

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Farmers Mutual Telephone Company
Complaint Against Frontier Communications of
Minnesota, Inc. re Early Termination Fees

P-522, 405/C-13-941

**COMMENTS OF
FRONTIER COMMUNICATIONS OF MINNESOTA, INC.**

On January 30, 2014, the Minnesota Public Utilities Commission (“Commission”) issued its *Order Finding Jurisdiction, Finding Grounds to Investigate, and Requiring Answer* (“Order”) in the Matter of Farmers Mutual Telephone Company (“Farmers”) Complaint Against Frontier Communications of Minnesota, Inc. (“Frontier”). As the basis for jurisdiction to investigate the entirety of Farmers’ complaint, and without differentiating between intrastate or telephone services provided by Frontier and the interstate and high-speed Internet services also provided by Frontier, the Commission asserted its authority to maintain “just and reasonable rates” and encourage “fair and reasonable competition for local exchange telephone service.”¹

On February 20, 2014, Frontier requested that the Commission reconsider that Order pursuant to Minn. Rule 7829.3000 to clarify the extent of the jurisdiction it intended to exercise.

¹ Order Finding Jurisdiction, Finding Grounds to Investigate, and Requiring Answer (Jan. 30, 2014) at 5.

The Commission has not yet ruled on Frontier's Request for Reconsideration. As further provided for in the Order, and without prejudicing its pending motion for reconsideration or otherwise waiving its right to contest any attempt by the Commission to exercise jurisdiction over its interstate and high-speed Internet services, Frontier hereby also submits comments on the Commission's Order. Specifically, in Ordering clause #4 of the Order, the Commission noted that initial comments by parties were to be filed within 30 days of the Order. In this filing, Frontier submits its comments, which address, among other issues, the procedural process the Commission should follow if the Commission denies Frontier's pending motion for reconsideration and/or proceeds with an investigation with respect to Frontier's services.

Frontier also understands that there may be some question as to whether or not Frontier is required to file an Answer pending the Commission's decision on its Motion for Reconsideration. With respect, Frontier believes that its Motion for Reconsideration stays the time to answer Farmers' Complaint. Frontier further notes, however, that under Minnesota Rule 7829.1800 subpart 4, in the absence of filing an Answer, the allegations in the Complaint will be deemed denied.

Comments

Frontier provides various services to its customers, including local services, features, high-speed Internet, and long distance service (via an affiliate). Some of these services are intrastate services subject to regulation by this Commission; others are interstate or nonregulated services which are not subject to this Commission's regulation.

In addition to offering services on a month-to-month basis, Frontier makes some services available on a term plan basis; that is, customers are advised of the availability of term plans and may agree to purchase particular services from Frontier for a term of years (1 or 2 years

generally). In response, Frontier provides those services to the customer at a rate discounted from the month-to-month rate for the duration of the term plan. Both parties receive benefits through these term plans. The customer obtains discounted and protected pricing, which they experience immediately upon the initiation of the term plan. The company obtains some assurance of revenue certainty in consideration for the discounted service, which it receives over time through the term of the plan.

On October 8, 2013, Farmers filed a complaint with the Commission regarding Frontier's contracts and early termination fees. Farmers' complaint was broad, and encompassed both intrastate, interstate and high-speed Internet services. Farmers' complaint made no attempt to identify for the Commission which of the practices being complained about involved intrastate services subject to the Commission's jurisdiction, and which dealt with interstate or high-speed Internet services and thus were outside the Commission's jurisdiction.

There is no dispute that the Commission's authority extends only to intrastate services. Minnesota statute §237.06 establishes that "*[i]t shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof.*" (emphasis added) The Commission is responsible for enforcing this directive, but there is no legal basis for extending this authority to interstate or nonregulated services. Rates, tolls, and charges for services that are not intrastate in nature are, by definition, not within the Commission's jurisdiction. Indeed, the Order acknowledges that interstate long distance service and stand-alone retail Internet access service are not at issue in this docket.

The Order also notes the provisions of Minn. Stat. §237.21, which states that "*No telephone rates or charges shall be allowed or approved by the commission...which are intended*

to or naturally tend to destroy competition or produce a monopoly in telephone service". Again, this statutory language plainly identifies the Commission's jurisdiction to include "telephone rates or charges", but does not extend that jurisdiction to services other than telephone service, most particularly high-speed Internet services.

