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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| In the Matter of Citizen Telecom Company of Utah | ) | Docket No. 19-041-04            |
| d/b/a/ Frontier Communications                   | ) |                                 |
|  | ) | Request for Leave to File a     |
|  | ) | Reply to Frontier’s Response to |
|  | ) | Office of Consumer Services     |
|  | ) | Request for Agency Action and   |
|  | ) | Proposed Reply                  |
|  |   |                                 |

Pursuant to Utah Code §§ 54-10a-301, 63G-4-204 and Utah Admin. Code r. 746-1, the Office of Consumers Services (“Office”) submits this Request for Leave to File a Reply and Proposed Reply. The instant docket, 19-041-04, is one of a number of related dockets all dealing with significant problems with telephone service provided by Citizen Telecom Company of Utah d/b/a/ Frontier Communications’ (“Frontier”) in Castle Valley, Utah. Two Consumer Complaints filed by Sorrel River Ranch Resort in docket 19-041-01 (“Sorrel Complaint”) and by Jayne May in docket 19-041-02 (“May Complaint”) initiated these related proceedings. These Complaints were followed by the filing of the Office’s Request for Agency Action opening the present docket 19-041-04 (“Office’s Request”). Thereafter, the May Complaint was consolidated with the Office’s request and the Division of Public Utilities (“Division”) initiated its own undocketed investigation pursuant to its own statutory authority. (“Division Undocketed

Investigation”); Utah Code § 54-4a-1(1)(c). After the Division opened its investigation, Frontier filed its Response arguing that the Office’s request for the Commission to open an investigative docket should be denied.

In the instant pleading, the Office seeks leave to file a Reply, as allowed by section 63G-4-204, on the grounds that although Frontier’s pleading is styled a Response, it is in substance a Motion to Dismiss from which a responsive pleading is permitted and because since the filing of the Office’s Request for Agency Action new facts have arisen that counter central factual and legal contentions Frontier advances in its Response. The Office’s proposed Reply asserts that the instant docket should not be terminated because it is not duplicative of related dockets and the factual foundations underlying all of Frontier’s arguments conflict with the record or are otherwise unsupported.

#### **I. MOTION FOR LEAVE TO FILE A REPLY**

Pursuant to section 63G-4-204(3), the Office moves for leave to file a Reply to Frontier’s Response. On May 17, 2019, the Office initiated this docket by filing its Request for Agency Action. On June 17<sup>th</sup>, Frontier filed its response under Utah Admin. Code r. 746-1-206, which provides a “responsive to . . . an initial pleading shall be filed in accordance with Utah Code Section 63G-4-204 . . . .” In turn, section 63G-4-204(3) states that the “presiding officer . . . may permit . . . pleadings in addition to . . . the request for agency action, and response.” In accordance with section 63G-4-204(3), the Office moves for leave to file a reply on the following grounds.

First, although Frontier’s Response is styled as a simple Response, it is in essence a Motion to Dismiss and responsive pleading are allowed to counter allegations and arguments presented in Motions to Dismiss. Utah Admin. Code r. 746-1-301. The first paragraph of

Frontier's Response asks the Utah Public Service Commission ("Commission") to "deny OCS's request [for agency action] . . . on the grounds explained below." Frontier's Response at pg. 1. The Response then proceeds to argue reasons why the Commission should dismiss the Office's Request for Agency Action. *Id.* at 1-4. Moreover, this Commission has already opened a docket pursuant to the Office's Request for Agency Action, held a scheduling conference and issued an Order impacting the adjudication of the Sorrel Complaint and the May Complaint. Docket Nos. 19-041-01, 19-041-02, 19-041-04, Notice of Scheduling Conference Notice of Consolidation, and Order Denying Motions Made at Hearing in Docket No. 19-041-01, at pg. 3 (Utah P.S.C., May 24, 2019). Given the substance of Frontier's pleading and the progress in the instant docket, Frontier's Response contending the Commission should not proceed with docket 19-041-04, should be treated as a Motion to Dismiss and the Office should be granted leave to file a Reply in accordance with Utah Admin. Code r. 746-1-301.

