reported by e-mail on March 29, 2023, the parties mutually agreed to a one-day extension to the deadline for filing a Motion to Compel from March 30, 2023 to March 31, 2023.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Barrett C. Sheridan

Barrett C. Sheridan

Assistant Consumer Advocate

PA Attorney I.D. # 61138

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Enclosures:

cc: PUC Secretary Rosemary Chiavetta
Certificate of Service

*343655

CERTIFICATE OF SERVICE

Office of Consumer Advocate and :
Office of Small Business Advocate :
v. : Docket No. C-2023-3037574
:
Commonwealth Telephone Company, :
LLC d/b/a Frontier Communications :
Commonwealth Telephone Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Motion to Compel Answers to OCA Set II Interrogatories, Nos. 2, 32, 36, 37, 38, 39, and 40, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 31st day of March 2023.

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Dated: March 31, 2023
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office of Consumer Advocate,	:	
Office of Small Business Advocate,	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2023-3037574
	:	
Commonwealth Telephone Company, LLC	:	
d/b/a Frontier Communications Telephone	:	
Company,	:	
Respondent.	:	

**OFFICE OF CONSUMER ADVOCATE’S MOTION TO DISMISS THE
OBJECTIONS OF FRONTIER COMMONWEALTH TELEPHONE COMPANY, LLC
D/B/A FRONTIER COMMUNICATIONS TELEPHONE COMPANY AND COMPEL
COMPLETE REPLIES OCA SET II INTERROGATORIES**

Pursuant to 52 Pa. Code §§ 5.321, 5.342, and 5.349 the Office of Consumer Advocate (OCA) hereby respectfully requests that Administrative Law Judges Steven Haas and John Coogan (ALJs) dismiss the objections to discovery by Commonwealth Telephone Company d/b/a Frontier Communications Telephone Company (Frontier or Company), and compel Frontier to provide full and complete answers to Interrogatories OCA-II-2, 32, 36, 37, 38, 39, and 40. The OCA served OCA Set II on the Company on March 8, 2023. A full copy of the Company’s Objections is attached as Appendix A. (Frontier Objections).

Frontier served its objections to the enumerated Set II interrogatories on March 20, 2023.¹ Frontier’s General Objection A.I. is based upon the Company’s position that the Commission’s

¹ Frontier’s General Objection I.B. alleged that certain Set II discovery requests for information over a five-year period would require an unreasonable investigation, in violation of Section 5.361(a)(4). 52 Pa. Code § 5.361(a)(4). Without further elaboration, Frontier’s General Objection I.B. stated that it will only provide data for three years, not five years. Frontier Obj. at 4. However, in the Company’s replies to OCA-II-3, -5, and -32, the Company provided

jurisdiction is limited and narrow with regard to broadband and IP-enabled service issues. Frontier declares that discovery related to these issues “be limited to the availability of 1.544 Mbps service internet service.” Frontier Obj. at 3.

Frontier’s General Objection A.I should be dismissed. The OCA Set II interrogatories ask for information which is relevant to the matter of Frontier’s service quality, state of its network facilities, and Frontier’s compliance with statutes, regulations, and Commission orders. The OCA Set II discovery fits within the Commission’s broad scope of allowed discovery. 52 Pa. Code § 5.321(c). The OCA Set II discovery seeks information that is relevant to subject of the Joint Complaint, information that may be admissible as evidence, and information that is reasonably calculated to lead to the discovery of admissible evidence. Frontier should be compelled to provide full and complete answers to each of the objected to OCA Set II Interrogatories.

