

July 17, 2008

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**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**  
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**JOINT STIPULATION AND AGREEMENT**

This Joint Stipulation and Agreement, resolving all issues raised in connection with the April 5, 2005 petition by Frontier Telephone of Rochester, Inc. (Frontier) seeking removal of provisions of the Open Market Plan (OMP or Plan),<sup>1</sup> is made this day of July 2008, by and among Frontier, all of its affiliated incumbent local telephone companies (collectively Citizens NYS ILECs),<sup>2</sup> the Staff of the Department of Public Service (Staff), the New York State Consumer Protection Board (CPB), and such other parties whose signature pages are attached to this Joint Stipulation and Agreement (collectively Signatory Parties).

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<sup>1</sup> Cases 93-C-0103, 93-C-0033, Opinion and Order Approving Joint Stipulation and Agreement, Opinion No. 94-25 (issued November 25, 1994). Cases 03-C-0103, 93-C-0033, Opinion and Order Establishing New Terms of Open Market Plan and Rate Plan, Opinion No. 00-4 (issued March 30, 2000).

<sup>2</sup> As used in this Joint Proposal, Citizens NYS ILECs refers to Frontier Telephone of Rochester, Inc.; Citizens Telecommunications Company of New York, Inc.; Frontier Communications of New York, Inc.; Frontier Communications of Ausable Valley, Inc.; Frontier Communications of Seneca-Gorham, Inc.; Frontier Communications of Sylvan Lake, Inc; Ogden Telephone Company, and any incumbent local exchange carrier(s) operating in New York State that may be acquired by Citizens Communications or any of its affiliates.

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## **I. Introduction**

The OMP was instituted on January 1, 1995 pursuant to the Commission's approval of a Joint Stipulation and Agreement.<sup>3</sup> At its inception, the OMP was a progressive alternative regulatory plan that incorporated both price cap regulation and extensive mechanisms to bolster the entry and operations of competitors in Frontier's local exchange markets. The OMP also included certain rate reductions and incentives to maintain high service quality. A key element of the OMP was that Frontier was allowed to establish a new, unregulated holding company. At the time, the Commission and Staff had a number of concerns about the creation of this new holding company structure for Frontier. As a result, the OMP contained a number of permanent provisions to provide protections relating to the risks of creating and operating an unregulated holding company. While the OMP expired on December 31, 2004, the permanent provisions associated with the creation of a holding company remain in effect unless modified by the Commission. Many of these provisions are in addition to the Commission's rules and regulations covering all New York ILECs.

Since the OMP commenced, there were fundamental and material changes in the telecommunications marketplace consisting of consolidation and expansion of traditional services over new platforms. As discussed in the Comp III Order,<sup>4</sup> the market conditions that existed when the OMP was instituted changed dramatically and the

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<sup>3</sup> See Opinion and Order Approving Joint Stipulation and Agreement, Opinion No. 94-25 (Nov. 10, 1994), as modified by Opinion and Order Establishing New Terms of Open Market Plan and Rate Plan, Opinion No. 00-4 (March 30, 2000). Some of the provisions of the OMP also apply to Frontier's New York ILEC affiliates.

<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 Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006).

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various players in the marketplace expanded their services well beyond those traditionally offered. In addition, the Telecommunications Act of 1996 was enacted to develop and foster competition. Moreover, Citizens Communications Company (Citizens) purchased the stock of Frontier and its affiliated New York ILECs. Citizens, a long-established holding company, already had ILEC subsidiaries in New York and many other states.

On April 5, 2005 Frontier filed a petition requesting that the Commission remove all remaining permanent restrictions of the OMP. On May 24, 2005 the Commission issued a Notice Soliciting Comments. Comments were filed by the CPB and Reply Comments were filed by Frontier. The Commission invited further comments pursuant to a Notice in the New York State Register dated June 7, 2006. Comments were filed by the CPB. On January 30, 2007 the Commission issued a Notice Regarding Settlement Conference and Active Party List. Pursuant to that Notice, Staff, the CPB, the New York State Telecommunications Association and Frontier (collectively the Parties) initiated negotiations. The Parties engaged in many telephonic and in-person meetings in 2007 and 2008 and exchanged several draft proposals as part of their discussions.

The Parties have now reached a consensus and offer the following replacement of the permanent restrictions in the OMP for the Commission's review and approval. Each of the remaining provisions of the OMP "aimed at eliminating or minimizing potential improprieties under a holding company structure" is addressed below.<sup>5</sup> Except for the restrictions and requirements stated below, the Parties propose

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<sup>5</sup> Frontier agrees that the list of provisions below includes all of the remaining provisions of the OMP, but believes that the list may be over-inclusive, including some provisions that are not related to a holding company structure and that have, therefore, expired. However, Frontier agrees to the resolution of each issue as provided herein.