Second, since the filing of the Office's Request for Agency Action, new facts have arisen that impact the arguments put forward in Frontier's Response. For example, Frontier's Response states that problems with regard to the telephone service in Castle Valley have been remedied because "recent equipment changes have assured adequacy of service [in Castle Valley]." Frontier Response at pg. 2. However, in a June 14, 2019 Status Report filed in docket 19-041-01, Complainant Sorrel River Ranch avers that since "the May 17, 2019 hearing in the Complaint Docket, service to SRR has not improved and still presents a public safety hazard. There have been outages at SRR's ranch that have spanned most of the day and other shorter outages and innumerable dropped and lost calls." Docket 19-041-01, Complainant Sorrel River Ranch's Status Report, at pg. 1 (June 14, 2019).

In addition, this Commission has issued an Order opening docket 19-041-04 and providing procedures pursuant to which both the Sorrel Complaint and the May Complaint may be consolidated with docket 19-041-04 and the May Complaint has since been consolidated into docket 19-041-04 by operation of the Order.<sup>1</sup> *See* Docket Nos. 19-041-01, 19-041-02, 19-041-04, Notice of Scheduling Conference Notice of Consolidation, and Order Denying Motions Made at Hearing in Docket No. 19-041-01, at pg. 2-3 (Utah P.S.C., May 24, 2019). Finally, on June 11, 2019, the Division of Public Utilities opened up an undocketed investigation captioned “In the Matter of the Division of Public Utilities Investigation of Citizen Telecom dba Frontier Communications service quality in Utah” pursuant to the Division’s independent power to investigate utilities. Utah Code § 54-4a-1(1)(c). All these factors, which occurred after the Office filed its May 17<sup>th</sup> Request for Agency Action, impact Frontier’s arguments presented in its Response and should be considered in ruling on Frontier’s request to dismiss this docket.

In sum, this Commission should grant the Offices Motion for Leave to File a Reply under section 63G-4-204 both because Frontier’s Response is essentially a Motion to Dismiss and because new facts have arisen material to the arguments presented in Frontier’s Response.

## **II. PROPOSED REPLY**

If this Commission grants the above Motion for Leave to File a Reply, this Commission should consider the following as the Office’s Reply to Frontier’s Response. In this proposed

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<sup>1</sup> The Commission’s May 24, 2019 Order provides, “the PSC gives notice it will consolidate additional proceedings in the May Complaint with the [docket 19-041-04] unless Ms. May provides notice to the PSC that she prefer not to do so on or before the date of the scheduling conference notice just above, June 4, 2019.” *See* Docket Nos. 19-041-01, 19-041-02, 19-041-04, Notice of Scheduling Conference Notice of Consolidation, and Order Denying Motions Made at Hearing in Docket No. 19-041-01, at pg. 2-3 (Utah P.S.C., May 24, 2019).

Because the record does not contain any notice that Ms. May does not want to consolidate, reading the record in light of the Commission Order demonstrates that the docket’s were consolidated on June 4, 2019 by operation of the May 24<sup>th</sup> Order.

Reply, the Office argues that contrary to assertions in the Frontier Response the Office's request for an investigative docket is not duplicative of other related dockets and Frontier's other arguments are countered by record evidence, subsequent filings or is otherwise unsupported.

A. The Office's Request for an Investigative Docket is not Duplicative of the Related Dockets

Docket 19-041-04 is not duplicative of any of the remaining related dockets. First, the Office's request and the May Complaint have been consolidated and therefore cannot be considered duplicative of one another. Accordingly, only the Sorrel Complaint and the Division's investigative docket remaining to support Frontier's claim. However, the Sorrel docket is limited to service quality issues impacting a specific resort. The docket cannot be used to investigate wider complaints by other customers in Castle Valley. *See In the Matter of Complaint of Jeff L. Middleton, Complainant vs. Mountain States Telephone and Telegraph Company, dba U.S. West Communications Inc.*, Docket No. 98-049-30, Order at 1-2, 1999 WL 35637984, (Utah P.S.C., April 13, 1999) ("to the extent that Complainant seeks . . . to represent the interests of other parties, the Commission lacks subject-matter jurisdiction"); *In the Matter of the Complaint of Brian Snelson, Complainant vs. Questar Gas Company*, Docket No. 99-057-10, Order at 1, 1999 WL 35639177, (Utah P.S.C., August 23, 1999) ("Under the Commission rules only parties in interest . . . can initiate proceedings before the Commission.") Therefore, the Sorrel Complaint cannot be considered duplicative of the Office's investigative docket.

