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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of SRR Partners, LLC d/b/a Sorrel River Resort & Spa against Frontier Communications)	Docket No. 19-041-01
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)	
Formal Complaint of Jayne Dillon May against Frontier Communications)	Docket No. 19-041-02
)	
)	
Investigation of Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah)	Docket No. 19-041-04
)	Motion to Compel Compliance with the Public Service Commission’s November 27, 2019 Order Granting in Part Motion to Compel
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Pursuant to Utah Code § 54-10a-301, UTAH ADMIN. CODE r. 746-1 and the Public Service Commission of Utah’s (“PSC”) November 27, 2019 Order Granting In Part Motion to Compel (“Order”), the Utah Office of Consumer Services (“OCS”) files this Second Motion to Compel seeking an order compelling Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah (“Frontier”) to comply with the PSC’s November 27th Order.¹

¹ UTAH ADMIN. CODE r. 746-1-105 provides that the “Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in Commission adjudications unless otherwise provided by: . . . (2) Utah Administrative Code R746 . . .” Rule 37, Utah R. Civ. P. governs Motions to Compel but that rule has time and page limits inconsistent with UTAH ADMIN. CODE r. 746-1. *Compare* Utah R. Civ. P. 37(a)(3)(7 days to respond to motion) *with* UTAH ADMIN. CODE r. 746-1-301(15 days to respond to

BACKGROUND

On August 1, 2019, the OCS served its Second Set of Data Request on Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah (“Frontier”). Declaration of Robert J. Moore, attached as exhibit A at ¶ 1. On August 19, 2019, Frontier provided answers to the discovery requests but these responses were grossly insufficient. *Id.* at ¶ 2. The parties complied with their Utah R. Civ. P. 37(a)(2)(B) meet and confer obligations but were unable to resolve the majority of the discovery issues. *Id.* at ¶ 3. Accordingly, on October 1, 2019, the OCS filed a Motion to Compel. On November 27th the PSC issued an Order Granting In Part the Motion to Compel, ordering Frontier to fully answer several of the challenged discovery requests on or before Monday, December 16, 2019. Order pg. 15.

Frontier made several supplemental filings both before and after the December 16th deadline. *Id.* at ¶ 5. However, the supplemental responses failed to respond to all matters the order compelled in the November 27th Order. *Id.* Accordingly, on January 17, 2020, the OCS sent Frontier a second Utah R. Civ. P. 37(a)(2)(B) Meet and Confer letter and the parties conducted meet and confer discussions on February 6, 2020. January 17, 2020 Meet and Confer Letter attached as exhibit B. During the meet and confer, the OCS requested Frontier completely comply with the PSC’s November 27th Order by February 18, 2020 but Frontier has not produced any additional supplemental filing to address the matters discussed February 6, 2020 meet and confer. Exhibit A. at ¶ 7.

motion). Because of these inconsistencies, the OCS does not move pursuant to the precise procedures of Rule 37 but under the rules of the UTAH ADMIN. CODE r. 746-1. However, the OCS does comply with the provisions of Rule 37 setting out the requirement for the content of a Motion to Compel. Utah R. Civ. P. 37(a)(A)-(C).

It has now been 216 days since the filing of the OCS's Second Set of Discovery Requests and 97 days since the PSC issue its Order compelling production and the OCS still does not have complete responses to its Second Set of Discovery Requests.

ARGUMENT

In addressing the discovery disputes, the OCS first complies with Utah R. Civ. P. 37(a)(2) content requirements for Motions to Compel, *see supra* note 1, and then will address the deficiencies in Frontier's response to the PSC's November 27th Order.

A. Rule 37(a)(2)(A), Relief Sought and Grounds for Relief

The OCS only seeks a second order from the PSC compelling Frontier to fully and completely comply with the PSC's November 27th Order. At this point, the OCS is not seeking discovery sanctions nor asking for a penalty pursuant to Utah Code § 54-7-25. The grounds for relief are that Frontier has simply not complied with this the PSC's November 27th Order.

B. Rule 37(a)(2)(B), Certification that the Parties Meet and Conferred

The undersigned hereby certifies that, as described above, the OCS and Frontier met and conferred in a February 6, 2020 phone conference in a good faith attempt to resolve discovery disputes without PSC action.

