



Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12<sup>th</sup> Floor  
Washington, D.C. 20006

TEL: 202 659 6600  
FAX: 202 659 6699  
www.eckertseamans.com

Brett Heather Freedson  
Phone: 202-659-6669  
bfreedson@eckertseamans.com

June 11, 2014

**Via Hand Delivery**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company, et al. v. UGI Utilities – Electric Division  
File No. EB-14-MD-007

Dear Secretary Dortch:

Enclosed please find an original and four copies of a Motion for Leave to File and Motion to Hold Proceeding in Abeyance Pending Complainants' Compliance With 47 C.F.R. § 1.1404(K) for filing with the Commission in the above-reference matter. Please date stamp the fifth copy of these documents as having been received by your office and return them to the courier in attendance.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Brett Heather Freedson".

Brett Heather Freedson  
*Counsel for UGI Utilities – Electric Division*

BHF/lje

Encls.

cc: Service List

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

COMMONWEALTH TELEPHONE COMPANY )  
d/b/a FRONTIER COMMUNICATIONS )  
COMMONWEALTH TELEPHONE COMPANY and )  
CTSI, LLC d/b/a FRONTIER COMMUNICATIONS )  
CTSI COMPANY )  
Complainants, )  
v. )  
UGI UTILITIES, INC. – ELECTRIC DIVISION )  
Respondent. )

File No. EB-15-MD-007

**MOTION FOR LEAVE TO FILE**

UGI Utilities, Inc. (“UGI”), the Respondent in the above-referenced proceeding, hereby requests leave to submit the accompanying “Motion to Hold Proceeding in Abeyance Pending Complainants’ Compliance with 47 C.F.R. § 1.1404(k)” (“Motion for Abeyance”) to correct serious misstatements of fact in the initial Complaint filed in the instant proceeding and to call the Commission’s attention to the failure of the Complainants to comply with the Commission’s rules.

1. As more fully articulated in the attached “Motion for Abeyance,” the Complainants failed to participate, in good faith, with executive-level discussions with the intent to resolve the issues currently in dispute between the parties prior to filing of their Complaint in this matter as required by 47 C.F.R. § 1.1404(k).

2. Thus, good cause exists to permit the filing and consideration of the Motion for Abeyance because the Complainants’ failure to comply with these significant pre-filing requirements frustrates the intent of the Commission’s rules and runs counter to long-established

Commission policy. Moreover, this failure will likely result in the imposition of unnecessary additional costs with respect to both the parties and the Commission's staff. UGI therefore believes it is efficient and reasonable to address these issues in a preliminary motion and attempt both to conserve the Commission's and the parties' resources and effectuate the Commission's regulations and policy.

For the foregoing reasons, UGI respectfully requests leave to file the attached Motion to Hold Proceeding in Abeyance Pending Complainants' Compliance with 47 C.F.R. § 1.1404(k).

Respectfully submitted,



Charles A. Zdebski  
Brett Heather Freedson  
Robert J. Gastner  
ECKERT SEAMANS CHERIN & MELLOTT, LLC  
1717 Pennsylvania Avenue, N.W.  
Suite 1200  
Washington, D.C. 20006  
Phone: (202) 659-6605  
Fax: (202) 659-6699

*Counsel to UGI Utilities, Inc. – Electric Division*

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2014, I caused a copy of the foregoing Motion for Leave to File to be served on the following by hand delivery, Federal Express, or U.S. mail (as indicated):

Joseph J. Starsick  
Associate General Counsel  
Frontier Communications  
1500 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25314  
(Via Federal Express & U.S. Mail)

Christopher S. Huther  
Claire J. Evans  
WILEY REIN LLP  
1776 K Street, NW  
Washington, DC 20006  
(Via Hand Delivery & U.S. Mail)

David H. Solomon  
WILKINSON BARKER KNAUER, LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037  
(Via Hand Delivery & U.S. Mail)

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
(Via Hand Delivery)

Lisa Griffin, Deputy Chief  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Michael Engel, Special Counsel  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utilities Commission  
400 North Street  
Commonwealth Keystone Building  
Harrisburg, PA 17120  
(Via U.S. Mail)

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
(Via U.S. Mail)



---

Robert J. Gastner

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

COMMONWEALTH TELEPHONE COMPANY )  
d/b/a FRONTIER COMMUNICATIONS )  
COMMONWEALTH TELEPHONE COMPANY and )  
CTSI, LLC d/b/a FRONTIER COMMUNICATIONS )  
CTSI COMPANY )  
Complainants, )  
v. )  
UGI UTILITIES, INC. – ELECTRIC DIVISION )  
Respondent. )

File No. EB-15-MD-007

**MOTION TO HOLD PROCEEDING IN ABEYANCE PENDING  
COMPLAINANTS’ COMPLIANCE WITH 47 C.F.R. § 1.1404(K)**

Defendant, UGI Utilities, Inc. – Electric Division (“UGI”), by and through its attorneys, respectfully submits this Motion to Hold Proceeding in Abeyance Pending Complainants’ Compliance with 47 C.F.R. § 1.1404(k), and requests that the Bureau: (i) order Complainants to participate in good faith, executive-level discussions for resolution of the issues raised in their Complaint; and (ii) suspend the filing deadlines directed in the Notice of Complaint, pending Complainants’ full satisfaction of the requirements of 47 C.F.R. § 1.1404(k). In support of this Motion, UGI states as follows:

1. On May 14, 2014, Commonwealth Telephone Company, LLC d/b/a Frontier Communications Commonwealth Telephone Company (“Commonwealth”) and CTSI, LLC d/b/a Frontier Communications CTSI Company (“CTSI”) (together, “Frontier”, or “Complainants”) filed their Complaint in above-captioned proceeding. The Bureau issued its Notice of Complaint to UGI on May 28, 2014, and therein directed UGI to respond to the Complaint on or before June

13, 2014. The Bureau thereafter granted a Consent Motion, providing UGI an extension of time to file its response to the Complaint until June 30, 2014.

