

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint by Farmers
Mutual Telephone Company against Frontier
Communications of Minnesota Regarding Early
Termination Fees

ISSUE DATE: April 9, 2014

DOCKET NO. P-522, 405/C-13-941

NOTICE OF AND ORDER FOR
HEARING

PROCEDURAL HISTORY

On October 8, 2013, Farmers Mutual Telephone Company (Farmers), a competitive local exchange carrier, filed a Verified Complaint and Request for Temporary Relief against Frontier Communications of Minnesota (Frontier), an incumbent local exchange carrier.

The Complaint alleges that Frontier is engaging in anticompetitive and unreasonable business practices by its imposition of early termination fees and its use of automatic renewal of contract terms without first obtaining informed customer consent.

On October 22, 2013, Frontier filed a motion seeking to dismiss the Complaint, asserting, inter alia, that the Commission lacks jurisdiction over Frontier's high-speed internet service, and that there is no reasonable basis to investigate Frontier's intrastate telecommunications services, as Frontier provides subscribers notice of the early termination fees and automatic renewals.

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

On February 10, 2014, Frontier filed a petition for reconsideration or amendment of the Commission's January 30, 2014 order.

On February 19 and 20, 2014, Farmers and the Minnesota Department of Commerce (the Department) filed comments opposing Frontier's petition.

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

On March 6 and 7, 2014, Farmers and the Department filed comments recommending referral of the matter to the Office of Administrative Hearings.

On April 1, 2014, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Frontier's Request for Reconsideration

On February 10, 2014, Frontier filed a petition for reconsideration or amendment of the Commission's January 30, 2014 order.

On April 1, 2014, the matter came before the Commission. The Chair inquired whether any Commissioner wished to move to reconsider the January 30, 2014 order. No Commissioner moved to reconsider, and the petition is therefore denied.

II. Allegations deemed denied

The Commission's January 30, 2014 order stated at Ordering Paragraph 3:

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's Order under Minn. Rules, part 7829.1800, subp. 2.

Frontier did not file an answer to the Complaint within 20 days. Under Minn. Rules, part 7829.1800, subp. 4, the allegations of the complaint are therefore denied.

III. Jurisdiction and Referral for Contested Case Procedures

The Commission has previously ruled that it has jurisdiction over this matter.¹ Minn. Stat. § 237.02 provides that the Commission has authority over telephone companies doing business in Minnesota. And, in its January 30, 2014 order, the Commission found that it has jurisdiction to investigate the matters raised in Farmers' Complaint, under Minn. Stat. § 237.081. Finally, all parties acknowledge that the Commission has clear authority over intrastate telephone and telecommunication services, and therefore those aspects of Farmers' complaint.

The Commission finds that it cannot satisfactorily resolve all issues raised in Farmers' Complaint on the basis of the record before it. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

IV. Issues to be Addressed

The issues in this case center on whether Frontier appropriately disclosed the terms and conditions of its various 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. The Complaint raises allegations of unreasonable and anticompetitive practices that could inhibit customers' choice, and that require factual development of the record.

¹ Order Finding Jurisdiction, Finding Grounds to Investigate, and Requiring Answer, this docket, (January 30, 2014) .

Farmers' Complaint also alleges that Frontier's use of automatic renewal of contract terms without first obtaining informed customer consent interfered with customers' ability to exercise their choice of provider of telecommunications services and has created a barrier to Farmers' ability to effectively compete.

The parties should address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the complaint.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Barbara Neilson. Her address and telephone number are as follows: Office of Administrative Hearing, 600 North Robert Street, St. Paul, Minnesota 55101 and (651) 361-7845. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 – 14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Commission Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2218.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

VI. Parties and Intervention

The current parties to this case are Farmers, Frontier, and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

VII. Prehearing Conference

A prehearing conference with the Administrative Law Judge will be held by telephone on April 30, 2014, at 9:30 a.m. To participate in the prehearing conference, parties should call 1-(888) 742-5095, and use Conference code: 3711523559.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

VIII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. § 10A.01 et seq., apply to cases of rate setting. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

IX. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300 – 7845.7400, which all parties are urged to consult.

ORDER

1. The motion to reconsider is denied.
2. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota
55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite
350 St. Paul, Minnesota
55101-2147

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NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Barbara Neilson, Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101
and (651) 361-7845. Mailing address: P.O. Box 64620, St. Paul, Minnesota 55164-0620.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____