C. Rule 37(a)(2)(C), Statement of Proportionality

The discovery sought in this Motion is reasonable and proportionate. First, there are only two categories of discovery request outstanding and both address issues central to the OCS's investigation. Moreover, the PSC has already overruled Frontier's objections and ordered Frontier to fully respond to the requests. In addition, Frontier has access to all information sought and this information cannot be obtained from another less burdensome source. Frontier, as a large corporation, presumably has sufficient resources to reply to these discrete requests.

Moreover, these discovery requests are needed to lay the foundation of an investigation into service quality issues in Castle Valley, which is wide ranging and requires inquiry into Frontier's past and future business practices and goals, technical issues regarding the provision of telephone service in remote locations and evidence of service quality issues affecting numerous customers. More to the point, the evidence already gathered to date contains allegations that the service quality issues impact the safety of customers in Castle Valley. Several long outages have occurred that have left the Valley without access to emergency phone service. Accordingly, the likely public interest benefits of the proposed discovery outweigh the burden or expense to Frontier.

D. Aspect of the PSC's Order Frontier Fails to Obey

The aspects of the PSC's Order that Frontier fails to comply with are related to Discovery Request No. 2.1, 2.3 and 2.4, requesting copies of residential and business contracts, and Discovery Requests No. 2.8 (a), (b) and (c), requesting copies of all trouble reports stemming from complaints communicated to Frontier by means other than a designated 800 phone number.

1. *Order Regarding Residential and Business Contracts*

The OCS's Second Set of Discovery Requests 2.1, 2.3 and 2.4, in essence, ask for production of customers' service contracts and "terms of conditions" in force from 2012 until the present for residential customers, small business customers and—if Frontier does not have service contracts and "terms of conditions" specifically for small business customers—for business customers. *Id.* at ¶ 8. Frontier's initial disclosures only provided a link to the current "terms and conditions" for residential customers and a link to the current and an immediately preceding "terms and conditions" for business customers and states that the "terms and conditions" constitute the parties' contracts. *Id.* at ¶ 9. The OCS moved to compel the disclosure

of “terms and conditions” that may have existed prior to the current “terms and conditions” and to state when the “terms and conditions” were in effect.

The Commission ruled:

Frontier shall produce copies of all versions of any . . . “terms and conditions” applicable to residential [and business] landline telephone service customers that have been in effect since 2012, including identification of the period during which such versions was in effect. If Frontier has no responsive documents, Frontier must explain the reason it has failed to keep copies, electronic or otherwise, of these documents.

. . . .

If Frontier does not and has not, in the pertinent period, employed specific contracts or “terms and conditions” for small business landline telephone customers, Frontier shall identify what version of these documents are and have been applicable to small business customers.

Order at 4-5.

In its additional responses to the Order, Frontier produced residential “terms and conditions” in effect in January 2012 through June 2012, and residential “terms and conditions” “last published” in September of 2013 and in January 2016. *Id.* at ¶ 13. Frontier also produced business “terms and conditions” in effect in January 2012 through June 2012 and business “terms and conditions” “last published” in August of 2013, in September of 2013 and July of 2017. *Id.* at ¶ 14. Finally, Frontier produced “terms and conditions” for small business customers in effect from January 2012 through April 2012, though Frontier has previously claimed it does not have “terms and conditions” for small businesses. *Id.* at ¶ 15.

These responses do not satisfy Frontier’s obligation under the PSC’s November 27th Order. Frontier does not claim that these are the only contracts or “terms and conditions” from the requested period, 2012 to the present. *Id.* at ¶ 16. Nor does Frontier provide “identification

of the period during which such versions were in effect.” Order at pg. 4 exhibit A at ¶ 16. Given the large gaps of time between different versions of the “terms and conditions,” it seems extremely likely that these versions provided by Frontier do not contain the total universe of “terms and conditions” from the requested period. However, Frontier does not attempt to “explain the reason it has failed to keep copies, electronic or otherwise, of these documents.” Order at pg. 4, exhibit A at ¶ 17. Nor did Frontier comply with the PSC direction that, if it “does not and has not, in the pertinent period, employed specific contracts or “terms and conditions” for small business landline telephone customers, Frontier shall identify what version of these documents are and have been applicable to small business customers.” Order at pg. 5, exhibit A at ¶ 18. Frontier cannot be allowed to disregard specific directions of the PSC and must be compelled to comply with the November 27th Order.