2. The Commission's rules require, as a pre-condition to filing any pole attachment complaint, that the complainant engage in executive-level discussions with the respondent, for the essential purpose of settling disputed issues without the need for intervention by the Bureau. Specifically, 47 C.F.R. § 1.1404(k) provides:

The complaint should include a certification that the complainant has, in good faith, engaged or attempted to engage in executive-level discussions with the respondent to resolve the pole attachment dispute. Executive-level discussions are discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the company they represent regarding the subject matter of the discussions. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter to the respondent outlining the allegations that form the basis of the complaint it anticipated filing with the Commission, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute. A refusal by a respondent to engage in the discussions contemplated by this rule shall constitute an unreasonable practice under section 224 of the Act.

3. This obligation, adopted in the *2011 Pole Attachment Order*, is consistent with the Commission's longstanding policies favoring negotiated settlement of pole attachment disputes. *See e.g., In the Matter of Implementation of Section 224 of the Act* (WC Docket No. 07-245), *A National Broadband Plan for Our Future* (GC Docket No. 09-51), Order and Further Notice of Proposed Rulemaking, FCC 10-84, 25 FCC Rcd 11864 ("*2010 Pole Attachment Order*") at ¶ 107 ("...we encourage, support and fully expect that mutually beneficial exchanges will take place between utility and attachment entity...[and] want to promote efforts by attachers and utilities to negotiate innovative and mutually beneficial solutions to contested contract issues."); *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment*

*of the Commission's Rules and Policies Governing Pole Attachments* (CS Docket No. 97-151), Report and Order, FCC 98-20, 13 FCC Rcd 6777 at ¶ 11 (“...the Commission's role is limited to circumstances when the parties fail to resolve a dispute and...negotiations between a utility and an attacher should continue to be the primary means by which pole attachment issues are resolved.”); *see also* *Fiber Tech. Networks, L.L.C. v. Narragansett Elec. Co., et al.*, 23 FCC Rcd 16970, ¶ 3 (2008); *In re Knology, Inc. v. Georgia Power Co.*, 20 FCC Rcd 2424, ¶ 3 (2005); *RCN Telecom Serv.'s of Philadelphia, Inc. v. Peco Energy Co.*, 19 FCC Rcd 2007, ¶ 3 (2004); *In re Cavalier Tel., LLC v. Virginia Elec. and Power Co. d/b/a Virginia Power*, 17 FCC Rcd 24414, ¶ 22 (2002).

4. Although the Complaint includes Complainants' certification of compliance with its obligations under 47 C.F.R. § 1.1404(k), Complainants embellish, and grossly mischaracterize their efforts to engage in meaningful dispute resolution discussions before resorting to the formal complaint process. Therefore, the Bureau should not review the merits of the Complaint unless and until such time as Complainants fulfill their legal obligation to participate in executive-level discussions, *in good faith*, and with the intention of reaching a mutually beneficial resolution.

5. Complainants' allegations against UGI date back to Complainants' request to re-negotiate, based on the *2011 Pole Attachment Order*, the rates, terms and conditions set forth in the January 1, 1931 joint use agreement between UGI and Commonwealth. Compl. ¶ 11. Responding to this request, UGI provided to Complainants proposed draft agreements (for each of Commonwealth, and CTSI), intended to serve as the starting point for the parties' ongoing discussions. *See* Letter from Paul J. Szykman dated February 10, 2012, attached to Compl. as Ex. 8. UGI also provided to Complainants documentation of the Telecom Rate applicable to CTSI, including its rate calculation, pursuant to 47 C.F.R. § 1.1409(e), formula inputs, and all

supporting pole data. *Id.* Although Complainants engaged UGI in rate-related discussions, at no time did Complainants make any attempt to negotiate the terms and conditions of attachment proposed by UGI. Quite simply, Complainants ignored the proposed agreements tendered by UGI.

6. Significantly, UGI and Commonwealth, and UGI and CTSI, respectively, continue to operate pursuant to their existing joint use, and pole license agreements, and neither UGI, nor Commonwealth has terminated the January 1, 1931 joint use agreement or taken any action regarding the pole license agreements. *See* Affidavit of Paul J. Szykman, attached hereto as Ex. 1 (“Szykman Affidavit”). To date, Commonwealth and CTSI continue to maintain attachments on UGI’s poles. *Id.* However, beginning for calendar year 2012, both Commonwealth and CTSI refused to make full payment of those pole attachment fees due under their respective joint use and license agreements. *Id.*

7. On November 21, 2013, UGI sent Complainants a written demand for full payment of the pole attachment fee amounts owed to UGI, pursuant to Complainants’ respective joint use, and license agreements, within thirty (30) days. UGI also indicated to Complainants its intent to pursue legal remedies, in the event that past due pole attachment fee amounts remained unpaid. *See* Letter from Brett Freedson dated November 21, 2013 attached hereto as Ex. 2.

