

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of Susan Hilliard against Frontier Communications	Docket No. 15-041-01 ANSWER AND MOTION TO DISMISS
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Citizens Telecommunications Company of Utah, dba Frontier Communications of Utah, (Frontier), respectfully submits this answer to the formal complaint of Susan Hilliard (Complainant), and moves the Public Service Commission of Utah (PSC or Commission) to dismiss this complaint because the relief sought by the Complainant runs contrary to the filed tariff approved by this Commission.

INTRODUCTION AND BACKGROUND

According to Frontier customer service records (attached hereto as Exhibit 1), the Complainant subscribed to service with Frontier on October 17, 2007 and she disconnected her service on September 23, 2010. There are no entries in the customer service record between 2010 and May 2015, when the Complainant initiated her informal complaint. The entry in the customer service record on May 28, 2015 indicates that the Complainant was served by “approximately 4 to 5 miles of open wire”. Open wire, an obsolete technology utilizing unshielded steel or copper cable to transmit analog telephone signals, was widely used in the first half of the twentieth century to provide lines to inaccessible rural areas like the Complainant’s ranch (see Exhibit 2 for representation of open wire). Complainant reportedly uses the property where she is requesting service only a few months per year, and at the time of disconnection was the only customer served by the open wire line. The Complainant’s service was interrupted in

October 2009 when a flood destroyed Frontier poles and open wire facilities that provided service to her remote ranch. At that time, Frontier was able to place the Complainant back into service with a temporary ground-laid wire until she disconnected service in September 2010. The temporary wire was destroyed by subsequent bad weather and flooding conditions at a time after Complainant disconnected her service, and before her 2015 request for service.

**APPLICABLE TARIFF PROVISIONS AND RESPONSE TO FORMAL
COMPLAINT**

Because Complainant disconnected her service in 2010, her subsequent request for service in 2015 is subject to Frontier’s PSC-approved tariff clauses regarding applications for service, customer requirements for service, rates for construction of outside plant facilities exceeding the Commission-approved cost coverage allowance, and the utility’s obligations to provide service. Frontier, as a rate-regulated incumbent local exchange carrier in Utah, must strictly conform to the terms and conditions in its tariffs to (among other requirements) avoid burdening its general population of ratepayers with subsidizing excessive costs to serve any single customer. Exhibit 3 (attached) is a digest of applicable tariff clauses.¹

When a customer applies for service, the tariff² gives the following guidance:

“Any application is merely a request for service and does not in itself bind the utility to furnish the service **except under reasonable conditions as set forth in the tariff schedules**, nor does it bind the applicant to take service.” (emphasis added)

Therefore, Frontier’s obligation to provide service is conditioned on the Company’s ability to furnish the service under reasonable conditions. One such condition the tariff sets out is that the

¹ Frontier’s Utah local exchange tariff can be found at the following link: http://cfapps.ftr.com/crtf/tariffs/u/46/UT/local/Local_Tariff.pdf Because the entire tariff consists of 522 pages, Frontier attaches only the pages it deems relevant. All subsequent footnotes herein refer to the tariff.

² Schedule No. AC, Rule No. 3, B1, sheet 22.

potential subscriber pay in advance for the estimated amount of construction if the cost exceeds the cost coverage allowance mentioned later in the tariff:

“An applicant for telephone service may be required to pay in advance at the time application for service is made, the service connection charges applicable, together with at least one month's charges for the services, equipment, and facilities applied for, and where necessary, in the opinion of the utility, the estimated amount of construction and installation charges.”³

The tariff explicitly recognizes that Frontier may refuse to establish service if any of the following conditions exist:⁴

“A utility may refuse to establish service if any of the following conditions exist:

C1 The applicant has an outstanding amount due for former utility services, and the applicant is unwilling to make arrangements with the utility for payment.

C2 A condition exists which in the utility's judgment is unsafe or hazardous to the applicant, the general population, or the utility's personnel or facilities.

C3 Refusal by the applicant to provide the utility with a deposit when the customer has failed to meet the credit criteria for waiver of deposit requirements.

C4 Customer is known to be in violation of the utility's tariffs filed with the Commission or of the Commission's Rules and Regulations.

C5 Failure of the customer to furnish such funds, service, equipment, and/or rights-of-way necessary to serve the customer and which have been specified by the utility as a condition for providing service.

C6 Service which has been disconnected for nonpayment at the premises will not be reestablished for another applicant, married or otherwise, if the delinquent customer still resides on the premises.”

Frontier contends that both C2 and C5 above apply in this case, and are PSC-approved grounds for refusing to provide service to the Complainant. The rugged nature of the terrain on which the facilities would have to be constructed means that there are dangers to Frontier's

³ Schedule No. AC, Rule No. 3, A6, B1, sheet 27.

⁴ Schedule No. AC, Rule No. 3, A6, B1, sheet 33.

technicians who must construct the new facilities to provide service, and the history of the Complainant's account demonstrates that there are hazards of severe weather and flooding which have already been and are a future danger to Frontier's facilities. Beyond that, Frontier has estimated the cost of extending facilities to serve the Complainant at approximately \$80,000.00, and has specified that amount in response to the informal complaint previously made in this case. Frontier repeats here what it also included in its response to the informal complaint, that Frontier's tariff places reasonable conditions on the Company's general obligation to provide service:⁵

“A3 Obligation to provide service

B1 The utility's obligation to furnish service is dependent upon its ability to secure and retain without unreasonable expense suitable facilities and rights for the construction and maintenance of the necessary pole lines, circuits, and equipment.”