2. *Order Regarding Trouble Reports*

Discovery Request 2.8 asks for the production of records of customer complaints and Frontier’s response to these complaints related to residential and small business phone service from 2012 to the present, communicated to Frontier by means other than a designated 800 phone number. *Id.* at ¶ 19. Frontier did not produce any documents in response to this request objecting to it claiming it was not data kept by Frontier in its ordinary course of business, despite the fact that UTAH ADMIN. CODE R. 746-340-5 B.1 requires Frontier to maintain records of this information. *Id.* at ¶ 20. The Commission overruled Frontier’s objection concluding that the “OCS’s motion to compel a response to Request 2.8 is therefore granted Frontier shall produce any responsive documents in its possession, custody, or control, including archived documents.” Order at 12.

In its additional responses to the Order, Frontier again did not produce any documents specifically responsive to this request. *Id.* at ¶ 22. Instead, in its email containing the trouble reports for 2012, 2013 and 2014, Frontier indicated that these documents were in response to both requests 2.7 and 2.8. *Id.* at ¶ 23. However, the spread sheets of trouble reports from 2012 through 2014 did not indicate what trouble reports were responses to complaints communicated to Frontier by way of the 800 number and what trouble reports were responses to complaints communicated to Frontier by means other than the 800 number. *Id.* at ¶ 24. Moreover, these responses only provided information from the years 2012 to 2014 and there is no indication that information already in the Offices possession contains trouble reports from complaints communicated to Frontier by means other than the 800 number. *Id.* at ¶ 25. Nor did Frontier indicate that all complaints communicated to Frontier by means other than the 800 number were included in the troubled reports that Frontier has provided the OCS. *Id.* at ¶ 26. Accordingly, Frontier has not complied with the PSC’s November 27th Order requiring Frontier to produce documents responsive to the OCS’s document requests 2.8 (a), (b) and (c).

E. Contents of Requested Order

In regard to Frontier’s failure to comply with the PSC’s November 27th Order concerning productions of the requested “terms and conditions,” the OCS requests a second order requiring compliance with the specific terms of the November 27th Order, i.e. that Frontier must produce: all responsive documents in the requested period, that the production include identification of the period during which the versions were in effect, that the production include identification of what versions of the “terms and conditions” apply to small businesses, and, if Frontier “has no responsive documents, Frontier shall explain the reason it has failed to keep copies, electronic or otherwise of these documents.” Order pg. 4.

In regard to Frontier’s failure to comply with the PSC’s November 27th Order concerning production of the requested reports of customer complaints, the OCS requests a second order requiring that Frontier produce copies of “all record of any type indicating residential [and business] landline telephone customer complaints and [Frontier’s] response to residential [and business] customers complaints . . . other than complaints using a designated 800 number.” Order at pg. 11. Frontier should be required to specifically identify what records related to complaints that do not use the designated 800 number and state that it has produced all requested documents.

CONCLUSION

For the forgoing reasons, the OCS requests that the PSC issue a second Order Compelling Frontier to fully answer the OCS’s Second Set of Discovery Requests Nos. 2.1, 2.3, 2.4, 2.8 (a), (b), and (c), in the manner requested above.

Respectfully submitted March 3, 2019.

/s/ Robert J. Moore
Robert J. Moore
*Attorney for the Utah Office
of Consumer Services*

EXHIBIT A

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of SRR Partners, LLC d/b/a Sorrel River Resort & Spa against Frontier Communications))))	Docket No. 19-041-01
Formal Complaint of Jayne Dillon May against Frontier Communications)))	Docket No. 19-041-02
Investigation of Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah))))	Docket No. 19-041-04 Declaration of Robert J. Moore

The undersigned Robert J. Moore hereby declares, under penalty of perjury, that he is the attorney for the Office of Consumer Services in the above captioned matter, has personal knowledge of the facts set out below and if called as a witness would testify to the same.

