

ROBERT J. MOORE (5764)
Assistant Attorney General
VICTOR P. COPELAND (13511)
Special Assistant Attorney General
Utah Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0312
Facsimile: (801) 366-0101
E-mail: rmoore@agutah.gov
vcopeland@agutah.gov
Attorneys for Utah Office of Consumer Services

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of SSR Partners 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 Citizen Telecommunication Company of Utah d/b/a Frontier Communications of Utah	Docket No. 19-041-04
	Reply in Support of Motion to Compel Compliance with the Public Service Commission's November 27, 2019 Order Granting in Part Motion to Compel

Pursuant to Utah Code § 54-10a-301 and UTAH ADMIN. CODE r. 746-1-101 through 801, the Office of Consumer Services (“OCS”) submits this Reply in Support of Motion to Compel Compliance with the Public Service Commission of Utah’s (“PSC”) November 27, 2019 Order Granting in Part Motion to Compel (“Second Motion to Compel”).

ARGUMENT

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”) (“Second Set of Discovery Requests”), approximately 241 days prior to the filing of this Reply. Yet the OCS still does not have sufficient answers to their discovery request concerning two issues central to this investigation: (1) the production of contracts between Frontier and its customers in Castle Valley and (2) the production of “trouble reports” from instances where customers communicated problems with phone service to Frontier by means other than a designated 800 number. In its March 24, 2020, Response to the OCS’ Second Motion to Compel (“Frontier Response”), Frontier repeats its long disproven contention that it does not possess any additional responsive residential and business contracts and now, for the first time, asserts that the trouble reports already produced to the OCS contain instances of complaints made by means other than the 800 number despite the fact that Frontier cannot identify one instance of this occurring. Frontier Response at 2-4. These assertions are insufficient to respond to the PSC’ November 27th Order and evidence Frontier’s continual pattern of delay and obfuscation.

A. Failure to Produce Contracts

In response to the instant Motion to Compel, Frontier argues that it does not possess any copies of contracts in addition to those already produced. However, Frontier does not claim that all responsive contracts have been produced but rather argues that it does not have the obligation to retain all contracts for the eight years covered in the discovery requests. Frontier’s Response

at 2-3. Setting aside the validity of that claim, this contention is insufficient to respond to the November 27th Order. The Order provides:

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.

November 27th Order pg. 4-5.

Accordingly, to Comply with the PSC’ November 27th Order, Frontier must “explain the reason it has failed to keep copies, electronic or otherwise” of the parties’ contracts. *Id.* However, despite the fact that this requirement was called to Frontier’s attention in the November 27th Order, the second meet and confer letter and the instant Motion to Compel, Frontier has failed to even address this requirement. *Id.*; Second Meet and Confer letter, attached as exhibit B to the Second Motion to Compel at 2; Second Motion to Compel at 6. Frontier should not be allowed to blithely ignore the requirements of the PSC’ orders.

Moreover, Frontier’s claim that it does not possess any additional responsive documents must be viewed through the lens of Frontier’s previous actions. Specifically, in response to the first Motion to Compel, Frontier also claimed that it “has produced what exists in its system of records.” Frontier’s Response to First Motion to Compel, at 6. (Response to First Motion to Compel”). However, after the November 27th Order,

Frontier produced several, but apparently not all, additional copies of its “terms of conditions.”¹

In addition, the offered reason for that contention that Frontier is not obligated to retain contracts for the eight years requested is not persuasive. Specifically, Frontier claims that because Utah Code § 78B-2-309 provides that a claim based on a written contract must be instigated within six years of the breach it is not obligated to retain contracts longer than six years. Frontier’s Response at 3. However, setting aside legal issues with this contention—such as the tolling of statute of limitations—it is factually irrelevant. Frontier has produced “terms and conditions” for the years 2012 and 2013. It is the time period from 2013 through 2019 where substantial gaps exist in the versions of the “terms and conditions” produced. *Supra* note 1.

Finally, if the PSC accepts Frontier’s claim that it does not possess copies of all contracts with its customers, the OCS notes that this fact is relevant to the underlying investigation. If Frontier’s business procedures are so lacking that it cannot even keep track of its contracts with customers, it is likely their business procedures relating to quality control are lacking as well. This is one reason that the requirement for Frontier to explain why it did not keep copies of these records is important to this investigation.

¹ 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. Declaration of Robert J. Moore, attached as exhibit A to the OCS’ Second Motion to Compel 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, as it does in the instant motion, it does not have “terms and conditions” for small businesses. *Id.* at ¶ 15, Frontier’s Response at 2-3.

B. Failure to Produce Trouble Reports

For the first time in this case, Frontier claims that the trouble reports provided to the OCS contain reports of service issues from all sources including reports of service issues communicated to Frontier by means other than the designated 800 number. Frontier's Response at pg. 3-4. However, Frontier could have, but did not, make this claim in response to the original discovery request approximately 231 days ago. Therefore, assuming this contention is true, this conduct evidences, at the very least, an intentional pattern of delay. In any event, this new contention is not credible.