8. UGI received no response of any kind to its demand, and therefore, on February 12, 2014, filed suit against Complainants in Pennsylvania state court (Court of Common Pleas, Dauphin Co., Penn., Case No. 2014-CV-1236). *See* Szykman Affidavit. The Complaint alleged breach of contract by Commonwealth, and CTSI, respectively, and unjust enrichment, and requested damages in the amounts equal to Complainants’ unpaid pole attachment fees for calendar years 2012 and 2013, as calculated at the rate set forth in the parties’ agreements. *Id.*

9. The response to UGI's Pennsylvania Complaint was originally due on or about March 10, 2014. Complainants requested two (2) extensions of time to respond to the Complaint. Complainants' repeated justification for their requests was their intent to negotiate a resolution of the issues presented *in UGI's Pennsylvania Complaint* before incurring the expense of drafting and filing a formal response with the court. *See Szykman Affidavit*. UGI granted Complainants an initial extension of time of thirty (30) days, and subsequently, granted an additional two (2) weeks, as needed to accommodate the April 16, 2014 meeting date proposed by Complainants. *See Id*; *see also* Letter from Kevin Skjodal dated March 11, 2014, attached hereto as Ex. 3 ("Skjodal Letter").

10. Based on its communications with Complainants, UGI believed that the parties' April 16, 2014 meeting would involve a proposal for settlement by Complainants, and as needed, further discussions of the breach of contract allegations raised in UGI's Pennsylvania Complaint. *See Szykman Affidavit*. However, on or about April 10, 2014, Complainants directed to UGI a summation of unrelated challenges to UGI's Telecom Rate calculation, including more than 170 pages of attachments. *See* Letter from Cynthia A. Cormany dated April 10, 2014, attached hereto as Ex. 4 ("Cormany Letter"). UGI received the same, via certified U.S. mail, on April 14, 2014 — less than two (2) days prior to the parties' scheduled April 16, 2014 meeting. *Id*. Furthermore, Complainants did not confirm the identities of executives attending the meeting until the evening of April 15, 2014. Complainants did not indicate, in the April 10, 2014 letter or otherwise, that the parties' scheduled meeting was intended to serve as pre-complaint, executive-level discussions, in accordance with 47 C.F.R. § 1.1404(k). *See* Cormany Letter.

11. Contrary to Complainants' assertion, UGI's counsel responded to Complainants' April 10, 2014 letter on the same day it was received, requesting that the scheduled discussions

adhere to the parties' previously agreed upon scope, and suggesting that the additional issues raised by Complainants be addressed at a separate meeting for that purpose. *See Skjodal Letter*. UGI has never received a written response from the Complainants with respect to this proposal for further negotiations focused on the substance of the allegations in the Complaint now pending before the Bureau. *See Szykman Affidavit*.

12. At the April 16, 2014 meeting, Complainants made no good-faith effort to resolve the parties' dispute. Instead, Complainants simply repeated the position they had taken long ago, when they engaged in self-help and short paid UGI's invoices to them – ultimately revealing their proposed resolution as being partial payment amounts remitted to date. *Id.*

13. UGI therefore requests that the Bureau hold the instant proceeding in abeyance until such time as the Complainants schedule, and participate with in good faith, executive-level discussions with the intent to resolve the issues currently in dispute.

14. The goal of 47 C.F.R. § 1.1404(k) is to encourage private settlement of pole-attachment disputes without the need for the Commission's involvement.

15. Allowing parties, such as the Complainants here, to proceed without a good-faith attempt to negotiate, frustrates the intent of this very basic requirement and will likely result in the imposition of unnecessary additional costs with respect to both the parties and the Commission's staff.

16. Moreover, it should be noted that the Bureau has previously granted requests to hold similar proceedings in abeyance. *Frontier West Virginia Inc. v. Appalachian Power Co., et al.*, 29 FCC Rcd 1314, n. 6 (2014) (noting that the Bureau had held a pole-attachment complaint proceeding in abeyance pending the resolution of a related matter filed with the Public Service Commission of West Virginia).

WHEREFORE, UGI respectfully requests that the Bureau expeditiously grant this motion, and: (i) order Complainants to participate in good faith, executive-level discussions for resolution of the issues raised in their Complaint; and (ii) suspend the filing deadlines directed in the Notice of Complaint, pending Complainants' full satisfaction of the requirements of 47 C.F.R. § 1.1404(k); and (iii) grant any other relief that it deems just and proper.