1. On August 1, 2019, the Office of Consumer Services (“OCS”) served its Second Set of Data Request on Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah (“Frontier”).

2. On August 19, 2019, Frontier provided answers to the discovery requests but these responses were grossly insufficient.

3. The parties complied with their Utah R. Civ. P. 37(a)(2)(B) meet and confer obligations but were unable to resolve the majority of the discovery issues.

4. Accordingly, on October 1, 2019, the OCS filed a Motion to Compel. On November 27th the PSC issued an Order Granting In Part the Motion to Compel, ordering Frontier to fully answer several of the challenged discovery requests on or before Monday, December 16, 2019.

5. Frontier made several supplemental filings both before and after the December 16th deadline. However, the supplemental responses failed to respond to all matters the order compelled in the November 27th Order.

6. Accordingly, on January 17, 2020, the OCS sent Frontier a second Utah R. Civ. P. 37(a)(2)(B) Meet and Confer letter and the parties conducted meet and confer discussions on February 6, 2020.

7. During the meet and confer, the OCS requested Frontier completely comply with the PSC's November 27th Order by February 18, 2020 but Frontier has not produced any additional supplement filing to address the matters discussed February 6, 2020 meet and confer.

8. The matters discussed in the meet and confer involved two categories of discovery requests: (1) Discovery Requests 2.1, 2.3 and 2.4, which in essence, ask for production of customers service contracts and "terms of conditions" in force from 2012 until the present for residential customers, small business customers and—if Frontier does not have service contracts and "terms of conditions" specifically for small business customers—for business customers and (2) Discovery Request 2.8 (a), (b) and (c), which in essence, ask for records of any type of customer complaints, and Frontier's response to these complaints, for complaints transmitted to Frontier by means other than a designated 800 number.

9. With regard to Discovery Requests 2.1, 2.3 and 2.4, Frontier's initial disclosures only provided a link to the current "terms and conditions" for residential customers and a link to the current and an immediately preceding "terms and conditions" for business customers and states that the "terms and conditions" constitute the parties' contracts.

10. The OCS moved to compel the disclosure of "terms and conditions" that may have existed prior to the current "terms and conditions" and to state when the "terms and conditions" were in effect.

11. The PSC granted this portion of the Motion to Compel compelling production of the "terms and conditions," requiring Frontier to identify the period of time these terms were in effect and, if Frontier did not have responsive documents, requiring Frontier to explain the reason it has failed to keep copies, electronic or otherwise, of these documents. The Order gave Frontier a deadline of December 16, 2019 to comply with the Order.

12. Frontier made additional responses both before and after the December 16, 2019.

13. In these additional responses, Frontier produced residential "terms and conditions" in effect in January 2012 through June 2012, and residential "terms and conditions" "last published" in September of 2013 and in January 2016.

14. Frontier also produced business "terms and conditions" in effect in January 2012 through June 2012 and business "terms and conditions" "last published" in August of 2013, in September of 2013 and July of 2017.

15. Frontier also produced "terms and conditions" for small business customers in effect from January 2012 through April 2012, though Frontier has previously claimed it does not have "terms and conditions" for small businesses.

16. Frontier did not claim that these are the only contracts or “terms and conditions” from the requested period, 2012 to the present. Nor did Frontier provide identification of the period during which such versions were in effect.

17. Given the large gaps of time between different versions of the “terms and conditions,” it seems extremely likely that these versions provided by Frontier do not contain the total universe of “terms and conditions” from the requested period. However, Frontier does not attempt to explain the reason it has failed to keep copies, electronic or otherwise, of these documents.

18. Nor did Frontier identify what version of these documents are and have been applicable to small business customers.

19. Discovery Requests 2.8 (a), (b) and (c) ask for the production of records of customer complaints and Frontier’s response to these complaints related to residential and small business phone service from 2012 to the present, communicated to Frontier by means other than a designated 800 phone number.

20. Frontier did not produce any documents in response to this request objecting to it claiming it was not data kept by Frontier in its ordinary course of business, despite the fact that UTAH ADMIN. CODE r. 746-340-5 B.1 requires Frontier to maintain records of this information.

