BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

ISSUE DATE: January 30, 2014

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

ORDER FINDING JURISDICTION, FINDING GROUNDS TO INVESTIGATE, AND REQUIRING ANSWER

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 dismissal of the Complaint, arguing that:

- the early termination fees about which Farmers complains relate only to Frontier's high-speed internet service, over which the Commission has no jurisdiction;
- there is no reasonable basis on which to investigate the Complaint with respect to intrastate telecommunications services because Frontier provides subscribers notice of the early termination fees and automatic renewal term; and
- the Complaint is premature, because an interconnection agreement between Farmers and Frontier requires mediation before Farmers may request a Commission investigation

On November 22, 2013, Farmers and the Minnesota Department of Commerce (the Department) filed comments in opposition to Frontier's motion to dismiss.

On December 5, 2013, and January 2, 2014, a number of letters from current and former customers of Frontier were filed , alleging that after the completion of an initial term of service, and changing to a new phone and internet company, each had received a bill from Frontier that included early termination fees ranging from $200 to $500.

On January 7, 2014, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Factual Background and Complaint

Frontier offers what it describes as a digital phone service bundle that provides customers with local telephone service, intrastate long distance service, and interstate long distance service with various customer calling features.[1] Frontier's service offering also includes high-speed internet service.

Farmers' Complaint in this docket alleges that Frontier has charged early termination fees to former customers who have terminated service with Frontier to purchase service from Farmers, and that Frontier has relied on automatic contract renewal terms to retain current customers, even though the customers had not agreed to those terms. Farmers alleges that when Frontier customers have contacted Frontier objecting to the imposition of the early termination fees, and disputed that they were notified of such terms in their contracts with Frontier, Frontier has failed to produce any written or recorded evidence of the customers' informed acceptance of the terms.

The Complaint alleges that by virtue of such actions, Frontier is engaging in anticompetitive business practices that unreasonably interfere with the ability of Frontier customers to exercise their choice of telecommunications provider and create a barrier to Farmers' ability to compete. The Complaint requests that the Commission commence an investigation into Frontier's use of such early termination fees and automatic contract renewals.

Finally, Farmers stated that it has information from some 50 Frontier customers who have come forward complaining that they were not adequately informed about the application of an early termination fee to their Frontier service(s).

II. Commission Jurisdiction over the Complaint

A. Positions of the Parties

Frontier argued that the Commission's jurisdiction under Minn. Stat. § 237.081 is limited to investigating the adequacy of telephone service. Frontier asserts that those portions of Farmers Complaint that relate to high-speed internet service should be dismissed, as high-speed internet service is not a telecommunications service or telephone service subject to Commission jurisdiction. Instead, internet broadband service is an information service subject to the exclusive jurisdiction of the Federal Communications Commission.

[1] See Frontier Motion to Dismiss, page 5.

Farmers argued that the Commission's investigatory authority is extremely broad, and may be exercised whenever it believes that an investigation of any matter relating to any telephone service should be made. Farmers asserted that Frontier's practices, as alleged in Farmers' Complaint, clearly affect telephone service, and the ability of Minnesota consumers to choose their telephone provider.

Farmers argued that its Complaint does not relate only to Frontier's internet services. Instead, Farmers argued that Frontier's practice of applying early termination fees and automatic contract renewals to its Digital Phone service and to internet service that is bundled with its Digital Phone service impedes customers' ability to change telephone providers.

The Department agreed that the Commission has broad jurisdiction to investigate this matter under Minn. Stat. § 237.081. While acknowledging that federal law preempts the Commission's authority over stand-alone retail interstate telephone long distance service, or stand-alone retail internet service, it is not such stand-alone service that is the subject of Farmers' Complaint.

The Department argued that this docket involves the alleged unreasonable conduct of Frontier, in the provision of intrastate phone services over which the Commission has exclusive jurisdiction, which Frontier sells at retail within a package of services, some of which are not regulated by the Commission. The Department asserted that intrastate services that are included in a bundle of services are directly affected by the application of an early termination fee to the bundle of services.

Further, the Department argued that because an incumbent local exchange carrier such as Frontier's allocation of an early termination fee to particular products or services within a bundle is controlled by the carrier alone, and because it is not clear whether and under what circumstances a customer can avoid the early termination fee on its intrastate services, the Commission should not presume that the practice is outside its jurisdiction without an investigation.

B. Commission Jurisdiction over Farmers' Complaint

Having carefully considered the written and oral presentations of the parties, the Commission concludes that it has jurisdiction over this matter. First, Minn. Stat. § 237.02 provides that the Commission has authority over telephone companies doing business in this state. Second, the Commission finds that it has jurisdiction to investigate the matters raised in Farmers' Complaint.

