

Citizens Telecom Company of Utah d/b/a Frontier Communications of Utah (“Frontier”) responds to the Utah Office of Consumer Services’ (“OCS”) Motion to Compel Complete Answers to the Office of Consumer Services Second Set of Data Requests (Motion to Compel) in the above-styled dockets, and asks the Utah Public Service Commission (“PSC” or “Commission”) to deny OCS’s motion on jurisdictional and other grounds explained below.

To start, Frontier denies that its responses are inadequate, ambiguous, evasive and unresponsive. Some of Frontier’s answers are incomplete, but Frontier continues to supplement them as responsive materials are retrieved from archives, reviewed, and Bates-stamped.

Frontier will respond to each of the OCS’s separate contentions regarding specific data requests below.

(1) DR 2.13. DR 2.13 requests information regarding foreign state and federal investigations into undefined “service quality issues” involving Frontier’s parent company, Frontier Communications Corporation. Frontier Communications Corporation is registered in Delaware, and holds no certificate from the Utah PSC. The Commission’s jurisdiction is not unlimited; in fact, the foundational statute makes that clear:

54-4-1. General jurisdiction.

The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the Department of Transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act.

OCS ignores two inconvenient facts: that Frontier Communications Corporation is not a public utility in Utah, nor is it certificated by the PSC. Therefore, the Commission is

not vested with power to supervise its business.¹ Nor can OCS show that any Frontier affiliate operating outside of Utah is a public utility within the meaning of the Utah statute. OCS's invitation for the PSC to operate beyond its jurisdiction should be refused. Admissible evidence in this case involves only that evidence concerning matters within the Commission's jurisdiction. It is entirely appropriate for Frontier to resist allowing the OCS to conduct a fishing expedition by expanding their investigation to matters outside the Commission's jurisdiction, and the PSC should refuse the offered bait. Notably, the Division of Public Utilities (DPU) website, in its frequently asked questions section, appears to support Frontier's position (<https://publicutilities.utah.gov/faqs.html>). It sets out that "Telecommunication Utilities providing local service" are subject to the PSC's jurisdiction. The logical conclusion is that Frontier Communications Corporation is not subject to the PSC's jurisdiction because it does not provide local service in Utah. OCS also misinterprets remarks in Frontier's Q2 earnings call by concluding that "Frontier Communication (sic) is not planning to make investment...", despite the plain language of the earnings call. What Frontier said was that it would manage "the elements of our business in secular decline by executing on cost efficiency programs and **selective capital investment.**" (emphasis added) Executing on selective capital investment does not equate to having no plan to invest. Instead, it simply indicates that Frontier will be selective about its capital investment in Utah. OCS has misread the cited comment on the earnings call in order to bolster its extrajurisdictional argument. The Commission should resist any improper exercise of jurisdiction and deny the OCS request to force Frontier to use resources to pursue issues occurring outside Utah to Frontier affiliates that are not Utah certificated public utilities,

¹ BEAR HOLLOW RESTORATION, LLC, Petitioner and Appellant, v. PUBLIC SERVICE COMMISSION OF UTAH, et al., Respondents and Appellees, No. 20100329. Utah Supreme Court, March 23, 2012

thereby failing to lead to the discovery of relevant and admissible evidence within the PSC's jurisdiction.

(2) DRs 2.5 (a), (b), and (c). The Frontier response to this request is neither ambiguous nor incomplete. OCS relies on a very selective reading of the limitations on liability in Frontier's Business Service Terms and Conditions in arguing in support of their motion. Notably, OCS fails to quote a most relevant phrase found on page 9 in those same terms and conditions:

"d. The liability of Frontier and its affiliates related to the Service shall in no event exceed the limitations of liability set forth in the applicable tariffs or regulatory rule or order, or, if there is no applicable tariff provision, rule or order, the total amount paid for the applicable Service, or equipment during the prior 12 months."

As Frontier pointed out in its initial response to this request, the terms and conditions, when read as a whole, set out precedence as between the tariff and the terms and conditions. OCS additionally fails to mention that Frontier's tariffs have been filed with and approved by this Commission, and thus are presumptively just and reasonable. OCS accuses Frontier of having ambiguous and/or contradictory language in its tariffs and Terms and Conditions, but fails to mention the fact that Frontier's Terms and Conditions of Business Service make it clear that if any tariff or written contract language runs contrary to language in the Terms and Conditions, the tariff or contract controls.² Beyond that, Frontier objects to answering questions of fact and/or law to be determined by the Commission, and objects to providing positions on contested issues in litigation while such positions are currently under development and will ultimately be presented to the Commission and parties

² The Terms and Conditions of Frontier Business Services also state: "Customer acknowledges that certain Services may be governed by a written agreement with Frontier or a tariff or price schedule filed with the Federal Communications Commission and/or the state public utilities commission. In the event of any inconsistencies between these terms and conditions and an applicable agreement or tariff, the agreement or tariff shall control except with respect to any matter addressed herein that is not in the applicable agreement or tariff, for which these terms and conditions shall control."

in due course in accordance with the procedural schedule in this proceeding.

