

**Minnesota Public Utilities Commission**  
*Staff Briefing Paper*

---

Meeting Date: April 1, 2014.....\*\* Agenda Item #   2  

---

Company: Farmers Mutual Telephone Co.; Frontier Communications of Minnesota

Docket No. P-522, 405/C-13-941  
In the Matter of the Complaint by Farmers Mutual Telephone Co. (Farmers)  
Against Frontier Communications of Minnesota (Frontier) Regarding Early  
Termination Fees

- Issues:
1. Should the Commission reconsider or reopen its *January 30<sup>th</sup> Order*?
  2. If so, should the *January 30<sup>th</sup> Order* be amended?
  3. How should the Commission proceed with respect to the complaint?

**Please Note: Minn. Rules 7829.3000, subp. 6, states that “[t]he commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.**

Staff: Kevin O’Grady.....651-201-2218

---

The attached materials are work papers of Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

**This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.**

---

## *Relevant Documents*

---

Farmers Complaint.....	October 8, 2013
<i>Order Finding Jurisdiction, Finding Grounds to Investigate, and Requiring Answer</i> .....	January 30, 2014
Frontier Petition for Reconsideration.....	February 10, 2014
Farmers Comments re: Reconsideration.....	February 19, 2014
DOC Comments re: Reconsideration.....	February 20, 2014
Frontier Comments .....	March 3, 2014
Reply Comments: Farmers .....	March 6, 2014
Reply Comments: DOC .....	March 7, 2014

---

## *Background*

---

**On October 8, 2013**, Farmers Mutual Telephone Co. (Farmers) filed a complaint against Frontier Communications of Minnesota (Frontier) arguing that Frontier is engaging in anticompetitive and unreasonable business practices by its imposition of early termination fees (ETF) and its use of automatic renewal of contract terms without first obtaining informed customer consent.

**On January 30, 2014**, the Commission issued its *Order Finding Jurisdiction, Finding Grounds to Investigate, and Requiring Answer*. In that *Order* the Commission found that it has jurisdiction over the matter and that there are reasonable grounds to investigate the complaint. The Commission ordered Frontier to file an answer to the complaint pursuant to Minn. Rules, part 7829.1800, subp. 2.

**On February 10, 2014**, Frontier filed a request for reconsideration or amendment of the *January 30<sup>th</sup> Order* to “make clear: (1) that the Commission is not asserting jurisdiction with respect to Internet or interstate phone services, and (2) the Commission will exercise jurisdiction only with respect to that portion of services provided by Frontier that encompass intrastate telephone services.”

**On February 19, 2014**, Farmers filed comments recommending denial of Frontier’s petition for reconsideration.

**On February 20, 2014**, the Minnesota Department of Commerce (DOC) filed comments opposing Frontier's petition for reconsideration.

**On March 3, 2014**, Frontier filed comments denying the allegations in the Complaint.

**On March 6, 2014**, Farmers filed comments requesting referral of the matter to the Office of Administrative Hearings (OAH).

**On March 7, 2014**, DOC recommended referral of the matter to the OAH to the extent that there are disputed issues of material fact.

---

Note: The record in this docket includes a number of letters filed by Frontier customers objecting to Frontier's imposition of early termination fees. In addition to those e-filed letters the Commission's Consumer Affairs Office (CAO) received two related complaints directly from customers (one in October 2013, and one in February 2014). CAO contacted Frontier on the customers' behalf and Frontier responded by refunding the early termination fees to those customers.

---

## ***Petition for Reconsideration***

---

### **Rules Guiding Reconsideration**

Commission rules make provision for the reconsideration of an order:

The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition. [Minn. Rules 7829.3000, subp. 6]

And Commission policy guides the motion to reconsider:

Any action of the Commission may be reconsidered. However, only a Commissioner voting on the prevailing side may move to reconsider. If the

motion to reconsider passes, then the matter is before the Commission. The Commission may then alter, amend, rescind, or uphold its previous decision. The same question cannot be reconsidered a second time. (Mason, sec. 457.2.) However, the Commission may at any time, on its own motion or upon the motion of an interested party, upon notice, reopen any case after issuing an order. (Minn. Stat. sec. 216B.25.) [Minnesota Public Utilities Commission, *Operating Procedures and Policy, Meeting Procedures*, issued February 1, 1995]

Commissioners Heydinger, Boyd and Lange supported the motion codified in the *January 30<sup>th</sup> Order* and, as such, any one of them may offer a motion to reconsider. Commissioner Wergin was absent.

