

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of SRR Partners, LLC d/b/a Sorrel River Ranch Resort & Spa against Frontier Communications	<u>DOCKET NO. 19-041-01</u>
Formal Complaint of Jayne Dillon May against Frontier Communications	<u>DOCKET NO. 19-041-02</u>
Investigation of Citizens Telecommunications Company of Utah dba Frontier Communications of Utah	<u>DOCKET NO. 19-041-04</u> <u>ORDER</u>

ISSUED: April 24, 2020

**Background**

This matter is before the Public Service Commission (PSC) on the Office of Consumer Services' (OCS) Motion to Compel Compliance with the PSC's November 27, 2019 Order Granting in Part Motion to Compel ("November 2019 Order"), filed with the PSC on March 9, 2020 ("Motion to Compel Compliance"). On March 24, 2020, Citizens Telecom Company of Utah d/b/a Frontier Communications of Utah ("Frontier") filed its response to the Motion to Compel Compliance ("Frontier Response to Motion to Compel Compliance"). On April 3, 2020, the OCS filed its Reply in Support of Motion to Compel Compliance ("OCS Reply"). For the reasons set forth below, we deny the Motion to Compel Compliance.

The continued discovery dispute in this matter dates back to a motion to compel that the OCS filed with the PSC on October 1, 2019 ("Original Motion"). This Motion to Compel Compliance centers on two categories of discovery requests and responses that were in dispute in the OCS's Original Motion including: A) data requests 2.1, 2.3, and 2.4 which ask for production of customer service contracts and terms and conditions in force from 2012 to present for residential and small business customers and, if no such information exists for small business

customers, the same information for business customers (the “Residential and Business contracts and terms and conditions”), and B) data request 2.8(a), (b), and (c) which asks for records of any type of customer complaints (“Trouble Reports”).

November 2019 Order

On November 27, 2019, the PSC granted the Original Motion requiring Frontier to produce the Residential and Business contracts and terms and conditions and the Trouble Reports. Specifically, with respect to data request 2.1, the PSC ordered:

Frontier shall produce copies of all versions of any (1) residential landline telephone service contract it has used since 2012, including reasonable identification of the period during which such contract was used; and (2) “terms and conditions” applicable to residential landline telephone service customers that have been in effect since 2012, including reasonable identification of the period during which such version 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 2019 Order at 4.

With respect to data request 2.3, the PSC ordered:

Frontier shall produce copies of all versions of any (1) small business landline telephone service contracts it has used since 2012, including reasonable identification of the period during which such contract was used; and (2) “terms and conditions” applicable to small business landline telephone service customers that have been in effect since 2012, including reasonable identification of the period during which such version was in effect. If Frontier has no responsive documents, Frontier shall explain the reason it has failed to keep copies, electronic or otherwise, of these documents. If Frontier does not and has not, in the pertinent period, employed specific contracts or “terms and conditions” for small business landline telephone customers, Frontier shall identify what versions of these documents are and have been applicable to small business customers.

November 2019 Order at 5.

With respect to data request 2.4, the PSC ordered:

Frontier shall produce copies of all versions of any (1) business landline telephone service contracts it has used since 2012, including reasonable identification of the period during which such contract was used; and (2) “terms and conditions” applicable to business landline telephone service customers that have been in effect since 2012, including reasonable identification of the period during which such version was in effect. If Frontier has no responsive documents, Frontier shall explain the reason it has failed to keep copies, electronic or otherwise, of these documents. If Frontier does not and has not, in the pertinent period, employed specific contracts or “terms and conditions” for business landline telephone customers, Frontier shall identify what versions of these documents are and have been applicable to small business customers.

November 2019 Order at 6.

With respect to data request 2.8 (a), (b), and (c), the PSC ordered Frontier “[to] produce any responsive documents in its possession, custody, or control, including archived documents.”

November 2019 Order at 12.

