

customers with bill credits as required by the tariff and if not whether this constitutes a violation of its tariff subjecting Frontier to penalties pursuant the Utah Code § 54-7-25.

A. FACTS

1. Formal Complaints. As this Commission is aware, two customer formal complaints have been filed alleging repeated service interruptions and dropped calls against Frontier in Docket Nos. 19-041-01 and 19-041-02. On Friday May 17, 2019, a hearing was held on the allegations in docket 19-041-01. In short, in Docket 19-041-01, SRR Partners, LLC d/b/a Sorrel River Resort & Spa (“Sorrel”) alleges long-lasting and continuing outages, dropped calls, lack of communication concerning these problems and the lack of any reimbursement or correction of the problems from Frontier. Sorrel’s February 27, 2019 Formal Complaint. In response Frontier points to technical difficulties complicated by rugged terrain and bad weather and, in conflict with the allegations in the Complaint, claims that the problems have been fixed by replacement of faulty radio equipment. Frontier further asserts that it “*will* implement courtesy service credits in accordance with its tariff and terms of condition of service.” Frontier also claims that the terms and condition of service in their contract with Sorrel prohibits a number of Sorrel’s claims. Frontier’s March 22, 2019 Answer to Formal Complaint (emphasis added).

In Docket 19-041-02, Jayne May, a resident for Castle Valley Utah, complains of long-last and ongoing service problems of repeated outages and dropped calls throughout Castle Valley Utah. The Complaint specifically alleges the outages cause concerns regarding safety and asserts that the Castle Valley fire department resorted to setting up “a command center at [the] town office” to provide a telephone line to the sheriff’s office in case of emergencies during a ten-hour outage. The Complaint further states that Frontier has provided no reimbursement for these delays and outages and even has raised rates. May’s, May 17, 2019 Formal Complaint.

Frontier raised the same allegations and defenses to the May Formal Complaint as it asserted in response to the Sorrel Formal Complaint and states “Frontier *will* credit all customers” that experience outages. Frontier April 12, 2019 Answer to Formal Complaint (emphasis added).

2. Frontier’s Terms and Conditions. Frontier’s Terms and Conditions Contract Frontier requires customers to sign contains expansive provisions limiting Frontier’s liability. These provisions are ambiguous, self-contradicting, conflict with Frontier’s tariff and seek to disclaim Frontier’s statutory duties as a utility. Some examples are as follows:

YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON A “AS IS” OR “AS AVILABLE “ BASIS . . . THERE IS NO WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE

....

Breach by Frontier: If Frontier has not remedied any breach within thirty (30) days after Frontier’s receipt of written notice from Customer of such breach, Customer may terminate the Service which is the subject of the breach. This is the customer’s exclusive remedy for a breach by Frontier.

Frontier’s Terms and Conditions at 6-8, 17 (found at website cited in footnote 2 of Frontier’s March 22, 2019 Answer to Formal Complaint).¹

3. Frontier’s Tariff. Frontier’s Tariff, Schedule No. AC Rule No. 6, provides for limitation of liability of Frontier and provides for billing credits to be provided to reimburse customers for outages. The tariff conflicts with the Limits of Liability contained in Frontier’s Terms and Conditions. These provisions are somewhat complex but include the following language.

¹ The terms and conditions also provide for remedies other than the termination of service such as: “In case of Service Outages liability shall be limited to 1/720 of the monthly recurring charge for each hour of the Service Outage.” However, these conflicting provisions will be confusing to customers particularly when the law of disclaiming liability is complex and beyond the scope of knowledge of most customers.

Except in cases of actionable negligence, the liability of the utility for damages arising out of mistakes, omissions, interruptions, delays, errors, or defects in any of the services or facilities furnish by the utility . . . shall in no event exceed an amount equal to the pro rata charges to the customer for the period during which the services or facilities are affected

Schedule No, AC, Rule No. 6. A1, B1, C1 (emphasis added). This tariff provides for bill credits for interruptions of services, including a month's credit for outages lasting over 24 hours.

Schedule No, AC, Rule No. 6. A1, D1

B. ISSUES FOR INVESTIGATION

The Office asserts that these allegations justify this Commission to open a new docket for a wider investigation of Frontier that is not limited to allegations in the formal Complaints. However, at the May 17th hearing, Frontier's witness testified that they will be replacing radio equipment in the week May 20th and they expect this new equipment to resolve all outstanding problems with service quality in Castle Valley. Accordingly, the investigation should be conducted in two phases. First, it should be determined whether the upcoming replacement of radio equipment resolves the difficulties. If the service quality issues persist, the Commission should investigate the following issues.

Systemic Service Quality Issues. If the allegations in the Formal Complaints prove correct, it is likely that Frontier may have systemic system deficiencies that prevent it from providing reliable service to sections of its service area. An investigation should be under-taken into the extent of these system deficiencies and Frontier's efforts to resolve these issues. The investigation should evaluate the extent that rugged terrain and bad weather excuse these problems given that all rural telecom providers face these challenges.

Service Quality for Telecommunication Corporation Rules. The investigation should explore whether Frontier services are in compliance with Service Quality for Telecommunication

Corporation Rules, Utah Admin. Code r. 746-340-4, 746-340-5, 746-340-7 and if not whether the Commission should take enforcement action pursuant to Utah Code § 54-8b-3.3(3).

Regardless of whether the service quality issues persist, the Commission should investigate the following issues:

Bill Credit for Outages. The investigation should explore whether Frontier is complying with its tariff in providing customers with credits for reported outages and is keeping records of the reported outages as require by Rule 746-340-5. If Frontier is not following its tariff or complying with Rule 745-340-5, the investigation should determine whether the Commission should impose penalties against Frontier pursuant to Utah Code § 54-7-25.

Frontier's Terms and Conditions. The investigation should also explore whether the Commission should allow Frontier to incorporate into their customer contract the ambiguous, self-contradicting Limitation of Liability language that is likely to confuse customers as to their recourses in confronting Frontier concerning the repeated service quality issues. The Commission should also determine whether to allow Limitation of Liability language in Frontier's customer contract that conflicts with Frontier's tariff and whether provisions in the Limitation of Liability language are void against public policy because they seek to disclaim the statutory duties of utilities. *See* Utah Code § 54-3-1 ("Every public utility shall furnish provide and maintain such services . . . as will be in all respects adequate, efficient, just and reasonable"); *Rothstein v. Snowbird Corp.*, 2007 UT 96, ¶¶ 6, 10, 175 P.3d 560 (ambiguous release not enforced; release that contradict public policy found in statutes void against public policy).

Any Other Issue. The Commission should also inquire into any other issue the Commission determines justifies additional investigation.

Conclusion

This Commission should open up a separate docket to under-take an investigation of Frontier to determine if it is acting in accordance with the relevant statutes, rules and its tariff and if not to determine the appropriate action to remedy the situation.

Respectfully submitted, May 17, 2019.

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