This leaves the Division's investigative docket to support Frontier's claim. However, there is an important distinction between the Division's investigation and the Office's request for

a Commission investigation, a Commission investigation would be a public process the Division's investigation is not.<sup>2</sup>

As alleged in the May Complaint, the problems with the telephone service in Castle Valley have become a considerable community concern. Office's Request for Agency Action, at pg. 2-3 (discussing May Complaint). Indeed, the May Complaint specifically alleges that "outages cause concern regarding safety and asserts that the Castle Valley fire department resorted to setting up 'a command center at [the] town office' to provide a telephone line to the sheriff's office in case of emergencies during a ten-hour outage." *Id.* Given the serious nature of these allegations and the significant public concern over long lasting service quality issues in Castle Valley, a public investigation is preferable to limiting these proceedings to the Division's investigation. In addition, it is not clear that the Division's investigation covers all the aspects of the investigation initiated by the Office. For example, it is not clear whether the Division will investigate whether Frontier should be allowed to include confusing disclaimers in its consumer contracts that are inconsistent with Frontier's tariff. *See* Offices' Request for Agency Action at pg. 3-5. If docket 19-041-04 is dismissed, the residents of Castle Valley will have no way of knowing if the appropriate governmental authorities are acting to address the allegations of long lasting and significant quality problems with Frontier's telephone service and no clear way of assisting in the investigation.

Finally, Frontier's concern that pursuing the Office's docket will result in a "waste of effort and resources for the Commission and all participants" is not well taken. Frontier's Response at 4. First, this concern stems from Frontier's assertion that there is no need for a wider investigation than the investigation conducted in the Sorrell Complaint. *Id.* However, the

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<sup>2</sup> The Division's investigation is not public because they have the statutory power to conduct their own investigation outside of a public process overseen by the Commission. Utah Code § 54-4a-1(1)(c).

Division has already initiated a wider investigation than simply an investigation into the consumer Complaints so the existence of docket 19-041-04 does not greatly expand the investigation or add a significant additional burden on Frontier.

Accordingly, the Office's request for an investigative docket, 19-041-04, is not duplicative of the remaining related dockets.

**B. Frontier's Central Factual Allegations Conflict with Record Evidence.**

All of Frontier's material factual allegations conflict with record evidence or later filings. Specifically, Frontier's Response contains three central factual allegations for support of all its argument: (1) that new equipment now "assure[s] adequacy of service [in Castle Valley]," (2) that the Office "has provided no evidence that Frontier has violated any PSC service quality rule," and (3) "all customers affected by issues with Frontier's system in Castle Valley were credited for all amounts paid to Frontier for the December 2018 through March 2019." Frontier Response at pg. 1-3. All of these suppositions conflict with later filings and/or record evidence.

First, as noted *supra* at pg. 3, the claim that the service issues in Castle Valley have been resolved conflicts with the June 14, 2019 Status Report filed by Sorrel River Ranch which avers that the service problems in Castle Valley persists and that there "have been outages at SRR's ranch that have spanned most of the day and other shorter outages and innumerable dropped and lost calls." Docket 19-041-01, Complainant Sorrel River Ranch's Status Report, at pg. 1 (June 14, 2019).

Second, the contention that no evidence exists to show that Frontier has violated any quality rule conflict with Frontier's witness testimony at the May 17, 2019 hearing. Specifically, Utah's telecom service quality rule Utah Admin. Code r. 746-340-5(2)(B)(1) provides:

Each Telecommunication corporation shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and respond to each complaint. The telecommunication corporation shall maintain a record of trouble reports made by its customers. This record shall include appropriate identification of the customer or service affected, the time, data, and nature of the report and the actions to clear the trouble or satisfy the complaint.

