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February 20, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: In the Matter of Farmers Mutual Telephone Company Complaint Against Frontier
Communications of Minnesota, Inc. re: Early Termination Fees.
Docket No. P522, P405/C-13-941

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce (Department) in response to Frontier Communications of Minnesota, Inc.'s Request for Reconsideration or Amendment in the above referenced matter.

The petition for reconsideration or amendment was filed on February 10, 2013 by:

Robert Cattanch
Dorsey and Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and

Kevin Saville
Vice President and Associate General Counsel
Frontier Communications Corporation
2378 Wilshire Boulevard
Mound, MN 55364

The Department recommends that the Frontier Request be denied and is available to answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY
Rates Analyst

KD/sm
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P522,405/C-13-9411

I. BACKGROUND

On October 8, 2013, Farmers Mutual Telephone Company (Farmers) filed a Complaint and Request for Temporary Relief (Complaint) regarding the “anticompetitive and unreasonable business practices of Frontier Communications of Minnesota, Inc. (Frontier). Farmers stated that Frontier's “inappropriate imposition of early termination fees and use of automatic renewal of contract terms without first obtaining informed customer consent ... has interfered with customers' ability to exercise their choice of provider of telecommunications services and has created a barrier to Farmers' ability to effectively compete.”¹

On October 22, 2013, Frontier filed a motion to dismiss the complaint, stating that 1) Farmers acknowledged in its complaint that Frontier bills an early termination fee for ‘High Speed Internet service’ which is not regulated by the Commission, 2) There is no basis to investigate the Complaint with respect to the Digital Phone service because Frontier fully notifies its customers of the applicable rates, terms, and conditions, including the service agreement term and auto-renewal provision both at the time that service is ordered and monthly on the bills customers receive; and 3) Farmers complaint is premature since Frontier did not seek to mediate its issues with Frontier prior to initiating a complaint as required by its interconnection agreement with Frontier.”²

On November 22, 2013, Farmers and the Department filed comments in opposition to Frontier’s motion.

¹ Complaint, page 1.

² Frontier Motion to Dismiss, October 22, 2013.

On January 30, 2014 the Commission issued an Order Finding Jurisdiction, Finding Grounds to Investigate and Requiring an Answer (Order Finding Jurisdiction).

On February 10, 2014, Frontier filed a Request for Reconsideration or Amendment (Frontier Request).

II. DEPARTMENT RESPONSE TO FRONTIER'S REQUEST

FRONTIER'S PETITION

Frontier states in its petition that “the Commission asserted jurisdiction to investigate Farmers’ complaint without differentiating the investigation of local service issues and interstate issues, much less high-speed Internet services.”

Frontier seeks reconsideration or amendment to clarify that:

1. The Commission is not asserting jurisdiction with respect to internet or interstate services; and that
2. The Commission will exercise jurisdiction only with respect to that portion of services provided by Frontier that encompass intrastate telephone services.

In support of its Request, Frontier argues that 1) Frontier’s telephone and internet services are a la carte and not bundled and 2) the Commission has no jurisdictional authority to regulate high-speed internet service.

FRONTIER'S TELEPHONE AND INTERNET SERVICES ARE PRESENTED AND MARKETED TO CONSUMERS AS “BUNDLES”

Frontier states that it offers customers three categories of service – local telephone service, intra- and inter-state long distance, and high speed internet services. Frontier appears to admit that it “offers service bundles that include some combination of local telephone service features and long distance services.”³ With respect to Frontier’s high-speed internet service, however, Frontier states that the use of the term ‘bundling’ is incorrect and misleading. Frontier states that “although purchasers of both Frontier’s Digital Phone service and broadband high-speed internet service receive discounts to each of these services if both services are purchased, it is inaccurate to call these ‘bundled services.’”⁴

³ While Frontier appears to concede on page 2 that its “Digital Phone” services are bundles, on page 4 of its petition Frontier appears to equivocate, stating that the Digital Phone products could only “*arguably... be thought of as a ‘bundled’ service that includes both intra- and inter-state telephone services.*” .

⁴ Frontier Request, page 2.

The Department finds Frontier's statement puzzling. Bundled service is addressed in Minn. Stat. 237.626 Subd. 2, titled "Bundled Service," where it makes it clear that: "A telephone company or telecommunications carrier may offer telecommunications services subject to the regulatory jurisdiction of the commission as part of a package of services that may include goods and services other than those subject to the commission's regulatory jurisdiction." Consistent with the statute, the term "bundle" is commonly used by both consumers and by providers of services to describe two or more services purchased together, with a discount available as a result of the combined purchase.

