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2017 APR 13 P 12:33

George Baker Thomson, Jr.
Associate General Counsel
1800 41st. St., Suite N-100
Everett, WA 98203
425-261-5844
george.thomson@ftr.com

April 11, 2017

Arizona Corporation Commission
ATTN: Kay Mecca, Docket Administrator
Docket Control
1200 West Washington St.
Phoenix, AZ 85007-2927

Arizona Corporation Commission

DOCKETED

Re: Docket No. T-01954B-17-0064

APR 13 2017

Subject: Response to Formal Complaint by Kim R. Gaines

DOCKETED BY
GB

Dear Ms. Mecca:

Citizens Utilities Rural Company, Inc. d/b/a Frontier Citizens Utilities Rural Company ("Frontier") hereby responds to the formal complaint of Kim R. Gaines ("Complainant") and states the following:

Complainant admits in his handwritten letter of 11/22/16 that his service was "working OK. Problem solved..." As a consequence of that admitted fact, Frontier will address the undated handwritten document entitled "Nature of Relief Sought: 2016-135102". Because Mr. Gaines, like all of Frontier's customers, is bound by Frontier's tariffs and terms and conditions of service, none of his requested relief is available to him and his formal complaint should be dismissed.¹

Regarding Mr. Gaines' request for relief 1, Frontier is constrained from departing from its tariff to provide the refund to an undefined set of customers as proposed by Mr. Gaines. Frontier's Terms and Conditions of Residential Service, which Mr. Gaines accepted by using and paying for service, provides that the Company's liability to a customer is "limited to the charges [you] incur for services and equipment during the affected period." Frontier's credits to Mr. Gaines' account for the period of outages are the only remedy to which he is entitled. Frontier will, of course, provide the same relief to any affected customer who requests service outage credits.

Regarding request for relief 2, Mr. Gaines seems to be unaware that Frontier stationed a generator to provide power during the last scheduled outage by Mohave Electric. Frontier will continue to use this method of restoring power in the event of future outages that extend beyond the power available from the backup batteries.

¹ See attached copies of applicable tariff page and Frontier Terms and Conditions.



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Regarding request for relief 3, Mr. Gaines has provided absolutely no proof of his claim that Frontier engaged in the "cost saving scheme" he describes in his complaint. Frontier, as Mr. Gaines admits, has exchanged the batteries he complained about in 2016 as part of its routine outside plant inspections and replacements. I am informed by Frontier's engineers that the backup batteries in question have an average lifespan of about 5 years, and that these batteries had previously been replaced in 2011.

Finally, in response to request for relief 4, Frontier's residential terms and conditions of service, which Mr. Gaines has accepted, specifically disclaim any liability for any incidental or consequential damages, and punitive or exemplary damages, including attorney's fees. The root cause of each of these outages was not a failure of Frontier's network; on the contrary, Mr. Gaines' research on Mohave Electric reflects that electric utility outages, not telephone plant issues under the control of Frontier, were ultimately the cause of his service failures.

For these reasons, Frontier respectfully requests that the formal complaint be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "George Thomson".

George Baker Thomson, Jr.



George Baker Thomson, Jr.
Associate General Counsel
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An ORIGINAL and thirteen (13) copies of the foregoing were shipped via UPS this 11th day of April 2017 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing were mailed via USPS this 11th day of April 2017 to:

Timothy la Sota, Acting Director
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Elijah Abinah, Acting Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Kim R. Gaines
7551 E Cayuse Ct. (Valle Vista)
Kingman, Arizona 86401

A handwritten signature in black ink that reads "R. Kirk Lee".

R. Kirk Lee
Manager – Government & External Affairs
Frontier Communications
1800 41st St., Suite N-100
Everett, WA 98203
425-261-5855 (o), 425-314-2755 (c)
kirk.lee@ftr.com

TELEPHONE SERVICES TARIFF

911 EMERGENCY SERVICE (Continued)

12.3 CONDITIONS (Continued)

- f) The 911 calling party forfeits the privacy afforded by private (nonpublished) and semiprivate (nonlisted) telephone number service to the extent that the telephone number, location address, and name associated with the originating station location are furnished to the PSAP. Information will be provided only for the purpose of responding to emergency calls.
- g) The Company's entire liability to any person for interruption or failure of 911 service shall be limited to the terms set forth in this schedule and other schedules of this tariff.
- h) The ESA shall have the responsibility of discovering all errors, defects, and malfunctions in the transmission of calls and data, database(s), and overall operation of the system. The ESA shall make such operational tests as, in the judgment of the ESA, are required to determine whether the system is functioning properly for its use. The ESA shall promptly notify the Company in the event the system is not functioning properly.
- i) The Company's liability for any loss or damage arising from errors, interruptions, defects failure or malfunctions of 911 Service or any part thereof whether caused by the negligence of the Company or otherwise shall not exceed an amount equivalent to the pro rata charges for the service affected during the period of time that the service was fully or partially inoperative.
- j) The ESA also agrees to release, indemnify, and hold harmless the Company from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by the calling party, ESA, or any other party, person or entity for any personal injury to or death of any person or persons, or for any loss, damage, or destruction of any property, whether owned by the calling party, ESA, or others, based upon, arising out of or alleged to arise out of, or in any way related to 911 Service.