I. History of the Proceeding

On January 9, 2023, the OCA and OSBA filed a verified Joint Complaint against Frontier. The Joint Complaint identifies Frontier’s obligation to comply with: the Public Utility Code and regulations as a public utility and local exchange company, with its Amended Chapter 30 Plan, with Commission’s orders, and with obligations as an Eligible Telecommunications Carrier (ETC). The Joint Complaint identifies Frontier as subject to the “Frontier Voluntary Commitments” tendered by the Frontier affiliate group applicants that sought Commission approval of its post-bankruptcy change of control. The Joint Complaint alleges that Frontier has provided unreasonable telephone service to its customers in a variety of ways, contrary to Frontier’s obligations.

information for five-years as requested or an otherwise satisfactory explanation. Accordingly, the OCA Motion is not directed at Frontier General Objection I.B.

On February 21, 2023, the Company filed its verified Answer to the Joint Complaint. As part of its defense, the Company averred that it is in compliance with its Amended Chapter 30 Plan and the Frontier Voluntary Commitments adopted by Commission Secretarial Letter. *See, e.g.* Frontier Answer, 4.B., G.

The OCA served Set I discovery on Frontier on February 13, 2023.

Frontier served Set I discovery on the OCA on February 21, 2023.

The OCA served Set II discovery on Frontier on March 8, 2023.

Frontier served Objections to certain OCA Set II interrogatories on March 20, 2023.

The Parties mutually agreed to a one-day extension of time for the filing of a Motion to Compel from March 29, 2023 to March 30, 2023, related to the Company's Objections to OCA Set II. The OCA provided notice to the presiding ALJs and Parties of the extension by e-mail on March 28, 2023.

A Prehearing Conference has been scheduled for April 11, 2023.

II. Legal Standard

The OCA and Frontier are in agreement that Sections 5.321 and 5.361 of the Commission's regulations provide the procedural framework for the conduct of discovery and limited reasons when discovery may be prohibited or unavailable. See Frontier Obj. at 1-2, *citing* 52 Pa. Code §§ 5.321(c), 5.361. That is where the common ground ends.

Section 5.321(c) specifically provides that "a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant." *Id.* Information may be discoverable, even if it would be inadmissible at a hearing. "It is not ground

for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

Section 5.361 does prohibit some specific types of discovery. 52 Pa. Code § 5.361. However, Frontier General Objection I.A. does not invoke Section 5.361 as support.

The OCA is well within the Commission’s regulations to seek the requested information. *See* 52 Pa. Code § 5.321. Consistently, the Commission has allowed participants wide latitude in discovery matters. Pa. P.U.C. v. The Peoples Natural Gas Company, 62 Pa. P.U.C. 56 (August 26, 1986); and Pa. P.U.C. v. Equitable Gas Company, 61 Pa. P.U.C. 468 (May 16, 1986). Relevancy depends on the nature and facts of an individual case, and any doubts are to be resolved in favor of relevancy and permitting discovery. Pa. P.U.C. v. Pennsylvania American Water Co., 2011 Pa. PUC LEXIS 1523, *19, Order on Motion to Compel at 12 (July 21, 2011), *citing* Koken v. One Beacon Insurance Co., 911 A.2d 1021, 1025 (Pa. Commw. 2006)(PAWC Order).

III. The Company’s General Objection I.A. Should Be Denied

Frontier’s General Objection I.A. should be dismissed as contrary to the Commission’s rules for discovery and inconsistent with the scope of this proceeding. The information sought by the OCA in discovery is relevant and designed to assist in the development of admissible evidence in support of the Joint Complaint.

Briefly, Frontier General Objection I.A. states conclusions of law regarding the Commission’s jurisdiction, the limits of Section 1501 of the Public Utility Code, the Voice Over Internet Protocol Freedom Act (VOIP Freedom Act), and the provisions of Chapter 30 that govern the Company’s obligation to make broadband service universally available. Frontier Obj. at 2-3, citing 66 Pa.C.S. § 1501, 3011, *et seq.*; 73 P.S. § 2251.3. Frontier cites cases in which the Commission addressed individual complaints that touched on some aspect of broadband service,

to support Frontier’s position that the objected to OCA Set II interrogatories touch on matters beyond the Commission’s jurisdiction. Frontier Obj. at 2-3, fn. 1, 2, 5. According to Frontier, the Commission’s “sole jurisdiction over broadband derives from Chapter 30” Frontier Obj. at 3. Frontier’s General Objection I.A. then broadly declares what “[d]iscovery and development of evidence” is beyond the scope of this proceeding. Frontier Obj. at 3-4.