Further, Frontier clearly markets varying combinations of high-speed internet service and local and long distance service as "bundles," (*not* as "distinct sets of services to which the discount applies," as Frontier claims).

In reviewing Frontier's website, when the "residential" tab on the home page of Frontier's website (Frontier.com) is selected (See DOC-Exh. 1), the page invites consumers to "choose your *bundle*." Alternatively, if the viewer selects residential "products," a drop-down menu allows the viewer to select "internet," "phone", "TV," or "Protection and Online Security."

Regardless of which option is selected, ("Choose your bundle," "Internet," "Phone," "TV," or "Protection and Online Security"), the consumer must then provide his/her address, presumably to ensure that the inquiring customer is located within Frontier's service area. Once an appropriate address is entered, the customer is directed (again, regardless of the option selected initially) to a page which displays three choices: "Triple Play" (sub headed "Internet +TV+Phone"), "Double Play - Internet + Phone" and "Double Play – Internet + TV." The customer is invited to "Choose your *internet bundle* first, then choose your security bundle." (DOC-Exh. 2)

If "Double Play – Internet + Phone" is selected, the potential customer is invited to choose among several options, each of which includes some combination of high-speed internet, local, and long distance service. If, the customer selects "see details," the customer is provided with a description of the bundle, which displays the option selected and states "this *bundle* includes: ..." as shown in DOC-Exh.3.

Further, while Frontier claims that it "is "abundantly clear" that that the early termination fees apply only to the termination of the high-speed internet services, information publicly available on Frontier's website indicates that it is wholly unclear.

Frontier's "Terms and Conditions" (see fine print at the bottom of Frontier.com's home page under the heading "Get To Know Frontier") posted on its website also refer to "bundles" which include high-speed internet service as well as varying combinations of local and long distance service (see DOC- Exh. 4). The Terms and Conditions indicate that early termination fees apply, but *none* of the Terms and Conditions applicable to bundles of high-speed internet and telephone services posted on the website appears to allocate the fee to one or another of the services within the bundle. The Terms and Conditions for "High-Speed Internet Offer Bundled with Digital Phone State Unlimited Voice-Calling Plan," for example, which combines high-speed internet

service with local and intrastate long distance, states only that the bundle “requires a one- or two-year Price Protection Plan. A \$200 early termination fee applies.” (DOC-Exh. 5)

THE ISSUE BEFORE THE COMMISSION IS NOT WHETHER THE COMMISSION HAS AUTHORITY TO REGULATE HIGH-SPEED-INTERNET SERVICE

Frontier’s petition discusses at great length, as it did in its initial Motion to Dismiss and in oral argument before the Commission, that the Commission lacks legal authority to regulate the rates, terms, and conditions applicable to high-speed internet service. However, no party has claimed that the Commission should assert its authority to regulate retail high-speed internet service, and the Commission’s Order Finding Jurisdiction, Finding Grounds to Investigate, and Requiring an Answer does not indicate that the Commission is asserting authority over rates, terms, and conditions applicable to stand-alone retail high-speed internet service. Frontier’s attempt to characterize the disputed issue in this docket as one of the Commission’s authority over high-speed internet service is misplaced and misleading. The Commission clearly recognized this at the January 14, 2014 hearing⁵ prior to making its decision:

Mr. Saville (at 13:48): I would like to focus on what I view as the paramount issue here which is the issue of whether or not the Commission has jurisdiction over high speed internet broadband service which is really the focus of the complaint.

Chair Heydinger: Excuse me. I’m going to interrupt for just a minute because I think your characterization of the issue is what’s at issue here. You characterize this as a dispute over broadband and whether we have jurisdiction and the other side takes issue with that characterization, so I think that is the important question for you to address. Why is this broadband *only*, and why is it not involving telephone service?

The Commission thoughtfully considered and clearly understood Frontier’s position with respect to the scope of the Commission’s jurisdiction, and still voted unanimously to reject Frontier’s request to narrow the scope of its investigation. There is no need to reconsider these arguments.

Commissioner Boyd (at 25:09) Mr. Saville, on bundled service, is it your position that if there is a dispute on bundled service about some of the contractual arrangements or a dispute about service terms, is it your position that we can’t investigate bundled service because it includes internet service?