Frontier’s Responses to OCS Data Requests 2.1, 2.3, and 2.4

Frontier’s original responses to OCS data requests 2.1, 2.3, and 2.4 - Residential and Business contracts and terms and conditions - provided a link to Frontier’s terms and conditions and indicated that they also constitute the contracts between Frontier and its residential and business customers.<sup>1</sup> Frontier also referenced and provided a link to its business customers’ terms and conditions in response to the OCS’s request for contracts and terms and conditions for

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<sup>1</sup> Motion to Compel Complete Answers to the Office of Consumer Services’ Second Set of Data Requests (previously defined as “Original Motion”), Exhibit B, pp. 23-24 of 78, filed October 1, 2019.

“small” business customers.<sup>2</sup> Frontier further stated that it “ha[d] produced what exists in its system of records.”<sup>3</sup> It also confirmed that the “[b]usiness [t]erms and [c]onditions were updated in July 2017 ... [and that its] [t]erms and [c]onditions of [s]ervice are updated as needed, and not on any particular schedule.”<sup>4</sup>

According to the OCS, before and after the December 16, 2019 compliance deadline set in the November 2019 Order, Frontier supplemented its responses producing residential terms and conditions in effect in January 2012 through June 2012, and residential terms and conditions last published in September 2013 and January 2016.<sup>5</sup> Frontier also produced business terms and conditions in effect in January 2012 through June 2012 and business terms and conditions last published in August 2013, September 2013, and July 2017.<sup>6</sup> Lastly, Frontier produced terms and conditions for small business customers in effect from January 2012 through April 2012.<sup>7</sup>

Most recently, in the Frontier Response to Motion to Compel Compliance, Frontier states that it “has produced, and OCS has received, the universe of applicable terms and conditions documents for the requested timeframe that exist in a Frontier system of records.”<sup>8</sup> Frontier reiterates that “any set of terms and conditions that are styled “Business Terms and Conditions” apply to small business and/or any size business that subscribes to Frontier service, unless those

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<sup>2</sup> *Id.* at 24.

<sup>3</sup> Frontier’s Response to Office of Consumer Services’ Motion to Compel, at 6 (filed October 16, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> Motion to Compel Compliance at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Frontier Response to Motion to Compel Compliance at 2.

businesses have signed a Frontier Service Agreement, much like the one Frontier produced to OCS earlier relating to Sorrel River Ranch, the original complainant in this proceeding.”<sup>9</sup>

Frontier’s Response to OCS Data Request 2.8(a), (b), and (c)

Frontier’s original response to OCS data request 2.8(a), (b), and (c) – Trouble Reports - stated that “[c]ustomers may contact Frontier by phone, by cell phone, via email, through a real-time chat, or via social media to report complaints or issues with service. See also Frontier response to [Sorrel River Ranch] data request SRR 3.6.”<sup>10</sup> According to the OCS, as of October 28, 2019, Frontier had failed to produce any documents in response to the request, and Frontier had produced no documents designated as trouble reports from complaints from sources other than the 800 number and has not admitted that it has no documents responsive to this request.<sup>11</sup> However, the OCS later states that in additional responses, Frontier provided an email containing trouble reports for 2012, 2013, and 2014 indicating that its response satisfied data requests 2.7 and 2.8.<sup>12</sup> Frontier states that it has produced all Utah trouble report records from 2012 to present responsive to the data request and that it has also provided a list of complaints to the OCS through responses to discovery propounded by Sorrel River Ranch.<sup>13</sup>

OCS Position

As to the Residential and Business contracts and terms and conditions, the OCS states that Frontier’s supplemental responses provided in response to the November 2019 Order “do

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> Original Motion, Exhibit B at 29.

<sup>11</sup> Reply in Support of Motion to Compel Complete Answers to the Office of Consumer Services’ Second Set of Data Requests filed on October 28, 2019 at 8-9.

<sup>12</sup> Motion to Compel Compliance at 7.