As discussed below, there are multiple reasons to dismiss Frontier’s General Objection I.A. as an improper and unreasonable limit on the allowable scope of discovery specific to this Joint Complaint proceeding. Frontier’s objections should be dismissed and Frontier should be compelled to provide full and complete answers to OCA-II-2, 32, 36, 37, 38, 39, and 40. Further, Frontier’s General Objection I.A. should be recognized as an untimely jurisdictional argument.

A. The OCA’s Discovery is Consistent with the Scope of this Joint Complaint Proceeding.

1. Frontier Compliance with Chapter 30 Obligations

Frontier’s General Objection I.A. should be dismissed and the OCA should be allowed to conduct discovery that probes the Company’s claim of compliance with its obligations under Chapter 30 of the Public Utility Code. *See*, Frontier Answer to Joint Complaint, at 4.G (filed February 21, 2023). The Joint Complaint gives notice of consumer reports of internet service problems that may contradict Frontier’s claim of Chapter 30 compliance. Joint Complaint, ¶ 4.G. The Joint Complaint also gives notice of telephone service quality troubles reported by consumers. Joint Complaint at 4.E. The OCA’s discovery of facts and details pertaining to the Company’s network facilities and capabilities that relate to the provision of both telephone and broadband service is relevant and within the allowed scope of discovery. For example, knowing the number of access lines capable of service at different speed tiers as requested in OCA-II-2 may provide insight into the Company’s operational priorities. The limit on discovery described in Frontier

General Objection I.A. is unreasonable and should be dismissed. The OCA's discovery is appropriate where directed at eliciting information that is relevant, may lead to admissible information, and relates to the Company's defense.

2. Frontier's Obligations under the Frontier Voluntary Commitments

Frontier's General Objection I.A. is also unduly narrow in its focus, where Frontier ignores the Joint Complaint's identification of other legal obligations of Frontier which touch upon broadband service. For example, Frontier is covered by the Frontier Voluntary Commitments that the Commission imposed as a condition of granting a change in control and which apply collectively to Frontier and affiliates. Those Frontier Voluntary Commitments "include the following in Pennsylvania: (1) \$50 million in capital expenditures by the end of 2024; (2) fiber based broadband access services to 15,000 locations by the end of 2027, and (3) numerous reporting and process-oriented changes regarding customer service as well as complaints." Joint Complaint, ¶ H, quoting Joint Application of Frontier Comm'ns Corp., et al. for Approval of a Change in Control, Dockets A-2020-3020004, et al., PUC Secretarial Letter at 10, Exh. 1 (Jan. 19, 2021)(January 2021 Secretarial Letter).² The Joint Complaint provides notice to Frontier that its compliance with the Frontier Voluntary Commitments that relate to telephone service and/or broadband service quality and availability is within the scope of the Joint Complaint. Joint Complaint, ¶ 4.R.f.

The specific Customer Complaint Handling provisions of the Frontier Joint Voluntary Commitments include recognition that consumer complaints regarding the broadband speed at the customer's premise may be received by the Bureau of Consumer Services (BCS), that the

² This "January 2021 Secretarial Letter" is available at <https://www.puc.pa.gov/pcdocs/1691067.docx>

consumer complainants will receive management level review, and that BCS will track Frontier's resolution of those informal complaints. January 2021 Secretarial Letter, Exh. 1, ¶ 7.

The premise of Frontier's General Objection I.A. – that the Commission's jurisdiction is limited strictly to broadband service at 1.544 Mbps downstream – does not hold up to scrutiny. Indeed, Chapter 30 defines “broadband” and by extension “broadband availability” as concerning a communications channel having bandwidth “*equal or greater* than 1.544 megabits per second (Mbps) in the downstream direction...” 66 Pa.C.S. § 3012.

