

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**DALLAS T. RUNYON, SR, and
DAVID E. RUNYON,**
Plaintiffs,

vs.

Mingo County Circuit Court
Civil Action No. 17-C-108

**CITIZENS TELECOMMUNICATIONS
COMPANY OF WEST VIRGINIA,
FRONTIER WEST VIRGINIA, INC, and
APPALACHIAN POWER COMPANY,**

Defendants.



TO: THE HONORABLE CHIEF JUSTICE

JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, defendants Frontier West Virginia Inc. ("Frontier") and Appalachian Power Company ("APCo" and collectively, "the Movants"), by undersigned counsel, respectfully request the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
- ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)
-
-

This action involves: (Please check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Anti-trust Actions between Commercial Entities; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.; |
| <input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Shareholders Derivative Claims; |
| <input type="checkbox"/> Commercial Non-consumer debts; | <input type="checkbox"/> Commercial Bank Transactions; |
| <input type="checkbox"/> Internal Affairs of a Commercial Entity; | <input type="checkbox"/> Franchisees/Franchisors; |
| <input type="checkbox"/> Trade Secrets and Trademark Infringement; | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology |
| <input type="checkbox"/> Non-compete Agreements; | <input checked="" type="checkbox"/> Disputes involving Commercial Entities; or |
| <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; | <input type="checkbox"/> Other (Describe) _____ |
| <input type="checkbox"/> Commercial Torts; | |
| <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; | |
| <input type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; | |

In support of this motion, the Movants state that this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

The Plaintiffs Dallas and David Runyon ("Plaintiffs") allege that they seek to exploit the subject property in Mingo County, West Virginia ("the Property") for timbering and (in a recent claim) for the extraction of minerals. In connection with their proposed operations on the Property (including the establishment of a staging area for timbering operations), they challenge the placement of Frontier lines on APCo utility poles, located on the Property. In 1939, APCo obtained an Easement from the Plaintiffs' predecessors in interest which permitted APCo "its successors, assigns, lessees and tenants, to construct, erect, operate and maintain a line or lines for the purpose of transmitting electric or other power and telegraph or telephone line or lines, in, on, along, over, through, or across" the Property.

Additionally, APCo entered into separate Agreements with Suddenlink Communications (“Suddenlink”) and Frontier governing these companies’ cable, television, internet and telephone line attachments on APCo’s poles. For safety reasons, power lines are the topmost lines, cable television and competitive local exchange carrier lines are placed in the middle, and the incumbent local exchange carrier’s lines are installed on the bottom, nearest the ground. When and if necessary, the respective utility lines are removed in that same order. The incumbent local exchange carrier [here, Frontier], with the lowest and final line, is responsible for removal of the pole from the ground upon completion.

In 2008 and 2009, the Plaintiffs’ obtained title to the Property. The Plaintiffs subsequently requested APCo move its facilities to a new location on the Property. APCo complied with the request, installing new poles and conductors in May of 2015. Suddenlink then moved its lines to the new APCo poles in 2016 or 2017. Before moving its facilities, Frontier attempted to obtain a new easement from the Plaintiffs. However, at the time, plaintiff David Runyon was incarcerated, unable to sign personally, and had either not assigned a power of attorney or had not made Frontier aware of any such assignment. Since then, Frontier has repeatedly attempted to obtain a new easement, only to be refused by the Plaintiffs for unspecified reasons.

The Plaintiffs initiated this suit in 2017, alleging various causes of action concerning Frontier’s placement of its lines on the old APCo poles. The Plaintiffs’ Amended Complaint was authorized by Order entered July 10, 2019, which required that Defendants answer that pleading by July 26, 2019. The Amended Complaint seeks lost profit damages in connection with future timber and coal production ventures allegedly planned for the Property. Specifically, the Amended Complaint raises nine (9) causes of action: (I) Unjust Enrichment; (II) Demand for Accounting and Damages; (III) Declaratory Judgment; (IV) Intentional Trespass; (V) Permitting Intentional Trespass; (VI) Aiding and Abetting; (VII) Intentional and Tortious Interference of a Business Expectancy; (VIII) Intentional and Tortious

(VII) Intentional and Tortious Interference of a Business Expectancy; (VIII) Intentional and Tortious Interference with a Contractual Relationship; and (IX) Civil Conspiracy. At mediation, the Plaintiffs based their confidential demand on purported lost profits damages in connection with yet-to-be-initiated timbering and coal mining ventures.

The case presents two principal issues: (1) the liability of utility companies in relocating facilities pursuant to an easement and a joint use agreement; and (2) the lost use damages incurred by purportedly planned timber and coal ventures on the Property.

Rule 29.04 of the Trial Court Rules provides the following definition of business litigation:

(a) “Business Litigation” – one or more pending actions in circuit court in which:

(1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

(2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and

(3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

The claims in this Civil Action meet this definition of Business Litigation. *First*, the principal claim or claims contained in the Amended Complaints “involve matters of significance to the transactions, operations, or governance among business entities.” W. Va. Tr. Ct. R. 29.04(a)(1). The claims concern the placement of utility lines on utility poles pursuant to easements entered into with landowners and, crucially, agreements between utility companies governing the use of such poles. The liability issue squarely involves the responsibility a utility company to relocate its facilities (1) by demand of a landowner and (2) in concert with the relocation of lines owned and operated by other utility companies. The damages issue also involves matters of significance among business entities: The Plaintiffs claim millions in lost profits for a nonexistent but purportedly planned coal venture. The extent to which the placement of a utility company’s facilities caused such damages is patently an issue of significance among business entities per Rule 29.04.

Second, the dispute unquestionably “presents commercial . . . issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” W. Va. Tr. Ct. R. 29.04(a)(2). A court with “specialized knowledge or expertise” is particularly critical to determine both liability and damages in this action. With respect to liability, “specialized treatment” is certain “to improve the expectation of a fair and reasonable resolution” given that *three* utility companies share the facilities in question, and that the movement of any particular line depends on the relocation efforts of other entities. With respect to the claimed damages stemming from a purported lost profits of prospective commercial timbering and mineral extraction operations upon the Property, attributable to the presence of Frontier’s utility lines on APCo’s poles, referral would similarly improve the expectation of a fair and reasonable resolution. The damages analysis in this action concerns (1) the profitability of the purported timber and coal ventures

and (2) the extent to which the current placement of utility lines jeopardizes that future venture. Indeed, both critical aspects of this case—liability and damages—involve commercial issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution.

Third and finally, the principal claims do not involve any of the categories which are specifically excluded from the Business Court by Rule 29.04(a)(3). This case involves only business claims, centered on the assertion that the utility lines in place on the Property for over sixty years are preventing the Plaintiffs from beginning and conducting commercial logging operations and coal mining. Notably, Rule 29.04 does not describe “business litigation” in relation to the nature of the *parties*, but rather to the nature of *the claims asserted*. Here, the Plaintiffs are individuals, but their *claims* clearly “involve matters of significance to the transactions, operations, or governance among business entities.”

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents.

In regard to expedited review, the Movants:

☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____


WHEREFORE, Frontier West Virginia Inc. and Appalachian Power Company hereby move., pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 9th day of September, 2019.

Prepared by:



Ronda L. Harvey (WVSB # 6326)
William M. Lorensen (WVSB # 13223)
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(304) 344-5800
Counsel for APCo

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**DALLAS T. RUNYON, SR, and
DAVID E. RUNYON,**
Plaintiffs,

vs.

Mingo County Circuit Court
Civil Action No. 17-C-108

**CITIZENS TELECOMMUNICATIONS
COMPANY OF WEST VIRGINIA,
FRONTIER WEST VIRGINIA, INC, and
APPALACHIAN POWER COMPANY,**

Defendants.

CERTIFICATE OF SERVICE

I, William M. Lorensen, do hereby certify that on this 9th day of September, 2019, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to

Nathan D. Brown
Ferrell & Brown, PLLC
Post Office Box 401
Williamson, West Virginia 25661
Nathan@ferrellandbrown.com

Lonnie Hannah, Clerk
Mingo County Circuit Court
78 East Second Avenue, Room 232
Williamson, WV 25661

Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, WV 25401


William M. Lorensen (WVSB # 13223)

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,

Plaintiffs,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY
OF WEST VIRGINIA d/b/a FRONTIER COMMUNICATIONS
OF WEST VIRGINIA, FRONTIER WEST VIRGINIA, INC.,
and APPALACHIAN POWER COMPANY,

Defendants.

Index of Exhibits to Joint Motion to Refer to Business Court Division

1. Verified Complaint
2. Answers
 - Answer and Cross-Claim of Appalachian Power Company
 - Answer, Answer to Cross-Claim, and Cross-Claim of Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia and Frontier West Virginia Inc.
 - AEP's Answer to Frontier's Cross-Claim
3. Amended Complaint
4. Answers
 - Answer to Amended Complaint and Counterclaim of Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia and Frontier West Virginia Inc.
 - Answer to Amended Complaint and Cross-Claim Against Frontier West Virginia Inc.
5. Dallas and David Runyon's Motion to Dismiss Counts IV and V Contained [in] Frontier's Counterclaim Complaint
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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON
Plaintiffs,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a FRONTIER
COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST VIRGINIA, INC.,
APPALACHIAN POWER COMPANY,

Defendants.

VERIFIED COMPLAINT

COMES NOW, Dallas T. Runyon, Sr., and David E. Runyon ("Plaintiffs"), by and through counsel, Nathan D. Brown of Ferrell & Brown, PLLC, and for their Complaint against the Defendants, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, Frontier West Virginia, Inc., (collectively "Frontier") and Appalachian Power Company, (sometimes hereinafter "APC") and states and avers as follows:

PARTIES

1. The Plaintiffs are all citizens of Mingo County, state of West Virginia and were so during the allegations in this Complaint.
2. The Defendant, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, is a West Virginia corporation with a local principal office address of 1500 MacCorkle Ave. S.E. Charleston, WV, 25396 engaged in providing telecommunication services in Mingo County, West Virginia at all relevant times herein.
3. The Defendant, Frontier West Virginia, Inc., is a West Virginia corporation with a local principal office address of 1500 MacCorkle Ave. S.E. Charleston, WV, 25396 engaged in providing telecommunication services in Mingo County, West Virginia at all relevant times herein.

4. The Defendant, Appalachian Power Company, is a Virginia corporation with a principal office address of 1 Riverside Plaza, 29th Floor, Columbus, OH, 43215, which was engaged in providing services to its customers in Mingo County, West Virginia at all relevant times herein.

5. At all relevant times herein, Plaintiffs are informed and believe, and on the basis of such information and belief, allege that Christopher Collier and Robert Hughart were agents and/or employees of Frontier, acting within the scope of their authority, engaged in the performance of duties which were expressly or impliedly assigned to them by Frontier.

JURISDICTION

6. Jurisdiction and venue are proper in this Court pursuant to West Virginia Code §§ 51-2-2 and 56-1-1 as the causes of actions in this Complaint occurred in Mingo County, West Virginia.

BACKGROUND

7. The property involved in this dispute is located at 16/65 Caney Branch Rd. Creek Side Drive, Delbarton, WV 25670, and more or less constitutes one hundred seventy-four (174) acres total.

8. A review of the records housed in the County Clerk's Office of Mingo County indicates that the property was conveyed to W.T Floyd in deeds dated March 1915 and 1916.

9. In or around June 10, 1939, Mr. Floyd entered into an agreement providing Appalachian Power Company ("APC") an easement on the subject property for the erection and maintenance of power poles and attendant electric lines.

10. On May 9, 2008, W.T. Floyd's heirs entered into a purchase agreement with Gene Brinager and Dallas T. Runyon, Sr. whereby Mr. Brinager and Mr. Runyon purchased the subject

property, and all mineral rights therein, for the sum of one hundred sixty-five thousand dollars (\$165,000).

11. The property was then deeded as contemplated in the purchase agreement to Dallas T. Runyon, Sr. and Gene Brinager on June 10, 2008.

12. On September 29, 2009, Mr. Brinager, and his wife, sold their interest in the subject property to David E. Runyon for the sum of seventy-seven thousand five hundred dollars (\$77,500) as reflected in Deed Book 426 Page 511.