Frontier maintains that extending facilities to one potential seasonal customer at an estimated cost of \$80,000.00 is an unreasonable expense, and is contrary to the public interest because the expenditure of the unreasonable amount would ultimately end up being defrayed by the rest of Frontier's Utah ratepayers.

Regarding the above tariff reference to “rights for the construction and maintenance of the necessary pole lines”, Frontier engineers have made a preliminary determination that any line constructed may require private easements as well as Bureau of Land Management permits and/or Forest Service permits. Should the Complainant agree to furnish the funds over and above the tariffed cost coverage allowance necessary to construct the facilities, Frontier's engineers will create the final design for the facilities and determine what permits or easements would be required based on that final design.

⁵Schedule No. AC, Rule No. 3, sheet 25.

The tariff also sets out the applicable charges and allowances for outside plant facility construction. The tariff provides an allowance for each customer seeking an extension of service:⁶

“Cost Coverage Allowance

The utility will construct at its expense up to \$500.00 of outside plant facilities per applicant.”

In the event the facilities cost more than the Cost Coverage Allowance, Frontier is required to charge the applicant for actual cost of construction, including any right-of-way costs and any permit costs:⁷

“Nonrecurring facility charges (continued)

B2 (continued)

C3 Outside plant facilities exceeding cost coverage allowance

D1 All outside plant facilities in excess of the cost coverage allowance is based upon the utility's actual cost.

C4 The utility may charge the applicant for any cost incurred in acquiring a suitable right-of-way when constructing plant on private property.

C5 The utility may charge the applicant for any cost incurred when acquiring special permits to construct plant.

B3 In those circumstances where extension to outside plant facilities exceeds \$2,500.00, in addition to any material or labor to be furnished by the customer, the customer will pay in advance one-half of the estimated total cost of the utility's construction as prescribed in R746-360-9(B) and as may be set forth in a contract executed between the utility and the customer. If costs exceed twice the state wide loop investment, as set forth annually by the Division of Public Utilities, pursuant to R746-360-9(B)(1), the customer must bear all remaining costs, except as ordered by the Commission.”

⁶Schedule No. A-2, C1, sheet 2.

⁷Schedule No. A-2, C1, sheet 3.

Ultimately, where the applicant must pay for the extension of services (as in this case), Frontier would have to refund any cost exceeding the actual cost at the conclusion of the job.⁸

“C2 Should the amount advanced by the customer exceed the actual cost, a refund will be made within 60 days after completion of the utility's construction.

C3 In no instance will the utility charge more than the actual cost at the closing of the job order.”

In sum, Frontier maintains that absent an agreement by the Complainant to assume all costs in excess of the cost coverage allowance, Frontier’s filed and PSC-approved tariffs exempt it from taking on an unreasonable expense to serve one seasonal customer. The tariff language itself provides the Commission-approved public interest rationale: “Charges under this schedule are for abnormally costly outside plant facility extensions to prevent unreasonably burdening the general body of existing customers.”⁹ Under the Filed Rate Doctrine, Frontier is presumed to be acting in a just and reasonable manner and in the public interest when it acts in accordance with its tariffs. Therefore, the Commission should dismiss the formal complaint

MOTION TO DISMISS FORMAL COMPLAINT

Frontier respectfully moves this Commission to dismiss the formal complaint and as grounds for such dismissal states:

1. Frontier customer account records reflect that the Complainant disconnected her service on September 23, 2010.
2. The applicable Frontier tariff (pertinent sections quoted above), filed with and approved by this Commission, excuses Frontier’s obligation to serve in cases where, as in this one, Frontier would incur unreasonable expenses and subject employees to

⁸ Schedule No. A-2, C2, 3, sheet 7.


⁹ Schedule No. A-2, A1, C1, sheet No. 6.

- hazardous conditions in order to construct and maintain the necessary pole lines and outside plant equipment to initiate service.
3. To date, Complainant has declined to defray any cost to initiate service at her ranch.
 4. Additionally, Complainant has refused Frontier's offer to serve her with an alternate (satellite) technology.
 5. The Filed Rate Doctrine provides that any entity that is required to file tariffs governing the rates, terms, and conditions of service (like Frontier) must adhere strictly to those tariffs (see e.g., 47 U.S.C. §§ 202, 203; Utah Code 54-3-7).
 6. This principle forbids a regulated entity from charging a rate other than the one on file with the appropriate regulatory authority.
 7. Frontier's tariff, once approved by the Commission, has the force and effect of law.
 8. In addition, under the Filed Rate Doctrine, Commission-approved rates, terms and conditions are presumptively just and reasonable and in the public interest.
 9. Frontier's tariff, with PSC approval, explicitly recognizes that abnormally costly outside plant facility extensions unreasonably burden the general body of existing customers.
 10. Thus, abnormally costly facility extensions are in conflict with the public interest.
 11. Complainant's requested outside plant facility extension is abnormally costly, having been estimated at \$80,000.00 for one (seasonal) customer.
 12. Constructing the outside plant facilities at Frontier's expense would violate the tariff, violate Utah Code 54-3-8, unreasonably reward Complainant at the expense of other ratepayers, and would be discriminatory.
 13. There is no basis for the Complainant's requested daily penalty relief because the Complainant has failed to allege that, or explain how, Frontier has deviated from its filed tariff or violated any applicable law or PSC rules.

14. Frontier has demonstrated *supra* that its filed tariff addresses this situation and Frontier has complied with its obligations under that tariff.

15. THEREFORE, for the reasons stated above, Frontier requests that the Commission dismiss the formal complaint and close Docket No. 15-041-01.

Respectfully submitted:



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