Respectfully submitted,



Charles A. Zdebski (czdebski@eckertseamans.com)  
Brett Heather Freedson (bfreedson@eckertseamans.com)  
Robert J. Gastner (rgastner@eckertseamans.com)

**ECKERT SEAMANS CHERIN & MELLOTT, LLC**  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(Tel) 202.659.6605  
(Fax) 202.659.6699  
czdebski@eckertseamans.com

*Counsel to UGI Utilities, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2014, I caused a copy of the foregoing Motion to Hold Proceeding in Abeyance Pending Complainants' Compliance with 47 C.F.R. § 1.1404(k) to be served on the following by hand delivery, Federal Express, or U.S. mail (as indicated):

Joseph J. Starsick  
Associate General Counsel  
Frontier Communications  
1500 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25314  
(Via Federal Express & U.S. Mail)

Christopher S. Huther  
Claire J. Evans  
WILEY REIN LLP  
1776 K Street, NW  
Washington, DC 20006  
(Via Hand Delivery & U.S. Mail)

David H. Solomon  
WILKINSON BARKER KNAUER, LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037  
(Via Hand Delivery & U.S. Mail)

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
(Via Hand Delivery)

Lisa Griffin, Deputy Chief  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Michael Engel, Special Counsel  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utilities Commission  
400 North Street  
Commonwealth Keystone Building  
Harrisburg, PA 17120  
(Via U.S. Mail)

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
(Via U.S. Mail)



---

Robert J. Gastner

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

COMMONWEALTH TELEPHONE COMPANY )  
d/b/a FRONTIER COMMUNICATIONS )  
COMMONWEALTH TELEPHONE COMPANY and )  
CTSI, LLC d/b/a FRONTIER COMMUNICATIONS )  
CTSI COMPANY )

Complainants, )

v. )

File No. EB-15-MD-007

UGI UTILITIES, INC. – ELECTRIC DIVISION )

Respondent. )

AFFIDAVIT OF PAUL J. SZYKMAN

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
COUNTY OF BERKS )

I, PAUL J. SZYKMAN, being sworn, depose and say:

1. I am the Vice President – Rates for UGI Utilities, Inc. (“UGI”). I am executing this Affidavit in response to certain allegations set forth in the Pole Attachment Complaint filed against UGI, on May 12, 2014, by Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company (“Commonwealth”) and CTSI, LLC d/b/a Frontier Communications CTSI Telephone Company (together, the “Complainants”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. In my role as Vice-President – Rates, I am responsible for the rate and regulatory affair activities for both UGI’s electric distribution company, as well as UGI’s three natural gas

distribution companies, specifically including rate development activities related to base distribution rates, energy cost recovery, FERC transmission rates, and other mechanisms.

3. UGI is a Pennsylvania corporation with its principal place of business located at 2525 North 12th Street, Suite 360, Reading, Pennsylvania 19612. UGI is a public utility, owning and controlling facilities used to distribute electric power and natural gas to retail customers within the Commonwealth of Pennsylvania and the State of Maryland.

4. I have reviewed the allegations made in the Motion to Hold Proceeding in Abeyance Pending Complainants' Compliance with 47 C.F.R. § 1.1404(k) filed in this matter, as well as the exhibits appended thereto, and affirm that they are true and correct to the best of my knowledge, information, and belief.

5. Except with respect to Complainants' non-payment of annual pole attachment fees, UGI and Commonwealth, and UGI and CTSI, respectively, continue to operate pursuant to their existing joint use, and pole license agreements with UGI.

6. Neither UGI or Commonwealth terminated the parties' January 1, 1931 joint use agreement. Neither UGI or CTSI has terminated the pole license agreements. To date, Commonwealth and CTSI continue to maintain attachments on UGI's poles.

7. Beginning for calendar year 2012, both Commonwealth and CTSI refused to make full payment of the annual pole attachment fees due under their respective joint use, and license agreements.

8. On February 12, 2014, UGI filed suit against Complainants in Pennsylvania state court (Court of Common Pleas, Dauphin County, Pennsylvania, Case No. 2014-CV-1236), for the collection of unpaid pole attachment fees due under Complainant's respective agreements with UGI. The Pennsylvania Complaint alleged breach of contract by Commonwealth, and

CTSI, respectively, and unjust enrichment, and requested damages relief in the amounts equal to Complainants' unpaid pole attachment fees for calendar years 2012 and 2013, as calculated at the rate set forth in the parties' agreements.

9. The Complainants requested two extensions to respond to UGI's Pennsylvania Complaint. UGI granted these requests based on representations of Complainants' legal counsel that Complainants desired to negotiate a resolution of the issues before the Pennsylvania court before incurring the expense of drafting and filing a formal response in that matter.

10. Legal counsel for UGI and Complainants agreed to meet on April 16, 2014, for the specific purpose of discussing the issues raised in UGI's Pennsylvania Complaint.

11. On or about April 10, 2014, Complainants directed correspondence to me raising new issues for discussion at the parties' upcoming meeting. Specifically, Complainants' letter of April 10, 2014 re-hashed communications between Complainants and UGI dating back over two years, relating to the parties' discussion of Complainants' partial pole attachment fee payments to UGI, purporting to reflect the regulated Telecom Rate. This letter did not even make mention of the contract-based claims that were raised in UGI's Pennsylvania Complaint, and further, did not include any offer of settlement for UGI to consider in advance of the April 16, 2014 meeting. Complainants appended to the letter more than 170 pages of documents.

12. Complainants' letter of April 10, 2014 was mailed less than one week before the parties' scheduled meeting. The letter also was transmitted via email, at 5:58 PM on April 10, 2014, to another individual within UGI, who was not identified among the individuals to appear at the parties' meeting. I did not receive the mailed copy of the letter until April 14, 2014 – less than two days prior to UGI's scheduled meeting with Complainants.

13. At the April 16, 2014 meeting, Complainants made no good-faith effort to resolve the parties' dispute. Instead, Complainants' simply repeated the position they had taken long ago, when they engaged in self-help and short paid UGI's invoices to them – ultimately revealing their proposed resolution as being the partial payment amounts remitted to date.