Frontier's Answer to the Joint Complaint states that the Company is in compliance with the Frontier Voluntary Commitments. Frontier Answer, ¶ 4.B. Frontier's General Objection I.A. does not support denial of information requested by OCA-II-2 and OCA-II-32 on topics that overlap with the Frontier Voluntary Commitments. OCA-II-2 requests information related to Frontier access lines, by wire center, including information about the number of copper lines and fiber lines and speed tiers of each. Similarly, OCA-II-32 asks Frontier for information about customer surveys, another topic that overlaps with the customer service and customer satisfaction terms of the Frontier Voluntary Commitments. Consistent with the Commission's discovery rules, the OCA-II-2 and OCA-II-32 interrogatories are appropriate discovery, relevant to the Company's services, facilities, and network capabilities and investigation of the Company's defense. These interrogatories are also designed to lead to admissible evidence.

3. Frontier's Offer of Lifeline and Affordable Connectivity Program (ACP) Assistance

Frontier's General Objection I.A. also ignores that the Joint Complaint identified Frontier's status as an Eligible Telecommunications Carrier (ETC) and compliance with ETC obligations as subject to investigation. Joint Complaint, ¶¶ 4.M, 4.R.g. As an ETC, Frontier is required to offer Lifeline Service which provides a discount on voice and/or broadband service. 47 C.F.R. § 54.401

(Lifeline service defined). Section 3019(f) of the Public Utility Code confirms that Pennsylvania designated ETCs, such as Frontier, shall provide Lifeline service and give notice of the availability of the service. 66 Pa.C.S. § 3019(f). OCA-II-36 discovery directed at Frontier’s offering of Lifeline service is relevant to the Joint Complaint and Frontier’s legal obligations, including the availability of Lifeline support for broadband service.

Frontier has also objected to OCA-II-37, -38, -39, and -40 which concern the federal Affordable Connectivity Program (ACP) and whether and how Frontier participates for the benefit of Pennsylvania consumers. As the Commission has publicized, Lifeline customers are eligible to apply for ACP discounts on broadband service. *See*, “Help for Affordable Broadband Service is Here,” https://www.puc.pa.gov/media/1782/affordable_broadband-ebb1221.pdf. Section 3011 declares that it is the Commonwealth’s policy to both maintain universal telecommunications services at affordable rates and to promote and encourage the deployment of broadband. 66 Pa.C.S. § 3011(2), (12). The OCA’s discovery is relevant and directed at development of admissible information, well within the scope of the Joint Complaint.

4. Frontier Should Be Compelled to Provide Full and Complete Answers to the OCA Set II Interrogatories

The Company’s General Objection I.A. should be dismissed as contrary to the Commission’s rules and policies that allow wide latitude in discovery of matters not privileged or otherwise prohibited. The burden rests with Frontier to support its objections to the OCA Set II interrogatories as lacking relevance to matters within the scope of the Joint Complaint or a defense raised by the Company. The OCA submits that Frontier has not met that burden and shown that the withholding of information is justified during this discovery phase of the proceeding.

The Company should be compelled to provide full and complete answers to the OCA-II-2, -32, -36, -37, -38, -39, and -40 interrogatories.

B. The Company's Objection is an Improper Vehicle to Allege a Lack of Jurisdiction

The Company's General Objection I.A. should also be dismissed as an untimely challenge to the Commission's jurisdiction to consider the full scope of issues raised by the Joint Complaint. Under the Commission's rules, upon notice of the Joint Complaint, the Company had the option of filing a preliminary objection on the grounds of a "[I]ack of Commission jurisdiction." 52 Pa. Code § 5.101(a)(1). The Company's filing of such a preliminary objection would have been accompanied by a notice to plead and filed in a document separate from the Answer to the Joint Complaint. 52 Pa. Code § 5.101(b), (c), and (d). The Company's preliminary objection was due within the same period allowed for the filing of an answer. 52 Pa. Code § 5.101(d). The Company filed only an Answer to the Joint Complaint.