### **Frontier Petition for Reconsideration**

Frontier respectfully requests that the Commission reconsider or amend its *Order* to make clear: (1) that the Commission is not asserting jurisdiction with respect to Internet or interstate phone services, and (2) the Commission will exercise jurisdiction only with respect to that portion of services provided by Frontier that encompass intrastate telephone services.

In the *Order*, 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. Because Frontier believes that the Commission lacks jurisdiction to investigate the high-speed Internet services offered by Frontier or any other carrier, and that a significant portion of its Digital Phone offerings is interstate in nature, Frontier respectfully requests that the Commission reconsider its *Order*, and craft a revised order that more clearly delineates the extent of the investigation intended by the Commission. Specifically, Frontier requests that the Commission clarify whether any investigation will extend beyond intrastate telephone service issues to include interstate telephone services, or even more expansively, whether the Commission intends to exercise jurisdiction over Frontier's high-speed Internet services.

### **Farmers Comments re: Reconsideration**

Farmers urges the Commission to deny Frontier's petition for reconsideration arguing that Frontier does nothing more than repeat the arguments that the Commission has already rejected. Frontier's arguments have not improved with repetition. The reasoning supporting the Commission's *Order* is sound and should be affirmed. The issues raised by Farmers' complaint fall squarely within the Commission's jurisdiction. To the extent that the Commission's investigation ultimately supports Frontier's claim that its early termination fees and automatic

contract renewals are completely separate from, and wholly unrelated to, intrastate phone service -- a development that, in light of the evidence that exists now, Farmers regards as extremely unlikely -- Frontier will have an opportunity to renew its arguments in light of that new evidence. Certainly the evidence adduced so far does not warrant cutting off the investigation even before it has begun.

### **DOC Comments re: Reconsideration**

DOC recommends that the Commission deny Frontier's request for reconsideration. The Commission's decision was well-informed, reasoned, and appropriate. 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.

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 *January 30<sup>th</sup> Order* 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, hearing prior to making its decision.

### **Staff Comment**

Staff agrees with the Farmers and DOC recommendations to deny the petition for reconsideration.

### **Commission Options**

#### **Issue 1: Should the Commission Reconsider or Reopen its *January 30<sup>th</sup> Order*?**

- 1.a Grant Frontier's petition for reconsideration.
- 1.b Deny Frontier's petition for reconsideration.

- 1.c Deny Frontier's petition for reconsideration and reconsider the *January 30<sup>th</sup> Order* on the Commission's own motion.
- 1.d Take other action.

Staff recommends option 1.b.

**Issue 2: Should the *January 30<sup>th</sup> Order* be Amended?**

Note: If the Commission denies Frontier's petition (option 1.b) it need not take any action regarding Issue 2.

- 2.a Amend the *Order* as requested by Frontier to clarify (1) that the Commission is not asserting jurisdiction with respect to Internet or interstate phone services, and (2) the Commission will exercise jurisdiction only with respect to that portion of services provided by Frontier that encompass intrastate telephone services.
- 2.b Do not amend the *Order*.
- 2.c Take other action.

Staff recommends option 2.b.

---

***Disposition of the Complaint***

---

**Background**

The Commission's *January 30<sup>th</sup> Order*, ordering paragraph 3, stated:

The Commission hereby serves the attached complaint on Frontier and orders the Company to file an answer to the complaint within 20 days of the service date of the Commission Order under Minn. Rules, part 7829.1800, subp. 2.

Part 7829.1800, subp. 2, states:

On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

And part 7829.1800, subp. 4, states:

If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied.

Frontier did not file an answer to the complaint within the 20 days contemplated by the Commission's Rules although it did file comments on March 3, 2014, referencing part 7829.1800, subp. 4.