Mr. Saville: Our position is first, this is not a bundled service, high speed internet is a separate service from the telephony service and the fact that the consumer subscribes to two different services does not make it a bundled service.

Commissioner Boyd: I understand that. I’m just trying to figure out if your position is that should a dispute arise with a bundled service that includes a state-regulated and a non-state regulated service that we can’t touch that?

⁵ See January 7, 2014 Agenda Meeting, at <http://www.puc.state.mn.us/PUC/calendar/index.html>;

Mr. Saville: My position is that with respect to the internet service that this Commission doesn't have jurisdiction over the rates, terms, and conditions with respect to internet service and that it has no authority to make any determination with respect to internet service.

Finally, the Commission recognized its authority to investigate the relationship between the services at issue, whether regulated or non-regulated, and the impact that an early termination fee applicable to one might have on the other.

Commissioner Lange (at 34:58): From the customer's perspective, in terms of the things that they agree to and pay for, is it a bundle or is it separate?

Mr. Merz: I think that's what your investigation is going to have to find out.

Chair Heydinger (at 38:20): Ms. Jensen, is part of the issue here whether or not the services are so closely tied together that it was obvious and implicit that to terminate any one of them required termination of all, and that that fee would kick in vs. separation of these that would clarify how one would terminate one portion of the service vs. another? Is that part of what you anticipate would be examined in the course of this?

Ms. Jensen: It appears so.

The Commission, in its Order Finding Jurisdiction, acknowledged that "federal law preempts Commission authority to determine prices or other terms for a standalone retail interstate long distance service or a stand-alone retail internet access."⁶ It is as yet unknown whether the high-speed internet service at issue is truly "standalone." While Frontier claims that it does not offer high-speed internet service in a "bundle" with regulated telephone services, it presents and advertises the service as a "bundle" to consumers. To the extent that an early termination fee is perceived by customers to be associated with a bundle which includes intrastate telephone services, and to the extent that (as stated in Farmers' complaint) Frontier's practices interfere with customers' ability to exercise their choice of provider of telecommunications, the Commission's jurisdiction is clear.

III. CONCLUSION

The Commission's decision was well-informed, reasoned, and appropriate. In its Petition Requesting Reconsideration or Amendment of the Commission's Order, Frontier has presented no new arguments, new evidence, or information that the Commission has not already considered and rejected, or that would compel a different conclusion.

⁶ Order Finding Jurisdiction, pages 3-4.

IV. COMMISSION OPTIONS

- A. Deny Frontier's Request for Reconsideration or Amendment and require an answer to the Complaint.
- B. Find that one or more of the issues cited by Frontier warrant reconsideration, and proceed to reconsider or amend the January 30, 2014 order.

V. DEPARTMENT RECOMMENDATION


The Department recommends option A. The Commission should deny Frontier's request for reconsideration or amendment of the Commission's January 30, 2014.

/sm


Internet Explorer browser window showing the Frontier Communications website. The address bar displays "http://frontier.com". The page features the Frontier logo, navigation menus for Residential, Small Business, Enterprise, and Products, and a main promotional banner for "THE HANK OF FRONTIER" High-Speed Internet. The banner includes a photo of a buffalo named Hank, a testimonial, and a large "1999" price tag. A sidebar on the right contains utility links like "Check Mail" and "Online Bill Pay". The Windows taskbar at the bottom shows the time as 2:50 PM on 2/18/2014.

frontier
Communications

- Residential
- Small Business
- Enterprise
- Products
- Special Offers
- Latentia (MI)
- Cart (2)
- Help Center



"It takes High-Speed Internet from Frontier for \$1999 per month please. I have wanted to say that!"



1999

High-Speed Internet

or call **1.888.596.0578**

Where can you keep up with your favorite Quiz Show buffalo?

We care about your experience

-
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frontier Search Frontier Site
STAY CONNECTED

Windows taskbar showing icons for Start, Internet Explorer, and various applications. The system tray shows the time as 2:50 PM on 2/18/2014.



Enable Advanced Selection for Converting to Adobe PDF

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Special Offers for Resident...

Double Play Internet + Phone

Double Play Internet + TV

SAVE \$5/mo

CHOOSE YOUR INTERNET BUNDLE FIRST, THEN CHOOSE YOUR SECURITY BUNDLE.