13. That the current owners of the subject property are Plaintiffs, Dallas T. Runyon, Sr., and David E. Runyon.

14. After acquiring an interest in the property, the Plaintiffs learned that Frontier, without Plaintiffs' permission, had installed its communication lines on APC power poles which were on the property at the time Plaintiffs purchased the same. Presumably, Frontier's lines were placed on APC's power poles with APC's permission.

15. Pursuant to the easement language referenced in Paragraph Nine (9) of this Complaint, APC, sometime after Plaintiffs' purchase, entered Plaintiffs' property and erected new power poles and lines, as dictated by the terms of the easement, and in an effort to provide Plaintiffs better access to their property.

16. Frontier's lines remained, and continue to remain, on the "old" APC power poles denying Plaintiffs reasonable access to their property and prohibiting the commercial development of the property as intended by Plaintiffs. Plaintiffs continued to contact Frontier in an effort to gain access to their property.

17. In a final effort to remedy the issues with Frontier, Kimberly Runyon, in her capacity as power of attorney for her husband, David E. Runyon, and Dallas T. Runyon, Sr.,

drafted and submitted a proposed easement agreement to Frontier on July 21, 2016. The language of the proposed easement agreement essentially mirrored the language found in the easement agreement Plaintiffs enjoy with APC.

18. The proposed easement agreement provided Frontier seven (7) months to acquiesce to its terms. The proposed Frontier easement agreement expired on February 21, 2017. Please see **Exhibit A** attached hereto.

19. During the seven (7) month period described in Paragraph Nineteen (19), Plaintiffs made substantial efforts with Frontier to garner compliance, as its lines prohibited Plaintiffs from further developing their property. And entering into a lucrative timbering agreement.

20. As a result of Frontier's actions, Plaintiffs have lost revenue opportunities associated with their property due to limited access resulting from Frontier's illegally placed lines.

21. All the while, Frontier profited, and continues to profit, from its lines illegally placed on Plaintiffs' property.

COUNT I – UNJUST ENRICHMENT (Frontier)

22. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

23. Frontier has improperly maintained, stored, and used for profit its communications lines on Plaintiffs' property all at a time when it had no legal right or valid claim to do the same.

24. As a result of Frontier's actions, it has become unjustly enriched by the monies it has made through the communication lines illegally located on Plaintiffs' property.

25. Plaintiffs seek to recover a percentage of all profits made by the communication lines which are illegally located on its property.

COUNT II – DEMAND FOR ACCOUNTING AND DAMAGES

26. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

27. The illegal placement of Frontier's communication lines on Plaintiffs' property has caused Plaintiffs irreparable harm by prohibiting their use and development of the property.

28. Plaintiffs have yet to receive either its interest or profits for the uses of its property and assets by Frontier.

29. As a result of the wrongful actions by Frontier, Plaintiffs have suffered damages, including but not limited to, loss of income, loss of assets, aggravation, annoyance, and inconvenience.

30. Plaintiffs demands an accounting of Frontier's gross profit for the lines located in Plaintiffs' property since its illegal takeover of Plaintiffs' property.

COUNT III – DECLARATORY JUDGMENT

31. Pursuant to West Virginia Code § 55-13-1 et. seq., Plaintiffs request a declaration from the Court that Frontier had no legal right to place or maintain its communication lines on Plaintiffs' property, and thereby, Frontier became unjustly enriched by its actions.

COUNT IV – INTENTIONAL TRESPASS (Frontier)

32. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

33. Plaintiffs are the sole owner of the land described in Paragraph Seven (7) of this Complaint.

34. Defendant intentionally entered onto Plaintiffs' land without consent or any other valid privilege, and all the while precluding Plaintiffs from using their property for its intended use.

COUNT V – PERMITTING INTENTIONAL TRESPASS (APC)

35. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

36. Plaintiffs are the sole owner of the land described in Paragraph Seven (7) of this Complaint.

37. Defendant APC intentionally entered into an agreement with and permitted Frontier to allow it to use APC's power poles on Plaintiffs' land, without consent or any other legal privilege, and all the while precluding Plaintiffs from using their property for its intended use.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment against the Frontier and APC in the amount to be determined based the Defendants' unjust enrichment and/or intentional trespass and other relief for the following:

- A. A declaration that Frontier became unjustly enriched by its actions;
- B. Actual Damages;
- C. Compensatory Damages;
- D. Damages for annoyance, and inconvenience;
- E. Disgorgement of Frontier's profits and restitution;
- F. Creation of a constructive trust;
- G. Punitive and exemplary damages;
- H. Pre-judgment interest;

I. Attorney Fees and Cost; and

J. All other equitable and legal relief which is deemed fair and just by the Court.

A JURY TRIAL IS DEMANDED

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'N.D. Brown', written over a horizontal line.

Nathan D. Brown (WV Bar Id. No.: 12264)

Joshua S. Ferrell (WV Bar Id. No.: 11607)

Ferrell & Brown, PLLC

Post Office Box 401

160 East Second Avenue

Williamson, West Virginia 25661

(304) 235-5674 (telephone)

(304) 235-5675 (facsimile)

EXHIBIT A

July 21, 2016

Kimberly Runyon
32 Conley Branch
Delbarton, WV 25670

Frontier West Virginia, Inc.
1500 MacCorkle Ave., SE
Charleston, WV 25396
Attn: Technical Supervisor

Dear Sir or Madam:

Please find enclosed an easement agreement and exhibit map for the property recorded in deed book 426, page 5110, tax map 325, parcel 86. If you have any questions or require further information please contact me at 304-928-6769 or 304-475-3113. I can also be reached by email at kimberlyrunyon@suddenlink.net. Thank you for your time concerning this project.

Sincerely,

Kimberly Runyon

Kimberly Runyon

EASEMENT AGREEMENT

Received of Frontier West Virginia Inc., One Dollar, \$1.00, in consideration of which we hereby grant unto Frontier West Virginia Inc., its successors and assigns, the right and easement now and in the future to construct, reconstruct, operate, maintain, repair, replace and remove telephone communication systems consisting of poles, anchors, guides & aerial cable, as shown on Exhibit "A" attached hereto and made a part hereof, the property of which we own, or in which I have any interest in the District of Lee, County of Mingo, and State of West Virginia. Said sum is received in full payment of said rights. It is expressly understood that this right and easement includes the right from time to time to cut and trim trees and brush that may threaten, endanger, or interfere with the operation or maintenance of said facilities including ingress thereto and egress therefrom.

The property across with this right and easement is granted is the same property which is recorded in deed book 426, page 5110, tax map 325, and parcel 86.

Frontier West Virginia Inc., its successors and assigns shall promptly compensate the grantor(s) for all damages to growing crops and repair any damage done to the driveways, fences, and fields in the exercise of the rights herein granted.

It is further understood and agreed by Frontier West Virginia Inc. and the Grantors that a minimum clearance of 18-feet, measured from the lowest telephone or cable line on the pole to the ground, shall be maintained.

It is also further understood and agreed by Frontier West Virginia Inc. and the Grantors that the existing telephone communications, that occupy the Grantors property without an easement, shall be relocated to the new location shown on aforesaid Exhibit "A" within seven (7) months of the date of this agreement.

DALLAS RUNYON and KIMBERLY RUNYON, Grantors, insofar as their interest is concerned, declare the total consideration paid for the rights conveyed by this document is One Dollar, \$1.00.

WITNESS our hand and seal this _____ day of _____ A.D. _____ at _____

(Post Office Address)

DALLAS RUNYON

(Grantor Seal)

KIMBERLY RUNYON

(Grantor Seal)

This instrument was prepared by Kimberly Runyon

STATE OF WEST VIRGINIA)

)

TO WIT:

County of Mingo)

I, _____, a Notary Public of Mingo County and State of West Virginia do certify that Dallas Runyon and Kimberly Runyon, whose names are signed to the within writing bearing the date the _____ day of _____ A.D. _____ have acknowledged the same before me in my said county. Given under my hand this _____ day of _____ A.D. _____.

Notary Public

My commission expires _____

VERIFICATION OF COMPLAINT

STATE OF West Virginia

COUNTY OF Mingo TO-WIT:

This day appeared before me Dallas T. Runyon Jr., affiant, who having first been duly sworn, deposes and states that the facts and allegations contained in the foregoing document(s) are true to the best of his/her knowledge, belief, and information.

Dallas T. Runyon Jr.
AFFIANT

Taken and subscribed, and sworn to before me in my aforesaid County and State on the 16th day of June, 2017.

My commission expires: 2/17/2024



Marissa Roberts
Notary Public

VERIFICATION OF COMPLAINT

STATE OF West Virginia

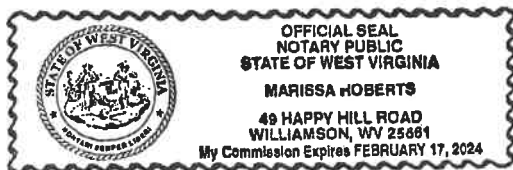
COUNTY OF Mingo TO-WIT:

This day appeared before me David E. Runyon, affiant, who having first been duly sworn, deposes and states that the facts and allegations contained in the foregoing document(s) are true to the best of his/her knowledge, belief, and information.

David E. Runyon
AFFIANT

Taken and subscribed, and sworn to before me in my aforesaid County and State on the 16th day of June, 2017.

My commission expires: 2/17/2024



Marissa Roberts
Notary Public

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

**DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,**

Plaintiffs,

v.

Civil Act. No. 17-C-108
Hon. Miki Thompson

**CITIZENS TELECOMMUNICATION COMPANY
OF WEST VIRGINIA d/b/a Frontier Communications
of West Virginia; FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,**

Defendants.

**ANSWER and CROSS-CLAIM
OF APPALACHIAN POWER COMPANY**

ANSWER

COMES NOW Appalachian Power Company d/b/a American Electric Power ("AEP")
and responds to the Plaintiffs' Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against AEP upon which relief can be granted.

SECOND DEFENSE

In response to the separately numbered paragraphs of the Complaint, AEP:

1. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1.

2. Admits the allegations set forth in Paragraph 2 upon information and belief.
3. Admits the allegations set forth in Paragraph 3 upon information and belief.
4. Admits the allegations set forth in Paragraph 4.
5. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5.
6. States that Paragraph 6 sets forth no allegation of fact, but only conclusions of law to which no response is required.
7. States that in its records the subject property ("the Property") is identified as having an address of 16/65 Caney Branch Road, Delbarton, West Virginia and as being Parcel 86 on Mingo County Tax Map 325, consisting of approximately 162.5 acres. AEP is without knowledge or information sufficient to form a belief as to the truth of any inconsistent allegation set forth in Paragraph 7.
8. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8.
9. Admits that on or around 10 June 1939, W. T. Floyd and others entered into an agreement ("the 1939 Easement") providing AEP an easement on the Property. AEP denies that the 1939 Easement was limited to "the erection and maintenance of power poles and attendant electric lines," as alleged. Instead, AEP asserts that although the 1939 Easement speaks for itself as to all of its terms and conditions, it expressly provided AEP "the right privilege and authority . . . to construct, erect, operate and maintain a line or lines for the purpose of transmitting electric or other power and telegraph or telephone line or lines."
10. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10.

11. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11.
12. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12.
13. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13.
14. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14.
15. Admits that pursuant to and in keeping with the provisions of an Easement Agreement dated 26 August 2014, and in keeping with the provisions of the 1939 Easement, AEP entered the Property and relocated its facilities. AEP is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 15.
16. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16.
17. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17.
18. Asserts that the "proposed easement" attached to the Complaint as Exhibit A speaks for itself, and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 18.
19. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19.
20. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20.

21. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21.

COUNT I

Alleged Unjust Enrichment by Frontier

22. Incorporates the preceding paragraphs of this Answer.

23. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23.

24. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24.

25. States that Paragraph 25 sets forth no allegation of fact, but only conclusions of law to which no response is required.

COUNT II

Plaintiffs' Demand for Accounting and Damages

26. Incorporates the preceding paragraphs of this Answer.

27. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27.

28. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28.

29. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29.

30. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that Frontier engaged in an "illegal takeover" of the Property. AEP

states that the remainder of Paragraph 30 sets forth no allegation of fact, but only conclusions of law to which no response is required.

COUNT III

Plaintiffs' Demand for a Declaratory Judgment

31. States that Paragraph 31 sets forth no allegation of fact, but only conclusions of law to which no response is required.

COUNT IV

Alleged Intentional Trespass by Frontier

32. Incorporates the preceding paragraphs of this Answer.

33. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33.

34. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34. However, AEP denies that it engaged in any of the conduct alleged in Paragraph 34.

COUNT V

Alleged Permitting of Intentional Trespass by AEP

35. Incorporates the preceding numbered paragraphs of this Answer.

36. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36.

37. Admits that it entered into certain agreements with Frontier and/or its predecessors-in-interest, and denies all remaining allegations set forth in Paragraph 37.

38. AEP denies each and every allegation set forth in the Complaint that is not expressly admitted above.

THIRD DEFENSE

Any damages suffered by the Plaintiffs were proximately caused by acts or omissions of other entities over which AEP has no right or ability to control, and for which AEP is not responsible.

FOURTH DEFENSE

AEP had express written consent and permission, pursuant to easements of record, for its presence on the Property.

FIFTH DEFENSE

"Permitting Intentional Trespass," as alleged in Count V, is not a cause of action recognized in the State of West Virginia.

SIXTH DEFENSE

AEP asserts the defenses of accord and satisfaction, waiver, novation, release, and satisfaction with regard to all claims asserted against it herein.

SEVENTH DEFENSE

An award of punitive damages as requested by the Plaintiff would violate the United States Constitution and the West Virginia Constitution.

EIGHTH DEFENSE

AEP hereby reserves the right to assert any additional affirmative defenses which may later become known to it, disclosed in the course of discovery, or otherwise discovered as this case progresses.

=====

WHEREFORE, having fully answered the Plaintiffs' Complaint, Appalachian Power Company respectfully demands that the Court grant the following relief:

1. Dismissal of AEP from this action, with the Plaintiffs recovering nothing from AEP;
2. An award in favor of AEP, and against the Plaintiffs, for all attorneys' fees, costs and expenses incurred by AEP in the defense of this action; and
3. All such other and further relief as may be proper and just.

CROSS-CLAIM

For its Cross-Claim against Citizens Telecommunication Company of West Virginia (d/b/a Frontier Communications of West Virginia) and Frontier West Virginia, Inc. (collectively, "Frontier"), AEP says as follows:

1. AEP incorporates the allegations of the Plaintiffs' Complaint, along with AEP'S responses to those allegations and the Affirmative Defenses presented above.
2. AEP and Frontier are party to a certain **Agreement Covering the Joint Use of Poles**, which has an effective date of 1 July 1986 and was amended in 2013. That Agreement, as amended, is incorporated herein by this reference.
3. AEP denies that it has any liability for the claims alleged in the Plaintiffs' Complaint.
4. However, to the extent that AEP is found to have any such liable to the Plaintiffs, such liability is due in whole or substantial part to the acts and/or omissions of Frontier.

5. Accordingly, in the event any liability is imposed on AEP in this action, Frontier is liable to AEP for express or implied indemnity and/or contribution.

6. Further, Frontier is liable to AEP for all "costs, attorneys' fees, disbursements and other proper charges and expenditures" that AEP may make or incur in the defense of this action.

WHEREFORE, Appalachian Power Company demands judgment on its Cross Claim in the amount of any judgment rendered against AEP, together with all "costs, attorneys' fees, disbursements and other proper charges and expenditures" that AEP may incur or make in the defense of this action, and all such other and further relief as may be proper and just.

APPALACHIAN POWER COMPANY

By Counsel,



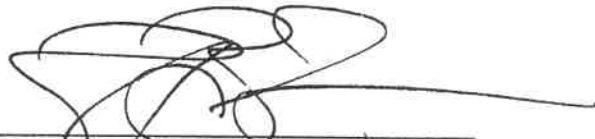
W. Bradley Sorrells (WV 4991)
Elizabeth T. Schindzielorz (WV12305)
Robinson & McElwee, PLLC
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800

CERTIFICATE OF SERVICE

I, W. Bradley Sorrells, counsel for the Appalachian Power Company, hereby certify that on this 7TH day of August, 2017 the foregoing **Answer and Cross-Claim** was served upon counsel for all parties in this civil action by mailing true copies of the same to their counsel of record in envelopes addressed as follows:

Nathan D. Brown
Ferrell & Brown, PLLC
Post Office Box 401
Williamson, West Virginia 25661
Nathan@ferrellandbrown.com

Ronda L. Harvey
Bowles Rice LLP
600 Quarrier Street
Charleston, WV 25301
rharvey@bowlesrice.com



W. Bradley Sorrells (WV Bar 1991)

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

**DALLAS T. RUNYON, SR., and
DAVID E. RUNION,**

Plaintiffs,

v.

**Civil Action No.: 17-C-108
Judge Miki Thompson**

**CITIZENS TELECOMMUNICATIONS COMPANY
OF WEST VIRGINIA d/b/a FRONTIER
COMMUNICATIONS OF WEST VIRGINIA,
FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,**

Defendants.

**ANSWER, ANSWER TO CROSS-CLAIM, AND CROSS-CLAIM
OF CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA D/B/A
FRONTIER COMMUNICATIONS OF WEST VIRGINIA
AND FRONTIER WEST VIRGINIA INC.**

ANSWER

Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia and Frontier West Virginia Inc. (jointly and individually "Frontier"), for answer to the Complaint filed in this civil action, state as follows:

FIRST DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND DEFENSE

In response to the numbered Paragraphs in the Complaint, Frontier states as follows:

1. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint.

Admitted to Practice
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Mingo County, West Virginia

2. Frontier admits the allegations in Paragraph 2 of the Complaint, but denies that Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia ("Citizen") is a proper party defendant. Citizens does not, and did not, have lines or other facilities upon, or otherwise occupy, the property that is the subject of this Complaint. All references hereafter to "Frontier" regarding such lines or other facilities or the claims and allegations related thereto are only to Frontier West Virginia Inc.

3. Frontier admits the allegations in Paragraph 3 of the Complaint.

4. Frontier is informed and believes the allegations in Paragraph 4 of the Complaint are true.

5. Frontier admits the allegations of Paragraph 5 of the Complaint.

6. Frontier admits the allegations in Paragraph 6 of the Complaint.

7. Frontier is informed and believes that the allegations in Paragraph 7 of the Complaint are true, except that it denies that the property more or less constitutes one hundred seventy-four (174) acres total.

8. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint.

9. Frontier admits the allegations in Paragraph 9 of the Complaint regarding the existence of an easement (the "1939 Easement"), but states that the 1939 Easement speaks for itself. Frontier further asserts that it has and had every right to construct, erect, operate and maintain its telephone lines upon the subject property.

10. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. Frontier is without knowledge sufficient or information to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint.

13. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint.

14. In response to Paragraph 14 of the Complaint, Frontier states that it has every right to maintain its facilities on the subject property, admits that it had the permission of Appalachian Power Company d/b/a American Electric Power ("APC" or "AEP") to place Frontier's lines on APC's power poles, but otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint.

15. In response to Paragraph 15 of the Complaint, Frontier admits that APC relocated its lines as may be shown by an inspection of the subject property, but is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 15 of the Complaint.

16. In response to Paragraph 16 of the Complaint, Frontier states that it has every right to continue to maintain its lines on the subject property, denies that its lines deny Plaintiffs reasonable access to or prohibit commercial development of the subject property, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint.

17. In response to Paragraph 17 of the Complaint, Frontier is without knowledge or information sufficient to form a belief as to the existence of any power of attorney, states that the referenced proposed easement speaks for itself and otherwise is without knowledge or information

sufficient to form a belief as to the truth of any remaining allegations in Paragraph 17 of the Complaint.

18. In response to Paragraph 18 of the Complaint, Frontier states that the referenced proposed easement speaks for itself.

19. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint.

20. Frontier denies the allegations in Paragraph 20 of the Complaint.

21. Frontier denies the allegations in Paragraph 21 of the Complaint.

COUNT I

22. In response to Paragraph 22 of the Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

23. Frontier denies the allegations in Paragraph 23 of the Complaint.

24. Frontier denies the allegations in Paragraph 24 of the Complaint.

25. Frontier denies the allegations in Paragraph 25 of the Complaint.

COUNT II

26. In response to Paragraph 26 of the Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

27. Frontier denies the allegation in Paragraph 27 of the Complaint.

28. In response to Paragraph 28 of the Complaint, Frontier denies that the Plaintiffs are entitled to any "interest or profits" or to any other relief.

29. Frontier denies the allegation in Paragraph 29 of the Complaint.

30. In response to Paragraph 30 of the Complaint, Frontier denies that the Plaintiffs are entitled to any such accounting or any other relief.

COUNT III

31. Paragraph 31 of the Complaint is a conclusion of law to which no response is required.

COUNT IV

32. In response to Paragraph 32 of the Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

33. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint.

34. Frontier denies the allegations in Paragraph 34 of the Complaint.

COUNT V

35. In response to Paragraph 35 of the Complaint Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

36. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint.

37. In response to Paragraph 37 of the Complaint, admits that it has entered into certain agreements with APC or its predecessors, which speak for themselves, but Frontier denies the remaining allegations in Paragraph 37 of the Complaint.

38. Frontier demands strict proof of each and every allegation set forth in the Complaint not expressly admitted herein and therefore denies the same.

THIRD DEFENSE

Frontier acquired an easement by prescription.

FOURTH DEFENSE

Alternatively, Frontier had an express easement under or arising out of the 1939 easement.

FIFTH DEFENSE

An award of punitive damages as requested by the Plaintiffs would violate the United States and West Virginia Constitutions.

SIXTH DEFENSE

Frontier reserves and asserts the defenses of accord and satisfaction, waiver, novation, release and satisfaction with respect to all claims asserted against it.

SEVENTH DEFENSE

Frontier reserves and asserts all legal and factual defenses for unjust enrichment, accounting and damages, declaratory judgment, intentional trespass or other claims in the Complaint, as may become known or apparent during discovery or other factual development.

ANSWER TO AEP'S CROSS CLAIM

For answer to AEP's Cross-Claim, Frontier states as follows:

1. In response to Paragraph 1 of AEP's Cross-Claim, Frontier incorporates its responses to the allegations of the Complaint, and states that no response is required to AEP's responses to those allegations or to AEP's affirmative defenses.
2. In response to Paragraph 2 of AEP's Cross-Claim, Frontier states that the Agreement, as amended, speaks for itself.
3. Frontier admits the allegations in Paragraph 3 of AEP's Cross-Claim.
4. Frontier denies the allegations in Paragraph 4 of AEP's Cross-Claim.
5. Frontier denies the allegation in Paragraph 5 of AEP's Cross-Claim.

6. Frontier denies the allegations in Paragraph 6 of AEP's Cross-Claim.

CROSS-CLAIM

For cross-claim against AEP, Frontier states as follows:

1. Frontier re-states and incorporates by reference all preceding paragraphs, defenses, responses and statements as if fully set forth herein.

2. To the extent to which, if at all, AEP is entitled to any relief from Frontier arising out of Frontier's act or omissions, which it is not, Frontier is entitled to like relief arising out of AEP's acts and omissions.

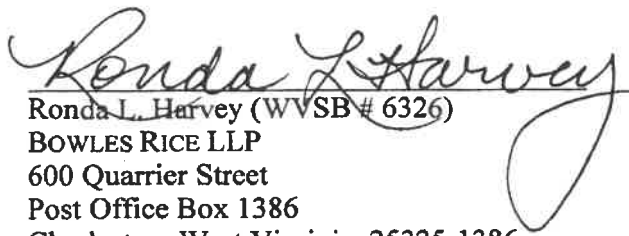
PRAYER FOR RELIEF

WHEREFORE, Frontier respectfully requests that the Court dismiss the Complaint and Cross-Claim against it, award it the relief it requests in its own Cross-Claim, and grant it such other relief to which it may be entitled or which otherwise may be just and proper.

Respectfully Submitted,

CITIZENS TELECOMMUNICATIONS
COMPANY OF WEST VIRGINIA D/B/A
FRONTIER COMMUNICATIONS OF
WEST VIRGINIA AND FRONTIER WEST
VIRGINIA INC.

By Counsel


Ronda L. Harvey (WVSB # 6326)
BOWLES RICE LLP
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia 25325-1386
(304) 347-1701
rh Harvey@bowlesrice.com

Of counsel:

Joseph J. Starsick, Jr. (WV State Bar #3576)
Associate General Counsel
Frontier Communications
1500 MacCorkle Avenue, S.E.
Charleston, West Virginia 25314
(304) 344-7644
Joseph.Starsick@FTR.com

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,

Plaintiffs,

v.

