

**Minnesota Public Utilities Commission**  
*Revised Staff Briefing Papers*

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Meeting Date: August 24, 2017 ..... \*\*Agenda Item # 9

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Company:           **Frontier Communications of Minnesota, Inc.**

Docket No.       **P405/AM-17-427**

**In the matter of a filing to institute a charge for paper bills for customers.**

**Issue           Should the Commission approve the proposal of Frontier Communications of Minnesota to institute a charge for paper bills for customers of Frontier Digital Phone Bronze Service?**

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**Relevant Documents**

Frontier files tariff to institute paper bill charge for Digital Phone Bronze Service	May 26, 2017
Comments of the Minnesota Department of Commerce .....	June 13, 2017
Reply Comments of Frontier Communications of Minnesota, Inc. ....	June 20, 2017
Commission Notice of Extended Reply Comment Period .....	June 30, 2017
Reply Comments of the Minnesota Department of Commerce .....	July 17, 2017
Reply Comments of the Office of the Attorney General .....	July 17, 2017

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## **I. Statement of the Issue**

Should the Commission approve the proposal of Frontier Communications of Minnesota to institute a charge for paper bills for customers of Frontier Digital Phone Bronze Service?

## **II. Background**

Since 1995, the Minnesota Public Utilities Commission (Commission) has been given the authority by the Minnesota Legislature to approve alternative form of regulation (AFOR) plans for local exchange carriers (LECs). See Minn. Stat. §237.76 through 237.774. The Legislature has since revised certain provisions of these statutes.

Frontier Communications of Minnesota (Frontier) currently operates under an AFOR plan approved on February 23, 2015 in Docket No. P405/AR-14-735. The AFOR Plan designates Frontier Digital Phone Bronze (formerly known as Frontier Digital Phone Essentials) as a Flexibly Priced Service. The AFOR Plan (Procedures for Objection to Price Increases to Flexibly-Priced Services, Section IV.C.2.c, page 8) states that an interested party may file an objection with the Commission including the manner in which the proposal violates state law or Commission rules or is otherwise not in the public interest.

## **III. Summary**

### **Frontier Filing**

On May 26, 2017, Frontier filed to begin a \$1.00 per month charge to receive a paper bill for their Digital Phone Bronze service (see Third Revised Sheet 64, Section 6, of Tariff No. 2). In their filing Frontier stated:

1. customers may elect to receive a digital bill instead and have the billing fee waived;
2. the purpose of initiating this fee was to “go green”; and
3. customers opting for the free digital billing would also be better able to manage their own account with Frontier.

### **Department Comments**

On June 13, 2017, the Minnesota Department of Commerce (Department) filed Comments objecting to the imposition of a paper bill fee in addition to charges paid for the phone service noting the creation of a paper bill is mandated in Minnesota Rules pt. 7810, Subpart 1 (Customer Billing) which states:

Bills to customers shall be typed or machine-printed, rendered regularly, and shall contain an itemized listing of all charges and the period of time

covered by the billing. Statements itemizing message toll charges shall be included in bills to customer. (Emphasis added.)

The Department notes (Department Comments, p. 3) that:

Minnesota Rules pt. 7810.1400 effectively makes the issuance of paper “typed or machine-printed” bills a required element of basic phone service. As such, the cost of issuing paper bills should be recovered through the charges for local and long distance services. Customers should not incur a special charge for paper bills when the billing functionality is a required element of phone service.

The Department acknowledges Minnesota Statutes section 237.101 (Electronic Billing) which states:

A telephone company may provide a customer's periodic account statement to the customer in electronic format in lieu of paper format if the customer has authorized the electronic format in writing.

As supporting background to its objection, the Department observed that Frontier’s Digital Phone Bronze Service is currently designated as a grandfathered service, available only to existing subscribers at their existing locations. This package does not include internet access and customers may be unable to receive an electronic version of their bills. Furthermore, the absence of internet as a component of the bundle makes the service more akin to traditional phone service for which customers traditionally have received a paper bill. The Department states:

While Minnesota Rules pt. 7810.1400 was promulgated prior to the general introduction of Internet service, the lack of Internet access as a component of Frontier’s Digital Phone Bronze Service makes the service consistent with the services offered at the time the rule was promulgated by the Commission. The concern over access to electronic billing information is compounded by the fact that Frontier’s Digital Phone Bronze Service is a grandfathered service, so the package components may not be readily altered to include Internet access. (See Department Comments at page 3.)

... In a previous docket, the Commission decided that customers could opt-out of receiving paper monthly bills. In the Commission’s April 17, 2008 Order in Docket No. P421/AM-08-275, the Commission found that a rule variance, under Minnesota Rules pt. 7829.3200, was unnecessary for Qwest Corporation dba CenturyLink to allow customers to opt-out of receiving paper bills. Unlike the current docket, the Qwest proposal did not involve the prospect of applying a special monthly charge for paper bills. (See Department Comments at page 4.)