21. The Commission overruled Frontier’s objection concluding that the “OCS’s motion to compel a response to Request 2.8 is therefore granted Frontier shall produce any responsive documents in its possession, custody, or control, including archived documents.”

22. In its additional responses to the November 27th Order Granting in Part the Motion to Compel, Frontier again did not produce any documents specifically responsive to this request.

23. Instead, in its email containing the trouble reports for 2012, 2013 and 2014, Frontier indicated that these documents were in response to both requests 2.7 and 2.8.

24. However, the spread sheets of trouble reports from 2012 through 2014 did not indicate what trouble reports were responses to complaints communicated to Frontier by way of the 800 number and what trouble reports were responses to complaints communicated to Frontier by means other than the 800 number.

25. These responses only provided information from the years 2012 to 2014 and there is no indication that information already in the OCS's possession contains trouble reports from complaints communicated to Frontier by means other than the 800 number.

26. Nor did Frontier indicate that all complaints communicated to Frontier by means other than the 800 number were included in the trouble reports that Frontier has provided the OCS.

I declare under criminal penalty of the State of Utah that the forgoing is true and correct.

Signed on this 9th day of March, 2020, at Salt Lake City, Utah.

/s/ Robert J. Moore
Robert J. Moore
*Attorney for the Utah Office of
Consumer Services*

EXHIBIT B

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
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January 17, 2020

Phillip J. Russel
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*Attorney for Citizens Telcom Company
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Via E-mail only

Re: **In the Matter of Citizens Telcom Company of Utah, Dockets 19-041-01, 19-041-02, 19-041-04 Utah R. Civ. P. 37(a)(2)(B) Meet and Confer Letter**

Dear Phil:

This letter is to inform you that the Office of Consumer Services ("Office") believes that several of your client's, Citizens Telcom Company of Utah ("Frontier"), responses to the Public Service Commission of Utah ("Commission") November 27, 2019 Order Granting in Part Motion to Compel ("Order") are insufficient. Hopefully we can resolve this matter through our meet and confer obligations, as set out in Utah R. Civ. P. 37(a)(2)(B). For discussion purposes, I will outline what I feel are your client's responses' major deficiencies.

Order's granting the Motion to Compel with Respect to Discovery Requests 2.1, 2.3 and 2.4. Discovery Requests 2.1, 2.3 and 2.4, in essence, ask for production of customers service contracts and "terms of conditions" in force from 2012 until the present for residential customers, small business customers and (if Frontier does not have service contracts and "terms of conditions" specifically for small business customers) for business customers. Frontier's initial disclosures only provided a link to the current "terms and conditions" for residential customers and a link to the current and an immediately preceding "terms and conditions" for business customers and states that the "terms and conditions" constitute the parties' contracts. Frontier also stated that it did not have "terms and conditions" specifically for small business customers. The Office moved to compel the disclosure of "terms and conditions" that may have existed prior to the current "terms and conditions" and to state when the "terms and conditions" were in effect.

The Commission ruled that Frontier must (1) produce all versions of contracts and “terms and conditions” it has used since 2012, including reasonable identification of the period during which such contract was used, (2) if Frontier has no responsive documents, Frontier must explain the reasons it has failed to keep copies, electronic or otherwise, of these documents. Order at 4-6.

In its additional responses to the Order, Frontier only produced “terms and conditions” in effect in 2012 for residential services, 2012 for small business customers (though Frontier earlier has claimed it does not have “terms and conditions” for small businesses) and 2012 for business customers. There was no indication how long these “terms and conditions” were in effect and no explanation of why Frontier does not have “terms and conditions” for the complete time period of the request, i.e., from 2012 to the present. Accordingly, these responses do not comply with the Commission’s Order.

Order’s granting the Motion to Compel with Respect to Discovery Requests 2.7.