Civil Action No. 17-C-108
Judge Miki Thompson

CITIZENS TELECOMMUNICATION COMPANY
OF WEST VIRGINIA d/b/a Frontier Communications
of West Virginia; FRONTIER WEST VIRGINIA, INC. and
APPALACHIAN POWER COMPANY,

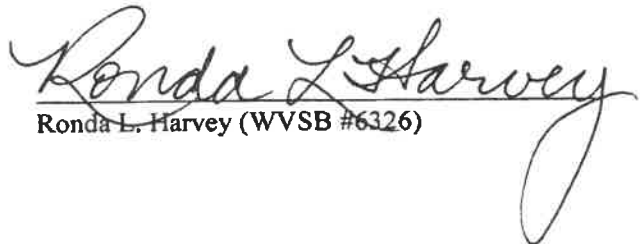
Defendants.

Certificate of Service

I, Ronda L. Harvey, counsel for Defendants, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, and Frontier West Virginia Inc., do hereby certify that on the 24th day of August, 2017, I served a true and exact copy of the *Answer, Answer to Cross-Claim, and Cross-Claim of Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia and Frontier West Virginia Inc.* via United States Mail, postage prepaid, to:

Nathan D. Brown (WVSB # 12264)
Joshua S. Ferrell (WVSB # 11607)
Ferrell & Brown, PLLC
Post Office Box 401
160 East Second Avenue
Williamson, West Virginia 25661
Counsel for Plaintiff

W. Bradley Sorrells (WVSB # 4991)
Robinson & McElwee, PLLC
Post Office Box 1791
Charleston, West Virginia 25326
Counsel for Appalachian Power Company


Ronda L. Harvey (WVSB #6326)

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,
Plaintiffs,

v.

Civil Act. No. 17-C-108
The Honorable Miki Thompson

CITIZENS TELECOMMUNICATION COMPANY
OF WEST VIRGINIA d/b/a Frontier Communications
of West Virginia; FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,

Defendants.


AEP's ANSWER TO FRONTIER'S CROSS-CLAIM

COMES NOW Appalachian Power Company d/b/a American Electric Power ("AEP") and answers the Cross-Claim filed by Frontier West Virginia, Inc. ("Frontier") as follows:

1. AEP incorporates its responses to the allegations of the Complaint and states that no further response is required to Frontier's responsive pleading or its incorporation thereof in Paragraph 1.
2. AEP denies the allegations set forth in Paragraph 2.

WHEREFORE, Appalachian Power Company prays that the Court dismiss Frontier's Cross Claim, but grant AEP judgment on its own Cross Claim, together with all such other and further relief as may be proper and just.

APPALACHIAN POWER COMPANY
By Counsel,




W. Bradley Sorrells (WV 4991)
Robinson & McElwee, PLLC
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800

CERTIFICATE OF SERVICE

I, W. Bradley Sorrells, counsel for Appalachian Power Company, hereby certify that on this 14th day of September, 2017 **AEP's Answer to Frontier's Cross-Claim** was served upon all parties in this civil action by mailing true copies of the same to their counsel of record in envelopes addressed as follows:

Nathan D. Brown
Ferrell & Brown, PLLC
Post Office Box 401
Williamson, West Virginia 25661
Nathan@ferrellandbrown.com

Ronda L. Harvey
Bowles Rice LLP
600 Quarrier Street
Charleston, WV 25301
rharvey@bowlesrice.com



W. Bradley Sorrells (WV 4991)

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON
Plaintiffs,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a FRONTIER
COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,

Defendants.

AMENDED COMPLAINT

COMES NOW, Dallas T. Runyon, Sr., and David E. Runyon ("Plaintiffs"), by and through counsel, Nathan D. Brown of Ferrell & Brown, PLLC, and for their Complaint against the Defendants, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, Frontier West Virginia, Inc., (collectively "Frontier") and Appalachian Power Company, (sometimes hereinafter "APC") and states and avers as follows:

PARTIES

1. The Plaintiffs are all citizens of Mingo County, state of West Virginia and were so during the allegations in this Complaint.
2. The Defendant, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, is a West Virginia corporation with a local principal office address of 1500 MacCorkle Ave. S.E. Charleston, WV, 25396 engaged in providing telecommunication services in Mingo County, West Virginia at all relevant times herein.
3. The Defendant, Frontier West Virginia, Inc., is a West Virginia corporation with a local principal office address of 1500 MacCorkle Ave. S.E. Charleston, WV, 25396 engaged in providing telecommunication services in Mingo County, West Virginia at all relevant times herein.

4. The Defendant, Appalachian Power Company (sometimes herein "APC") is a Virginia corporation with a principal office address of 1 Riverside Plaza, 29th Floor, Columbus, OH, 43215, which was engaged in providing services to its customers in Mingo County, West Virginia at all relevant times herein.

5. The Defendant APC operates under the tradename American Electric Power ("AEP").

6. At all relevant times herein, Plaintiffs are informed and believe, and on the basis of such information and belief, allege that Christopher Collier and Robert Hughart were agents and/or employees of Frontier, and Clifton Nicholson was an agent/employee of APC acting within their scope of their authority, engaged in the performance of duties which were expressly or impliedly assigned to them by their employer.

JURISDICTION

7. Jurisdiction and venue are proper in this Court pursuant to West Virginia Code §§ 51-2-2 and 56-1-1 as the causes of actions in this Complaint occurred in Mingo County, West Virginia.

BACKGROUND

8. The property involved in this dispute is located at 16/65 Caney Branch Rd. Creek Side Drive, Delbarton, WV 25670, and more or less constitutes one hundred seventy-four (174) acres total.

9. A review of the records housed in the County Clerk's Office of Mingo County indicates that the property was conveyed to W.T Floyd in deeds dated March 1915 and 1916.

10. In or around June 10, 1939, Mr. Floyd entered into an agreement providing Appalachian Power Company ("APC") an easement on the subject property for the erection and maintenance of power poles and attendant electric lines.
11. As part of the 1939 Deed, provided the property owner the unilateral ability to request APC to relocate its poles on the property if such poles prohibits the "erection of buildings or the construction of roads, tipples, or other structures."
12. On May 9, 2008, W.T. Floyd's heirs entered into a purchase agreement with Gene Brinager and Dallas T. Runyon, Sr. whereby Mr. Brinager and Mr. Runyon purchased the subject property, and all mineral rights therein, for the sum of one hundred sixty-five thousand dollars (\$165,000).
13. The property was then deeded as contemplated in the purchase agreement to Dallas T. Runyon, Sr. and Gene Brinager on June 10, 2008.
14. On September 29, 2009, Mr. Brinager, and his wife, sold their interest in the subject property to David E. Runyon for the sum of seventy-seven thousand five hundred dollars (\$77,500) as reflected in Deed Book 426 Page 511.
15. That the current owners of the subject property are Plaintiffs, Dallas T. Runyon, Sr., and David E. Runyon.
16. Soon after acquiring the subject property, Dallas Runyon began to contact AEP about the relocation of its lines on the property to permit access to the property by Plaintiffs.
17. In April 2009, Dallas Runyon and Gene Brinager, one of the original property owners, entered into an agreement with Quality Natural Properties, whereby Quality Natural Properties would extract the natural gas on the property and pay unto the property owners a royalty for the gas produced.

18. The aforementioned royalty on payments hinged on the accessibility to the property, thus a bridge would need to be constructed to be permit use of the property. The subject communication lines owned by Frontier prohibited the development of a bridge to the property.

19. As a result, the property owners began asking APC to relocate its poles and lines to permit use of the property.

20. After acquiring an interest in the property, the Plaintiffs learned that Frontier had installed its communication lines on APC power poles which were on the property at the time Plaintiffs purchased the same. Presumably, Frontier's lines were placed on APC's power poles with APC's permission via the parties Joint Use Agreement.

21. On or about the August 26, 2014, the Runyons and APC entered into a "superseding easement" which replaced the 1939 easement whereby APC was to move its lines on the Runyon property to new location. APC desired to terminate the 1939 easement given the unrestricted ability of the landowners to request relocation of the subject poles/lines.

22. The superseding easement required the lowest line on the pole of any party to maintain 18 foot minimum clearance from the ground level.

23. The Runyons negotiated this height to permit large vehicle travel on the property and allow the elevation to be raise for two predetermined railroad crossings.

24. After signing the superseding easement, APC erected poles, relocated its lines, and left Frontier communication lines on the old APC poles which where governed by the 1939 easement.

25. On or about July 6, 2015, APC through Cliff Nicholson, informed Frontier that it had relocated its lines and Frontier needed to do the same while maintaining 18' minimum clearance from the ground.

26. Frontier's lines remained, and continue to remain, on the "old" APC power poles denying Plaintiffs reasonable access to their property and prohibiting the commercial development of the property as intended by Plaintiffs. Plaintiffs continued to contact Frontier in an effort to gain access to their property.

27. With Frontier refusing to relocate its communication lines, Kimberly Runyon, in her capacity as power of attorney for her husband, David E. Runyon, and Dallas T. Runyon, Sr., drafted and submitted the proposed easement agreement to Frontier on July 21, 2016. The language of the proposed easement agreement essentially mirrored the language found in the superseding easement agreement Plaintiffs enjoy with APC.

28. The proposed easement agreement provided Frontier seven (7) months to acquiesce to its terms. The proposed Frontier easement agreement expired on February 21, 2017.

29. During the seven (7) month period described in Paragraph Twenty-Eight (28), Plaintiffs made substantial efforts with Frontier to garner compliance, as its lines prohibited Plaintiffs from further developing their property via timber harvesting to prepare for mineral extractions.

30. As part of the business arrangement between APC and Frontier, the parties entered into a Joint Use Agreement, as amended, which dictated the process of how APC poles transferred ownership to Frontier once APC relocated facilities.

31. Upon information and belief, neither APC nor Frontier completed the transfer process, thus, APC poles remained in place with Frontier communication facilities attached to its poles.

32. APC failed to take any affirmative action to remove or require Frontier to move its communication lines off the "old" APC poles located on Runyons' property despite its knowledge it was required to do so.

33. As a result of Defendants' actions, Plaintiffs have lost revenue opportunities associated with their property due to limited access resulting from Defendants' actions.

34. All the while, Defendants profited, and continues to profit, from lines unlawfully maintained on Plaintiffs' property.

COUNT I – UNJUST ENRICHMENT (Frontier)

35. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

36. Frontier has improperly maintained, stored, and used for profit its communications lines on Plaintiffs' property all at a time when it had no legal right or valid claim to do the same.

37. As a result of Frontier's actions, it has become unjustly enriched by the monies it has made through the communication lines illegally located on Plaintiffs' property.

38. Plaintiffs seek to recover a percentage of all profits made by the communication lines which are illegally located on its property.

COUNT II – DEMAND FOR ACCOUNTING AND DAMAGES

39. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

40. The illegal placement of Frontier's communication lines on Plaintiffs' property has caused Plaintiffs irreparable harm by prohibiting their use and development of the property.

41. Plaintiffs have yet to receive either its interest or profits for the uses of its property and assets by Frontier.

42. As a result of the wrongful actions by Frontier, Plaintiffs have suffered damages, including but not limited to, loss of income, loss of assets, aggravation, annoyance, and inconvenience.

43. Plaintiffs demands an accounting of Frontier's gross profit for the lines located in Plaintiffs' property since its illegal takeover of Plaintiffs' property.

COUNT III - DECLARATORY JUDGMENT

44. Pursuant to West Virginia Code § 55-13-1 et. seq., Plaintiffs request a declaration from the Court that Frontier had no legal right to place or maintain its communication lines on Plaintiffs' property once APC entered into the superseding agreement, and thereby, Frontier became unjustly enriched by its actions.

COUNT IV - INTENTIONAL TRESPASS (Frontier)

45. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

46. Plaintiffs are the sole owner of the land described in Paragraph Eight (8) of this Complaint.

47. Defendant intentionally entered onto Plaintiffs' land and then remained without consent or any other valid privilege, and all the while precluding Plaintiffs from using their property for its intended use.

COUNT V - PERMITTING INTENTIONAL TRESPASS (APC)

48. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

49. Plaintiffs are the sole owner of the land described in Paragraph Eight (8) of this Complaint.

50. Defendant APC intentionally entered into an agreement with and permitted Frontier to allow it to use APC's power poles on Plaintiffs' land.