CHOOSE Frontier Secure Bundle

\$47 98 /mo.

ITEM ADDED TO CART

VIEW ANY CART

See Details

Broadband Max 6Mbps

Digital Phone Essentials

\$50 98 /mo.

ADD TO CART

See Details

Broadband Max 6Mbps

Digital Phone Unlimited

\$60 98 /mo.

ADD TO CART

See Details

Broadband Ultra 12Mbps

Digital Phone Unlimited

\$60 98 /mo.

ADD TO CART

See Details

PERFORMANCE

STANDARD

BASIC

2:56 PM 2/18/2014

← http://frontier.com/residential/special-offers

File Edit View Favorites Tools Help

X Convert Select

Special Offers for Resident...

2:57 PM 2/18/2014

Broadband Max + Digital Phone Essentials

This bundle includes:

Broadband Max
up to 6Mbps

Our best, most affordable Internet plan. With download speeds of up to 6Mbps you can use email, surf the web, download music, share pictures & much more!

- Speeds up to 6Mbps
- 8 email addresses, each with 5GB storage space
- 200 MB of space to create your own web page or blog
- Free Frontier Wi-Fi Router included

Digital Phone
Essentials

Get unlimited local calling, 30 minutes of nationwide long distance, and our most popular calling features – at a price you'll love.

- Caller ID
- Call Waiting
- Rollover up to 300 unused minutes for 12 months
- Calls over 30 long distance minutes for 10¢/minute

Service subject to availability and actual price may vary. Some restrictions may apply.

http://frontier.com/terms/

File Edit View Favorites Tools Help

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Terms and Conditions

Frontier Communications Corporation is committed to maintaining the integrity of all our telecommunications systems. To achieve these goals, we observe and enforce the following Terms and Conditions:

General Terms and Conditions

- Frontier Residential General Terms and Conditions
- Frontier Business Service Terms and Conditions

Television

- DISH Network Digital Satellite TV
- DIRECTV**
- FIOS TV**

High-Speed Internet

- Residential Internet Service Terms and Conditions
- FIOS Internet**
- Residential Internet Service with Embedded Line Terms and Conditions
- Residential Internet Service with Emergency Line Terms and Conditions

Telephone

- Frontier Long Distance
- Unlimited Nationwide Voice-Calling Offers
- Digital Phone State Unlimited Offers**
- Digital Phone Essentials Offers**
- Digital Phone 100 Offers*
- Free Second Line

Bundles

- Internet with Digital Phone Unlimited
- Internet with Digital Phone Unlimited & DISH
- Internet with Digital Phone State Unlimited Voice-Calling**
- Internet with Digital Phone State Unlimited Voice-Calling and DISH**
- Internet with Digital Phone Essentials**
- Internet with Digital Phone Essentials & DISH**
- Internet with Digital Phone 100*
- Internet with Digital Phone 100 & DISH*
- Triple Play-Choice*
- Triple Play-Choice Xtra*

Online Services, Terms of Service and Conditions

- Frontier Online Bill Pay

9:41 AM
2/19/2014



Terms and Conditions

High-Speed Internet Offer Bundled with Digital Phone State Unlimited Voice-Calling Plan

Monthly modem fee of \$6.30 applies in addition to promotional price. New bundled Frontier High-Speed Internet and unlimited intra-state long distance voice-calling plan for residential customers only. Services subject to availability and may require feature-enabled equipment. Requires a one- or two-year Price Protection Plan. A \$200 early termination fee applies. Installation options vary and charges may apply. Applicable taxes, surcharges and USF (Universal Service Fee) charges apply. If You move your residence out of Frontier's service territory, we will impose a termination fee of \$50 instead of the termination fee stated above. Intra-state long distance minutes exclude 900, international, and directory assistance calls and apply only to direct-dialed calls made from your main home telephone number (and on second phone line with qualifying free second phone line offer with High-Speed Internet). Also see "[Digital Phone State Unlimited Offers](#)". Other restrictions may apply.

Tennessee Residents: This offer contains telecommunications services that are also available separately. Should you desire to purchase only one of the services included in this offer, without additional products or services, you may purchase that particular service individually at the price posted on www.frontier.com or filed with the Tennessee Regulatory Authority.

Last Updated: October 14, 2010

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. P522,405/C-13-941

Dated this 20th day of February 2014

/s/Sharon Ferguson

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