

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Formal Complaint of SRR Partners, LLC d/b/a Sorrell River Ranch Resort & Spa against Frontier Communications	<u>DOCKET NO. 19-041-01</u>
Frontier 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: June 25, 2020

**BACKGROUND**

On April 24, 2020, the Public Service Commission (PSC) issued its Order denying the Office of Consumer Services' Motion to Compel Compliance with the PSC's November 27, 2019 Order Granting in Part Motion to Compel ("April 2020 Order"), filed with the PSC on March 9, 2020. On May 26, 2020, the Office of Consumer Services (OCS) filed a Petition for Review or Rehearing of the April 2020 Order ("Petition"), and on June 10, 2020, Citizens Telecom Company of Utah d/b/a Frontier Communications ("Frontier"), filed its Response to the Petition. ("Response"). For the reasons and with the clarifications discussed in this order, we decline to modify our decision in the April 2020 Order.

**The Petition**

The OCS acknowledges that its arguments in the Petition are not much different from its arguments in the Second Motion but states that it "files [the] Petition in the hope that the PSC reconsiders crediting [Frontier's] assertions given the impact of the PSC's ruling on the OCS'

ability to prosecute [the] investigation.”<sup>1</sup> More specifically, the OCS asks the PSC to reconsider its ruling that “Frontier answered the OCS’ discovery request seeking documents evidencing that Frontier keeps trouble reports from sources other than a designated 800 number by crediting Frontier’s claim that the trouble reports that Frontier previously provided to the OCS include customer complaints from emails and all other sources of communication.”<sup>2</sup> The OCS requests, instead, a ruling that “Frontier did not answer the subject discovery requests and that Frontier produced no evidence that it keeps trouble reports from complaints communicated to Frontier by email or means other than the designated 800 number.”<sup>3</sup> The OCS claims that Frontier’s assertions were not supported by an affidavit or other evidentiary material but based only on a lawyer’s argument which directly contradicted the sworn testimony of Mr. Giles, Local Manager and Operations Supervisor of Frontier.<sup>4</sup> The OCS argues that “crediting the unsupported arguments of counsel over sworn testimony of Frontier’s own witness creates unique difficulties with the investigation.”<sup>5</sup> Finally, the OCS concludes that “under the facts of this case, crediting Frontier’s argument could possibly lead to the OCS terminating its participation in this investigation.”<sup>6</sup>

#### Frontier’s Response

Frontier contends that the OCS’ continuing claim that Frontier failed to state that “the spreadsheet it produced in response to OCS DR 2.7 ‘included reports of problems communicated

---

<sup>1</sup> Petition at 2.

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

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

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

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 8.

to Frontier from sources other than the 800 number at that time,’ is ‘factually incorrect and fundamentally misleading and [can’t] serve as a basis for now claiming that the [PSC] abused its discretion.’”<sup>7</sup> Frontier reiterates that it produced several spreadsheets in response to OCS DR 2.7 and even labeled one as being responsive to both OCS DR 2.7 and 2.8 as follows: “2.7 and 2.8 DR2 2012\_2014 tickets by exchange CTC UT (FTR-0000008).”<sup>8</sup> Frontier asserts that OCS’ continuing contention is misleading because OCS DR 2.7 was a request for “all” trouble reports from customers in Castle Valley from 2012 forward, and did not request trouble reports generated from a specific path.<sup>9</sup> According to Frontier, it then follows that its response to OCS DR 2.7 “necessarily included trouble reports communicated to Frontier from any source, and not just the 800 number.”<sup>10</sup> Frontier notes that it has consistently stated that it accepts trouble reports from various sources including voice calls, via email, through live chat, social media channels, and by U.S. Mail.<sup>11</sup> Frontier then disputes the OCS’ characterization of Mr. Giles’ testimony and states that he did not “unambiguously testif[y] that Frontier does not keep records of service problems communicated to Frontier by emails or means other than the designated 800 number.”<sup>12</sup>

---

<sup>7</sup> Response at 2.

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

**DISCUSSIONS, FINDINGS AND CONCLUSIONS**

**1. Reconsideration of a PSC order that adjudicates a motion to compel is appropriate.**

The Petition seeks reconsideration on several grounds that merit either a response or clarification. A request for reconsideration of an order related to a motion to compel is uncommon at the PSC. While no PSC statute or rule specifically references such a request, Rule 54(b) of the Utah Rules of Civil Procedure (URCP) seems to contemplate it, as follows:

**Judgment upon multiple claims and/or involving multiple parties.** When an action presents more than one claim for relief—whether as a claim, counterclaim, cross-claim, or third-party claim—and/or when multiple parties are involved, the court may enter judgment as to one or more but fewer than all of the claims or parties only if the court expressly determines that there is no just reason for delay. *Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and may be changed at any time before entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*

*Id.*<sup>13</sup> Emphasis added. Consistent with our R746-1-105, the URCP and case law interpreting the rules are persuasive authority in PSC adjudications, including this one, unless otherwise provided by: (1) Title 63G, Chapter 4, Administrative Procedures Act; (2) Utah Administrative Code R746; or (3) an order of the PSC. *Id.* Utah Code Ann. § 63G-4-301(1)(a) allows a party to seek review of a PSC order, as follows:

If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

---

<sup>13</sup> See also, Utah Code Ann. §§ 54-7-14.5 and 54-7-15(2)(a).