DATE ISSUED: September 15, 1997
EFFECTIVE DATE: September 24, 1997
FILED BY: F. Wayne Lafferty
TITLE: Assistant Vice - President

RESERVED FOR ACC TARIFF APPROVAL

DECISION NO.: 59810

DOCKET NO.: E-1032-96-353

Terms and Conditions: Frontier Communications of America, Inc.

About These Terms and Conditions

THIS NOTICE DESCRIBES THE TERMS AND CONDITIONS PURSUANT TO WHICH FRONTIER WILL PROVIDE ITS CUSTOMERS WITH SERVICE ("Service") **AND REQUIRES THAT ANY DISPUTE BE RESOLVED BY BINDING ARBITRATION ON AN INDIVIDUAL BASIS RATHER THAN LAWSUITS, JURY TRIALS, OR CLASS ACTIONS, AS EXPLAINED MORE FULLY BELOW.** BY USING FRONTIER SERVICES OR EQUIPMENT, YOU ARE AGREEING TO THESE TERMS AND CONDITIONS. IF YOU SIGNED AN AGREEMENT WITH A PHYSICAL OR ELECTRONIC SIGNATURE, THAT AGREEMENT SUPERSEDES ANYTHING INCONSISTENT IN THESE TERMS AND CONDITIONS.

Termination by Customer

You may terminate a service to which you subscribe on a month-to-month basis at any time by notifying us. You remain liable for payment of all outstanding charges for all services you used and equipment you purchased prior to termination. If you receive special rates in return for subscribing to multiple services and subsequently unbundle, terminate, or disconnect any of these services at any time, then we may adjust the rates for the remaining services. A change in your service address or the location to which any service is provided to you may constitute your termination of that service.

Termination by Frontier

We may interrupt or terminate a service: (1) if you do not honor any provision of these terms and conditions (including payment obligations to Frontier for these or any other services), (2) if you use a service in a manner that adversely affects service to other customers or harasses our customers or employees or (3) if you or others use a service to engage in fraud or unlawful conduct or are suspected of doing so. We may restore such interrupted or terminated service, in our sole discretion, following correction of the violation and payment of any amounts due, including any restoration charge we assess for restoring your service.

Payments

We will bill you monthly for all charges associated with the services or equipment provided. Payment in full is due no later than the due date indicated on your bill. You are responsible for paying any taxes, surcharges, fees and assessments imposed from time to time in connection with these services. If you have authorized payment for services or equipment by credit card or by debiting a bank account, no additional notice or consent is required before we invoice the credit card or debit the bank account for all amounts due to us for any reason. We may accept late payments, partial payments or any payments marked as being "payment in full" or as being settlement of any dispute without losing any of our rights under this agreement. You agree to pay costs and fees we incur to collect an unpaid balance from you including attorney's fees. A reasonable handling charge, not less than \$10.00, will be assessed for all checks returned by the drawee bank for insufficient funds, closed account, apparent tampering, missing signature or endorsement, or any other insufficiency or discrepancy. Interest at the rate of 1.5% per month (unless a lower rate is prescribed by law, in which event at the highest rate allowed by law) may be applied in accordance with Frontier's standard credit policy to any unpaid amount commencing 20 days after the statement date.

Credits and Deposits

You authorize us to ask credit reporting agencies for credit information about you. We may, in our discretion, require you to submit a deposit as security for payment of charges. An additional deposit may be required if either the amount or number of services is increased or your credit rating changes. Simple interest will be paid on the cash deposit for the period it is held by us and will be refunded if satisfactory credit has been established or upon termination of service. We reserve the right to apply the deposit to any amount due and unpaid. We may require a guarantee of payment by an individual or entity approved by us.

Telephone Numbers

We may assign telephone numbers in connection with the service subscribed to. You have no proprietary right to any such identifiers, and we reserve the right to change them upon notice to you.

Theft and Fraud

If your service or equipment is lost or stolen or fraudulently used, then you are responsible for all usage incurred before we receive notice from you of such loss or theft. You agree to cooperate in the investigation of fraud or theft and to provide us with such information and documentation as we may request (including affidavits and police reports).