Frontier's proposal to apply a monthly charge for the issuance of paper bills was not accompanied by a request for a variance to the requirements in Minnesota Rules pt. 7810.1400 as Minnesota Rules pt. 7829.3200 allows in the following circumstances:

1. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. granting the variance would not adversely affect the public interest; and
3. granting the variance would not conflict with standards imposed by law.

Staff observes that Frontier has not requested a rule variance in this proceeding.

Nonetheless, the Department addresses in the "DOC Attachment" why these conditions do not apply in this instance. Notably:

1. the rule imposes little or no burden upon the carrier, while granting such a variance may impose a significant burden on the affected customers, particularly those lacking internet access;
2. the public interest is adversely affected by the application of a paper bill charge that discourages customers who desire paper bills from receiving timely and convenient billing information so they can verify itemized charges on their bill; and
3. the two sections in the Minnesota Statutes that apply to billing – Minn. Stat. §237.101 and §325F.692 – do not specifically address the possibility of a charge being applied to the issuance of paper bills.

The Department concluded its Comments at page 4 reiterating that:

Frontier's proposal, to apply a monthly charge on the bills of those Digital Phone Bronze Service subscribers who fail to opt-out of receiving paper bills, does not comply with the requirements of the Minnesota Rules pt. 7810.1400, subpart 1. Therefore, the Department recommends disapproval of the proposal.

### **Frontier Reply Comments**

On June 20, 2017 Frontier filed Reply Comments stating that it was in compliance with Minnesota Rules pt. 7810.1400, subpart 1 and Minnesota Statutes section 237.101 (Electronic Billing) stating:

No change to the content or substance of the bills will result from this introduction. Paper bills will look the same as they do now, and the electronic billing will look the same as it does now. The charge should serve as an inducement for customers to move to electronic billing which is more efficient and environmentally friendly.

Staff observes that the Department did not raise the issue of the bill's appearance or content which Frontier rebuts in its Reply Comments, nor did Frontier address the issues which were raised by the Department regarding the introduction of a charge for customers to receive a paper bill.

### **Department Reply Comments**

On July 17, 2017 the Department filed Reply Comments stating that Frontier's Reply Comments of June 22, 2017 suggest that Minnesota Rules pt. 7810.1400, Subpart 1, permits issuance of bills in electronic format at the option of the carrier. The Department refutes this citing Minnesota Statutes section 237.101 (Electronic Billing) as stating:

A telephone company may provide a customer's periodic account statement to the customer in electronic format in lieu of paper format if the customer has authorized the electronic format in writing.

The Department continues stating:

Minnesota law clearly places the choice between the issuance of electronic or paper bills with the customer and not with the carrier.

The Department supports the use of electronic billing if chosen by the customer, but the Department does not support a fee imposed upon customers that want or need to receive a paper bill. The policy change being proposed by Frontier imposes an excessive burden upon customers and fails to pass the public interest test for a variance under Minnesota Rules part 7829.3200. In its June 13, 2017 comments, the Department provided a detailed discussion of the public interest issues associated with Frontier's proposal. The issuance of paper bills to telephone and telecommunications subscribers is a cost of basic service that should continue to be recovered through monthly access line charges. (Emphasis added.)

The Department concludes commenting that if the Commission accepts Frontier's new interpretation of the rules, other companies will follow suit harming customers statewide.

### **Office of the Attorney General Reply Comments**

On July 17, 2017 the Office of the Attorney General (OAG) filed Reply Comments noting that Frontier had "... provided no supporting information for its new fee." (See OAG Reply, page 1.) The OAG states at page 7 that:

The Commission should reject Frontier's proposal to charge its Frontier Digital Phone Bronze customers a fee to continue to receive paper bills. Under the provisions of the Company's AFOR, the Commission must reject the Company's

proposal if there is substantial evidence in the record that the Company's proposal is unlawful, contrary to Commission rules, *or* detrimental to the public interest. Here, all three criteria are met. Minnesota law establishes the paper bill as the default bill format, the costs of which are already recovered in rates. The Commission's rules also establish the default bill format. Finally, there are a number of public interest considerations that illustrate the harm a paper bill fee would cause, especially to certain vulnerable populations.

### Unlawful Charge

The OAG affirms and reinforces the Department's contention that together Minnesota Rule 7810.1400, subpart 1 and Minnesota Statutes section 237.101 establish a paper bill as the default for customer billing elaborating at pages 3-4:

... [I]t is unlawful and counter to Commission rules to charge customers an add-on fee in order to continue to receive the default paper bill, as the Company here proposes. Minnesota law establishes the paper bill as the default option. As such, current rates already reflect the costs associated with printing and delivering paper bills. Such a charge would require Frontier's customers to pay for each paper bill twice. ...