51. After moving its poles and lines as requested by Plaintiffs, APC permitted Frontier to remain on the "old" APC poles despite the Plaintiffs' efforts to have the Frontier lines relocated and APC knowledge that Frontier was in violation of the easement agreement governing the use of the "old" poles.

52. Defendant APC failed to follow the internal procedures in the Defendants' Joint Use Agreement to transfer ownership of the subject "old" poles to Frontier.

53. As such, Frontier remained on APC poles after Plaintiffs' demanded the removal of the same, and after APC entered into a superseding easement replacing the easement which Frontier relied on in part as the authority for placement of its communication lines on APC poles.

54. These actions were without Plaintiffs' consent and continued to preclude Plaintiffs from reasonable use of their property.

COUNT VI – AIDING AND ABETTING

55. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

56. By permitting Frontier to remain on the "old" APC power poles as described above, APC has assisted and continues to assist Frontier in wrongfully prohibiting Plaintiffs reasonable access to their property to develop or otherwise use the property as Plaintiffs intended.

57. APC actions have caused and continue to cause Plaintiffs great harm, including but not limited to loss of revenue and business opportunities.

**COUNT VII – INTENTIONAL AND TORTIOUS INTERFERENCE
OF A BUSINESS EXPECTANCY**

58. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

59. As stated above, the actions of the Defendants have intentionally and tortiously interfered with Plaintiffs' business expectancy thereby rendering Plaintiffs' property and investment in the property useless all the while causing substantial financial harm to the Plaintiffs as Defendants continued to profit from their actions.

**COUNT VIII: INTENTIONAL AND TORTIOUS INTERFERENCE WITH A
CONTRACTUAL RELATIONSHIP**

60. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if stated verbatim herein.

61. As stated above, the actions of the Defendants have intentionally and tortiously interfered with Plaintiffs' contractual relationship thereby causing substantial financial harm to the Plaintiffs as Defendants continued to profit from their actions.

COUNT IX: CIVIL CONSPIRACY

62. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if stated verbatim herein.

63. Upon information and belief, all Defendants have conspired by joining in concerted action to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means resulting in damages to the Plaintiff.

64. The acts of Defendants as alleged in the Complaint, constitute a civil conspiracy of which caused harm to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment against the Frontier and APC in the amount to be determined based the Defendants' unjust enrichment and/or intentional trespass and other relief for the following:

- A. A declaration that Frontier became unjustly enriched by its actions;
- B. Actual Damages;
- C. Compensatory Damages;
- D. Damages for annoyance, and inconvenience;
- E. Disgorgement of profits and restitution;
- F. Punitive and exemplary damages;
- G. Pre-judgment interest;
- H. Attorney Fees and Cost; and
- I. All other equitable and legal relief which is deemed fair and just by the Court.

A JURY TRIAL IS DEMANDED

Respectfully submitted,



Nathan D. Brown (WV Bar Id. No.: 12264)

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

**DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,**

Plaintiffs,

v.

**Civil Action No.: 17-C-108
Judge Miki Thompson**

**CITIZENS TELECOMMUNICATIONS COMPANY
OF WEST VIRGINIA d/b/a FRONTIER
COMMUNICATIONS OF WEST VIRGINIA,
FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,**

Defendants.

**ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM OF CITIZENS
TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA D/B/A FRONTIER
COMMUNICATIONS OF WEST VIRGINIA AND FRONTIER WEST VIRGINIA INC.**

ANSWER

Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia and Frontier West Virginia Inc. (jointly and individually "Frontier"), for answer to the Amended Complaint filed in this civil action, state as follows:

FIRST DEFENSE

The Amended Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND DEFENSE

In response to the numbered Paragraphs in the Amended Complaint, Frontier states as follows:

1. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Amended Complaint.

2. Frontier admits the allegations in Paragraph 2 of the Amended Complaint, but denies that Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia ("Citizen") is a proper party defendant. Citizens does not, and did not, have lines or other facilities upon, or otherwise occupy, the property that is the subject of this Amended Complaint. All references hereafter to "Frontier" regarding such lines or other facilities or the claims and allegations related thereto are only to Frontier West Virginia Inc.

3. Frontier admits the allegations in Paragraph 3 of the Amended Complaint.

4. Frontier is informed and believes the allegations in Paragraph 4 of the Amended Complaint are true.

5. Frontier is without knowledge sufficient or information to form a belief as to the truth of the allegations in Paragraph 5 of the Amended Complaint.

6. Frontier admits the allegations of Paragraph 6 of the Amended Complaint.

7. Frontier admits the allegations in Paragraph 7 of the Amended Complaint.

8. Frontier is informed and believes that the allegations in Paragraph 8 of the Amended Complaint are true, except that it denies that the property more or less constitutes one hundred seventy-four (174) acres total.

9. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Amended Complaint.

10. Frontier admits the allegations in Paragraph 10 of the Amended Complaint regarding the existence of an easement (the "1939 Easement"), but states that the 1939 Easement

speaks for itself. Frontier further asserts that it has and had every right to construct, erect, operate and maintain its telephone lines upon the subject property.

11. Frontier admits that the 1939 Easement provides the property owner the ability to request AEP to relocate the poles to a convenient location, but denies any implication that the easement places no obligation upon the property owners in such a scenario.

12. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Amended Complaint.

13. Frontier is without knowledge sufficient or information to form a belief as to the truth of the allegations in Paragraph 13 of the Amended Complaint.

14. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Amended Complaint.

15. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Amended Complaint.

16. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Amended Complaint.

17. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Amended Complaint.

18. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Amended Complaint.

19. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Amended Complaint.

20. Frontier admits placing the lines on AEP's poles pursuant to a Joint Use Agreement but is without knowledge or information sufficient to form a belief as to the timing of Plaintiffs' awareness of this fact. Frontier's lines are open and notorious.

21. Frontier is informed and believes that the allegations in Paragraph 21 are true. Frontier did not agree to any termination of the Joint Use Agreement or the underlying 1939 easement.

22. Frontier is informed and believes that the allegations in Paragraph 22 are true.

23. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Amended Complaint.

24. Frontier is informed and believes that the allegations in Paragraph 24 are true.

25. Frontier denies that APC demanded or otherwise informed Frontier it "needed" to move its lines.

26. In response to Paragraph 26 of the Amended Complaint, Frontier states that it has every right to continue to maintain its lines on the subject property, denies that its lines deny Plaintiffs reasonable access to or prohibit commercial development of the subject property, and otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Amended Complaint.

27. In response to Paragraph 27 of the Amended Complaint, Frontier is without knowledge or information sufficient to form a belief as to the existence of any power of attorney, states that the referenced proposed easement speaks for itself and otherwise is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 17 of the Amended Complaint.

28. In response to Paragraph 28 of the Amended Complaint, Frontier states that the referenced proposed easement speaks for itself.

29. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Amended Complaint.

30. Frontier denies the allegations contained in Paragraph 30 of the Amended Complaint. This paragraph refers to provisions in the Joint Use Agreement concerning abandonment of jointly used poles. Frontier denies that these provisions are relevant to relocated poles.

31. Frontier denies that the "transfer process" alleged in Paragraphs 30 and 31 applies. Frontier further posits that the Runyon's refusal to provide permission or a new written easement prevented Frontier from moving its lines.

32. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Amended Complaint.

33. Frontier denies the allegations in Paragraph 33 of the Amended Complaint.

34. Frontier denies the allegations in Paragraph 34 of the Amended Complaint.

COUNT I

35. In response to Paragraph 35 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

36. Frontier denies the allegations in Paragraph 36 of the Amended Complaint.

37. Frontier denies the allegations in Paragraph 37 of the Amended Complaint.

38. Frontier denies the allegations in Paragraph 38 of the Amended Complaint.

COUNT II

39. In response to Paragraph 39 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

40. Frontier denies the allegation in Paragraph 40 of the Amended Complaint.

41. In response to Paragraph 41 of the Amended Complaint, Frontier denies that the Plaintiffs are entitled to any "interest or profits" or to any other relief.

42. Frontier denies the allegation in Paragraph 42 of the Amended Complaint.

43. In response to Paragraph 43 of the Amended Complaint, Frontier denies that the Plaintiffs are entitled to any such accounting or any other relief.

COUNT III

44. Paragraph 44 of the Amended Complaint is a conclusion of law to which no response is required.

COUNT IV

45. In response to Paragraph 45 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

46. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Amended Complaint.

47. Frontier denies the allegations in Paragraph 47 of the Amended Complaint.

COUNT V

48. In response to Paragraph 48 of the Amended Complaint Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

49. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Amended Complaint.

50. Frontier is informed and believes that the allegations in Paragraph 50 are true.

51. Frontier denies that it is in violation of the easement.

52. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Amended Complaint.

53. Frontier admits that it remained on the poles after Plaintiffs demanded Frontier remove its lines. Plaintiffs refused to give Frontier permission / a properly signed right of way and easement to relocate its lines.

54. Frontier denies the allegations in Paragraph 54 of the Amended Complaint.

COUNT VI

55. In response to Paragraph 55 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

56. Frontier denies the allegation in Paragraph 56 of the Amended Complaint

57. Frontier is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 of the Amended Complaint.

COUNT VII

58. In response to Paragraph 58 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

59. Frontier denies the allegations in Paragraph 59 of the Amended Complaint.

COUNT VIII

60. In response to Paragraph 60 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

61. Frontier denies the allegations in Paragraph 61 of the Amended Complaint.

COUNT IX

62. In response to Paragraph 62 of the Amended Complaint, Frontier re-states and incorporates by reference all preceding paragraphs as if fully set forth herein.

63. Frontier denies the allegations in Paragraph 63 of the Amended Complaint.

64. Frontier denies the allegations in Paragraph 64 of the Amended Complaint.

THIRD DEFENSE

Frontier acquired an easement by prescription.

FOURTH DEFENSE

Alternatively, Frontier had an express easement under or arising out of the 1939 easement.

FIFTH DEFENSE

Frontier's power of eminent domain precludes Plaintiffs' claims. Without limiting the foregoing, Frontier, an entity with the power of eminent domain, had actual possession of its right-of-way or easement, and the Plaintiffs, as subsequent owners of the subject property, took the property subject to the burden of Frontier's right-of-way or easement. The right to any payment for such right-of-way or easement, or for damages, belongs to the owner at the time that Frontier took possession, not to the Plaintiff's.

SIXTH DEFENSE

An award of punitive damages as requested by the Plaintiffs would violate the United States and West Virginia Constitutions.

SEVENTH DEFENSE

Frontier reserves and asserts the defenses of accord and satisfaction, waiver, novation, release and satisfaction with respect to all claims asserted against it.

EIGHTH DEFENSE

Frontier reserves and asserts all legal and factual defenses for unjust enrichment, accounting and damages, declaratory judgment, intentional trespass or other claims in the Amended Complaint, as may become known or apparent during discovery or other factual development.

COUNTERCLAIM AGAINST DALLAS T. RUNYON, SR. AND DAVID E. RUNYON

For counterclaim against Plaintiffs Dallas T. Runyon, Sr. and David E. Runyon (together, the "Runyons"), Frontier West Virginia Inc., the only proper Frontier defendant in this lawsuit, states as follows:

1. The Runyons are citizens of Mingo County, West Virginia.
2. Defendant and counterclaim plaintiff Frontier West Virginia Inc. ("Frontier") is a West Virginia corporation with a local office at 1500 MacCorkle Avenue, S.E., Charleston, West Virginia. Frontier owns and operates telecommunications facilities in Mingo County, West Virginia.
3. In 1939, predecessors-in-interest Ethel Wiles, G.R.C. Wiles, Lillie Floyd, and W.T. Floyd conveyed to Appalachian Electric Power Company ("AEP") an easement and right of way (the "Easement") entitling AEP and its successors and assigns the right to construct, erect, operate and maintain lines in, on, along, over, through or across a parcel in Mingo County, West Virginia (the "Property") for the purpose of transmitting electric or other power and telegraph or telephone.
4. The easement provides that "if, at any time, [grantee's] poles . . . are in the way of erecting buildings or the construction of roads, tipples or other structures, that [the] Power Company shall shift its poles, wires and other appliances out of the way of such development, to other convenient locations on the land[]." [See Easement at 1, attached hereto as Exhibit 1.]