Discovery Requests 2.7 ask for the production of trouble reports of residential, small business and (if Frontier does not keep trouble reports specifically for small business) for business phone service from 2012 to the present specifically identifying customers in Castle Valley, that Frontier is required to maintain pursuant to Utah Admin. Code r. 746-340-5 B.1. Initially Frontier responded by providing ticket reports for all Utah exchanges from January 2017 to July 2019. However, the trouble reports were in a PDF format with writing so small that it was almost unreadable. In the Motion to Compel, the Office argued that it is entitled to trouble reports from the entire period requested and to have the trouble reports provided in Excel format to enable the Office to examine the reports.

In its Order, the Commission agreed and ordered Frontier to produce trouble reports for the entire period requested and stated: “Additionally, the PSC notes the file name description in its initial discovery response identifies the file with an ‘.xlsx’ suffix, suggesting that the native files are executable in Excel. While the OCS may not unreasonably dictate the format of production such that it becomes disproportionately burdensome, the OCS is entitled to a production in the native file format where that format is legible and the alternative file format is not.” Order at 10.

In its additional responses to the Order, Frontier provided trouble reports for the years 2012, 2013 and 2014, in excel format. Together with trouble reports for the years 2015 and 2016, also in excel format, (which were provided in discovery to another party prior to the Office entering this case) this constitutes trouble reports for the entire period requested. However, despite the Commission’s order, Frontier did not provide trouble reports from its initial response in excel format. Because all other trouble reports were provided in excel format, it is clear that Frontier can produce trouble reports from January 2017 through July 2019 in excel format and must do so to comply with the Commission’s Order. This is essential because this is the most important period and the Office needs this information to be legible for it to be of any use.

In addition, as noted by the Commission in another part of the Order, “Frontier should understand it is under a continuing duty to supplement that request to the extent it locates

additional responsive documents.” Order at 8. Accordingly, Frontier should also supplement its response to include trouble reports presently in its possession for periods after July 2019.

Order’s granting the Motion to Compel with Respect to Discovery Requests 2.8.

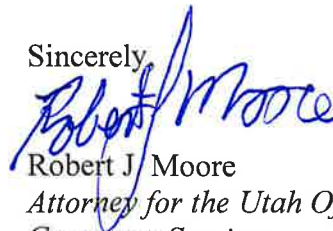
Discovery Requests 2.8 ask for the production of trouble reports of residential, small business and (if Frontier does not keep trouble reports specifically for small business) for business phone service from 2012 to the present, communicated to Frontier by means other than a designated 800 phone number. Frontier did not produce any documents in response to this request objecting to it because it was not data kept by Frontier in its ordinary course of business. However, the Commission ruled that the “OCS’s motion to compel a response to Request 2.8 is therefore granted Frontier shall produce any responsive documents in its possession, custody, or control. Including archived documents.” Order at 12.

In its additional responses to the Order, Frontier again did not produce any documents responsive to this request. Instead, in its email containing the trouble reports for 2012, 2013 and 2014, Frontier indicated that these documents were in response to both requests 2.7 and 2.8. However, the spread sheets of trouble reports from 2012 through 2014 did not indicate what trouble reports were responses to complaints communicated to Frontier by way of the 800 number and what trouble reports were responses to complaints communicated to Frontier by means other than the 800 number. Moreover, these responses only provided information from the years 2012 to 2014 and there is no indication that information already in the Offices possession contains trouble reports from complaints communicated to Frontier by means other than the 800 number, as the Office’s requests and the Commission’s Order clearly require Frontier to produce.

Moreover, Frontier’s initial objection that it does not keep this information in its ordinary course of business, which the Commission overruled, is not well taken. Utah Admin. Code r. 746-340-5 B.1 requires Frontier to keep this information. Accordingly, it is essential that the Office obtain this information, information that the initial requests clearly sought and the Commission clearly ordered Frontier to produce. Therefore, to comply with the Commission’s order, Frontier must produce all copies of trouble reports from 2012 to the present and indicate specifically whether these reports were from complaints communicated to Frontier by means other than the 800 number.

This letter is not meant to address every problem with your additional response to the Commission’s Order but simply to serve as an initial basis for the required meet and confer telephone conversation. I will call or email you to schedule the meet and confer conversation after you and your client have the opportunity to review this letter. Thank you for your attention to this matter.

Sincerely,



Robert J. Moore

*Attorney for the Utah Office of
Consumer Services*