Had the Company filed a preliminary objection alleging a lack of Commission relative to some or all of the Joint Complaint, the Joint Complainants would have had timely notice and an opportunity to address the substance of the Company's jurisdictional arguments. The Company's decision to set forth in its General Objection I.A. the Company's theory of the limits on the Commission's jurisdiction does not necessitate a point-by-point reply by the OCA during this discovery phase of the proceeding.

C. The Company's Use of a General Objection is Improper in Form

The Company is clear that it is proposing a framework to restrict all discovery in this proceeding, rather than present specific, individual objections to the OCA-II-2, -32, -36, -37, -38, -39, and -40 interrogatories. Indeed, Frontier General Objection I.A. states that "*discovery in this case* should be limited to the availability of 1.544 Mbps service internet service. Discovery that is outside of this narrow jurisdiction includes: ... IP-enabled services or related facilities." Frontier Obj. at 3-4 (emphasis added).

The overbreadth and lack of specificity in the Company's objections is evident by the Company's reference to the VOIP Freedom Act and declaration that discovery of "IP-enabled Services or related facilities" should be off-limits in this proceeding. *See*, Frontier Obj. at 3-4, *citing* 73 P.S. § 2251.3. At no point in the Company's objections to OCA-II-2, -32, -36, -37, -38, -39, or -40 interrogatories does the Company identify an OCA discovery request that concerns "IP-enabled services" or "IP-enabled facilities."

The use of "general objections" is not a sound practice nor allowable by the Commission's regulations. PAWC Order, 2011 Pa. PUC LEXIS 1523, *12-13. Section 5.342(c)(1) requires the filing of an objection instead of an answer. 52 Pa. Code § 5.342(c)(1). Section 5.342(c)(2) requires that the objection identify the interrogatory or part of the interrogatory deemed objectionable and the specific ground for the objection. 52 Pa. Code § 5.342(c)(2).

Frontier's use of the General Objection I.A. to object to all or part of the diverse OCA-II-2, -32, -36, -37, -38, -39, and -40 interrogatories creates a lack of clarity and confusion. The OCA has received and reviewed the Company's discovery replies. The result of the Company's approach is ambiguity as to the completeness of each Company reply.

For example, OCA-II-2 requested access line information broken out by various combinations factors (residential/business, fiber/copper, single line/multi-line, voice lines/internet access lines, copper DSL separately by speed). The Company's specific objection states:

As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provide those services.

Frontier Obj. to OCA-II-2 at 4-5.

On March 28, 2023, the Company provided a reply to OCA-II-2 comprised of a confidential exhibit and the following narrative reply:

Response: Subject to and without waiving the Company’s objections, including its objection that the Commission’s sole jurisdiction over broadband provided services and IP-enabled voice services derives from Chapter 30 of the Public Utility Code, which is limited to the availability of 1.544 Mbps service and discovery in this case should be limited to the availability of 1.544 Mbps service internet service, the Company provides the following response:
See **CONFIDENTIAL** Exhibit 2a-2k attached.

In reply, Frontier provided information that appears to respond to some of OCA-II-2, excluding subparts d. and e. (d. residential copper-based DSL lines, separately by speed; e. business copper-based DSL lines, separately speed). However, the Company’s reservation of both “the Company’s objections” in the plural and restatement of the core General Objection I.A. gives rise to uncertainty as to the completeness of the those parts of OCA-II-2 for which Frontier provided some information in the Confidential Exhibit 2a-2k.