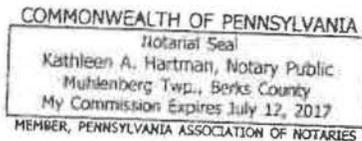
14. Notwithstanding UGI's response to Complainants' letter of April 10, 2014, UGI has not received any written correspondence from Complainants requesting further discussion of the substance of the allegations raised in the Complaint now pending before the Enforcement Bureau.

By:

  
Paul Szykman

Sworn to before me this 10<sup>th</sup> day of June, 2014

  
Notary Public



**ECKERT  
SEAMANS**  
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12<sup>th</sup> Floor  
Washington, D.C. 20006

TEL 202 659 6600  
FAX 202 659 6699  
www.eckertseamans.com

Brett Heather Freedson  
Phone: 202-659-6669  
bhfreedson@eckertseamans.com

November 21, 2013

Ms. Joan E. Huffine  
Section Manager -- Network Engineering  
Centralized Joint Use Team  
Frontier Communications  
8001 West Jefferson Boulevard  
Fort Wayne, IN 46804

Re: Final Notice and Demand For Payment of Past Due Pole Attachment Rental Fees

Dear Ms. Huffine:

On behalf of UGI Utilities, Inc. – Electric Division (“UGI”), this letter constitutes final notice of past due annual pole attachment rental fees owed by Commonwealth Telephone Company, LLC d/b/a Frontier Communications Commonwealth Telephone Company and CTSI, LLC d/b/a Frontier Communications CTSI Company (together, “Frontier”), for calendar years 2012 and 2013, in the total amount of \$373,316.06.<sup>1</sup> Appended hereto, for Frontier’s convenience, is the complete detail of the fee amounts invoiced by UGI, the fee amounts paid by Frontier, and the fee amounts past due as of the date of this notice. The detail also includes the minimum amounts for which Frontier is responsible, as calculated in accordance with the parties’ current Joint Use Agreement, at the agreed-upon rate of \$18.70 per pole.<sup>2</sup> In its 2011 Pole Attachment Order, the FCC presumed that rates, terms, and conditions found within longstanding joint use agreements are just and reasonable, or otherwise, that incumbent LECs, such as Frontier, are well positioned to renegotiate their existing joint use arrangements.<sup>3</sup> Therefore, unless and until the parties’ Joint Use Agreement is amended to incorporate different pricing terms, the annual rate of \$18.70 per pole must be applied both by Frontier and UGI.<sup>4</sup> Significantly, Frontier has continued to invoice

<sup>1</sup> In accordance with the parties’ Joint Use Agreement, this amount has been calculated applying an annual rate of \$18.70 per pole.

<sup>2</sup> Agreement on Attachments between Commonwealth Telephone Company and Luzerne County Gas and Electric Corporation, dated January 1, 1931, as amended, in relevant part, Supplemental Agreement, dated December 10, 2001 (“Joint Use Agreement”).

<sup>3</sup> In the Matter of Implementation of Section 224 of the Act (WC Docket No. 07-245), A National Broadband Plan for Our Future (GC Docket No. 09-51), Report and Order and Order on Reconsideration, 26 FCC Red 5240, FCC 11-50 (rel. Apr. 7, 2011) at ¶ 216 (“2011 Pole Attachment Order”).

<sup>4</sup> See Email from Charles A. Zdebski, counsel to UGI Utilities, Inc. to Joan E. Huffine, Frontier Communications (Feb. 28, 2013).

UGI at the annual rate of \$18.70 per pole, for attachments by UGI to Frontier's poles, and at the same time, has demanded that UGI reduce the reciprocal attachment rate invoiced to Frontier by fifty percent (50%).<sup>5</sup>

UGI has accepted Frontier's request to renegotiate the pole attachment rates, terms, and conditions applicable to Commonwealth Telephone Company and CTSI, respectively,<sup>6</sup> and for that purpose, has provided to Frontier copies of its proposed Joint Use Agreement and Master Facilities License Agreement.<sup>7</sup> UGI also has disclosed to Frontier its Telecom Rate, as calculated in accordance with 47 C.F.R. § 1.1409(e)(2), and has provided Frontier complete documentation of its Telecom Rate calculation, formula inputs, and supporting data. Frontier, however, has demonstrated willingness to engage only piecemeal challenges to the pole attachment rate proposed by UGI, and has not yet even considered the terms and conditions of attachment that UGI currently offers to other entities. Nothing in the 2011 Pole Attachment Order entitles Frontier to the substantial pole attachment rate reductions ordered by the FCC for jurisdictional attachers, while continuing to maintain the unique benefits of its Joint Use Agreement.

Simply put, Frontier owes UGI the attachment rate specified by the unambiguous terms of the parties' Joint Use Agreement and related course of performance and dealing. UGI looks forward to receiving Frontier's full payment of the amount of \$373,316.06 no later than thirty (30) days following the date of this notice, or December 23, 2013. In the event Frontier's payment is not received by UGI within such thirty (30) day time period, UGI shall pursue remedies available at law or in equity.

Sincerely,



Brett Heather Freedson

*Counsel to UGI Utilities, Inc.*

<sup>5</sup> See, e.g., Bill No. PAFL045400213, dated February 6, 2013.