A paper bill is the default format for telephone services in Minnesota. It runs counter to Minnesota law and Commission rules to charge customers an additional fee in order to continue to receive the default bill. A paper bill is the default bill type in Minnesota because Minnesota Statutes section 237.101 requires customer authorization before switching to an electronic bill. This establishes a paper bill as the default bill format, the costs of which are and have been recovered through the rate established in Frontier's tariff.

... The Company should not be allowed to extract an add-on fee from customers in order to maintain the default bill format. The flexibly-priced Frontier Digital Phone Bronze offering already takes into account costs such as billing in its rate. Frontier has not demonstrated that an add-on fee is necessary and, importantly, not duplicative. Flexibly-priced services are priced at a level equal to or exceeding the total service long-run incremental cost of providing that service. [See Minn. Stat. § 237.762, subd. 6.] In other words, a company providing a flexibly-priced service cannot offer it below this level. [See Footnote 8.] Because of this, Frontier's existing rate for its Digital Phone Bronze service must already incorporate the cost to provide the default paper bill to customers. Under the law, this is required. To assess a paper bill penalty onto its customers would result in double-charging customers the costs associated with paper bills.

The OAG further notes that Frontier did not argue that the monthly rate for its Digital Phone Bronze product was priced below the applicable costs, nor did it provide any analysis in support of the \$1 fee it proposed. (See Footnote 9.)

#### Contrary to Public Interest

The OAG affirms the public interest arguments in the Attachment to the Department's Comments of June 13, 2017 and extends those points citing the 2016 National Consumer Law Center (NCLC) study "*Paper Statements: An Important Consumer Protection*". The OAG noted at page 5-6:

[R]eceipt of paper bills can help consumers identify unauthorized fees or charges on their bills that may otherwise go unnoticed. This ... can help consumers remedy problematic charges sooner, thus avoiding the payment of unauthorized added fees. A direct disincentive to continue to receive a paper bill—here, in the form of a paper bill charge—would force consumers to choose between paying an add-on fee to continue receiving paper bills or abandoning paper billing for online-only statements. [T]his arrangement ... could also harm vulnerable Minnesotans, leaving them to choose between paying more for the same service or getting an electronic bill that they may have trouble accessing.

... [T]he “digital divide” prevents many consumers from access to reliable, high-quality broadband service. This divide overwhelmingly affects vulnerable populations such as low-income and elderly citizens. As such, any action that makes it more difficult or costly to receive a paper bill will have an outsized impact on these groups. Second, although some consumers may have internet access through a mobile device, access to a statement via such a device may be impractical or even impossible for many. Put simply, it is easier to read a letter-sized piece of paper than a 3-inch screen.

The OAG also shares Department's concerns that since the internet is not included in the service offered, customers not otherwise having access to the internet will be unable to avoid Frontier's additional paper bill charge.

#### **IV. Staff Analysis and Recommendation**

The essential question of this filing can be summarized as, “Is the delivery of a paper bill as required in M.R. 7810.1400, Subd. 1 a required element of basic phone service paid through the charges for local and long distance services.” The Department and the OAG effectively argue that this is the case and that the proposed additional charge to receive a paper bill is not in the public interest.

The Department in its Comments at page 4 says that MR 7810.1400, subd. 1 “effectively” makes the paper bill “a required element of basic phone service.” Therefore, the cost “should be” recovered through the charges for local and long distance services.

The legislature, through Minn. Stat. §237.101, and the Commission, through Minn. Rule 7810.1400, have already made the policy decision that as a default, a customer should receive a printed bill, and if they consent, or opt in, they may receive an electronic bill.

Allowing Frontier to charge for what they must already provide is a significant shift in the policy set by the legislature and Commission. If there are other companies adopting this practice, Frontier has not mentioned them. Some companies, staff believes, may offer a small discount to incent customers to move to electronic billing if they wish to do so. However, this is the reverse of what Frontier is proposing.

Nor does Frontier’s argument in its reply comments that it is not changing the content or substance of the bill help its case. The content is not at issue here; the issue is whether customers can be charged for a paper version when Commission Rules already require them.

Finally, as a matter of public interest, both the Department and OAG effectively explain that a paper bill allows many, especially vulnerable consumer groups, a timely, readable means to review their bills for accuracy. They also note that these same customers may lack internet access and/or an effective viewing screen to access digital bills.

Staff finds the Department’s and OAG’s opposition to the proposed paper bill fee to be reasonable based on its arguments presented, and the lack of rebuttal of those arguments by Frontier.

Staff concurs with the Department’s and OAG’s recommendation to disapprove the proposal.

## **V. Commission Options**

- A. Approve the proposal of Frontier Communications of Minnesota to institute a charge for paper bills for customers of Frontier Digital Phone Bronze Service.
- B. Disapprove the proposal of Frontier Communications of Minnesota to institute a charge for paper bills for customers of Frontier Digital Phone Bronze Service.
- C. Take other action as the Commission deems appropriate.

The Department and the OAG recommend Option “B” and Staff concurs.