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that the Commission declare that the remaining permanent restrictions of the OMP, to the extent that they go beyond the restrictions and requirements of the New York State Public Service Law (PSL) and the Commission's own rules and regulations, are no longer effective.

**II. Proposed Replacement to the Remaining Restrictions of the Open Market Plan.**

**The Parties Propose the Elimination of the Following Provisions, (1) through (11):**

**A. Corporate Governance.**

- (1) Frontier must provide quarterly director certification that payment of a dividend by Frontier will not impair Frontier's service quality or its ability to maintain a debt rating target of "A" (for Standard and Poors (S&P), or the equivalent for other rating agencies).
- (2) A majority of Frontier's Board of Directors must be outside members, only one director may be a holding company or affiliate officer or employee, and new directors must be nominated by outside members of the Board.
- (3) Frontier must maintain the position of legal counsel for the provision of legal services to Frontier only.
- (4) Frontier is allowed to impose a termination charge to reimburse itself for unrecovered investment in the event a person or entity terminates service before capital expenditures are fully recovered for specifically requested purchased network functions or services.
- (5) The annual compensation of officers and employees of Frontier must be based on Frontier's performance only and Frontier's officers and senior managers cannot collectively own more than 10% of the holding company's stock.

**B. Affiliate Transactions.**<sup>6</sup>

- (6) Staff has access, upon a showing of need, to the books and records of affiliates not having an obvious relationship with the Citizens NYS ILECs (see item 21 below).

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<sup>6</sup> These provisions were eliminated because the OMP's specific provisions are either no longer necessary or are duplicative with the PSL and the Commission's rules and regulations required of ILECs.

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- (7) Transactions between Frontier and its affiliates and between its holding company and its affiliates shall be limited to purchases and sales made pursuant to tariff except for the non-tariffed transactions discussed in (8). This restriction applies to transactions between Citizens NYS ILECs, other than Frontier, and the holding company and its affiliates.
- (8) Monetary caps on non-tariffed transactions are limited to \$4 million annually plus 1993 allocated cost unless otherwise authorized by the Commission.
- (9) All non-tariffed transactions must be subject to arms-length bargaining and written contracts.
- (10) Where common costs are to be allocated, the allocation procedures must be filed with and approved by the Commission.
- (11) Frontier's managers must annually certify their familiarity with the Commission's affiliate transaction rules.

**The Parties Propose to Retain, Eliminate and/or Modify the Following Provisions:**

- (12) When Citizens or any of its affiliates seek to acquire an incumbent New York telephone corporation, the petitioner(s) must consent to the treatment of the acquisition as a Citizens NYS ILEC subject to the treatment of this Joint Stipulation and Agreement or provide justification why the acquisition should not be so treated.

**Parties' Proposal:** Maintain this provision.

- (13) Frontier bears the burden of justifying continuation of transactions with affiliates at the end of the rate plan.

**Parties' Proposal:** All Citizens NYS ILECs bear the burden of demonstrating the reasonableness of transactions with affiliates in the event of any future rate case.

**C. Dividend Restrictions.**

- (14) Frontier may not make dividend payments to parent holding company if its service quality falls below a certain level (see item 15, below).

**Parties' Proposal:** No Citizens NYS ILECs may make dividend payments to the parent holding company if its service quality falls below a certain level as described in item 15 below. For the purposes of determining the service quality dividend restriction, service quality will be

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considered for all Citizens NYS ILECs on a combined basis as described in item 15.

**D. Service Quality.**

- (15) Frontier must maintain service quality minimums.

**Parties' Proposal:** Eliminate duplicative service quality reporting and base any rebate or dividend restriction on the Commission's current Telephone Service Standards as follows:

Citizens NYS ILECs' service quality will be measured and reported monthly on a combined basis.

A customer rebate system will be in effect and will be based on the total number of measurement opportunities on a twelve month rolling basis using the previous twelve months. If the Commission adopts this Plan, the date the Commission issues its approval order will be the date the Plan commences using the previous twelve month analysis as service quality data.

A "measurement opportunity" is the monthly Customer Trouble Report Rate (CTRR) performance of each central office. Thus, the total number of measurement opportunities in a year represents the number of central offices times 12 (months). For purposes of this rebate, the Citizens NYS ILECs currently have a total of 210 central offices. Thus the total number of measurement opportunities on a rolling 12-month basis would be 2,520.

