

**In the Circuit Court of Harrison County, West Virginia**

**COMMUNITY CARE OF WEST  
VIRGINIA, INC.,**  
Plaintiff,

v.

Case No. CC-17-2017-C-318  
Judge Shawn David Nines

**FRONTIER COMMUNICATIONS OF  
AMERICA, INC., ITS PARENTS,  
SUBSI,  
TAMCO CAPITAL CORPORATION,  
ITS PARENTS, SUBSIDIARIES AND  
AFF,  
ANTHONY ROME,  
MICHAEL SHAFFER,**  
Defendants

**Order Regarding Mediation**

Pursuant to Trial Court Rule 29.08(h), mediation shall be conducted on **November 17, 2023**, beginning at **9:00 a.m.**, at the office of Kay, Casto & Chaney, PLLC, 150 Clay Street, Suite 100, Morgantown, WV 26501 and shall continue day to day thereafter at the sole discretion of the Resolution Judge.

Mediation shall be conducted by Honorable David Hammer, assigned by the Business Court Division as Resolution Judge.

**MEDIATION** shall be conducted in accordance with the following procedures:

**PRE-MEDIATION CONFERENCE CALL**

1. Counsel for the parties shall schedule a conference call with the Resolution Judge to discuss any outstanding issues related to the mediation if needed prior to mediation.

**REQUIRED PARTICIPANTS**

2. The following persons are required to attend the mediation **in person**:
  - a) Corporate and legal entity representative for each party with full authority to enter and

sign a settlement agreement.

- b) Lead trial counsel for each party.

**ABSENT GOOD CAUSE SHOWN, FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS, UP TO AND INCLUDING THE STRIKING OF PLEADINGS AND DISMISSAL. COUNSEL AND PARTY REPRESENTATIVES MUST ARRIVE AT MEDIATION BY NO LATER THAN 8:50 A.M. ON NOVEMBER 17, 2023.**

### **CONFIDENTIALITY**

- 3. The contents of the mediation statements and the mediation discussions, including any resolution or settlement shall remain confidential, shall not be used in the present litigation nor any other litigation (whether presently pending or filed in the future), and shall not be construed as nor constitute an admission. Breach of this provision shall subject the violator to sanctions.

### **MEDIATION STATEMENTS**

- 4. Mediation statements shall be delivered to the office of Judge Hammer via email at [david.hammer@courtswv.gov](mailto:david.hammer@courtswv.gov) for receipt no later than 12:00 p.m. on November 16, 2023. Mediation statements shall also be emailed to [christina.bernhard@courtswv.gov](mailto:christina.bernhard@courtswv.gov).
- 5. **Mediation statements are confidential.** Mediation statements shall state on their face “CONFIDENTIAL MEDIATION STATEMENT” and **shall not** be filed with the Clerk’s office, **shall not** be exchanged among the parties or counsel (unless the parties or counsel so desire), **shall not** be provided to the Presiding Judge and **shall not** become part of the record in this matter.
- 6. Mediation statements may be in memorandum or letter form. They must be double-spaced, in no less than 12-point font, and be no longer **than fifteen (15) pages**.
- 7. Mediation statements **must** contain the following information:

- a) **Contact information:** all trial counsel participating in the mediation shall provide: (1) a direct dial telephone work number; (2) a cell phone number; and (3) an electronic mail address where lead trial counsel can be reached.
- b) **Parties:** identify the party/parties represented, describe their relationship, if any, to each other, and by whom each party is represented, including the identity of all representatives who will be participating on behalf of a party/parties during the mediation.
- c) **Factual and Procedural History of the Case:** provide a concise summary of the factual and procedural history of the case, including a statement of the essential facts of the litigation, clearly indicating which material facts are not in dispute and which material facts remain in dispute. Each party shall provide their theories of liability and a one-page itemization of damages claimed, both liquidated and special and shall provide their theories of defense and their position as to the damages claimed, if applicable. The one-page itemization of damages claimed by each party **shall be provided to adverse parties by no later than 12:00 p.m. on November 16, 2023.**
- d) **Critical Deposition Testimony:** provide the deposition synopsis of critical fact witnesses or expert witnesses, or in the alternative, a summary of the testimony of such fact witnesses or expert witnesses if you believe it would be helpful to the Resolution Judge's understanding of the case.
- e) **Summary of Applicable Law:** provide a summary of the applicable law, including statutes, cases, and standards. Quotation of applicable syllabus points may suffice.
- f) **Strengths and Weaknesses of the Case:** provide an **honest** discussion of the strengths **and** weaknesses of the party's claims and/or defenses, the likelihood of a verdict in favor of the party, an opinion as to the probable verdict range, and an opinion as to the range of settlement value.
- g) **Settlement Efforts:** provide a **brief** discussion of prior settlement negotiations and

discussions between the parties, including any outstanding demand made by the parties to settle the litigation, any response by the opposing parties to that demand, and an assessment as to why settlement has not been reached.

- h) **Settlement Proposal:** provide the party's term(s) of settlement, including any proposed term(s) that may be non-monetary, as well as any suggestions regarding how the Resolution Judge may assist the parties in reaching a resolution.
- i) **Fees and Costs:** list separately (I) attorneys' fees and costs incurred to date; (II) other fees and costs incurred to date; (III) a good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (IV) a good faith estimate of additional fees and costs to be incurred if this matter is not settled. Remember, this information is confidential and shall remain so.
- j) **Other Settlements:** if applicable, counsel shall provide the gross settlement amount of any other settlements on behalf of a party whose case is being mediated.
- k) **Other Matters:** in addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, counsel is encouraged to address any other matters they believe may be of assistance to the Resolution Judge.

#### **EXHIBITS TO MEDIATION STATEMENT**

- 8. While counsel may submit documents that will assist the Resolution Judge in understanding the issues and resolving the litigation as exhibits to the mediation statement, counsel is cautioned to limit exhibits to only those documents counsel believes will be crucial to resolution of the litigation. Please bear in mind that the Resolution Judge has access to the electronic file maintained by the Circuit Clerk of Harrison County. Therefore, reference to documents within the electronic file will suffice.

#### **MEMORIALIZATION OF SETTLEMENT**

- 9. If the parties reach a resolution of their dispute, the Resolution Judge will ensure that it is

memorialized before the mediation is deemed concluded. The parties are encouraged to **submit and exchange** a draft resolution agreement in advance of mediation with certain essential terms left blank pending the outcome of mediation.

### **EX PARTE CONTACTS**

10. Before, during and after the scheduled mediation, the Resolution Judge may find it necessary and useful to communicate with one or more parties outside the presence of the other party or parties.

### **OBLIGATION OF GOOD FAITH PARTICIPATION**

11. The required participants shall attend the entire mediation in person and shall be available and accessible throughout the mediation process. No party may be compelled by this Order, the Presiding Judge, or the Resolution Judge to settle a case involuntarily or against the party's judgment. However, the Resolution Judge expects the parties' full and good faith cooperation with the mediation process and expects the participants to be prepared to participate fully, openly, and knowledgably in a mutual effort to examine and resolve issues. The Resolution Judge encourages all participants to keep an open mind to reassess their previous positions and to find creative means for resolving the dispute.

**If settlement is reached on or before November 16, 2023, at noon, the parties must notify the Resolution Judge promptly.**

**Counsel are reminded of their obligations to read and comply with this Order.** To avoid the imposition of sanctions, counsel shall advise the Resolution Judge immediately of any problems regarding compliance with the Order.

It is so ORDERED.

The Clerk shall transmit certified copies to counsel of record and *pro se* parties.

ENTER: November 8, 2023

**/s/ David M. Hammer**  
Circuit Court Judge

## 15th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.