<sup>6</sup> For avoidance of doubt, it is UGI's position that Commonwealth Telephone Company is an incumbent LEC, and therefore is not entitled to pole attachment rates calculated in accordance with 47 U.S.C. § 224(e).

<sup>7</sup> The Joint Use Agreement and Master Facilities License Agreement proposed to Frontier reflect the standard pole attachment rates, terms and conditions offered by UGI, respectively, to all ILEC and CLEC attachers.

**ECKERT  
SEAMANS**  
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Kevin M. Skjoldal  
717.237.6039  
kskjoldal@eckertseamans.com

April 14, 2014

VIA EMAIL

Christopher S. Huther, Esq.  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006  
CHuther@wileyrein.com

Re: *UGI Utilities, Inc. – Electric Division v. Commonwealth Telephone Company, LLC, d/b/a Frontier Communications Telephone Company and CTSI, LLC d/b/a Frontier Communications CTSI Company*  
Dauphin County Court of Common Pleas, Docket No. 2014-CV-1236

\*\*\* FOR SETTLEMENT DISCUSSION PURPOSES ONLY \*\*\*

Dear Mr. Huther:

UGI Utilities, Inc. – Electric Division (“UGI”) is in receipt of the letter dated April 10, 2014, that was sent to Paul Szykman by Cynthia M. Cormany on behalf of Commonwealth Telephone Company LLC (“Commonwealth”) and CTSI, LLC (“CTSI”) (together “Frontier”). We will provide a written response to the substantive allegations set forth therein as soon as possible.

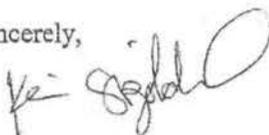
It appears that Frontier seeks to re-negotiate the annual pole rental rate of \$18.70 per pole, which UGI charges Commonwealth and CTSI pursuant to the parties’ current pole attachment agreements. UGI is amenable to doing so in the broader context of the parties’ discussions to replace those agreements, including the terms and conditions pursuant to which Frontier attaches to UGI’s poles. As you are aware, in early 2013, UGI sought Frontier to engage in those discussions by providing Frontier copies of its standard pole attachment agreements, for both ILEC and CLEC attachers. To date, however, Frontier has not evidenced any willingness to proceed in that direction.

The meeting between UGI and Frontier, scheduled to take place this upcoming Wednesday, April 16, 2014, was arranged at the request of Frontier’s counsel, for the specific purpose of discussing the potential settlement of issues pending before the Court of Common Pleas in Dauphin County, Pennsylvania. This litigation is limited in scope to those pole attachment fee amounts owed by Frontier to UGI for calendar years 2012 and 2013, pursuant to the pole

attachment agreements between UGI, and Commonwealth and CTSI, which remain in full force and effect. Indeed, neither UGI nor Frontier has terminated those agreements, and, to date, Frontier continues to enjoy the benefits of maintaining and installing attachments pursuant to those agreements. The pole attachment rates charged by UGI to Frontier going forward are not related to this litigation, and therefore, would be more appropriately addressed in future discussions between the parties.

UGI looks forward to a productive meeting this week.

Sincerely,



Kevin M. Skjoldal

KMS/glp



Cynthia M. Cormeny  
Centralized Joint Use Team  
8001 W. Jefferson Blvd.  
Fort Wayne, IN 46804  
Phone: 260.461.8904  
cynthia.cormeny@ftr.com

---

April 10, 2014

*Sent via Certified Mail and via email to AHemmerich@ugi.com*

Mr. Paul J. Szykman  
Vice President – Rates  
UGI Utilities, Inc.  
2525 North 12<sup>th</sup> Street  
Suite 360  
P.O. Box 12677  
Reading, PA 19612-2677

Re: Meeting on Rates and Agreements Between UGI Utilities, Inc. – Electric Division (“UGI”) and Commonwealth Telephone Company LLC (“Commonwealth”) and CTSI, LLC (“CTSI”) (Commonwealth and CTSI together, “Frontier”).

Dear Mr. Szykman,

Frontier looks forward to our meeting scheduled for 10:00 a.m on April 16, 2014, with our respective VP level representatives. The meeting will be held at Eckert Seamans, Cherin & Mellott, LLC, 213 Market Street, 8th Floor, in Harrisburg, Pennsylvania.

To assist in making that meeting as productive as possible, we take this opportunity to identify the areas that Frontier thinks are in dispute between our companies and to attach the letters and emails between our companies summarizing our discussions to date. In brief:

1. As you know, Frontier contends that it is entitled to just and reasonable rates, terms and conditions that are consistent with the 2011 *FCC Order*<sup>1</sup> as of the effective date of that order for its attachments to UGI’s poles under: (1) the Agreement on Attachments Between Commonwealth and Luzerne County Gas and Electric Corporation dated January 1, 1931 (“Commonwealth Agreement”), and (2) the pole attachment license for CTSI attachments (CTSI Agreement”).

