

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 FRONTIER'S REPLY TO COMPLAINANT'S RESPONSE
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Citizens Telecommunications Company of Utah, dba Frontier Communications of Utah, (Frontier), respectfully submits this reply to the Response in Opposition to Motion to Dismiss, or in the Alternative, Motion for Leave to Amend Complaint (Response) of Susan Hilliard (Complainant), and stands by Frontier's previous motion to the Public Service Commission of Utah (PSC or Commission) to dismiss this complaint because the relief sought by the Complainant runs contrary to Frontier's filed tariff, approved by this Commission.

INTRODUCTION AND BACKGROUND

Complainant's Response fails to deal with the salient fact that the Complainant disconnected her service in 2010, as shown in Frontier's customer service records appended to Frontier's answer, and she is therefore initiating service. Complainant makes much of her contention that facts outside the pleadings and existing record of this matter should be ignored, but then ignores matters already in the record when the record leads to the inexorable conclusion that Frontier is simply applying its PSC-approved filed tariff in demanding the customer contribution required for construction above and beyond the Cost Coverage Allowance outlined in the tariff. Dismissal of the complaint may seem harsh to the Complainant, but for Frontier to disregard its filed tariff and treat Complainant's request for initiation and extension of service as

something other than what it actually is violates the Filed Rate Doctrine and would unfairly and unreasonably discriminate against all of Frontier's Utah ratepayers.

THE RECORD IN THIS PROCEEDING CONTAINS SUFFICIENT FACTS TO
SUPPORT FRONTIER'S MOTION

Because Complainant disconnected her service in 2010, as shown in Exhibit A to Frontier's answer, 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. The Complainant cites to the very notes she elsewhere claims are outside the PSC's consideration to contend that she merely suspended service, but her cited customer service note of 2010-05-02 predates the 2010-09-23 disconnection order found in the same exhibit. Beyond that inconvenient but dispositive fact, Complainant specifically inquired about seasonal suspension of service in one of the notes dated 2010-05-02 and was told that Frontier does not offer that service in her area. For Complainant to contend now that she merely "suspended" service while she was "temporarily away" is simply not consistent with the record contained within the pleadings in this docket. The record is clear: Complainant disconnected her service in September 2010 and applied to initiate service after an extended gap of more than four and a half years. To excuse her from complying with the tariff requirements for line extensions simply because at one point years in the past she was a customer would produce an absurd and discriminatory result.

Nor is Complainant's argument that Frontier had a duty to pursue a maintenance program persuasive, in light of the extended period from disconnection in 2010 to her attempted initiation of service in 2015. As the pleadings reflect, Complainant was the only customer served on this

particular open wire line. Once she disconnected service, Frontier had no customer for whom the line should have been maintained, and no customer for whom private easements, BLM permits, or Forest Service permits would have been required.

As established in the answer (and acknowledged by the Complainant¹), Frontier is a rate-regulated incumbent local exchange carrier in Utah, and is required by its tariffs to avoid burdening its general population of ratepayers with subsidizing excessive costs to serve any single customer. Frontier's obligation to provide service is conditioned on the Company's ability to furnish the service under reasonable conditions. One of the requirements in the tariff is that the potential subscriber must pay in advance the estimated amount of construction if the cost exceeds the cost coverage allowance. Complainant has declined to do so, disregarding the approved tariff's requirements. As a result, Frontier is not obligated to extend service unless and until Complainant complies with the provisions of the tariff.

The tariff explicitly recognizes that Frontier may refuse to establish service when the cost to serve is unreasonable. Beyond that, Frontier has identified two separate conditions allowing such refusal, as pled in the answer. Complainant's own submissions in this docket demonstrate that there are hazards of severe weather and flooding which have already been and are a future danger to Frontier's facilities.² In addition, Frontier has estimated the cost of extending facilities to serve the Complainant at approximately \$80,000.00, and has specified that amount both in response to the informal complaint previously made in this case and in Frontier's answer. Indeed, that amount is mentioned in the exhibit the Complainant attempts to use to support her

¹ See Response, p. 10.

² See Exhibits A, C, E, and F to Formal Complaint on UT PSC website (<http://www.psc.utah.gov/utilities/telecom/telecomindx/2015/1504101indx.html>).

discredited suspended service argument. That amount is also referenced in the Exhibits to Ms. Hilliard's Formal Complaint.

Frontier continues to maintain 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.

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 prevent 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."³ 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.

THE FILED RATE DOCTRINE APPLIES

Regardless of the Complainant's advocacy that Frontier's reliance on the Filed Rate Doctrine is "inapt", the doctrine provides that telecommunications carriers that are required to file tariffs governing the rates, terms, and conditions of service (like Frontier) must adhere strictly to those tariffs. Complainant cannot reasonably dispute that Utah Code § 54-3-7, which codifies the Filed Rate Doctrine in Utah, applies in this situation. That provision states:

Charges not to vary from schedules -- Refunds and rebates forbidden -- Exceptions.

Except as provided in this chapter or Chapter 8b, Public Telecommunications Law, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any

³ Schedule No. A-2, A1, C1, sheet No. 6.

service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified; nor extend to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.

Under the Filed Rate Doctrine, Commission-approved rates, terms and conditions are presumptively just and reasonable and in the public interest. As the answer explained, Frontier's PSC-approved tariff explicitly recognizes that abnormally costly outside plant facility extensions unreasonably burden the general body of existing ratepayers. Thus, abnormally costly facility extensions are in conflict with the public interest. Complainant's requested outside plant facility extension is abnormally costly, having been estimated at \$80,000.00 for one (seasonal) customer. Constructing the outside plant facilities at Frontier's expense would violate the tariff, violate Utah Code §§ 54-3-7 and -8, unreasonably reward Complainant at the expense of other ratepayers, and would be discriminatory. Contrary to Complainant's argument, Frontier has not invoked the Filed Rate Doctrine to absolve itself of anything. Instead, Frontier has demonstrated *supra* that its filed tariff addresses this situation, that Frontier has complied with its obligations under that tariff, and that the Complainant has not.

CONCLUSION


Despite the requirement for Complainant to fund the cost of construction as required by Frontier's approved tariff, and throughout the pendency of both the informal complaint and this formal complaint, Frontier has at various times offered to serve the Complainant with alternate satellite technology.⁴ Frontier renews that offer here, and additionally states its willingness to engage in mediation with the Complainant, pursuant to PSC Rule R746-100-3. H. 1. However,

⁴ See e.g., Frontier's Answer, p. 7.

should the Complainant persist in demanding that Frontier ignore its approved tariff and treat her in a manner which unfairly transfers her responsibility under the tariff to the general population of Frontier's Utah ratepayers, Frontier will continue to defend its position vigorously.

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

Respectfully submitted:



George Baker Thomson, Jr.
Associate General Counsel
Frontier Communications
1800 41st St., N-100
Everett, WA 98203
george.thomson@ftr.com
425-261-5844