A customer rebate equal to 25% of the flat monthly basic service charge as presented in each of the respective Citizen NYS ILECs' tariffs (this applies to retail business and residence customers that are jurisdictionally regulated with respect to retail service quality<sup>7</sup>) shall be applied to customer bills when the companies fail a 90% CTRR (90% of the central office entities) with CTRR of at or lower than 3.3 per 100 access lines over a rolling 12-month average ("Performance Threshold"). The 25% rebate to customers will go to customers in the affected central office entities, will be based upon specific rate groups, and message rate customers will receive the same rebate as flat rate customers within their same rate groups. The rebates shall be credited in within 60 days of report of failure to the Commission, which occurs on the 10<sup>th</sup> day of the month following the failure to meet the Performance Threshold(s).

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<sup>7</sup> This rebate will not apply to private line services.

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During periods when the Performance Threshold is missed, the rebate shall double to 50% of the monthly service charge for each office where the CTRR measurement exceeds the higher threshold of 5.5 CTRR per 100 access lines. The 50% rebate is payable when the 25% rebate would have been payable.

In the event that a customer rebate is paid, a bill message briefly explaining the reason for the rebate shall be placed on the customers' bills the month(s) during which the rebate(s) appear.

Rebates shall end with the month the company meets the Performance Threshold.

Further, dividends shall be suspended if service quality fails, such that Citizens NYS ILECs CTRR level falls below the Performance Threshold for three consecutive months. The dividend suspension ends when the Citizens NYS ILECs meet the Performance Threshold for three consecutive months.

(15a) Consequences of Missing Service Quality.

**Parties' Proposal:** Waivers can be requested pursuant to the Commission's rules. The conditions for a waiver are those specified in 16 NYCRR §603.1(c) of the Commission's regulations.

**E. Financial Integrity.**

(16) There must be a review with Staff, at least annually but also following any circumstance that could reasonably be expected to affect adversely Citizens' debt ratings, including but not limited to a downgrading of Citizens' debt ratings. Frontier will review with the Department of Public Service's Office of Accounting and Finance Director its activities and plans relating to the attraction of capital and review Frontier's dividend and financial experience over the past fiscal year and projections for the approaching fiscal year.

**Parties' Proposal:** Eliminate this provision and replace it with the following:

The Citizens NYS ILECs will provide copies of the debt rating agencies' reports from Moody's Investors Service and Standard & Poors, with respect to Citizens' debt, to Staff upon request. In addition, the Citizens NYS ILECs will provide copies of any company presentations given to analysts or credit agencies to Staff upon request. If the senior unsecured credit ratings of Citizens should ever fall below Ba3 by Moody's Investors

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Service and BB- by Standard & Poor's, Citizens NYS ILECs shall file with the Commission within 45 days of the downgrade: (1) a description of the actions and plans that Citizens is taking in response to the downgrades; (2) an analysis showing Citizens' current and projected investments in the Citizens NYS ILECs' facilities; and, (3) plans and programs to ensure the safety and reliability of the network. For any business plans or other non-public information qualifying for confidential treatment under Subpart 6-1 of the Commission's rules, the Citizens NYS ILECs will file and the Commission will protect such information pursuant to such rules.

- (17) Frontier's assets cannot be pledged for debt obligations other than Frontier's own.

**Parties' Proposal:** No Citizens NYS ILEC assets can be pledged for debt obligations or provide financial guarantees without approval by the Commission.

- (18) Frontier's services, functionalities or databases cannot be transferred to affiliates without Commission approval.

**Parties' Proposal:** All Citizens NYS ILECs will comply with the applicable provisions of the PSL and the Commission's rules and regulations.

- (19) Frontier's total debt, fund transfers to affiliates, customer deposits and preferred stock cannot exceed 45% of total capital.

**Parties' Proposal:** All Citizens NYS ILECs' total debt, fund transfers to affiliates, customer deposits and preferred stock cannot exceed 45% of total capital for its NYS ILECs on a statewide basis, or 60% of total capital for any individual New York company.

- (20) A cash management agreement (CMA) among the affiliates must be maintained wherein the holding company (Frontier Corporation) is the cash manager. The CMA must include specific protections against potential financial manipulation of the cash management fund including (1) a requirement that Frontier's fund transfer balances not exceed 5% of total capital, and (2) the authority for the Commission, if necessary, to modify the CMA.

**Parties' Proposal:** Eliminate the restriction on fund transfer balances as long as (19) is met. Maintain the requirements for a CMA including notifying the Commission when modifications are necessary. Continue the current accounting to establish evidence of indebtedness between Citizens

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NYS ILECs and the holding company. This will be applicable to all of Citizens' NYS ILECs.