Dispute Resolution with Frontier by Binding Arbitration

***PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS ***

Frontier encourages you to contact our Customer Service department if you have concerns or complaints about your Service or Frontier. Generally, customer complaints can be satisfactorily resolved in this way. In the unlikely event that you are not able to resolve your concerns through our Customer Service department, you and Frontier each agree to resolve all disputes through binding arbitration or a small claims court rather than lawsuits in courts of general jurisdiction, jury trials, or class actions. Arbitration is more informal than a lawsuit. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and individual relief affecting individual parties that a court can award, including an award of attorneys' fees if the law allows. For any non-frivolous claim that does not exceed \$75,000, Frontier will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from Frontier for your own dispute to the same extent as you would be in court. In addition, under certain circumstances (as explained below), Frontier will pay you more than the amount of the arbitrator's award if the arbitrator awards you an amount that is greater than what Frontier has offered you to settle the dispute.

Arbitration Agreement:

(a) You and Frontier agree to arbitrate **all disputes and claims** between us related to or associated with the Service. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to, all claims arising out of or relating to any aspect of our relationship, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, that arose either before or during this or any prior Agreement, or that may arise after termination of this Agreement. It also includes claims that currently are the subject of class action or purported class action litigation in which you are not a member of a certified class. References to "Frontier," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of Frontier Broadband Services under this or prior Agreements between us.

Notwithstanding the foregoing agreement, Frontier agrees that it will not use arbitration to initiate debt collection against you except in response to claims you have made in arbitration. In addition, by agreeing to resolve disputes through arbitration, **you and Frontier each agree to unconditionally waive the right to a trial by jury or to participate in a class action, representative proceeding, or private attorney general action.** Instead of arbitration, either party may bring an individual action in a small claims court for disputes or claims that are within the scope of the small claims court's authority. In addition, you may bring any issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf.

This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision, even after the Agreement is terminated.

(b) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Frontier should be addressed to: Frontier Communications, Legal Department, 401 Merritt 7, Norwalk, CT 06851 ("Notice Address"). The Notice must (1) describe the nature and basis of the claim or dispute, and (2) set forth the specific relief sought ("Demand"). If Frontier and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Frontier may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Frontier or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Frontier is entitled.

(c) The arbitration will be governed by the Consumer Arbitration Rules ("AAA Rules") of the American Arbitration Association ("AAA"), as modified by the terms of this Agreement, and will be administered by the AAA. Procedure, rule and fee information is available from the AAA online at <http://www.adr.org>, by calling the AAA at 1-800-778-7879, or by calling Frontier at 1-877-462-7320, option 3. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision, including the scope, interpretation, and enforceability of section (f) below, are for a court to decide. If your claim is for \$25,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$25,000, the right to a hearing will be determined by the AAA Rules. Unless Frontier and you agree otherwise, any in-person hearings will take place at a location that the AAA selects in the state of your primary residence unless you and Frontier agree otherwise. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

Frontier agrees to pay your AAA filing, administration, and arbitrator fees ("AAA fees") for claims for damages of up to \$75,000 and for claims for non-monetary relief up to the value of \$75,000, as measured from either your or Frontier's perspective (but excluding attorneys' fees and expenses). After Frontier receives notice that you have commenced arbitration, it will promptly reimburse you for

your payment of the filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$200 but is subject to change by the AAA. If you are unable to pay this fee, Frontier will pay it directly upon receiving a written request.) In addition, Frontier will not pay your share of the AAA fees if the arbitrator finds that either your claim or the relief sought is frivolous or brought for an improper purpose, as measured by the standards of Federal Rule of Civil Procedure 11(b). In such case, the payment of AAA fees will be governed by the AAA Rules, and you agree to reimburse Frontier for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. If you initiate an arbitration in which you seek relief valued at more than \$75,000 (excluding attorneys' fees and expenses), as measured from either your or Frontier's perspective, the payment of AAA fees will be governed by the AAA Rules.

(d) If Frontier offers to settle your dispute prior to appointment of the arbitrator and you do not accept the offer, and the arbitrator awards you an amount of money that is more than Frontier's last written settlement offer, then Frontier will pay you the amount of the award or \$5,000 ("the alternative payment"), whichever is greater. If Frontier does not offer to settle your dispute prior to appointment of the arbitrator, and the arbitrator awards you any relief on the merits, then Frontier agrees to pay you the amount of the award or the alternative payment, whichever is greater. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

(e) Although Frontier may have a right to an award of attorneys' fees and expenses if it prevails, Frontier agrees that it will not seek such an award.

(f) You and Frontier agree to seek, and further agree that the arbitrator may award, only such relief—whether in the form of damages, an injunction, or other non-monetary relief—as is necessary to resolve any individual injury that either you or Frontier have suffered or may suffer. In particular, if either you or Frontier seeks any nonmonetary relief, including injunctive or declaratory relief, the arbitrator may award relief on an individual basis only, and may not award relief that affects individuals or entities other than you or Frontier. YOU AND FRONTIER AGREE THAT WE EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. FURTHERMORE, UNLESS BOTH YOU AND FRONTIER AGREE OTHERWISE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. If a court decides that applicable law precludes enforcement of any of this paragraph (f)'s limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court. Further, an arbitrator's award and any judgment confirming it shall apply only to that specific case and cannot be used in any other case except to enforce the award itself.