The Company repeats this process of providing a “specific objection” – which is not specific at all as it does no more than refer back to General Objection I.A. – for OCA-II-32 (related to customer surveys); OCA-II-36 (Lifeline support for voice and broadband); OCA-II-37 (Frontier participation in ACP); OCA-II-38 (details for Frontier ACP participation); OCA-II-38; OCA-II-39 (Frontier broadband service plans and ACP); and OCA-II-40 (broadband service availability and ACP). Frontier Obj. at 5-7.

The Company’s answers to OCA-II-32, -36, -37, -38, -39, and -40 then all include the qualifier:

Response: Subject to and without waiving the Company’s objections, including its objection that the Commission’s sole jurisdiction over broadband provided services and IP-enabled voice services derives from Chapter 30 of the Public Utility Code, which is limited to the availability of 1.544 Mbps service and discovery in this case should be limited to the availability of 1.544 Mbps service internet service, the Company provides the following response: ...

The cumulative effect of the Company's combined approach of relying on a General Objection and then providing a verified response that states that the 'Company's objections... are not waived' is to undermine the value and reliability of the Company's responses to discovery. This approach is inconsistent with the Commission's discovery rules. Dismissal of the Company's General Objection I.A. and an order compelling Frontier to provide full and complete replies will remedy this flawed procedural approach employed by the Company.

IV. CONCLUSION

The Office of Consumer Advocate respectfully requests that the Presiding Administrative Law Judges dismiss the Objections of Frontier and compel Frontier to provide full and complete answers to the objected to OCA Set II interrogatories.

Respectfully Submitted,

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Dated: March 31, 2023
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Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office of Consumer Advocate,	:	
Office of Small Business Advocate,	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2023-3037574
	:	
Commonwealth Telephone Company, LLC	:	
d/b/a Frontier Communications Telephone	:	
Company,	:	
Respondent.	:	

**COMMONWEALTH TELEPHONE COMPANY, LLC D/B/A
FRONTIER COMMUNICATIONS TELEPHONE COMPANY’S OBJECTIONS
TO THE OFFICE OF CONSUMER ADVOCATE AND THE OFFICE OF SMALL
BUSINESS ADVOCATE’S INTERROGATORIES, SET II**

Pursuant to Section 5.342 of the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) regulations, 52 Pa. Code § 5.342, Commonwealth Telephone Company, LLC D/B/A Frontier Communications Telephone Company (“Commonwealth”) submits these Objections to the Office of Consumer Advocate’s (“OCA”) and the Office of Small Business Advocate’s Set II (“OCA-OSBA-II”) Interrogatories and Requests for Production of Documents.

In proceedings before the Commission, “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party...” 52 Pa. Code § 5.321(c). It is not ground for objection that the information sought will be inadmissible at hearing **if** the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.* Further, the Commission’s regulations prohibit discovery which “[w]ould cause unreasonable . . . burden or expense . . . [or] [w]ould require the

making of an unreasonable investigation,” “[r]elates to matter which is privileged,” or “[w]ould require the making of an unreasonable investigation by the deponent, a party or witness.” 52 Pa. Code § 5.361.

As explained below, Commonwealth objects to certain of OCA-OSBA-II on the following grounds.

OBJECTIONS TO OCA-OSBA-II

I. General Objections to OCA-OSBA-II

A. Commission Jurisdiction Over Broadband Services

Retail internet service is an interstate service under the purview of the Federal Communications Commission (“FCC”). Retail internet service is not a “public utility service” subject to the provisions of Section 1501 of the Public Utility Code. As the Commission has consistently made clear: “retail broadband access services to the Internet are generally under the regulatory purview of the FCC” and outside the jurisdiction of this Commission.¹ Therefore, the Commission has held that “allegations regarding . . . [a] service outage of . . . retail Internet service should be dismissed for lack of subject matter jurisdiction. In general, this Commission does not have jurisdiction over the provision of retail Internet services.”²

¹ *Daskalakis v. Verizon Pennsylvania, Inc.*, No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042 (Opinion and Order entered April 4, 2011); *See also MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173 (Opinion and Order entered May 2, 2008), affirmed, *MilleniaNet Corporation v. Pennsylvania Public Utility Commission*, Docket No. 990 CD 2008 (Commonwealth Court, Memorandum Opinion by Judge Butler filed April 30, 2009) (this Commission “has no jurisdiction” over the disputes at issue because “both the Pennsylvania General Assembly and Congress have indicated that the [Commission’s] authority does not . . . extend to internet services.”).