Frontier produced a spreadsheet of trouble reports with its first production in response to the OCS' Second Set of Discovery Requests and, although this response was insufficient, Frontier could have made the contention that the spreadsheet included reports of problems communicated to Frontier from sources other than the 800 number. Response to First Motion to Compel, exhibit B at 8. Frontier did not. Nor did Frontier make this claim in response to the initial Meet and Confer letter, in its response to the first Motion to Compel or in its supplemental productions in response to the PSC' November 27th Order. Second Motion to Compel, exhibit B at ¶ 3; Response to First Motion to Compel, exhibit B at 8. Nor did Frontier make this claim in its second Meet and Confer conference.² Rather, Frontier waited 231 days to make this claim, for the first time, in its response to the Second Motion to Compel.

² In connection with the second Motion to Compel the OCS declared: "Nor did Frontier indicate that all complaints communicated to Frontier by means other than the 800 number were included in the trouble reports Frontier has provided to the OCS." Second Motion to Compel, exhibit A at ¶ 26.

This delay raises concerns whether this new contention is credible. Frontier appears to be grasping at straws to avoid making the concession that it does not keep trouble reports from complaints communicated to by means other than the 800 number. However, assuming this contention is true, this delay demonstrates that Frontier is not acting in good faith but intentionally delaying these proceedings by failing to cooperate with discovery. Indeed, the Meet and Confer conferences have been unhelpful and have operated not as a means for the parties to resolve discovery disputes informally but rather as a requirement that only produces delay. Response to First Motion to Compel, exhibit A at ¶ 9; Second Motion to Compel, exhibit A at ¶ 3.

Not only does the delay demonstrate that Frontier's contention is not credible but other evidence in this case also support the likelihood that Frontier does not keep trouble reports of problems communicated to Frontier by means other than the 800 number. In the hearing conducted in the Sorrel River Ranch docket, Mr. Giles, local manager of Frontier, testified that the 800 number directs calls to a centralized call center and the call center initiates the procedures to create a trouble report.³ These reports indicate that in a twelve-month period Sorrel River only initiated one formal trouble report even though other documents provide that in that same period Frontier's technicians were dispatched

³ **Q. What are the procedures that Sorrel River must go through to issue a trouble report?**

A. They call a central location, 800 number, and report their -- whatever issues they have That creates a trouble ticket in our system and is subsequently dispatched to whatever group is going to handle that issue. Could be the field where my employees are, it could be a long-distance group, various different areas. Not all of these would come out to the field and require a field visit. Docket 19-041-01, Hearing Transcript at 56.

to Sorrel River Ranch six additional times.⁴ Some of these dispatches were in response to emails sent by Sorrel River to Frontier's local office and no formal trouble reports were initiated. *Supra* note 4. Finally, Mr. Giles clearly testified that Frontier does not keep records of problems communicated to Frontier in emails that don't go through the 800 number. *Id.*

This testimony directly undercuts Frontier new-found assertion, i.e., the trouble reports previously provided to the OCS contain complaints from all sources. Moreover, this testimony together with Frontier's failure to identify one instance of a report generated from a source other than the 800 number and Frontier's long delay in bring this claim demonstrate that Frontier's response is insufficient. Frontier should be ordered to produce the requested records or admit what appears to be the case, that Frontier does not

⁴Q. Will you look at page 4, 7 Request 1-5?

A. Okay. I'm there.

Q. And that provides that "Frontier made only one dispatched service to Sorrel River Ranch in response to a trouble ticket in the past 12 months."

A. Correct.

Q. "There were an additional 6 technician visits in response to Owner and/or Managing Director emails over the past 5 months."

A. Correct.

Q. Help me out here. Does that mean the six technicians in the past five months were dispatched without a reporting on your repair ticket?

A. That is correct. Those were visits made to the site in response to either something that we observed or an email from SRR. We made visits out to the site to start monitoring their PRI circuit which provides their voice.

Q. But the email didn't generate a formal --

A. No, did not. This was on our -- this was us taking active -- proactive -- I guess reactive to the email, but proactive stance to go out and visit, check with the front desk to make sure they hadn't had any dropped calls, and to retrieve data from our device out on site there and look at the previous week's report.

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

A. No.

Docket 19-041-01, Hearing Transcript at 58-59.

generate trouble reports from complaints communicated by means other than the 800 number.

The OCS is mindful that if the PSC grants this Motion to Compel, Frontier's response will in all likelihood be hampered by the measures taken to control the Covid 19 virus. However, the PSC has the discretion to grant the Motion and allow sufficient time to respond to the order under these unusual circumstances. Moreover, assuming Frontier does not have additional responsive documents as it claims, this Motion only seeks to have Frontier explain why it does not keep contracts and admit that it does not have any evidence to support the contention that it maintains trouble reports from complaints initiated by means other than the 800 number.

CONCLUSION

The PSC should issue an order granting the OCS' Second Motion to Compel Compliance with the PSC's November 27, 2019 Order and compel Frontier to (1) produce all requested copies of contracts and "terms and conditions" or explain the reason it has failed to keep copies of the requested contracts and "terms and conditions," and (2) produce all copies of trouble reports generated from complaints communicated by means other than the 800 number or admit that it can produce no evidence to support the claim that Frontier retains records of trouble reports of complaints communicated by means other than the 800 number.

Respectfully Submitted, April 3, 2020

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