Commonwealth is an incumbent local exchange carrier (ILEC) and as such, has a right to just and reasonable rates, terms and conditions for its attachments to UGI’s poles. The FCC held that where an ILEC has “access” to poles – as Commonwealth does here under

---

<sup>1</sup> Report and Order and Order on Reconsideration, FCC 11-50, released April 7, 2011 (“*FCC Order*”).

the terms of the Commonwealth Agreement – it is “entitled to rates, terms and conditions that are ‘just and reasonable.’”<sup>2</sup> Frontier, therefore, disagrees with UGI’s contention that the \$18.70 rate per pole under the Commonwealth Agreement continues to apply until it is amended to incorporate different pricing.<sup>3</sup> Such an interpretation runs contrary to the FCC’s statement that it can consider whether an ILEC “genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement . . . as appropriate in a complaint proceeding.”<sup>4</sup> Frontier thus seeks rate relief as of the effective date of the *FCC Order* even though the Commonwealth Agreement was in effect on that date. Indeed, UGI itself applied its interpretation of the *FCC Order* as of the July 12, 2011 effective date by sending 2012 invoices to Commonwealth and CTSI that applied a new, higher \$18.86 rate that it characterized as the new telecom rate retroactively to July 12, 2011.<sup>5</sup> Frontier seeks that same starting date for rate relief under the *FCC Order*.

CTSI is a competitive local exchange carrier (CLEC) and is entitled to the new, lower telecommunications rate effective June 8, 2011. In 2011, the FCC stated its intent to develop a new telecom rate that would *reduce* the telecom rate to approximate the cable rate.<sup>6</sup> Yet, UGI increased the rate from \$18.70 to \$18.86 and applied it retroactively.<sup>7</sup>

2. It is also Frontier’s position that Commonwealth and CTSI are entitled to properly calculated pole attachment rates that are comparable to those that apply to Frontier’s competitors, which generally will be a rate equivalent to the cable rate.<sup>8</sup> For 2012, Frontier calculated UGI’s cable rate at \$9.64 per pole and new telecom rate slightly higher at \$9.67 per pole.<sup>9</sup> UGI, however, invoiced the nearly double amount of \$18.86 per pole based on UGI’s calculation of its new telecom rate.<sup>10</sup> For 2013, Frontier calculated UGI’s cable rate at \$9.60 per pole and new telecom rate slightly higher at \$9.63 per pole.<sup>11</sup> Again, UGI invoiced a nearly double amount at \$18.83 per pole based on UGI’s calculation of its new

<sup>2</sup> *FCC Order* ¶ 202.

<sup>3</sup> Letter from Brett Heather Freedson (UGI) to Joan Huffine (Frontier) dated Nov. 21, 2013, p. 1.

<sup>4</sup> *FCC Order* ¶ 216.

<sup>5</sup> See letters to Commonwealth and CTSI dated Feb. 10, 2012 (“UGI 2012 Invoice Letters”) (revising prior year 2011 billing to the higher \$18.86 rate for July 12, 2011 through Dec. 31, 2011).

<sup>6</sup> *FCC Order*, ¶ 149.

<sup>7</sup> See UGI 2012 Invoice Letters. Although UGI originally used July 12, 2011, as the effective date of the *FCC Order* for CTSI, UGI subsequently agreed that June 8, 2011, was the appropriate effective date. See letter from Eric Sorber (UGI) to Joan Huffine (Frontier) dated July 10, 2012.

<sup>8</sup> See *FCC Order* ¶¶ 149, 151 and 217.

<sup>9</sup> See estimated rate calculations explaining Frontier’s good-faith 2012 payments attached to letter from Joan Huffine (Frontier) to Eric Sorber (UGI) dated Jan. 15, 2013.

<sup>10</sup> See UGI 2012 Invoice Letters.

<sup>11</sup> See attached estimated rate calculations and adjusted invoices on which Frontier based its 2013 good-faith payments. Please note that the attached 2012 and 2013 rate calculations also include estimated proportionate non-urban new telecom rates for UGI based on UGI’s estimated use of 8 feet of space on Frontier’s poles. Based on these calculations, UGI’s estimated proportionate rates for 2012 and 2013 are \$20.36 and \$20.25 per pole, respectively. As stated in Frontier’s Jan. 15, 2013 letter to Mr. Sorber, “[o]nce any remaining issues are resolved and the parties have finalized new agreements, we can perform any necessary true-up of the pole attachment fees, including adjusting the rate that UGI pays to attach to Frontier poles.” But Frontier’s records indicate that UGI has not paid the attached 2013 invoice, invoiced at the lower \$18.70 rate.

telecom rate.<sup>12</sup> The parties' rate differences are predominately driven by the fact that UGI improperly pairs an average number of attaching entities *less than the non-urban* presumption of 3 with the *urban* cost definition of 66%. UGI's inconsistent selection of inputs undercuts the FCC's adoption of a new telecom rate that will *reduce* the telecom rate to approximate the cable rate.<sup>13</sup> It further countermands the FCC's explicit rejection of the urban cost definition for areas where there are fewer attachers.<sup>14</sup> UGI's selection of inputs results in warped new telecom rates that, instead of approximating the cable rate, are almost double the cable rate.

Frontier recently received invoices from UGI for 2014 rentals at an \$18.70 per pole rate.<sup>15</sup> These invoices were not accompanied by supporting calculations or inputs, so Frontier cannot determine whether the 2014 rates suffer from the same flaws discussed above. Accordingly, Frontier requests that UGI provide its rate calculations for 2014, along with the rate inputs and methodology used, so that Frontier can better prepare for the upcoming meeting.