5. In 1958, and at subsequent times, Frontier, formerly known as The Chesapeake and Potomac Telephone Company of West Virginia, did place upon the subject poles its telecommunications cables and associated facilities, either pursuant to the aforesaid easement or pursuant to a prescriptive easement which has since ripened pursuant to law.

6. Over twenty (20) years later, in 2008, Plaintiff Dallas T. Runyon, Sr. and his brother-in-law, Gene Brinager, purchased the Property. Mr. Brinager subsequently conveyed his one-half interest to Plaintiff Dallas E. Runyon in 2009.

7. Subsequent to purchasing the Property, the Runyons requested AEP to move its poles to a new location. After protracted discussions, AEP entered into a new easement agreement with the Runyons in August 2014 under which AEP would relocate its poles on the Property.

8. In September 2018, the Runyons intimated to Frontier, for the first time, that they may "fill" land located underneath the facilities attached to the new poles. Concerned that filling land would jeopardize Frontier's compliance with a minimum 18-foot clearance requirement by the Runyons, Frontier sought details of the Runyons' planned construction efforts. The Runyons never complied.

9. On numerous occasions, Frontier sought to enter into a new easement agreement with the Runyons. All efforts have failed.

10. Between 2015 and 2017, Plaintiff David E. Runyon was incarcerated in the Federal Correction Facility at Morgantown, West Virginia, and was unavailable to sign a new easement agreement for Frontier. Moreover, Frontier was not provided with a power of attorney allowing another person to act in David E. Runyons' behalf.

11. On June 17, 2017, the Runyons filed the instant Complaint in the Circuit Court of Mingo County against Frontier, challenging Frontier's use of AEP's poles.

COUNT I – BREACH OF OBLIGATION TO PROVIDE NEW EASEMENT

12. Frontier hereby incorporates paragraphs 1 through 10 of the Counterclaim as if fully set forth herein.

13. Under the Easement, “[i]t is mutually understood and agreed that if, at any time, said poles or other appliances are in the way” of construction, the “power company shall shift its poles, wires and other appliances out of the way of such development *to other convenient locations.*” [Easement at 1.]

14. Under the Easement, the Runyons have an obligation to identify “other convenient locations” for Frontier’s telecommunications cables and associated facilities and to agree to new easements for those “convenient locations.”

15. After AEP moved its lines to the new poles, Frontier sought assurance from the Runyons that Frontier’s telecommunications cables and associated facilities, should they be placed on the new poles, would satisfy the 18-foot clearance requirement.

16. The Runyons failed to provide such assurances.

17. Frontier repeatedly attempted to obtain a new easement, but the Runyons failed to provide one, and instead filed the instant suit.

18. By failing to assure Frontier that installing telecommunications cables and associated facilities on the new poles would comply with the terms of the easement, and by failing to provide a new easement, the Runyons breached its obligations.

19. Frontier suffered, and continues to suffer, damages in the form of attorneys’ fees and legal costs.

COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

20. Frontier hereby incorporates paragraphs 1 through 18 of the Counterclaim as if fully set forth herein.

21. The Runyons, successors-in-interest to the Easement and right-of-way agreement, owe Frontier, assignees, an implied covenant of good faith and fair dealing.

22. The Runyons failed to provide Frontier sufficient information to allow Frontier to relocate its telecommunications cables and associated facilities to a convenient location.

23. The Runyons failed to provide a new easement to allow Frontier to relocate its telecommunications cables and associated facilities.

24. Frontier suffered, and continues to suffer, damages in the form of attorneys' fees and legal costs.

COUNT III – QUIET TITLE

25. Frontier hereby incorporates paragraphs 1 through 24 of the Counterclaim as if fully set forth herein.

26. Frontier rightfully maintains its lines under a valid easement. [See Exhibit 1.]

27. In the alternative, Frontier's use and maintenance of the lines constitute adverse use of the Runyons' property and/or AEP's poles.

28. Frontier installed the lines in 1958. Ever since, Frontier has continuously used and maintained the lines.

29. The lines are open and notorious.

30. Should a court or jury determine that Frontier does not rightfully maintain its lines pursuant to express easement, Frontier has obtained an easement by prescription due to its continuous, uninterrupted, adverse, open and notorious use and maintenance of the lines.

31. Frontier requests that this Court issue declaratory relief by finding that Frontier is the rightful owner of an easement justifying the current placement of the lines, and asks that this Court enter an order quieting title.

COUNT IV – SLANDER OF TITLE

32. Frontier hereby incorporates paragraphs 1 through 31 of the Counterclaim as if fully set forth herein.

33. Frontier has rightfully and lawfully placed its telecommunications cables and associated facilities on AEP's poles pursuant to an express easement.

34. In the alternative, Frontier obtained an easement by prescription due to its adverse, continuous, open and notorious use of the land for over ten years.

35. In the Complaint, the Runyons assert that Frontier's lines are illegally placed on the Runyons' property.

36. The Runyons published this false statement, derogatory to Frontier's title, with malice.

37. Frontier has suffered special damages via the incursion of attorneys' fees in defending its title in this action.

38. The cloud on Frontier's easement is likely to result in diminished value in the eyes of third parties.

39. Frontier seeks to recover damages attributable to the Runyons' malicious slander of title.

COUNT V – PUNITIVE DAMAGES

40. Frontier hereby incorporates paragraphs 1 through 39 of the Counterclaim as if fully set forth herein.

41. The Runyons' failure to provide Frontier the necessary easement and information to satisfy the 18-foot clearance requirement constitutes gross fraud, malice, oppression, and/or wanton, willful, or reckless conduct.

42. Frontier respectfully requests an award of punitive damages.

WHEREFORE Defendant Frontier requests (i) declaratory relief quieting title in favor of Frontier and (ii) judgment against the Runyons for the damages sustained by it as a result of the allegations contained in the counterclaim, pre- and post-judgment interest, punitive damages, costs and expenses, including attorneys' fees and such other and further relief as the Court deems just and proper.

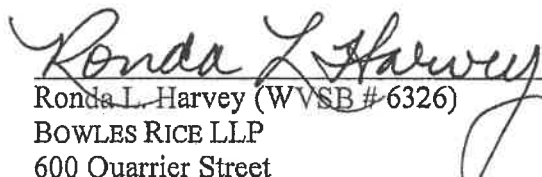
PRAYER FOR RELIEF

WHEREFORE, Frontier respectfully requests that the Court dismiss the Amended Complaint and Cross-Claim against it, award it the relief it requests in its own Cross-Claim, and grant it such other relief to which it may be entitled or which otherwise may be just and proper.

Respectfully Submitted,

CITIZENS TELECOMMUNICATIONS
COMPANY OF WEST VIRGINIA D/B/A
FRONTIER COMMUNICATIONS OF
WEST VIRGINIA AND FRONTIER
WEST VIRGINIA INC.

By Counsel


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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,

Plaintiffs,

v.

Civil Action No. 17-C-108
Judge Miki Thompson

CITIZENS TELECOMMUNICATION COMPANY
OF WEST VIRGINIA d/b/a Frontier Communications
of West Virginia; FRONTIER WEST VIRGINIA, INC. and
APPALACHIAN POWER COMPANY,

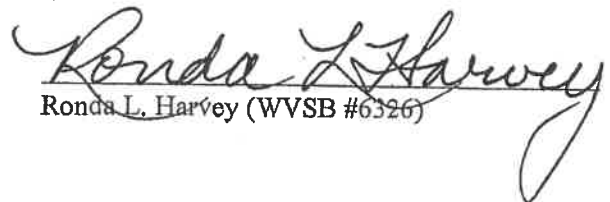
Defendants.

Certificate of Service

I, Ronda L. Harvey, counsel for Defendants, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, and Frontier West Virginia Inc., do hereby certify that on the 26th day of July, 2019, I served a true and exact copy of the *Answer to Amended Complaint and Counterclaim of Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia and Frontier West Virginia Inc. via United States Mail*, postage prepaid, to:

Nathan D. Brown (WVSB # 12264)
Joshua S. Ferrell (WVSB # 11607)
Ferrell & Brown, PLLC
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Counsel for Plaintiff

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Ronda L. Harvey (WVSB #6326)

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON,

Plaintiffs,

v.

Civil Act. No. 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATION COMPANY
OF WEST VIRGINIA d/b/a Frontier Communications
of West Virginia; FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,

Defendants.

**ANSWER TO AMENDED COMPLAINT
AND CROSS-CLAIM AGAINST FRONTIER WEST VIRGINIA, INC.**

COMES NOW Appalachian Power Company d/b/a American Electric Power ("AEP") and responds to the Plaintiffs' Amended Complaint and reasserts its Cross-Claim against Frontier West Virginia, Inc. ("Frontier"):

ANSWER

FIRST DEFENSE

The Amended Complaint fails to state a claim against AEP upon which relief can be granted.

SECOND DEFENSE

In response to the separately numbered paragraphs of the Amended Complaint, AEP:

1. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1.
2. Admits the allegations set forth in Paragraph 2 upon information and belief.
3. Admits the allegations set forth in Paragraph 3 upon information and belief.
4. Admits the allegations set forth in Paragraph 4.
5. Admits the allegations set forth in Paragraph 5.
6. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6.
7. States that Paragraph 7 sets forth no allegation of fact, but only conclusions of law to which no response is required.
8. States that in its records the subject property ("the Property") is identified as having an address of 16/65 Caney Branch Road, Delbarton, West Virginia and as being Parcel 86 on Mingo County Tax Map 325, consisting of approximately 162.5 acres. AEP is without knowledge or information sufficient to form a belief as to the truth of any inconsistent allegation set forth in Paragraph 8.
9. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9.
10. Admits that on or around 10 June 1939, W. T. Floyd and others entered into an Indenture ("the 1939 Easement") providing AEP a right-of-way and easement on the Property. AEP denies that the 1939 Easement was limited to "the erection and maintenance of power poles and attendant electric lines," as alleged. Instead, AEP asserts that although the 1939 Easement

speaks for itself as to all of its terms and conditions, it expressly provided AEP “the right privilege and authority . . . to construct, erect, operate and maintain a line or lines for the purpose of transmitting electric or other power and telegraph or telephone line or lines.”

11. States that the 1939 Easement speaks for itself, but admits that it contained a right such as is summarized in Paragraph 11.

12. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12.

13. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13.

14. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14.

15. Admits the allegations set forth in Paragraph 15, upon information and belief.

16. Admits that in or around 2009 AEP and Dallas Runyon first discussed relocation of AEP facilities on the Property.

17. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17.

18. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18.

19. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19.

20. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20. AEP states, however, that under federal law

it is required to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

21. Admits that it entered into a new easement agreement with the Plaintiffs ("the 2014 Easement") on or about August 26, 2014, and states that the document speaks for itself.

22. Admits the allegations set forth in Paragraph 22.

23. Admits the allegations set forth in Paragraph 23, upon information and belief.

24. Admits that after signing the 2014 Easement it installed several new poles ("the New Poles") on the Property, installed new electric lines along the New Poles, and removed the electric line that had been attached to Pole No. 38820847D00001 ("the Old Pole"). AEP admits that Frontier's communication line remains attached to the Old Pole well after AEP installed the New Poles and removed its lines to the New Poles. Upon information and belief, AEP states that Frontier's communication line is still attached to the Old Pole.

25. Admits the allegations set forth in Paragraph 25.

26. Admits the allegations set forth in Paragraph 23, upon information and belief.

27. Is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27.

28. Is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28.

29. Is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29.

30. Admits that it and Frontier are party to a Joint Use Agreement, which agreement speaks for its self.

31. Denies the allegations set forth in Paragraph 31.

- 32. Denies the allegations set forth in Paragraph 32.
- 33. Denies the allegations set forth in Paragraph 33 as to itself.
- 34. Denies the allegations set forth in Paragraph 34 as to itself.

COUNT I

Alleged Unjust Enrichment by Frontier

- 35. Incorporates the preceding paragraphs of this Answer.
- 36. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36.
- 37. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37.
- 38. States that Paragraph 38 sets forth no allegation of fact, but only conclusions of law to which no response is required.

COUNT II

Plaintiffs' Demand for Accounting and Damages

- 39. Incorporates the preceding paragraphs of this Answer.
- 40. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40.
- 41. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41.
- 42. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42.
- 43. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that Frontier engaged in an "illegal takeover" of the Property. AEP

states that the remainder of Paragraph 43 sets forth no allegation of fact, but only conclusions of law to which no response is required.