² *A. Moses, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2205259, 2011 Pa. PUC LEXIS 310 (Opinion and Order entered November 4, 2011); *See also, Ebersole-Brown v. The United Telephone Company of Pennsylvania LLC, d/b/a CenturyLink*, Docket No. F- 2012-2310988 (Opinion and Order entered February 28, 2013).

Further, as a matter of Pennsylvania statutory law the Commission does not regulate “IP-enabled” voice service, which is any “service, capability, functionality or application provided using Internet protocol or any successor protocol that enables an end user to send or receive a communication in Internet protocol format or any successor format, regardless of whether the communication is voice, data or video.”³ Both DSL and fiber-based internet access service clearly fit that definition.⁴

The Commission’s sole jurisdiction over broadband provided services derives from Chapter 30 of the Public Utility Code, which is limited to the availability of 1.544 Mbps service to be provided within ten days by an incumbent local exchange carrier, such as Frontier Commonwealth.⁵ The services and facilities provision above this speed level are not properly the subject of the complaint (See Frontier Commonwealth Answer to OCA Complaint at Paragraphs 3 and 4.G).

Therefore, discovery in this case should be limited to the availability of 1.544 Mbps service internet service. Discovery and the development of evidence that is outside of this narrow jurisdiction includes:

- The availability of speeds faster than 1.544 Mbps.
- The reasons for the deployment of DSL or fiber optical facilities that provide speeds faster than 1.544 Mbps.

³ 73 P.S. § 2251.3. Under the Voice Over Internet Protocol Freedom Act “...no department, agency, commission or political subdivision of the Commonwealth may enact or enforce, either directly or indirectly, any law, rule, regulation, standard, order or other provision having the force or effect of law that regulates, or has the effect of regulating, the rates, terms and conditions of . . . IP-enabled service.”

⁴ 73 P.S. § 2251.4.

⁵ *Courtney Matkovich v. Verizon North LLC*, Docket No. C-2020-3022369, Opinion and Order entered August 25, 2022, 2022 PA. PUC LEXIS 259 (“While internet service is generally subject to federal review of interstate tariffs under the purview of the FCC, in Chapter 30 the General Assembly has invested the Commission with jurisdiction over regulated ILECs to assure broadband is deployed to 100% of their retail customers by December 31, 2015, at speeds no less than 1.544/0.128 Mbps, upon ten business days of their customer's requests.”); See also, *White v. Verizon North LLC*, Docket No. C-2016-2532236 Opinion and Order entered November 2, 2016 at 6-7.

- The amount of deployed DSL or fiber optical facilities that provide speeds faster than 1.544 Mbps.
- Future plans to deploy DSL or fiber optic facilities that provide speeds faster than 1.544 Mbps.
- The operation and maintenance of DSL and fiber optic facilities that provide speeds faster than 1.544 Mbps.
- The number of customers served by DSL and fiber optic facilities that provide speeds faster than 1.544 Mbps.
- IP-Enabled Services or related facilities.

B. Requests For Information Excessively Prolonged Periods

Some of the OCA’s Set II interrogatories request information over a five year period.