However, at the hearing Frontier's witness Mr. Michael Giles, Local Manager and Operations Supervisor for Frontier, testified that Frontier does not keep records of trouble reports submitted by email.<sup>3</sup> Hearing Testimony at pg. 53 ln. 20-21; pg. 57 ln.13 to pg. 58 ln. 10. This practice violates service quality Rule 746-340-5(2)(B)(1).

In addition, testimony at the hearing raised serious questions regarding whether Frontier complies with Utah's telecom service quality rule Utah Admin. Code r. 746-340-5(2)(C), which provides:

Inspection and Tests – Each telecommunication corporation shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving efficient operation of its system and rendering safe, adequate, and continuous service. It shall file a description of its inspection and testing program with the Commission showing how it will monitor and report compliance with Commission rules or standards.

However, both Mr. Giles, Local Manager and Operational Supervisor of Frontier, and Mr. Carl Erhart, Vice President for Regulatory and Governmental Affairs for Frontier, testified

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<sup>3</sup> Q. Is there any specific record that deals with your response to email requests that don't go through the 800 number?

A. No.

Hearing Testimony at pg. 53 ln. 20-21; pg. 57 ln.13 to pg. 58 ln. 10.



that they do not know if Frontier provides this Commission with “a description of its inspection and testing program.” Hearing Testimony at pg. 31 ln. 14-22; pg. 58 ln. 11-17; pg. 76 ln. 12-25; pg. 84-20-23. If the Local Manager and Operational Supervisor of Frontier and the Vice President of Regulatory and Governmental Affairs cannot state that Frontier makes the necessary filing with the Commission pursuant to Rule 746-340-5(2)(C), it is likely that Frontier has not made the necessary filing. If so, this constitutes a violation of Rule 746-340-5(2)(C).

In any event, the hearing testimony demonstrates that Frontier is not complying with Rule 746-340-5(2)(B)(1). Thus, contrary to the factual allegations of Frontier’s Response, Frontier has violated the applicable service quality rules.

Finally, Frontier’s contention that it has provide customer credits to all customers suffering service quality issues occurring from December 2018 through March 2019 is supported by a declaration and for purposes of this memorandum the Office will accept this fact as true. However, the hearing testimony of David Ciani manager-director of Sorrel River Ranch contains ample evidence that the substantial problems with Frontier’s service quality existed before and after this limited time period and Sorrel’s Status Report asserts that the problems are continuing. Hearing Testimony at pg. 9, ln. 14-20; pg. 25 ln. 12-18, Docket 19-041-01, Complainant Sorrel River Ranch’s Status Report, at pg. 1 (May 24, 2019).

Accordingly, while the contention that all customers receive bill credits for disruptions of services occurring from December 2018 through March 2019 may be true, any implication that issues of Frontier providing appropriate bill credits has been remedied is not warranted. Indeed, if Frontier did provide bill credits for service interruptions outside this limited period, Frontier had incentive to demonstrate this fact and failed to do so. Thus, issues with the appropriate bill credits have not be resolved and Frontier’s implication to the contrary is unsupported.

In sum, the three factual underpinnings for all of Frontier's arguments conflict with record evidence and subsequent filings or are otherwise unsupported. Gathering additional information on these three issues is precisely the type of evidence that the investigation envisioned and requested by the Office would be able to provide.

### **CONCLUSION**

This Commission should grant the Office leave to file a Reply, Frontier's Response is essentially a Motion to Dismiss from which responsive pleadings are authorized and new evidence, filings and an Order from this Commission have arisen that are material to Frontier's Response and should be taken in consideration on ruling whether to dismiss the Office's request for an investigative docket. Therefore, this Commission should consider the above Proposed Reply and deny Frontier's attempt to dismiss this docket because docket 19-041-04 is not duplicative of the remaining related dockets and the factual foundations underlying all of Frontier's arguments conflict with record evidence or are otherwise unsupported.

Respectfully submitted, June 21, 2019.

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