<sup>13</sup> Frontier Response to Motion to Compel Compliance at 4.

not satisfy Frontier's obligation under the PSC's November [2019] Order."<sup>14</sup> The OCS explains that "Frontier does not claim that these are the only contracts or 'terms and conditions' from the requested period, 2012 to the present."<sup>15</sup> The OCS further states that Frontier does not provide "identification of the period during which such versions were in effect."<sup>16</sup> The OCS also states that "Frontier argues that it does not have the obligation to retain all contracts for the eight years covered in the discovery requests."<sup>17</sup>

As to the Trouble Reports, the OCS states that in "[Frontier's] email containing the trouble reports for 2012, 2013 and 2014, Frontier indicated that these documents were in response to both data requests 2.7 and 2.8"<sup>18</sup> and that "the spread sheets of trouble reports from 2012 through 2014 did not indicate what trouble reports were responses to complaints communicated to Frontier by way of the 800 number and what trouble reports were responses to complaints communicated to Frontier by means other than the 800 number. [ ] Moreover, [that] these responses only provided information from the years 2012 to 2014 and there is no indication that information already in the [OCS's] possession contains trouble reports from complaints communicated to Frontier by means other than the 800 number ..." were included in the trouble reports that Frontier has provided to the OCS.<sup>19</sup> The OCS states that, accordingly, Frontier has not complied with the PSC's November 2019 Order requiring Frontier to produce documents responsive to the OCS's data requests 2.8(a), (b), and (c).<sup>20</sup> Finally, the OCS states that

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<sup>14</sup> Motion to Compel Compliance at 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5-6.

<sup>17</sup> OCS Reply at 2.

<sup>18</sup> Motion to Compel Compliance at 7.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.*

Frontier's claim that the Trouble Reports provided to the OCS contain reports of service issues from all sources is not credible.<sup>21</sup>

Frontier Position

In response, Frontier states that it has “produced every set of responsive terms and conditions found in a Frontier system of records.”<sup>22</sup> It further states that “OCS has cited no [PSC] rule that requires a telecommunications carrier to keep historical records of particular terms and conditions, much less for an apparently arbitrarily selected period of 8 years”<sup>23</sup> and that “the ALJ’s Order [does not] require Frontier to produce records that do not exist in a Frontier system of records.”<sup>24</sup> Frontier also states that it “has no documents to ‘separately identify’, in that no different set of Frontier [t]erms and [c]onditions applied to Castle Valley alone at any time since 2012.”<sup>25</sup> Finally, Frontier states that it “has produced, and OCS has received, the universe of applicable terms and conditions documents for the requested timeframe that exist in a Frontier system of records.”<sup>26</sup>

In response to data request 2.8, Frontier states that it “is not required to track the route [that] a trouble ticket follows or provide non-required data in a manner desired by the OCS ...”<sup>27</sup> It further states that “Frontier’s production identifies the customer, service affected, time, date and nature of the report, and the action taken to clear the trouble.”<sup>28</sup> Frontier also states that it

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<sup>21</sup> *Id.*

<sup>22</sup> Frontier Response to Motion to Compel Compliance at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.*

“has produced all Utah trouble report records from 2012 to the present responsive to this [request], a fact not in dispute in [the] OCS motion”<sup>29</sup> and that “[b]eyond that, Frontier has also provided a list of complaints to OCS through responses to discovery propounded by [Sorrel River Ranch].”<sup>30</sup>

### **Discussions, Findings, and Conclusions**

As an initial matter, Frontier represents that its terms and conditions also constitute its contracts with its customers.<sup>31</sup> Frontier referenced and provided a link to its terms and conditions for business customers.<sup>32</sup> In response to the request for contracts and terms and conditions for “small” business customers, it also confirmed that the “[b]usiness [t]erms and [c]onditions were updated in July 2017 ... [and that its] [t]erms and [c]onditions of [s]ervice are updated as needed, and not on any particular schedule.”<sup>33</sup> Subsequently, Frontier produced copies of residential terms and conditions in effect in January 2012 through July 2012, and residential terms and conditions last published in September 2013 and January 2016. Frontier also produced business terms and conditions in effect in January 2012 through June 2012 and business terms and conditions last published in August 2013, September 2013, and July 2017.<sup>34</sup> Lastly, Frontier produced terms and conditions for small business customers in effect from January 2012 through

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *See supra* n.1.