*Id.* Requests for reconsideration of a PSC order must be filed within 30 days of the issuance date of the order. *Id.* The OCS filed its Petition within 30 days from the issuance of the April 2020 Order; therefore, the Petition was timely.

**2. The spreadsheets originally produced in response to OCS DR 2.7 which were later produced in response to OCS DR 2.8, comply with our November 2019 Order compelling Frontier to produce responsive documents.**

Our November 27, 2019 Order Granting in Part Motion to Compel OCS' DR 2.8 ("November 2019 Order"), referenced the prefatory language in OCS DR 2.8 related to Mr. Giles' testimony that the OCS notes in the Petition, and concluded that it caused unnecessary confusion and argument, and therefore could be disregarded by Frontier. Rather, we found that "[s]ubparts (a) through (c) [of OCS DR 2.8] each pose specific and relevant requests for information independent of the prefatory language"<sup>14</sup> and granted, in part, the OCS' original motion. We ordered Frontier to "[...] produce any responsive documents in its possession, custody, or control, including archived documents."<sup>15</sup> Frontier subsequently produced several spreadsheets – the same ones that Frontier produced in response to OCS DR 2.7. The subject spreadsheets "identif[y] the customer, service affected, time, date and nature of the report, and the action taken to clear the trouble."<sup>16</sup> They do not contain the specific path from which the referenced trouble reports were generated.

---

<sup>14</sup> November 2019 Order at 12.

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

<sup>16</sup> Frontier's Response to Office of Consumer Services' Second Motion to Compel at 4.

The OCS characterized our April 2020 Order as having found that “Frontier answered the OCS’ discovery request seeking documents evidencing that Frontier keeps trouble reports from sources other than a designated 800 number by crediting Frontier’s claim that the trouble reports that Frontier previously provided to the OCS include customer complaints from emails and all other sources of communication.”<sup>17</sup> Our ruling was more prescriptive. We ruled that “the spreadsheet[s] provided in response to [OCS DR] 2.8 appear to include[] [...] relevant information that has been discovered [...] that is responsive to the data request. [...] In addition, Frontier represents that it has produced everything in its system of records.”<sup>18</sup> But even if the OCS’ characterization of our ruling had been accurate, it would not be difficult to “credit Frontier’s claim that the trouble reports that Frontier previously provided to the OCS include customer complaints from emails and all other sources of communication” based on the OCS DR 2.7’s broad request, which asked for the following:

- a) Provide copies of *all* records of trouble reports of residential landline telephone customers separately for each exchange served by Citizens Telecom Company of Utah d/b/a Frontier Communications’ specifically identifying customers in Castle Valley, from 2012 to the present.
- b) If you provide services specifically for small business landline telephone customers, provide copies of all records of trouble reports of small business landline telephone customers separately for each exchange served by Citizens Telecom Company of Utah d/b/a Frontier Communications’ specifically identifying customers in Castle Valley, from 2012 to the present.
- c) If you do not provide services specifically for small business landline customers, provide copies of all records of trouble reports from business landline customers served separately for each exchange served by Citizens Telecom Company of Utah d/b/a Frontier Communications’ specifically identifying customers in Castle Valley, from 2012 to the present.

---

<sup>17</sup> Petition at 2.

<sup>18</sup> April 2020 Order at 12.

*Id.* Emphasis added.

As Frontier stated in its Response, “OCS DR 2.7 requested data relating to ‘all’ trouble reports from customers in Castle Valley from 2012 forward, and not trouble tickets originating just from a particular path, such as the 800 number or emails. Thus, Frontier’s response to OCS DR 2.7 necessarily included trouble reports communicated to Frontier from any source, and not just the 800 number.”<sup>19</sup> In any case, our ruling in the April 2020 Order was prescriptive and based on the similarities between OCS DR 2.7 and OCS DR 2.8 which generally asked for the same type of information.

