

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

2021 DEC -9 AM 11:51

CLERK OF COURT

DAVID E. RUNYON and DEBRA BISHOP,  
EXECUTOR OF THE ESTATE OF  
DALLAS T. RUNYON, SR.  
Plaintiffs,

v.

Civil Action No. 17-C-108  
Presiding: Judge Young  
Resolution: Judge Dent and  
Senior Judge Wilkes

CITIZENS TELECOMMUNICATIONS  
COMPANY OF WEST VIRGINIA;  
FRONTIER WEST VIRGINIA, INC.; and  
APPALACHIAN POWER COMPANY,  
Defendants.

**ORDER GRANTING MOTION TO COMPEL AND  
GRANTING IN PART MOTION FOR PROTECTIVE ORDER**

Plaintiffs David E. Runyon and Debra Bishop, as Executor of the Estate of Dallas T. Runyon, Sr., moved this Court for an Order: (1) compelling Defendant Frontier to respond to an interrogatory and related request for production; and (2) precluding a second deposition of Plaintiff David E. Runyon. As set forth below, Plaintiffs' Motion to Compel is **GRANTED** and Plaintiffs' Motion for Protective Order is **GRANTED IN PART**.

**MOTION TO COMPEL**

By motion filed November 2, 2021, Plaintiffs moved to compel responses to the following discovery requests:

**Interrogatory No. 11:** Please provide a detailed response for each year from 2015 to the present, the revenue Frontier made on the lines which were located on the Runyon property. Your answer should include:

- a. An indication of the year described (i.e. 2015, 2016, etc...);
- b. The gross revenue for the applicable year;
- c. The net revenue for the applicable year; and
- d. The formula used to calculate both the gross and net revenue.

**Request for Production No. 23:** Please provide copies of any and all documents used or consulted to answer Interrogatory Eleven.<sup>3</sup>

In opposition to Plaintiffs' Motion, Frontier contended that it possessed no documents responsive to Plaintiffs' requests, and that even if responsive information existed, it need not be produced because "landowner plaintiffs are not entitled to disgorge the profits of trespassing utilities."

Having reviewed the parties' briefs and having heard the parties' oral arguments on November 18, 2021, the Court concludes as follows. First, Frontier is obliged to conduct a reasonable investigation of the records and information available to it in order to respond to Plaintiffs' requests. Second, Plaintiffs' requests for information about the revenue Frontier has earned from the lines located on the Plaintiffs' property are reasonably calculated to lead to the discovery of admissible evidence related to the Plaintiffs' claims for trespass and unjust enrichment. Accordingly, the Plaintiffs' motion to compel is **GRANTED**, and it is **ORDERED** that, by December 2, 2021, Frontier shall fully respond to Interrogatory No. 11 and Request for Production 23, including by specifically:

1. Identifying the number of customers served by the lines crossing the Plaintiffs' property from January 1, 2015, to the present;
2. Producing all records of receipts from those customers; and
3. Identifying any costs that Frontier asserts are associated with those customers

In providing this information, Frontier is authorized to redact any personally identifying information of its customers.

#### **MOTION FOR PROTECTIVE ORDER**

By motion filed November 1, 2021, Plaintiffs sought an order preventing Frontier from taking a second deposition of Plaintiff David Runyon. The Plaintiffs contended that the proposed deposition was barred by Rule 26(b)(10)(A), which prohibits discovery that is "duplicative."

Frontier opposed the motion, arguing that it was entitled to depose Mr. Runyon about (1)

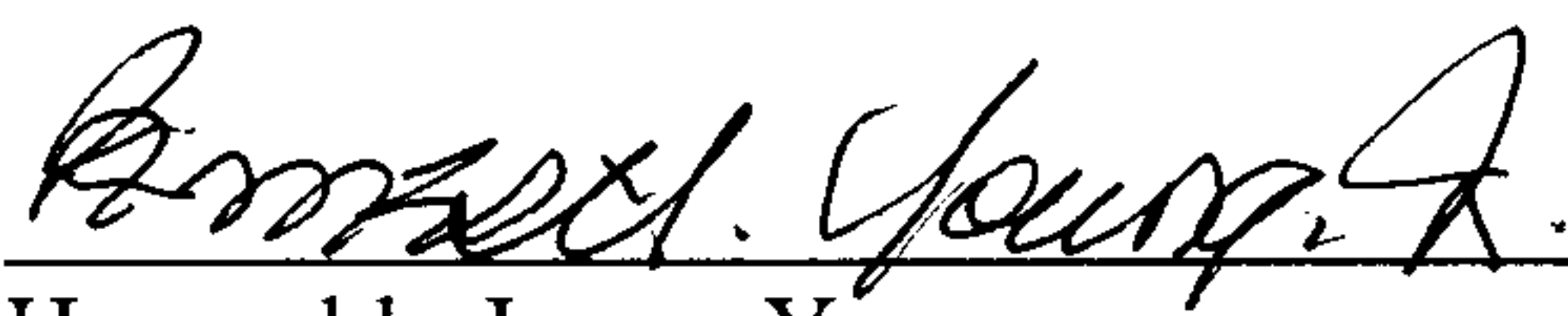


“developments after” his first deposition, (2) “the new causes of action raised in the amended complaint,” and (3) the terms of his settlement with co-defendant Appalachian Power Company. In addition to reviewing the parties’ briefs and hearing their arguments on November 9, 2021, the Court requested and reviewed a copy of the transcript of Mr. Runyon’s first deposition.

The Court concludes that Frontier is not entitled to a second bite at the apple with respect to mining issues or any other subjects that were or could have been covered in Mr. Runyon’s initial deposition. Frontier is entitled, however, to conduct non-duplicative discovery related solely to the new counts in the amended complaint. Accordingly, the Plaintiffs’ motion for protective order is **GRANTED IN PART**, and it is **ORDERED** that the second deposition of Plaintiff David E. Runyon be limited in scope to questions regarding the factual bases for the new counts alleged in the amended complaint, but not crossing into any subjects that were, or could have been, covered at the time of the initial deposition. It is further **ORDERED** that Frontier should provide to Plaintiffs, in advance, a detailed list of all topics within the scope of this order about which Frontier intends to question Mr. Runyon.

The Clerk is directed to send a copy of this Order to all counsel of record. Frontier’s objections and exceptions are noted and preserved.

Entered this 7 day of December, 2021

  
\_\_\_\_\_  
Honorable James Young  
Circuit Court Judge

**Submitted by:**



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Ryan McCune Donovan (WVSB#11660)  
Kayla S. Reynolds (WVSB #13268)  
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**TWENTY-FOURTH JUDICIAL CIRCUIT**

WAYNE COUNTY, WEST VIRGINIA

POST OFFICE BOX 68

WAYNE, WEST VIRGINIA 25570

**JAMES H. YOUNG, JR.**

*Judge*

*Telephone*

04-272-6332

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December 7, 2021

Lonnie Hannah, Circuit Clerk  
Mingo County Courthouse  
78 East Second Avenue, Room 232  
Williamson, West Virginia 25661

RE: David E. Runyon, et al. vs. Citizens Telecommunications Company of West  
Virginia, Civil Action No, 17-C-108

Dear Mr. Hannah:

Please find enclosed two original Orders to be filed in the above-referenced matter, along with a self-addressed envelope in order that a **time-stamped copy can be returned to me.** Please forward to a copy to all parties of record.

If you need anything further, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Diana Fields".

Diana Fields  
Secretary

Enclosures