COUNT III

Plaintiffs' Demand for a Declaratory Judgment

44. States that Paragraph 44 sets forth no allegation of fact, but only conclusions of law to which no response is required.

COUNT IV

Alleged Intentional Trespass by Frontier

45. Incorporates the preceding paragraphs of this Answer.

46. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 46.

47. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 47. However, AEP denies that it engaged in any of the conduct alleged in Paragraph 47.

COUNT V

Alleged Permitting of Intentional Trespass by AEP

48. Incorporates the preceding numbered paragraphs of this Answer.

49. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 49.

50. Admits that it entered into certain agreements with Frontier and/or its predecessors-in-interest, and denies all remaining allegations set forth in in Paragraph 50.

51. Denies the allegations set forth in Paragraph 51.

52. Denies the allegations set forth in Paragraph 52.

53. Admits that Frontier has still not moved its communication line from the Old Pole to the New Poles, but states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 53.

54. Denies that it has precluded the Plaintiffs from reasonable use of the Property, but states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54.

COUNT VI
Alleged Aiding and Abetting

55. Incorporates the preceding paragraphs of this Answer.

56. Denies that it permitted Frontier to remain on the Old Pole and denies the remaining allegations set forth in Paragraph 56.

57. Denies the allegations set forth in Paragraph 55.

COUNT VII
*Alleged Intentional and Tortious
Interference of a Business Expectancy*

58. Incorporates the preceding paragraphs of this Answer.

59. Denies the allegations set forth in Paragraph 59.

COUNT VIII
*Alleged Intentional and Tortious
Interference With a Contractual Relationship*

60. Incorporates the preceding paragraphs of this Answer.

61. Denies the allegations set forth in Paragraph 61.

COUNT IX

Alleged Civil Conspiracy Incorporates the preceding paragraphs of this Answer.

62. Denies the allegations set forth in Paragraph 63.

63. Denies the allegations set forth in Paragraph 64.

64. AEP denies each and every allegation set forth in the Amended Complaint that is not expressly admitted above.

THIRD DEFENSE

Any damages suffered by the Plaintiffs were proximately caused by acts or omissions of other entities over which AEP has no right or ability to control, and for which AEP is not responsible.

FOURTH DEFENSE

AEP had express written consent and permission, pursuant to easements of record, for its presence on the Property.

FIFTH DEFENSE

AEP asserts the defenses of accord and satisfaction, waiver, novation, release, and satisfaction with regard to all claims asserted against it herein.

SIXTH DEFENSE

An award of punitive damages as requested by the Plaintiff would violate the United States Constitution and the West Virginia Constitution.

SEVENTH DEFENSE

AEP was and is required by federal law to provide a telecommunications carrier such as Frontier, with access to its poles. *See* 47 U.S.C. § 224(f)(1).

EIGHTH DEFENSE

AEP was (and is) prohibited by law from moving Frontier's Line to the New Poles, because such a move would require intentionally damaging that line and the disruption of telephone service. Such acts are expressly prohibited by West Virginia law. *See W.Va. Code* 61-3-49(b).

NINTH DEFENSE

AEP hereby reserves the right to assert any additional affirmative defenses which may later become known to it, disclosed in the course of discovery, or otherwise discovered as this case progresses.

WHEREFORE, having fully answered the Plaintiffs' Amended Complaint, Appalachian Power Company respectfully demands that the Court grant the following relief:

1. Dismissal of AEP from this action, with the Plaintiffs recovering nothing from AEP;
2. An award in favor of AEP, and against the Plaintiffs, for all attorneys' fees, costs and expenses incurred by AEP in the defense of this action; and
3. All such other and further relief as may be proper and just.

CROSS-CLAIM

For its Cross-Claim against Frontier West Virginia, Inc. ("Frontier"), AEP says as follows:

1. AEP incorporates the allegations of the Plaintiffs' Amended Complaint, along with AEP'S responses to those allegations and the Affirmative Defenses presented above.

2. AEP and Frontier are party to a certain **Agreement Covering the Joint Use of Poles**, which has an effective date of 1 July 1986 and was amended in 2013. That Agreement, as amended, is incorporated herein by this reference.

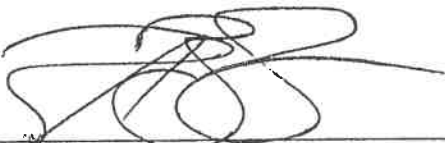
3. AEP denies that it has any liability for the claims alleged in the Plaintiffs' Amended Complaint.

4. However, to the extent that AEP is found to have any such liability to the Plaintiffs, such liability is due in whole or substantial part to the acts and/or omissions of Frontier.

5. Accordingly, in the event any liability is imposed on AEP in this action, Frontier is liable to AEP for express and/or implied indemnity and/or contribution.

6. Further, Frontier is liable to AEP for all "costs, attorneys' fees, disbursements and other proper charges and expenditures" that AEP may make or incur in the defense of this action.

WHEREFORE, Appalachian Power Company demands judgment on its Cross-Claim in the amount of any judgment rendered against AEP, together with all "costs, attorneys' fees, disbursements and other proper charges and expenditures" that AEP may incur or make in the defense of this action, and all such other and further relief as may be proper and just.



W. Bradley Sorrells (WV 4991)
Robinson & McElwee, PLLC
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800


APPALACHIAN POWER COMPANY
By Counsel,

CERTIFICATE OF SERVICE

I, W. Bradley Sorrells, counsel for the Appalachian Power Company, hereby certify that on this 26th day of July, 2019, the foregoing **Answer to Amended Complaint and Cross-Claim** was served upon counsel for all parties in this civil action by e-mail and by mailing the same in envelopes addressed as follows:

Nathan D. Brown
Ferrell & Brown, PLLC
Post Office Box 401
Williamson, West Virginia 25661
Nathan@ferrellandbrown.com

Ronda L. Harvey
Bowles Rice LLP
600 Quarrier Street
Charleston, WV 25301
rharvey@bowlesrice.com



W. Bradley Sorrells (WV 4991)

ADMITTED TO RECORD

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

2019 AUG 16 PM 3:43

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON

MINGO COUNTY CIRCUIT CLERK

Plaintiffs and Counterclaim Defendants,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a
FRONTIER COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST
VIRGINIA, INC., and APPALACHIAN POWER COMPANY,

Defendants.

**DALLAS AND DAVID RUNYON'S MOTION TO DISMISS COUNTS IV AND V
CONTAINED FRONTIER'S COUNTERCLAIM COMPLAINT**

COMES NOW Counterclaim Defendants, Dallas Runyon, Sr. and David Runyon, by and through its undersigned counsel, pursuant to Rule 12 of the West Virginia Rules of Civil Procedure, and moves this Court to Dismiss Counts IV and V contained in Frontier's Counterclaim Complaint. In support of there Motion, the Counterclaim Defendants asserts as follows:

I. BRIEF OVERVIEW

The original Complaint in this matter was filed on June 16, 2017, in which the Runyons in part asserted that Frontier maintained illegally placed lines on their property and which were connected to Defendant American Electric Power ("AEP") poles. The basis for assertions was that Frontier failed to relocate its communication lines from AEP poles despite being contractually obligated to do so, and further maintained its communication lines on the Runyon property without a valid easement. The original easement contained in a 1939 deed had been superceded by a 2014 easement entered into by the Runyons and AEP.

On or about June 26, 2019, the Runyons filed their Amended Complaint in this matter, and thereafter, Frontier filed its answer and counterclaim on July 26, 2019. In its Counterclaim, Frontier asserts the Runyons have slandered Frontier's name by publishing a false and derogatory statement in their Complaint as it relates to the Frontiers "title."

Additionally, Frontier seeks punitive damages from the Runyons. Frontier asserts the Runyons have failed to provide it necessary easement and informatin to satisfy the 18 foot minimum requirement contained in the 2014 superceding easement. Frontier asserts the Ruyons actions "constitue gross fraud, malice, oppression, and/or willful, wanton, or reckless conduct."

II. APPLICABLE LAW

West Virginia Rule of Civil Procedure 12(b)(6) permits a trial court to dismiss a pleading for failure to state a claim upon which relief can be granted. W.Va.R.Civ.P 12(b)(6). Even though Complaints are to be liberally construed, under Rule 12(b)(6), a Plaintiff is required to set forth sufficient information to outline the elements of his claim or permit inferences to be drawn that these elements exist. *John W. Lodge Distrib. Co. v. Texaco*, 161 W.Va. 603, 245 S.E.2d 157 (1978). A trial court, in appraising the sufficiency of a Complaint on a motion to dismiss must inquire as to whether the allegations adhere to Rule 8(a) of the West Virginia Rules of Civil Procedure. *John W. Lodge*, 161 W.Va. at 605, 245 S.E.2d at 159. Pursuant to Rule 8(a), the pleadings must contain: (a) a short and plain statement of the facts showing the pleader is entitled to relief; and (b) a demand for judgment for the relief the pleader seeks. W.Va.R.Civ.P. 8(a). Each essential element of a claim must be stated in the Complaint. *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 398 S.E.2d 532 (1999). Moreover, under West Virginia law, conclusory allegations without any material factual allegations in support thereof are not sufficient, *Par Mar*, 183 W.Va. at 710, 398 S.E.2d at 536. Instead, "the essential material facts must appear on the face of the

complaint... and sketchy generalizations of a conclusory nature unsupported by operative facts does not set forth a cause of action." Id. (citing *Fass v. Newsco Well Service, Ltd.*, 177 W.Va. 50, 350 S.E.2d 562 (W.Va. 1986)).

III. ARGUMENT

a. Count IV - Statements made during litigation are privileged.

Generally stated, allegations made parties during the course of the litigation are privileged, and as such, are not actionable under law.

A party to private litigation is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding. *Collins v. Red Roof Inns, Inc.*, 211 W. Va. 458, 461, 566 S.E.2d 595, 598 (2002).

An absolute privileged communication is one in respect of which, by reason of the occasion on which, or the matter in reference to which, it is made, no remedy can be had in a civil action, however hard it may bear upon a person who claims to be injured thereby, and even though it may have been made maliciously. *Crump v. Beckley Newspapers, Inc.*, 173 W.Va. 699, 706, 320 S.E.2d 70, 78 (1983) (quoting *City of Mullens v. Davidson*, 133 W.Va. 557, 563, 57 S.E.2d 1, 6 (1949) (quoting, 33 Am.Jur. Libel and Slander § 125)). Because an absolute privilege removes all possibility of remedy for a wrong that may even be committed with malice, such a privilege is permitted only in limited circumstances. In this respect, the *Crump* Court observed:

The scope of absolute privilege is confined within fairly narrow limits. "With a few exceptions ... absolutely privileged communications are limited to legislative, judicial and quasi-judicial proceedings and other acts of the State." *Parker v. Appalachian Electric Power Co.*, 126 W.Va. 666, 672, 30 S.E.2d 1, 4 (1944). Absolute privilege situations also include (1) where a plaintiff has consented to the defamation or instigated the publication of

defamatory statements, see, e.g., *Walters v. Linhof*, 559 F.Supp. 1231 (D.Colo.1983); *Johnson v. Buckner*, 610 S.W.2d 406 (Mo.App.1980); *Hollowell v. Career Decisions, Inc.*, 100 Mich.App. 561, 298 N.W.2d 915 (1980); (2) where the broadcast of statements made by political candidates is involved, see *Farmers Educational and Co-op. Union of America v. WDAY, Inc.*, 360 U.S. 525, 79 S.Ct. 1302, 3 L.Ed.2d 1407 (1959); and (3) where a petitioning of the government for a redress of grievances protected by the first amendment is involved, see *Webb v. Fury*, 167 W.Va. 434, 282 S.E.2d 28 (W.Va.1981).

Absolute privilege is based upon the public interest in according to all men the utmost freedom of access to the courts of justice for the settlement of their private disputes. Like the privilege of an attorney, it is absolute. It protects a party to a private litigation or a private prosecutor in a criminal prosecution from liability for defamation irrespective of his purpose in publishing the defamatory matter, of his belief in its truth or even his knowledge of its falsity. *Collins*, 211 W. Va. 458, 461-62, 566 S.E.2d 595, 598-99 (2002).