OCS DR 2.8 requested the following:

- a) [P]rovide all records of any type indicating residential landline telephone customer complaints and/or Citizens Telecom Company of Utah d/b/a Frontier Communications’ response to residential landline telephone customer complaints for residential landline telephone customers, separately for each exchange served by Citizens Telecom Company of Utah d/b/a Frontier Communications, specifically identifying customers in Castle Valley, from 2012 to the present, **other** than complaints using a designated 800 number.
- b) If you provide services specifically for small business landline telephone customers, provide all records of any type indicating small business landline telephone customer complaints and/or Citizens Telecom Company of Utah d/b/a Frontier Communications’ response to small business landline telephone customer complaints from small business landline telephone customers, separately for each exchange served by Citizens Telecom Company of Utah d/b/a Frontier Communications, specifically identifying customers in Castle Valley, from 2012 to the present, **other** than complaints using a designated 800 number.
- c) If you do not provide services specifically for small business landline customers, provide all records of any type indicating business landline telephone customer complaints and/or Citizens Telecom Company of Utah d/b/a Frontier Communications’ response to business customer complaints from business landline telephone customers, separately for each exchange

---

<sup>19</sup> Response at 2-3.

served by Citizens Telecom Company of Utah d/b/a Frontier Communications, specifically identifying customers in Castle Valley, from 2012 to the present, **other** than complaints using a designated 800 number.

While OCS DR 2.7 requested “trouble reports” and OCS DR 2.8 requested “complaints,” based on Frontier’s responses, we deem that Frontier has responded to the requests with an interchangeable use of those terms.<sup>20</sup> The only substantive difference between the two requests is that OCS DR 2.8 specifically asked Frontier to exclude “complaints using a designated 800 number” from its response. With that exception, both OCS DR 2.7 and DR 2.8 asked for all records of trouble reports and/or customer complaints from residential and small business customers, or from business customers, if small business customers’ records were not available. Neither OCS DR 2.7 nor DR 2.8 requested a breakdown of the source of the trouble reports/complaints.

The only part that Frontier did not answer was the last part of OCS DR 2.8 which requested that Frontier exclude trouble reports/complaints that were generated by the designated 800 number. Frontier has consistently objected to OCS DR 2.8, explaining that it does not have records that show the path from which trouble reports/complaints are generated.<sup>21</sup> Frontier produced all of the responsive documents in its system of records. Therefore, it is not possible to *exclude* trouble reports/complaints generated from the 800 number as OCS DR 2.8 requests.

URCP 34 states that “[...] [a] party who produces documents for inspection must produce them

---

<sup>20</sup> OCS DR 2.8 also requested Frontier’s response to the requested customer complaints/trouble reports, but this part of the request in 2.8 has not been the subject of the dispute so the PSC will not address it.

<sup>21</sup> See e.g., Motion to Compel Complete Answers to the Office of Consumer Services’ Second Set of Data Requests, Exhibit B (Frontier’s Responses to Office of Consumer Services’ Second Data Request to Citizens Telecom of Utah August 1, 2019), p. 9; Frontier’s Response to Office of Consumer Services’ Second Motion to Compel, March 24, 2020, p. 4.

as they are kept in the usual course of business.”<sup>22</sup> That Frontier took a long time to produce the OCS DR 2.7 spreadsheets in response to OCS DR 2.8, does not make the spreadsheets nonresponsive to OCS DR 2.8. That the spreadsheets do not exclude trouble reports/complaints that were generated from the designated 800 number also does not make them nonresponsive to OCS DR 2.8 if the spreadsheets are a record of trouble reports/customer complaints from all other sources. Finally, Frontier has consistently asserted that it produced all records in its possession that it keeps in its system of records.<sup>23</sup>

Based on the broad requests in OCS DR 2.7 and DR 2.8, and on the similarity between the requests, and on the spreadsheets produced in response thereto, the PSC cannot rule that “Frontier did not answer the subject discovery requests and that Frontier produced no evidence that it keeps trouble reports from complaints communicated to Frontier by email or means other than the designated 800 number.”<sup>24</sup> We therefore decline to modify our April 2020 Order.

**3. Neither this order nor the April 2020 Order deprive the OCS of the opportunity to prosecute this case.**

Finally, the OCS argues that Frontier’s assertions were not supported by an affidavit or other evidentiary material but based only on a lawyer’s argument which directly contradicted the sworn testimony of Mr. Giles, Local Manager and Operations Supervisor of Frontier.<sup>25</sup> The OCS then states that the PSC’s ruling in this case creates unique difficulties with its investigation and creates “impediments to the OCS’ ability to prosecute this case.”<sup>26</sup> Frontier disputes the OCS’

---

<sup>22</sup> Utah Rules of Civil Procedure 34(c).

<sup>23</sup> See Frontier’s Response to Office of Consumer Services’ Second Motion to Compel at 4; Response at 2.