The Commission's authority over intrastate telephone and telecommunication services, and accordingly, its authority over Farmers' Complaint to the extent that it relates to Frontier's Digital Phone service and the intrastate components of its Digital Phone Service bundle, is unquestioned. Frontier, however, claims that the early termination fees it imposes on certain customers of its phone service package are not part of the intrastate service Frontier provides, and relate only to the interstate components of the bundled phone service and the high-speed internet services over which the Federal Communications Commission, and not the Commission, has jurisdiction.

The Commission concludes that it has subject matter jurisdiction to investigate the matters raised in the Complaint. The Commission has broad authority under Minn. Stat. § 237.081 to open an investigation whenever it believes an investigation "should for any reason be made." While federal law preempts Commission authority to determine prices or other terms for a stand-alone retail interstate long distance service or stand-alone retail internet access service, that is not the issue in this docket. Frontier offers and advertises its intrastate digital phone service, which is clearly within Commission jurisdiction, within a service package or bundle that includes long distance telephone service as well as high-speed internet services. Packaging a jurisdictional service with non-jurisdiction service does not defeat jurisdiction.

III. Grounds to Investigate

A. Positions of the Parties

Frontier argued that there is no basis to investigate the Complaint, because Frontier fully discloses the terms and renewal provisions of the relevant discounted digital phone service package at the time customers order service and on each subsequent bill.

Both Farmers and the Department argued that there is a sufficient basis to investigate the matters raised in its Complaint, because Frontier's use of early termination fees and automatic contract renewals without first obtaining customer consent implicates key state policy goals for telecommunication, including encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner and promoting customer choice.

Farmers argued that Frontier's practices are designed to discourage, if not prevent, customers from changing service providers, and harm competition. Farmers also argued that whatever customer disclosures Frontier makes to customers regarding early termination fees and automatic contract renewals, such disclosures appear to be made only *after* the service commences, and that Frontier has to date failed to disclose documentation evidencing customer agreement to such terms prior to commencement of the service.

The Department argued that Farmers' Complaint raises questions of unreasonable, anticompetitive practices that could inhibit competition and customer choice. The Department asserted that there are significant factual issues raised by Farmers' Complaint that are related to the provision of state regulated telephone services, which need to be investigated. And, while recognizing that the allegations in the Complaint might later prove unfounded, the Department nonetheless recommended that the Commission investigate the matter and require Frontier to answer the Complaint.

B. Commission Action

The Commission concurs with both Farmers and the Department that there are reasonable grounds to investigate Frontier's practices with regard to the early termination fees and automatic contract renewals raised in Farmers' Complaint. Frontier's claim that it fully discloses the terms and renewal provisions of the relevant discounted digital phone service package is as yet unsubstantiated. Importantly, the claim is disputed by Farmers and the numerous current and former customers of Frontier who have filed comments in this docket.

As recognized by Farmers and the Department, under Minn. Stat. § 237.011, the Commission has the obligation to consider certain state goals for telecommunications, including maintaining just and reasonable rates, encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner, and promoting customer choice. Further, the Commission is mindful of the provisions of Minn. Stat. § 237.21, which state as follows, "[n]o telephone rates or charges shall be allowed or approved by the commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected."

IV. Dispute Resolution Terms Do Not Control

Finally, Frontier argued that Farmers' Complaint is premature, because Farmers did not attempt to mediate its issues with Frontier prior to initiating a complaint, as required by its interconnection agreement with Frontier.

The Commission disagrees. The dispute resolution process in the parties' interconnection agreement applies only to disputes arising under the agreement. The subject matter of the Complaint is not treated in the interconnection agreement.

V. Service of the Complaint

Having concluded that it has jurisdiction and that investigation is warranted, the Commission will serve the formal Complaint on Frontier, together with an order requiring it to answer within 20 days. Minn. Rule, part 7829.1800.

VI. Interested Parties

Interested parties may submit initial comments within 30 days of the Commission's Order and reply comments within 10 days of the end of the initial comment period.

The parties shall address the above issues in the course of this proceeding. They may also raise and address other issues relevant to the Complaint.

ORDER

1. The Commission finds that it has jurisdiction over this matter.

2. The Commission finds that there are reasonable grounds to investigate the complaint.

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

4. Initial comments by interested parties shall be filed within 30 days of this Order.

5. Reply comments shall be filed within 10 days of the end of the initial comment period under Minn. Rules, part 7829.1900, subps. 2 and 3. Reply comments shall be limited in scope to the issues raised in the initial comments.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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