(g) Notwithstanding any provision in this Agreement to the contrary, you and Frontier agree that if Frontier makes any change to this arbitration provision during the period of time that you are receiving Frontier services, you may reject that change by providing Frontier with written notice within 30 days of the change to the Notice Address provided in (b) above and require Frontier to adhere to the language in this provision. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

Governing Law

If required by law, this agreement will be governed by the laws of your state. Otherwise, this agreement will be governed by the laws of the state of New York, without regard to its choice of law rules.

No Third Party Rights

This agreement shall not provide any third party with a remedy, claim or right of reimbursement.

Assignment

We may assign this Agreement to another entity without any advance consent from or notice to you. You may not assign this Agreement without our consent.

Acts Beyond Our Control

Neither you nor we will be responsible to the other for any delay, failure in performance, loss or damage due to fire, explosion, power blackout, earthquake, volcanic action, flood, the weather elements, strike, embargo, labor disputes, civil or military authority, war, terrorist acts, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond our reasonable control, except that you must pay for any services used.

Severability

If we do not enforce any right or remedy available under this Agreement, that failure is not a waiver. Except where this Agreement specifically provides otherwise, if any part of the Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in force.

INDEMNIFICATION

YOU AGREE THAT WE SHOULD NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES, FURTHER, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEY'S FEES, UNLESS SUCH CLAIMS ARE BASED ON OUR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS PROVISION WILL CONTINUE TO APPLY AFTER THE AGREEMENT ENDS.

LIMITATION OF LIABILITY

OUR LIABILITY REGARDING YOUR USE OF SERVICES OR EQUIPMENT, OR THE FAILURE OF OR INABILITY TO USE THE SERVICES OR EQUIPMENT, IS LIMITED TO THE CHARGES YOU INCUR FOR SERVICES OR EQUIPMENT DURING THE AFFECTED PERIOD. THIS MEANS WE ARE NOT LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS OR LOST BUSINESS OPPORTUNITIES), PUNITIVE OR EXEMPLARY DAMAGES, OR ATTORNEY'S FEES.

DISCLAIMER OF WARRANTIES

WE MAKE NO WARRANTY REGARDING THE SERVICES AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE ARE NOT RESPONSIBLE FOR CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OR OMISSIONS OF OTHERS, ATMOSPHERIC CONDITIONS, OR ACTS OF GOD. WE DO NOT MANUFACTURE EQUIPMENT OR SOFTWARE, AND YOUR ONLY WARRANTIES AND REPRESENTATIONS WITH RESPECT TO EQUIPMENT OR SOFTWARE ARE THOSE PROVIDED BY THE MANUFACTURER (WITH RESPECT TO WHICH WE HAVE NO LIABILITY WHATSOEVER).

ABOUT THESE TERMS AND CONDITIONS

BY USING FRONTIER COMMUNICATIONS OF AMERICA SERVICES OR EQUIPMENT, YOU ARE AGREEING TO THESE TERMS AND CONDITIONS. IF YOU ARE A NEW CUSTOMER AND DO NOT WISH TO BE BOUND BY THESE TERMS AND CONDITIONS, DO NOT BEGIN USING THE SERVICES OR EQUIPMENT AND NOTIFY US IMMEDIATELY. WITH RESPECT TO CURRENT CUSTOMERS, WE MAY CHANGE PRICES, TERMS AND CONDITIONS AT ANY TIME BY GIVING YOU AT LEAST 25 DAYS NOTICE BY BILL MESSAGE OR OTHER NOTICE UNLESS GUARANTEED BY CONTRACT. YOU ACCEPT THE CHANGES IF YOU USE THE SERVICES OR EQUIPMENT AFTER YOU RECEIVE OUR NOTICE. YOU WILL STILL BE RESPONSIBLE FOR ALL CHARGES FOR SERVICE AND EQUIPMENT MADE BEFORE YOU TERMINATED YOUR AGREEMENT. FRONTIER MAY ALSO WITHDRAW A SERVICE BY GIVING YOU AT LEAST 25 DAYS NOTICE.

Entire Agreement

These terms and conditions, together with the service order and any applicable tariff, are the entire agreement between you and Frontier, which may only be amended as described above. These terms and conditions supersede any inconsistent or additional promises made to you by any of our employees or agents. Interstate rates and charges for each of our products can be found in our current price list at tariffs.frontiercorp.com. If you do not have internet access, you may call the customer service number on your bill to request this information.

Last update: January 2016