<sup>24</sup> Petition at 2.

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

<sup>26</sup> *Id.* at 6.

characterization of Mr. Giles' testimony and explains that his testimony was referring to one customer about a specific complaint.<sup>27</sup> As noted in our November 2019 Order, we granted the OCS' motion to compel Frontier to respond to OCS DR 2.8 independent of Mr. Giles' testimony. The only relevant issue that we decided in our April 2020 Order was whether Frontier complied with the November 2019 Order which ordered Frontier to "[...] produce any responsive documents in its possession, custody, or control, including archived documents."<sup>28</sup> We ruled that the spreadsheets contained information that was responsive to OCS DR 2.8.<sup>29</sup> This decision was in no way informed by Mr. Giles' testimony, consistent with the direction we gave in our November 2019 Order. We will not comment on Mr. Giles' testimony at this time.

As to OCS' contention that Frontier's assertions were based only on a lawyer's argument, lawyers who sign pleadings and/or who respond to data requests on their clients' behalf must comply with all relevant Utah laws. URCP 26(e) requires that "[e]very [...] response to a request for discovery and objection to a request for discovery shall be [...] signed by at least one attorney of record. [...] The signature of the attorney or party is a certification under [URCP] 11. [...] If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by [URCP] 11 or [URCP] 37(b)." *Id.* A lawyer could be sanctioned for not complying with these Rules and therefore we do not take Frontier's assertions and arguments in pleadings or responses to data requests lightly.

---

<sup>27</sup> Response at 3.

<sup>28</sup> April 2020 Order at 12-13.

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

Further, we disagree with the OCS that our ruling in any way creates an impediment to its ability to prosecute this case. The current case does not yet have a scheduled evidentiary hearing. In fact, discovery is ongoing and will likely proceed further given the current informal stay in the case. The PSC is aware of the recent announcement of Frontier's bankruptcy and expects that parties will soon ask for a scheduling conference to schedule testimony deadlines, formal discovery deadlines, as well as an evidentiary and public witness hearings. Parties, including the OCS, will have the ability and opportunity to explore the inconsistencies noted herein. Parties will have the opportunity to make their respective cases to the PSC, including to cross examine witnesses and rebut witnesses' testimony with their own witnesses, and to participate fully in the process. Our April 2020 Order in no way hinders any party's ability to prosecute its case.

**ORDER**

For the reasons and with the clarifications discussed above, we decline to modify our April 2020 Order based on the Petition.

DATED at Salt Lake City, Utah, June 25, 2020.

/s/ Yvonne R. Hogle  
Presiding Officer

DOCKET NOS. 19-041-01, 19-041-02, and 19-041-04

- 12 -

Approved and confirmed June 25, 2020 as the Order of the Public Service Commission  
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#314407

CERTIFICATE OF SERVICE

I CERTIFY that on June 25, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Dave Ciani, Managing Director ([managingdirector@sorrelriver.com](mailto:managingdirector@sorrelriver.com))  
Elizabeth Rad, Owner ([erad237@gmail.com](mailto:erad237@gmail.com))  
Joerg Limper, General Manager ([gm@sorrelriver.com](mailto:gm@sorrelriver.com))  
Joshua Schaeffer, Operations Director ([operationsdirector@sorrelriver.com](mailto:operationsdirector@sorrelriver.com))  
Becky Oxner, Accounting Manager ([accounting@sorrelriver.com](mailto:accounting@sorrelriver.com))  
Sorrel River Ranch

Stephen F. Mecham ([sfmecham@gmail.com](mailto:sfmecham@gmail.com))  
Stephen F. Mecham Law

Jayne Dillon May ([ejdillon@frontiernet.net](mailto:ejdillon@frontiernet.net))

Robin J. Toso-Condon ([robin.j.toso-condon@ftr.com](mailto:robin.j.toso-condon@ftr.com))  
Leslie Zink ([leslie.zink@ftr.com](mailto:leslie.zink@ftr.com))  
Frontier Communications

Phillip J. Russell ([prussell@jdrslaw.com](mailto:prussell@jdrslaw.com))  
James Dodge Russell & Stephens P.C.

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))  
Justin Jetter ([jjetter@agutah.gov](mailto:jjetter@agutah.gov))  
Robert Moore ([rmoore@agutah.gov](mailto:rmoore@agutah.gov))  
Victor Copeland ([vcopeland@agutah.gov](mailto:vcopeland@agutah.gov))  
Assistant Utah Attorneys General

Madison Galt ([mgalt@utah.gov](mailto:mgalt@utah.gov))  
Division of Public Utilities

Cheryl Murray ([cmurray@utah.gov](mailto:cmurray@utah.gov))  
Office of Consumer Services

---

Administrative Assistant