(3) DR 2.6. Frontier has recently produced a variety of responsive documents to OCS, including a copy of Frontier's filing with the UT PSC establishing that Frontier is in compliance with Utah Admin. Code R746-340-5 C. Frontier discovered the record this week while reviewing archived material, despite OCS's sworn declaration that it had "been in communication with the Commission staff and the Utah Division of Public Utilities and these communications have not identified any attempt by Frontier to comply with this rule and provide the required description of its inspection and testing program." OCS Declaration, Exhibit A to Motion to Compel. Apparently, the research effort described by OCS in its declaration did not include actually searching pertinent Commission records to verify that Frontier had complied with the rule before asserting the Company was not in compliance and demanding an admission of the same from Frontier.

(4) DR 2.8. Frontier has previously responded to OCS that it accepts complaints and/or trouble reports from a variety of sources including (but not limited to) voice call reports, via email, through live chat, social media channels, and by US Mail. Frontier stands by its characterization of Mr. Giles' testimony, and denies he provided false testimony. If OCS had questions about what Mr. Giles meant, they could (and should) have pursued that line of questioning during the hearing when he was on the stand. OCS chose not to cross-examine on that point. Ultimately, the context and credibility of witness testimony is and should be determined by the Commission after the proceedings (and record) are closed. Frontier also points out that Mr. Giles was testifying in a proceeding then limited to examination of Sorrel River Ranch's (SRR) specific formal complaint, a fact which validates Frontier's contention that Mr. Giles was discussing specific SRR customer emails and was not answering the question in the broader context of Frontier's statewide process for receiving

notice of trouble or other service issues.

(5) DR 2.7. Frontier has recently received from archives and produced additional trouble report records from 2015 and 2016 responsive to this DR, in addition to records produced earlier from 2017 - 2019. Beyond that, Frontier has already provided a list of complaints to OCS through responses to discovery propounded by SRR and served on OCS. Frontier should not be required to reformat its records or provide existing data in its system of records in a format dictated by the OCS. Frontier is required to produce relevant and responsive documents held in its system of records. Frontier is not required to manipulate existing records into forms not held by the Company in the ordinary course of business for the convenience of an opposing party in litigation. Such a demand is not appropriately proportional, and should be denied.

Regarding the issue raised by OCS as to zip codes, Frontier estimates that approximately 5% of the entries list a zip code outside Utah. Frontier assumes these are zip codes to which customer bills are sent, and may reflect customers who have a second home in Utah, customers who are seasonal residents, business customers who have business interests in multiple geographic locations and prefer to receive their bills in one location outside Moab, or folks with other practical reasons to receive invoices at a particular address outside of the Moab zip code.

(6) DR 2.1. Regarding Frontier's Terms and Conditions of Service, Frontier has produced what exists in its system of records. Frontier knows that the Business Terms and Conditions were updated in July 2017, as stated on page 26 of same. Frontier's Terms and Conditions of Service are updated as needed, and not on any particular schedule.

(7) DRs 2.3 and 2.4. See response in (6) above. Frontier has provided a copy of its Business Terms and Conditions of Service which clearly state that they were updated

in July 2017. Frontier considers the Business Terms and Conditions of Service to be its contract with small businesses.

Conclusion

Frontier respectfully urges the Administrative Law Judge to deny OCS's motion to compel. OCS clearly overreaches in their contention that Frontier must provide responses in a specific format other than that in which they exist in a Frontier system of records, and provides no citation to law or rule support their position. OCS is not entitled to demand admissions of ultimate fact and/or law determinations at a point in time where the record is incomplete and Frontier's positions are currently under development. Nor is Frontier required to provide a legal conclusion in a discovery response to a litigation opponent. Such determinations rest solely within the Commission's purview at the appropriate point in the procedural schedule. OCS's dissatisfaction with answers provided by Frontier does not provide a basis for OCS to move to compel the answer they would like, particularly in instances where OCS has failed to perform even a cursory search of the Commission's records. Finally, Frontier disputes that OCS has made its case regarding the proportionality of its discovery requests. Discovery and discovery requests are proportional only "if the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues"³. Discovery focused on issues or matters outside the jurisdiction of the Commission is per se unreasonable, and is not designed to lead to the discovery of admissible evidence. Discovery demanding Frontier admissions of dispositive fact and/or law are unreasonable because those determinations are reserved to the Commission. Utah R. Civ. P 37 allows the Administrative Law Judge to rule

³ Utah R. Civ. P. 26.

that a “question about a statement or opinion of fact or the application of law to fact not be answered until after designated discovery has been completed or until a pretrial conference or other later time”. Frontier prays that the motion to compel be denied for the reasons stated in this conclusion, and in its specific arguments *supra*.

RESPECTFULLY SUBMITTED this 16th day of October, 2019.

Citizens Telecommunications Company
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I CERTIFY that on October 16, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

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