



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 5, 2018

Corporation Service Company, Registered Agent
Frontier Communications Northwest, Inc.
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Salem, OR 97301

Carl E. Erhart
VP-Regulatory and Governmental Affairs
Frontier Communications Northwest, Inc.
7979 N. Belt Line Road, Suite # S2A90
Irving, TX 75063

Daniel J. McCarthy, President
Frontier Communications Northwest, Inc.
401 Merritt 7
Norwalk, CT 06851

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860140-GB0534-18 / Docket No. NC 389

**PLEASE READ ALL DOCUMENTS CAREFULLY –
DIRECT ALL CORRESPONDENCE TO THE PUBLIC UTILITY COMMISSION OF OREGON**

On September 11, 2018, a representative from your company participated in a telephone conference with the Public Utility Commission of Oregon's Enforcement Committee to discuss an alleged rule violation. Based on that meeting and subsequent correspondence, I have prepared the enclosed documents to resolve this matter.

Enclosed are two sets of documents that contain a Complaint and a Stipulation. The Complaint serves as a formal notice to you of the violation you were charged with and requires that you Answer the allegation. Because you already reached an agreement with the Enforcement Committee, you do not need to submit an Answer. Instead, you need only sign and return the enclosed Stipulation in order to answer the Complaint. If you had not reached an agreement with the Enforcement Committee, filing an Answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing.

The Stipulation sets forth the terms and conditions supported by the Enforcement Committee. To finalize the settlement, **you must sign the original Stipulation and mail it within 20 days of the date of this letter to:**

**Public Utility Commission of Oregon
Administrative Hearings Division
PO Box 1088
Salem OR 97308-1088**

Frontier Communications

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The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

If, for some reason, you do not agree to the terms of the Stipulation, you MUST FILE AN ANSWER TO THE COMPLAINT, admitting or denying the allegation, or a default order may be issued.

If you have questions regarding this matter, please contact Kevin Hennessy at (503) 378-6115.

Sincerely,



Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

Enclosures
JMR:pjr/#9171258

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 NC 389

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 FRONTIER COMMUNICATIONS
9 NORTHWEST, INC.,

9 Defendant.

COMPLAINT

10 1.

11 This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter
12 “Commission”) to determine whether civil monetary penalties should be assessed as provided in
13 ORS 757.993. The Commission maintains its offices at:

14 201 High Street SE Ste. 100, P.O. Box 1088, Salem, Oregon 97308-1088.

15 2.

16 At all relevant times, Defendant was doing business in this state.

17 3.

18 Under ORS 757.993, the Commission has discretion to seek penalties for violations of
19 rules adopted by the Oregon Utility Notification Center (OUNC).

20 4.

21 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for
22 notification to OUNC of excavation activity and marking of underground facilities for the
23 purpose of preventing damage to such facilities. “Excavation”, “operator” and other relevant
24 definitions are contained in ORS 757.542 and OAR 952-001-0010.

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5.

OUNC adopted OAR 952-001-0070(1), which was in effect at all relevant times. The rule provides, in relevant part:

(1) Except as provided in section (3) of this rule, within 2 business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent must:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;

(b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications must include locate request call back information and if done with AVR (Automated Voice Response) must have a repeat option and a call back number to hear the information again.

6.

On or about July 10, 2018, Defendant violated OAR 952-001-0070(1) in that Defendant failed to mark with reasonable accuracy all of its locatable underground facilities or provide marks of its unlocatable underground facilities or notify excavator that none exist, in the area of a proposed excavation at or near 58226 E. Marmot Road in Sandy, Oregon.

7.

ORS 757.993 provides that:

(1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.

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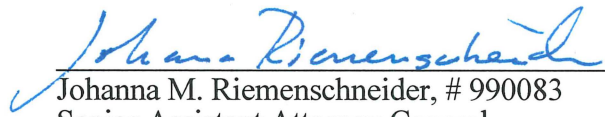
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8.

WHEREFORE, the Commission directs Defendant to file a verified answer to this Complaint within twenty (20) days from the date this Complaint is mailed to Defendant. If no verified answer or other written appearance raising a question of fact or law is filed with the Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the Complaint are deemed admitted, and civil penalties will be imposed in the amount of \$1,000.

DATED this 5th day of December 2018.

Respectfully submitted,
ELLEN F. ROSENBLUM
Attorney General



Johanna M. Riemenschneider, # 990083
Senior Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

1 4.

2 The parties further agree that the Commission may enter an order assessing a civil
3 monetary penalty against Defendant in the amount of \$1,000 under the following terms and
4 conditions:

- 5 A. Defendant must sign and return this Stipulation within 20 days of the date it was
6 served upon (mailed to) Defendant.
- 7 B. Payment of a civil penalty (\$1,000) is suspended and the penalty shall be waived with
8 no further penalties imposed for the violation alleged in the Complaint unless
9 Defendant fails to comply with all of the terms of this Stipulation and all of the rules
10 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
11 one-year period following the date of the Commission's entry of an order.
- 12 C. On or before the 60th day following the Commission's entry of its Order in this
13 docket, Defendant must provide a current plan or procedure (policy) that identifies
14 the company's workflow for marking underground facilities, investigating and
15 troubleshooting damages to underground facilities. The policy must include, though
16 it is not limited to the following:
- 17 (1) Description of the purpose of the policy and commitment thereof by leadership,
18 management, and employees;
 - 19 (2) Identification of notifications and types of responses for marking underground
20 facilities;
 - 21 (3) Identification of tasks assigned to participants by title or position and their roles
22 and responsibilities in the workflow process;
 - 23 (4) Identification of the technology or systems and methods used throughout the
24 policy that enables the completion of identified tasks; and
 - 25 (5) Criteria for periodic review of effectiveness and identification of best practices.

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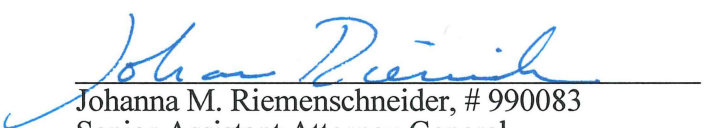
1 D. In the event that Complainant contends that the Defendant has not complied with all
2 of the terms of this Stipulation and all OUNC rules for that one year period,
3 Complainant may reopen this proceeding and petition for imposition of all or a
4 portion of the suspended penalty. In such case, Defendant shall be entitled to a
5 hearing and to be notified of the basis upon which Complainant contends that
6 compliance has not occurred.

7 E. Complainant's failure to enforce any provision of this Stipulation, or decision to
8 waive any violation or nonperformance of this Stipulation in one instance, will not
9 constitute a waiver by the Complainant of that provision, any other provision, or any
10 other violation or nonperformance in another instance.

11 5.

12 This Stipulation is conditioned upon final approval of its terms by the Commission. If
13 the Stipulation is not accepted in its entirety, it is deemed withdrawn.

14
15 DATED this 5th day of December 2018.

16
17 
18 Johanna M. Riemenschneider, # 990083
19 Senior Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

20 DATED this _____ day of December 2018.

21
22 _____
Defendant / Representative (signature)

23
24 _____
(Print Name)