The Order asserts that there is some role for Commission intervention in situations where there is a service package or bundle that includes intrastate telephone service as well as long distance telephone service and high-speed Internet services. The Commission concluded that "*Packaging a jurisdictional service with non-jurisdictional service does not defeat jurisdiction.*" Frontier does not challenge the Commission's exercise of jurisdiction over intrastate regulated services. The issue here, however, is the extent to which the Commission's exercise of jurisdiction over the intrastate regulated portion of what is being characterized as "bundled" services² will be expanded, whether by design or practical consequence, to include interstate and high-speed Internet services. Frontier filed a *Request for Reconsideration or Amendment* on February 10, 2014 on this exact issue, and remains hopeful that the Commission will modify the Order to make clear what the Commission understands to be the limits of its jurisdiction and authority in situations such as this.

Comments on Procedural Process

Assuming for purposes of these comments, and without waiving its rights and arguments regarding the Commission's jurisdiction, if the Commission elects to exercise jurisdiction over the intrastate services provided by Frontier, the Commission should refer this proceeding to the

² Frontier does not dispute that its marketing materials use the term "bundle" as a short-hand descriptor for certain offerings, notwithstanding the fact that those respective services are billed separately. Frontier submits that the substance of the transaction as reflected in the format of the bill, which does not reflect a singled "bundled" service or charge, defines the interrelationship of the services.

Minnesota Office of Administrative hearings for a contested case proceeding in accordance with Minnesota Rule 7829.1000, which provides:

7829.1000 REFERRAL FOR CONTESTED CASE PROCEEDING.

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings . . .

If the Commission moves forward with its investigation, one of the fundamental and disputed material factual questions will be whether Frontier appropriately disclosed the terms and conditions of its term plan offerings, including the applicable term for service and applicability of an early termination fee if the customer elects to terminate service prior to the expiration of the agreed upon term. Frontier offers multiple different services, which can be ordered via different processes. The means by which the terms and conditions are disclosed may vary from service to service and customer to customer and will depend on when the customer subscribed to service and what service package they subscribed to. As Frontier has explained, customers are advised of the service term and requirements at the time they subscribe to service. Some of those customers execute an electronic contract. Other customers have terms and conditions reflected in a federal interstate price list similar to the tariffs on file with the Commission. Customers also receive different notices regarding their term commitment on their bill depending on the term of service and the particular service they subscribe to. Some customers agree to automatically renew their existing term plans. Others do not. The Commission will have to resolve numerous material factual questions before it can determine whether the customer received adequate notice of the term commitment and corresponding early termination fee in order to accept and receive the discounted services provided by Frontier.

Similarly, the Commission will also have to determine another fundamental contested factual issue in this docket of whether Frontier provided telephone and high-speed Internet services as separate and distinct services, or whether as asserted by the Department of Commerce and Farmers, Frontier provides only a single and indivisible service that includes not only intrastate telephone services but also interstate telephone and high-speed Internet services which cannot be disaggregated from the services subject to the Commission's jurisdiction.

Both of these disputed issues of material fact can only properly be resolved via a contested case hearing. If the Commission decides to continue its investigation in this docket, the proper avenue to address these as well as any other disputed factual questions, would be refer this matter to the Office of Administrative Hearings as provided for in Minn. Rule 7829.1000.

Answer to Complaint

As noted above, Frontier understands that there may be some question as to whether or not Frontier is required to file an Answer pending the Commission's decision on its Motion for Reconsideration. With respect, Frontier believes that its Motion for Reconsideration stays the time to answer Farmers' Complaint. If the Commission should determine that Frontier's Request for Reconsideration did not stay its time to respond, Minnesota Rule 7829.1800 subpart 4, provides that the allegations in the Farmers' Complaint will be deemed denied if Frontier does not file an Answer. While that procedural mechanism will protect Frontier's interests with respect to Frontier's need to respond further to Farmers' Complaint, Frontier requests the right to submit a more complete Answer if the Commission denies Frontier's pending Motion for Reconsideration. Given that the extent to which the Commission may exercise jurisdiction has not yet been determined, it would be more appropriate for Frontier to receive the Commission's order on its Request for Reconsideration before filing an Answer that will focus the issues or

taking other appropriate action. As noted above, however, even if the Commission determines that Frontier may not file an Answer following the Commission's ruling on Frontier's Motion for Reconsideration the allegations in the Farmer's Complaint will be deemed denied, in accordance with Minnesota Rule 7829.1800 subpart 4.

Dated March 3, 2014

Respectfully submitted,

FRONTIER COMMUNICATIONS OF MINNESOTA, INC.

A handwritten signature in black ink that reads "Kevin Saville". The signature is written in a cursive, flowing style.

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IN THE MATTER OF

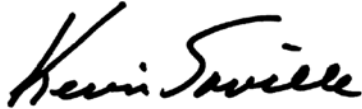
The Farmers Mutual Telephone Company
Complaint Against Frontier Communications
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PUC Docket No. 13-941

CERTIFICATE OF SERVICE

I, Kevin Saville, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing.

Dated this 3rd day of March, 2013.



Kevin Saville

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