<sup>32</sup> *See supra* n.2.

<sup>33</sup> Frontier’s Response to Office of Consumer Services’ Motion to Compel at 6 (filed October 16, 2019).

<sup>34</sup> *Id.*



April 2012. Frontier states that it had “produced every set of responsive terms and conditions found in a Frontier system of records.”<sup>35</sup>

Contrary to the OCS’s contention that “Frontier does not claim that all responsive contracts have been produced ...”, Frontier represents that it has “produced every set of responsive terms and conditions found in a Frontier system of records.”<sup>36</sup> Notwithstanding Frontier’s representation, the OCS contends that Frontier’s actions have been contrary to its claims because although Frontier had previously represented that it did not have any additional responses, it has nonetheless continued to produce additional responses that are responsive to the subject data requests. The PSC does not find this a persuasive reason to refuse to accept Frontier’s representation that it has produced all responsive documents. Frontier indicated in its response to the Original Motion, that it would “continue[ ] to supplement [its responses] as responsive materials are retrieved from archives, reviewed, and [b]ates-stamped.”<sup>37</sup> In addition, the PSC expects parties to comply with Utah law including the continued obligation to supplement discovery request responses to the extent additional relevant responses are discovered, as the case progresses.<sup>38</sup>

The OCS also argues that there are still some years that are not covered in the produced documents, and that Frontier has not provided a reason for this gap. This means, according to the OCS, that Frontier has not fully complied with the November 2019 Order. Based on Frontier’s

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<sup>35</sup> See Frontier Response to Office of Consumer Services’ Motion to Compel at 6 (filed October 16, 2019), and Frontier Response to Motion to Compel Compliance at 2.

<sup>36</sup> See *supra* n.22.

<sup>37</sup> Frontier’s Response to Office of Consumer Services’ Motion to Compel, filed October 16, 2019 at 2.

<sup>38</sup> See Utah Admin. Code R746-1-105 and Utah R. Civ. P. 26(1)–(2).

response that “OCS has cited no [PSC] rule that requires a telecommunications carrier to keep historical records of particular terms and conditions, much less for an apparently arbitrarily selected period of 8 years,”<sup>39</sup> the PSC concludes that Frontier’s explanation for not having the remaining documents is that, unless there is a legal obligation to retain records, there is no assurance that Frontier will have the missing documents that would be responsive to the data request. In response, the OCS argues that “[g]iven that the terms and conditions constitute the residential contract[,] Frontier must keep records of all versions of its terms and conditions for purposes of contract litigation if for no other reason.”<sup>40</sup> The OCS also argues that if the PSC accepts Frontier’s claim that it does not have copies of all contracts with its customers, “this fact is relevant to the underlying investigation.”<sup>41</sup> The PSC is not persuaded by the OCS’s argument that Frontier must have copies of all versions of its terms and conditions for purposes of contract litigation. The PSC will also not prematurely comment on what is or is not relevant in the matter at this point.

We find that because terms and conditions are also the contracts between Frontier and its customers, Frontier complied with the November 2019 Order for responding to subparts (1) and (2) of data requests 2.1, 2.3, and 2.4, as it explained in its original responses. Second, we find that Frontier complied with subparts (2) of data requests 2.1, 2.3, and 2.4 of the November 2019 Order requiring Frontier to include “reasonable identification of the period during which such version was in effect” for both residential and business customers (including small business

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<sup>39</sup> Frontier Response to Motion to Compel Compliance at 2.