3. Finally, it is Frontier's position that it is entitled to review information about UGI's rates and existing agreements with other attachers in order to determine whether it seeks to attach at the same rate pursuant to an agreement with comparable terms. With respect to rates and in spite of Frontier's repeated requests for such information,<sup>16</sup> UGI has not provided its rate inputs and supporting data for its new telecom rate methodology, which includes the data, information and methodology used by UGI to rebut the FCC's presumptive averages for the number of attaching entities in urbanized and non-urbanized areas. Frontier does appreciate that UGI provided a summary of entities with attachments on UGI poles<sup>17</sup> and, after additional requests, added the type of attaching entity for some of its summary,<sup>18</sup> but UGI's list remains incomplete because it includes no cable operators.<sup>19</sup> Further, UGI did not provide its methodology for calculating the average number of attaching entities and has taken the position that it need not calculate a separate average number of attaching entities for urbanized and non-urbanized locations. Frontier disagrees. The FCC maintained that utilities must either use the FCC's presumptive averages or

<sup>12</sup> See letters to Commonwealth and CTSI dated Feb. 25, 2013 ("UGI 2013 Invoice Letters"). UGI's Complaint demands a minimum of \$18.70 per pole – based on UGI's 2001 calculation that Frontier asked to renegotiate consistent with the 2011 *FCC Order*.

<sup>13</sup> *FCC Order*, ¶ 149.

<sup>14</sup> *Id.*, ¶ 150.

<sup>15</sup> Frontier notes that the 2014 invoices were directed to the wrong address. In the attached email from Heather Bustos (Frontier) to Eric Sorber (UGI) dated February 19, 2013, Frontier provided an updated address and requests that future invoices be directed to that address.

<sup>16</sup> See Frontier's correspondence dated Sept. 13, 2011, Mar. 15, 2012, Apr. 9, 2012, June 28, 2012, Jan. 15, 2013, Aug. 13, 2013, Sept. 16, 2013, and Oct. 25, 2013.

<sup>17</sup> Letter from Charlie Zdebski (UGI) to Joan Huffine (Frontier) dated Feb. 28, 2013.

<sup>18</sup> E-mail from Brett Heather Freedson (UGI) to Joan Huffine (Frontier) dated Nov. 21, 2013.

<sup>19</sup> UGI must count all attaching entities including itself and "any telecommunications carrier, incumbent or other local exchange carrier, cable operator, government agency, and any electric or other utility, whether or not the utility provides a telecommunications service to the public, as well as any other entity with a physical attachment to the pole." *Consolidated Partial Order on Reconsideration, In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, 16 FCC Red 12103, 12120-22 (¶ 59) (2001) ("2001 *Recon. Order*").

Page 4  
Mr. Paul J. Szykman  
April 10, 2014

develop actual "averages for two areas: (1) urbanized (50,000 or higher population), and (2) non-urbanized (less than 50,000 population)."<sup>20</sup> It is Frontier's position that, because UGI has not done so, it has failed to properly rebut the FCC's presumptive averages of 3 attaching entities for non-urbanized areas and 5 attaching entities for urbanized areas.

With respect to existing agreements with other entities and in spite of Frontier's written requests and execution of a confidentiality agreement,<sup>21</sup> UGI has not provided any representative, existing agreements with other cable and telecommunications attaching entities. UGI sent only copies of its "Master Facilities License Agreement" and "Joint Use Agreement"<sup>22</sup> – documents that would purportedly contain proposed "starting-point" terms but do not reflect the result of UGI's negotiations with any entity. Accordingly, it remains Frontier's position that UGI should provide, without further delay, signed, existing agreements with telecommunications carriers and cable operators.

Frontier looks forward to your response to this letter and to our meeting.

Sincerely,



Cynthia M. Cormany  
Senior Manager – Engineering  
Centralized Joint Use Team

Enclosures: Estimated 2012 and 2013 rate calculations  
2013 adjusted invoices  
2013 Invoice to UGI  
Letters dated:  
September 13, 2011  
February 10, 2012 (2 letters)  
March 15, 2012 (email and letter)  
April 2, 2012  
April 9, 2012 (email)  
May 16, 2012 (email without attachments)  
June 28, 2012 (email with rate calculation attachments only)  
July 10, 2012  
December 14, 2012 (email and letters)  
January 15, 2013 (letter to Eric Sorber)

<sup>20</sup> 2001 Recon. Order, ¶ 67.

<sup>21</sup> See letter from Joan Huffine (Frontier) to Eric Sorber (UGI) dated Sept. 13, 2011; letter from Joan Huffine (Frontier) to Paul Szykman (UGI) dated Jan. 15, 2013; and letter from Joan Huffine (Frontier) to Eric Sorber (UGI) dated Mar. 15, 2012 (attaching signed Confidentiality Agreement).

<sup>22</sup> E-mail from Charlie Zdebski (UGI) to Joan Huffine (Frontier) dated Feb. 28, 2013.

Page 5  
Mr. Paul J. Szykman  
April 10, 2014

January 15, 2013 (letter to Paul J. Szykman)  
February 19, 2013 (email)  
February 25, 2013 (2 letters)  
February 28, 2013 (email and letter)  
August 5, 2013 (email)  
August 13, 2013 (2 emails)  
September 16, 2013 (email)  
September 17, 2013 (email)  
October 9, 2013 (email)  
October 25, 2013 (emails)  
November 21, 2013 (email and letter)  
November 25, 2013