It is clear in this matter, the basis for Frontier's cause of action in Count IV revolve around an allegation made by the Runyons in its Complaint and as such is part of a judicial proceeding. The law on this matter is very well settled. Simply stated, Frontier cannot proceed with this claim as is it barred by law.

b. Count V - Frontier's assertions do not rise to the level required by law for the recovery of punitive damages.

The intent behind punitive damages under West Virginia law is to punish the tortfeasor based on credible evidence of intentional conduct, or only where there is evidence that a defendant acted with wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others. *Michael on Behalf of Estate of Michael v. Sabado*, 192 W.Va. 585 (1994). The United State Supreme Court has instructed courts reviewing punitive damage claims to consider, in part, the degree of reprehensibility of the defendant's misconduct. *State Farm v.*

Campbell, 538 U.S. 408 (2003). Further, under West Virginia Law, an award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. *West Virginia Code* § 55-7-29.


In their Counterclaim, Frontier fails to set forth any evidence the Runyons acted with wanton, willful, or reckless conduct or criminal indifference toward Frontier. Frontier simply states the Runyons failed to provide it information Frontier claims it needs to abide by the easement negotiated by AEP, the easement holder.

Based on the above, the allegations in the do not support the clear and convincing standard required by under West Virginia Code § 55-7-29 to pursue a punitive damage award, thus, the same must be dismissed.

IV. CONCLUSION

Wherefore, based on the above, Dallas and David Runyon prays this Court dismiss Counts IV and V of the Counterclaim Complaint.

Respectfully Submitted.
By Ferrell & Brown, PLLC,


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Counsel for Runyons'

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON
Plaintiffs,

v.

Civil Act. No.:17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a
FRONTIER COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST
VIRGINIA, INC., and APPALACHIAN POWER COMPANY,

Defendants.


CERTIFICATE OF SERVICE

The undersigned, Nathan D. Brown, of the Ferrell & Brown, PLLC, counsel for the Plaintiffs, Dallas T. Runyon, Sr. and David E. Runyon, does hereby certify that he has, this the 16th day of August 2019, served a true copy of the attached *Dallas and David Runyon's Motion to Dismiss Counts IV and V Contained Frontier's Counterclaim Complaint* upon Defendants counsel of record via United States Mail to the addresses listed below:

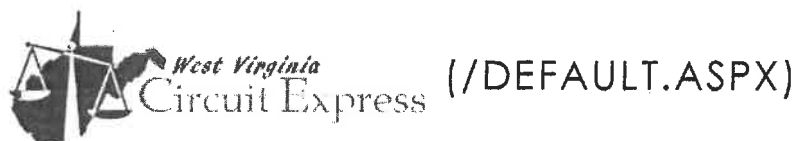
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Counsel for Defendant, Appalachian Power Company

Dallas Runyon, Sr.,
and David Runyon
By counsel,



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Counsel for Runyons'



Civil

Case Information

Thirtieth Judicial Circuit of Mingo County

17-C-108

Judge: MIKI THOMPSON

DALLAS RUNYON, SR VS. CITIZENS TELECOMMUNICATIONS

Plaintiff(s)Plaintiff Attorney(s)

RUNYON, DALLAS, SR

NATHAN D. BROWN

Defendant(s)Defendant Attorney(s)APPALACHIAN POWER COMPANY
FRONTIER WEST VIRGIN
TELECOMMUNICATIONS,

N/A

Date Filed: 06/16/2017

Case Type: DUPLICATE TAPE

Appealed: 0

Final Order Date: N/A

Statistical Close Date: N/A

<u>Line</u>	<u>Date</u>	<u>Action / Result</u>
0001	06/16/2017	VERIFIED COMPLAINT-SUMMONS-CIVIL CASE FILED & SENT TO SOS FOR SER
0002	06/28/2017	RETURNED SUMMONS AND VERIFIED COMPLAINT FILED;
0003	07/27/2017	NOTICE OF APPEARANCE ,CERT.OF SERVICE FILED;
0004	07/31/2017	NOTICE OF APPEARANCE ,CERT.OF SERVICE FILED;
0005	08/14/2017	ANSWER AND CROSS-CLAIM OF APPALACHIAN POWER COMPANY FILED;
0006	08/28/2017	CIVIL COVER SHEET,ANSWER,ANSWER TO CROSS-CLAIM,CERT.OF SERVICE
0007		FILED;
0008	08/29/2017	MOTION FOR DEFAULT JUDGEMENT,CERT.OF SERVICE FILED;
0009	09/12/2017	NOTICE OF HEARING*OCTOBER 5,2017*@10:00 ENTERED;
0010	09/15/2017	NOTICE OF CANCELLATION OF HEARING AND WITHDRAW OF MOTION FOR
0011		DEFAULT JUDGEMENT FILED; (SENT ORDER W/FILE TO JUDGES OFFICE)
0012	09/18/2017	AEP'S ANSWER TO FRONTIER CROSS-CLAIM,CERT.OF SERVICE FILED;
0013	09/22/2017	ORDER GRANTING PLTF'S MOTION TO WITHDRAW DEFAULT JUDGEMENT

0014		ENTERED;
0015	10/04/2017	PLTF'S FIRST SET OF INTERROGATORIES REQUEST FOR PRODUCTION AND
0016		REQUEST FOR ADMISSIONS TO DEF.FRONTIER,CERT.OF SERVICE FILED;
0017	10/04/2017	PLTF'S FIRST SET OF INTERROGATORIES REQUEST FOR PRODUCTION AND
0018		REQUEST FOR ADMISSIONS TO DEF.APPALACHIAN POWER COMPANY,CERT.OF
0019		SERVICE FILED;
0020	11/09/2017	CERTIFICATE OF SERVICE FILED;
0021	11/22/2017	CERT.OF SERVICE FILED;
0022	01/17/2018	NOTICE OF DEPOSITION(FEB.15,2018)@10:00 FILED;
0023	02/09/2018	NOTICE OF CANCELLATION OF DEPOSITION OF(CHRIS COLLIER)
0024		CERTIFICATE OF SERVICE FILED;
0025	04/16/2018	CERTIFICATE OF SERVIXCE FILED;
0026	05/17/2018	COPY SUPOENA TO CHRIS COLLIER COPIES GIVEN TO NATHAN BROWN
0027		FOR SERVICE FILED;
0028	05/22/2018	*FAX*TIME FRAME ORDER TRIAL SET MAY 9,2019@8:30 ENTERED;
0029	05/23/2018	NOTICE OF DEPOSITION CHRIS COLLIER(JUNE 5,2018@10:00)
0030		CERTIFICATE OF SERVICE FILED;
0031	05/29/2018	NOTICE OF VIDEOTAPE DEPOSITIONS OF PLTF'S,CERT.OF SERVICE FILED;
0032	06/04/2018	NOTICE OF CANCELLATION OF DEPOSITION OF CHRIS COLLIER HAS BEEN
0033		CANCELLED FOR JUNE 5,2018,CERTIFICATE OF SERVICE FILED;
0034	06/04/2018	CERTIFICATE OF SERVICE FILED;
0035	09/06/2018	AGREED MOTION FOR NEW TRIAL DATE AND EXTENSION OF TIMEFRAME
0036		ORDER,CERTIFICATE OF SERVICE FILED;
0037	09/25/2018	NOTICE OF DEPOSITION(CLIFF NICOLSON)CERT.OF SERVICE FILED;
0038	09/25/2018	NOTICE OF DEPOSITION(CHRISCOLLIER)CERT.OF SERVICE FILED;
0039	09/25/2018	NOTICE OF DEPOSITION(STEVEN LIGHT)CERT.OF SERVICE FILED;
0040	10/04/2018	NOTICE OF VIDEOTAPE DEPOSITIONS OF KIMBERLY RUNYON,DAVID E.
0041		RUNYON,AND DALLAS T.RUNYON,SR.(OCTOBER 15,2018@10:00)CERTIFICATE
0042		OF SERVICE FILED;
0043	10/18/2018	CERTIFICATE OF SERVICE FILED;
0044	10/30/2018	CERTIFICATE OF SERVICE FILED;
0045	10/30/2018	CERTIFICATE OF SERVICE FILED;
0046	11/13/2018	CERTIFICATE OF SERVICE FILED;
0047	11/13/2018	CERTIFICATE OF SERVICE FILED;
0048	11/13/2018	STIPULATION AND AGREED PROTECTIVE ORDER ENTERED;
0049	11/26/2018	CERTIFICATE OF SERVICE FILED;
0050	11/28/2018	CERTIFICATE OF SERVICE FILED;
0051	12/07/2018	CERTIFICATE OF SERVICE FILED;
0052	12/12/2018	CERTIFICATE OF SERVICE FILED;
0053	12/17/2018	CERTIFICATE OF SERVICE FILED;
0054	12/18/2018	ORDER TO EXTEND DISCOVERY DEADLINE ENTERED;
0055	12/26/2018	CERTIFICATE OF SERVICE FILED;
0056	01/10/2019	ORDER CORRECTING ORDER TO EXTEND DISCOVERY DEADLINE TO ORDER

0057		TO EXTEND TIME FRAME AND SETTING NEW TRIAL DATE ENTERED;
0058	02/05/2019	TIME FRAME ORDER (TRIAL IS SET FOR OCTOBER 17,2019@8:30)ENTERED;
0059	03/06/2019	INITIAL DISCLOSURES,CERTIFICATE OF SERVICE FILED;
0060	03/11/2019	AEP'S INITIAL DISCLOSURES ,CERTIFICATE OF SERVICE FILED;
0061	03/14/2019	FRONTIER WV INC.'S INITIAL DISCLOSURES,CERT.OF SERVICE FILED;
0062	03/25/2019	CERTIFICATE OF SERVICE FILED;
0063	04/29/2019	CERTIFICATE OF SERVICE FILED;
0064	05/06/2019	CERTIFICATE OF SERVICE (FAXED OVER COPY FROM FEB.19,2019)FILED;
0065	05/07/2019	NOTICE OF DEPOSITION CRAIG SMITH,CERT.OF SERVICE FILED;
0066	05/08/2019	CERTIFICATE OF SERVICE FILED;
0067	05/16/2019	CERTIFICATE OF SERVICE FILED;
0068	06/05/2019	NOTICE OF MEDIATION,CERTIFICATE OF SERVICE FILED;
0069	06/07/2019	CERTIFICATE OF SERVICE FILED;
0070	06/11/2019	MEMORANDUM OF LAW IN SUPPORT OF PLTF'S MOTION FOR LEAVE TO
0071		FILE AN AMENDED COMPLAINT ,CERTIFICATE OF SERVICE FILED;
0072	06/11/2019	NOTICE OF HEARING (JUNE 25,2019@1:30)CERTIFICATE OF SERVICE
0073		FILED;
0074	06/12/2019	PLTFS' EXPERT WITNESS DISCLOSURES,CERTIFICATE OF SERVICE
0075		FILED;
0076	06/13/2019	CERTIFICATE OF SERVICE FILED;
0077	06/18/2019	CERTIFICATE OF SERVICE FILED;
0078	06/21/2019	AMENDED NOTICE OF HEARING (JUNE 26,2019@9:00),CERTIFICATE
0079		OF SERVICE FILED;
0080	06/21/2019	CERTIFICATE OF SERVICE FILED;
0081	06/24/2019	AEP'S OPPOSITION TO PLTF'S MOTION TO AMEND,CERTIFICATE OF
0082		SERVICE FILED;
0083	06/25/2019	CERTIFICATE OF SERVICE FILED;
0084	06/25/2019	CERTIFICATE OF SERVICE FILED;
0085	06/25/2019	CERTIFICATE OF SERVICE FILED;
0086	07/02/2019	CERTIFICATE OF SERVICE FILED;
0087	07/10/2019	AGREED ORDER (GRANTING MOTION TO AMEND AND VACATING TIME
0088		FRAME ORDER) ENTERED;

These materials have been prepared by the Office of the Clerk of the various Circuit Courts from original sources and data believed to be reliable. The information contained herein, however, has not been independently verified by the Office of the Clerk or Software Computer Group, Incorporated. The Office of the Clerk of the Circuit Courts and Software Computer Group, Inc. assume no liability for the accuracy, completeness, or timeliness of the information contained herein.

Software Computer Group | PO Box 27 | Fraziers Bottom WV 25082