<sup>40</sup> See Reply in Support of Motion to Compel Complete Answers to the Office of Consumer Services’ Second Set of Data Requests at 11.

<sup>41</sup> OCS Reply at 4.

customers) by providing copies of terms and conditions that were in effect in 2012 and “last published” in the years 2013, 2016, and 2017. Third, we find that, to the extent there are gaps, Frontier complied with subparts (2) of data requests 2.1, 2.3, and 2.4 of the November 2019 Order which require it to provide an explanation for any missing terms and conditions between 2012 and the present by stating that it did not keep the documents because it believes there is no such requirement. Therefore, based on Frontier’s responses and its explanation, the PSC finds that Frontier has complied with the November 2019 Order for data requests 2.1, 2.3, and 2.4 and therefore denies the OCS’s Motion to Compel Compliance.

As to data request 2.8(a), (b), and (c), in its response to the Original Motion, Frontier provided that “[c]ustomers may contact Frontier by phone, by cell phone, via email, through a real-time chat, or via social media to report complaints or issues with service, [ ] and [noted] response[s] to [Sorrel River Ranch] data request SRR 3.6.”<sup>42</sup> Frontier subsequently produced to the OCS Utah trouble report records from 2012 to present (which were the same reports Frontier produced in response to OCS data request 2.7) as well as the list of complaints through responses to discovery propounded by Sorrel River Ranch.<sup>43</sup> The key difference between OCS data request 2.7 and 2.8 is that 2.8 specifically requests Trouble Reports (**other** than complaints using a designated 800 number). Frontier explains that its report identifies the customer, service affected, time, date and nature of the report, and the action taken to clear the trouble. It also states that it does not track the route that a trouble ticket follows.

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<sup>42</sup> Original Motion, Exhibit B, at 29.

<sup>43</sup> Motion to Compel Compliance at 7.

The OCS argues that Frontier’s claim that the trouble reports provided to the OCS includes reports of service issues from all sources including reports of service issues communicated to Frontier by means other than the designated 800 number, is not credible because Frontier could have made that claim in its first production in response to the OCS’s second set of discovery requests, in response to the Original Motion, in response to the initial meet and confer letter, etc., and did not.<sup>44</sup> The OCS then contends that this appears to be a deliberate tactic so that Frontier can avoid making the concession that it “does not keep trouble reports from complaints communicated to by means other than the 800 number.”<sup>45</sup> The OCS then requests that the PSC “order[ ] [Frontier] to produce the requested records or admit what appears to be the case, that Frontier does not generate trouble reports from complaints communicated by means other than the 800 number.”<sup>46</sup>

The spreadsheet provided in response to data request 2.8(a), (b), and (c) appears to include the relevant information that has been discovered to date that is responsive to the data request. The rule on which the OCS relies<sup>47</sup> does not require Frontier to track complaints the way the OCS requests. In addition, Frontier represents that it has produced everything in its system of records that is responsive to this request. Thus, the PSC finds that Frontier complied with the November 2019 Order requiring Frontier to “produce any responsive documents in its

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<sup>44</sup> See OCS Reply at 5.

<sup>45</sup> *Id.* at 6.

<sup>46</sup> *Id.* at 7-8.

<sup>47</sup> Utah Admin. Code R746-340-5.B.1 states:

Each telecommunications corporation shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and response to each complaint. The telecommunications 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, date and nature of the report, and the action taken to clear the trouble or satisfy the complaint.

possession, custody, or control, including archived documents.” The PSC denies the OCS’s Motion to Compel Compliance with regard to data request 2.8(a), (b), and (c).

DATED at Salt Lake City, Utah, April 24, 2020.

/s/ Yvonne R. Hogle  
Presiding Officer

Approved and confirmed April 24, 2020, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#313371

CERTIFICATE OF SERVICE

I CERTIFY that on April 24, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

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