- (21) Staff has full access upon request (and, in some instances, without notice), to the books and records of the holding company and its affiliates having a direct or indirect relationship to Citizens.

**Parties' Proposal:** Maintain this provision.

- (22) None

**Parties' Proposal: Add new provision.**

Service Quality and Infrastructure Protection Fund – To the extent Citizens NYS ILECs service quality misses the Performance Threshold as provided in (15) above, a Service Quality and Infrastructure Protection Fund (SQIPF) shall be established. Citizens' NYS ILECs shall be required to set aside \$15 million into a fund over which each of its NYS ILECs will have legal control. Funds shall be transferred to the SQIPF within 30 days of the date the Performance Threshold is missed.

Further, within 30 days after the funds are transferred into the SQIPF, the Company shall submit to the Secretary of the Commission a detailed service improvement plan that will obtain consistent monthly performance.

The SQIPF shall be released once the Performance Threshold has been met for three consecutive months.

### **III. General Provisions.**

#### **A Dispute Resolution.**

If a disagreement over the interpretation or implementation of any provision of this Joint Proposal cannot be resolved informally among the Signatory Parties, it will be resolved as follows: (a) the Signatory Parties will promptly convene a conference and in good faith attempt to resolve the disagreement; and (b) if a resolution cannot be achieved,

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then any Signatory Party may petition the Commission for a decision of the disputed matter.

**B. Provisions Not Precedent.**

This Joint Proposal is a negotiated agreement. Its terms and provisions apply solely to, and are binding on each Signatory party only in, the context of this proceeding. None of the positions taken herein by any Signatory Party, including agreement to the terms and provisions of this Joint Proposal and any methodology or principle utilized herein, may be cited or relied upon in any fashion as precedent in any other proceeding before the Commission, another regulatory agency or a court of law for any purpose, except in furtherance of the purposes and results of this Joint Proposal.

**C. Commission Authority to Modify.**

All Commission rules, regulations and orders remain in effect. Nothing in this Joint Stipulation and Agreement shall be construed to affect or otherwise limit the Commission's authority under the Public Service Law or any other law or regulation applicable in the State of New York. The Parties understand that the Commission reserves the authority to modify this Joint Stipulation and Agreement if circumstances in the opinion of the Commission have such a substantial impact as to render this Joint Stipulation and Agreement unreasonable, unnecessary, or insufficient for the continued provision of safe and adequate service by Citizens NYS ILECs at just and reasonable rates or otherwise contrary to the Public Service Law or any other law rule or regulation in the State of New York.

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**D. Integrated Agreement.**

Each provision of this Joint Proposal is in consideration and support of all the provisions and is expressly conditioned upon approval of the Joint Proposal in full by the Commission. If the Commission fails to adopt the terms of this Joint Proposal as presented, the Signatory Parties are free to pursue their respective positions in this proceeding without prejudice.

**E. Entire Agreement.**

This Joint Proposal contains the entire agreement of the Signatory Parties regarding the matters contained herein and supersedes and replaces any and all prior or contemporaneous written or oral agreements or understandings.

**G. Intent of Signatory Parties**

The Signatory Parties agree that the record in this proceeding fully justifies approval of the terms of this Joint Proposal, and intend to submit the Joint Proposal to the Commission with the recommendation that it be approved as being in the public interest.

**H. Counterparts.**

This Joint Proposal is being executed in counterpart originals and will be binding on each Signatory Party that executes a counterpart.

**IV. Conclusion**

The Parties believe that the proposals stated in this Joint Stipulation are in the public interest, because they eliminate restrictions that are no longer necessary or

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appropriate, retain or modify restrictions that remain in the public interest, and refocus Citizens NYS ILECs' regulatory plan on the achievement of high quality service not only in the Rochester area, but throughout the service territories of all of the New York State ILECs under the common ownership of Citizens Communications Company.

IN WITNESS WHEREOF, the Parties have duly executed this Joint Stipulation and Agreement and respectfully submit it for the Commission's review and approval.

**STAFF OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE**



Name: Brian Jossias

Title: Assistant Counsel - NYS DPS

Date: 7-23-08

**FRONTIER TELEPHONE OF ROCHESTER,  
INC., on its own behalf and on behalf of its  
Affiliated New York State Local Exchange  
Carriers**



Name: Daniel McCarty

Title: President & Chief Operating Officer

Date: 7-21-08

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**NEW YORK STATE CONSUMER  
PROTECTION BOARD**



Name: Gregg C. Cowan.

Title: Telecommunications Project Manager

Date: 7/21/08