Such discovery “[w]ould require the making of an unreasonable investigation by the deponent, a party or witness” in violation of the Commission’s discovery regulations.⁶

II. Specific Objections to OCA-OSBA-II

Information about service territory

2. Provide in Excel-compatible format the following. Provide separately by wire center the numbers of lines in service:

- residential lines;**
- single-line business lines;**
- multi-line business lines;**
- residential copper-based digital subscriber lines, separately by speed;**
- business copper-based digital subscriber lines, separately by speed;**
- residential fiber voice lines;**
- business fiber voice lines;**
- residential fiber internet access lines;**
- business fiber access lines;**
- any other lines in service; and**
- Total lines in service (indicate whether instances of a customer subscribing to both voice and high-speed internet access is tallied as one or two lines).**

Objection: As set forth in General Objection I.A above, the Commission’s authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier

⁶ 52 Pa. Code § 5.361(a)(4).

Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

3. Provide in Excel-compatible format the following. To the extent not provided in response to other discovery, please provide for each of the past five years the following on an aggregate basis for your service territory:

- a. **Number of copper lines in service;**
- b. **Number of fiber lines in service;**
- c. **Number of service installations of copper-based voice lines; and**
- d. **Number of service installations of fiber-based voice lines.**

Objection: As set forth in General Objection I.B. above, five years of data is excessive and would require an unreasonable investigation. Frontier Commonwealth will provide information for a three year period.

5. Provide in Excel-compatible format the following. To the extent not provided in response to other discovery, please provide for each of the past five years the following on an aggregate basis for your service territory for all customers:

- a. **Number of outside plant technicians assigned to copper repair;**
- b. **Number of outside plant technicians assigned to fiber repair;**
- c. **Number of repairs occurring on the Company's side of the network interface device;**
- d. **Number of repairs, if any, occurring on customer side of network interface device; and**
- e. **Number of customers, if any, subscribing to inside wire maintenance plan (please include monthly price for plan).**

Objection: As set forth in General Objection I.B. above, five years of data is excessive and would require an unreasonable investigation. Frontier Commonwealth will provide information for a three year period.

Customer surveys

32. Within the last five years has the Company, the Company's parent corporation, or any entity on behalf of the Company or the Company's parent corporation conducted any surveys of its customers? If so, please describe briefly, and provide the results of such surveys.

Objection: As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

Further, as set forth in General Objection I.B. above, five years of data is excessive and would require an unreasonable investigation. Frontier Commonwealth will provide information for a three year period.

Assistance Programs

36. Does the Company offer Lifeline support for both voice and broadband services to Lifeline-eligible customers? Is the Company able to provision voice and broadband service throughout the Company's service territory that meets federal Lifeline minimum requirements? Are there some residential customers, who even if Lifeline eligible, would not be able to receive a qualifying Lifeline-supported broadband service from the Company? Please explain the Company's reply.

Objection: As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

37. Does the Company or an affiliate participate in the Affordable Connectivity Program for the benefit of the consumers in the Company's service area? If "no," please explain whether the Company or an affiliate is taking steps to participate and describe those steps.

Objection: As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

38. Does the Company or an affiliate participate in the Affordable Connectivity Program for the benefit of consumers in the Company's service area? If "yes":

- a) **When did the Company or affiliate commence participation in the ACP?**
- b) **Provide copies of the ACP outreach messages provided to consumers in the Company's service area.**
- c) **Describe how and when consumers have been provided notice of the availability of ACP assistance.**
- d) **Provide the number of customers enrolled in each month since the Company or its affiliate became a participant.**

Objection: As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

39. Identify the Company broadband service plan(s) that qualify for Affordable Connectivity Plan support and are available to consumers throughout the Company's service territory.

Objection: As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

40. Are there Company broadband service plans that qualify for ACP support but are not available at all residential locations?

- a) Please identify those plans.
- b) Identify and describe all network factors that limit the availability of ACP qualifying broadband service plans at some locations.

Objection: As set forth in General Objection I.A above, the Commission's authority over broadband and internet protocol provided voice services is limited to the availability of 1.544 Mbps service to be provided within ten days by Frontier Commonwealth. Frontier Commonwealth will provide information regarding the availability of 1.544 Mbps internet service and facilities that provides those services.

Respectfully submitted,

/s/ Norman J. Kennard

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Dated: March 20, 2023