### **Frontier Comments**

Frontier argued that if the Commission elects to exercise jurisdiction over the intrastate services provided by Frontier, the Commission should refer this proceeding to the OAH for a contested case proceeding in accordance with Minnesota Rule 7829.1000. 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. 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.

Frontier stated that it believed that its petition for reconsideration stayed the Commission's *January 30<sup>th</sup> Order* requiring an answer to the complaint. Frontier also stated that 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 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.

### **Farmers Comments**

Farmers requests that this matter be referred without further delay to the OAH to develop the record on all disputed issues of fact arising from Farmers' complaint and without providing Frontier with further opportunity to answer. Frontier does not identify any Commission rule or legal authority in support of its belief that a petition for reconsideration stays the Commission's *January 30<sup>th</sup> Order* requiring an answer. In fact, the Commission's rules provide that the Commission "may vacate or stay the order, or part of the order, that is the subject of the petition [for reconsideration] pending action on the petition." Minn. Rules, part 7829.3000, subd. 6. Pursuant to this rule, the filing of a petition for reconsideration does not, by itself, stay the effect of the order that is the subject of the petition; rather, the Commission must take some affirmative action to stay the effect of its order. Here, Frontier did not request a stay and the Commission has not ordered one.

### **DOC Comments**

DOC argues that the Commission should consider all allegations of the complaint denied, and move forward without delay to establish an appropriate procedure for consideration of the merits of the case. To the extent there are disputed issues of material fact, DOC recommends referral of the matter to the OAH for a contested case proceeding.

While Minn. Rules, part 7829.3000, subd. 6, permits the Commission to stay its *Order*, no automatic stay results from the filing of a motion for reconsideration and there is no requirement that the Commission stay its order in event reconsideration is requested. In fact, the Commission has not done so in this matter.

### **Staff Comment**

Staff agrees with Farmers and DOC that Minnesota's Rules do not make provision for an automatic stay of a Commission order addressing telecommunications issues upon the filing of a petition for reconsideration. Frontier did not affirmatively request a stay.



Staff believes that there are likely to be material facts in dispute and agrees with all parties that the matter should be referred to the OAH for record development. If the Commission does not believe that material facts are at issue it may retain the matter for investigation.

**Commission Options**

**Issue 3: How Should the Commission Proceed with Respect to the Complaint?**

- 3.a Retain the matter for investigation. Establish a comment period.
- 3.b Refer the matter to the OAH for record development.
- 3.c Find that Frontier's petition for reconsideration stays the Commission's *January 30<sup>th</sup> Order*. Grant Frontier the opportunity to file a more detailed answer to the complaint. Establish a comment period.
- 3.d Take other action.

Staff recommends option 3.b.

---

## *Summary of Options*

---

### **Issue 1: Should the Commission Reconsider or Reopen its *January 30<sup>th</sup> Order*?**

- 1.a Grant Frontier's petition for reconsideration.
- 1.b Deny Frontier's petition for reconsideration.
- 1.c Deny Frontier's petition for reconsideration and reconsider the *January 30<sup>th</sup> Order* on the Commission's own motion.
- 1.d Take other action.

Staff recommends option 1.b.

### **Issue 2: Should the *January 30<sup>th</sup> Order* be Amended?**

Note: If the Commission denies Frontier's petition (option 1.b) it need not take any action regarding Issue 2.

- 2.a Amend the *Order* as requested by Frontier to clarify (1) that the Commission is not asserting jurisdiction with respect to Internet or interstate phone services, and (2) the Commission will exercise jurisdiction only with respect to that portion of services provided by Frontier that encompass intrastate telephone services..
- 2.b Do not amend the *Order*.
- 2.c Take other action.

Staff recommends option 2.b.

### **Issue 3: How Should the Commission Proceed with Respect to the Complaint?**

- 3.a Retain the matter for investigation. Establish a comment period.
- 3.b Refer the matter to the OAH for record development.
- 3.c Find that Frontier's petition for reconsideration stays the Commission's *January 30<sup>th</sup> Order*. Grant Frontier the opportunity to file a more detailed answer to the complaint. Establish a comment period.
- 3.d Take other action.

Staff recommends option 3.b.