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March 7, 2014

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: In the Matter of Farmers Mutual Telephone Company Complaint Against Frontier Communications of Minnesota, Inc. re: Early Termination Fees.  
Docket No. P522,P405/C-13-941

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce (Department) in response to the March 3, 2014 comments filed by Frontier Communications of Minnesota, Inc. in the above referenced matter.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY  
Rates Analyst

KD/sm  
Attachment



## BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

### COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P522,P405/C-13-941

#### I. BACKGROUND

On October 8, 2013, Farmers Mutual Telephone Company (Farmers) filed a Complaint and Request for Temporary Relief (Complaint) regarding the “anticompetitive and unreasonable business practices of Frontier Communications of Minnesota, Inc. (Frontier).”<sup>1</sup>

On October 22, 2013, Frontier filed a motion to dismiss the Complaint.

On November 22, 2013, Farmers and the Department filed comments in opposition to Frontier’s motion.

On January 30, 2014 the Commission issued an Order Finding Jurisdiction, Finding Grounds to Investigate and Requiring an Answer (Order Finding Jurisdiction or Order). The Order Finding Jurisdiction required that Frontier file an answer to the Complaint ***within 20 days*** (February 19, 2014).<sup>2</sup>

On February 10, 2014, Frontier filed a Request for Reconsideration or Amendment of the Commission’s Order Finding Jurisdiction.

On February 19 and February 20, 2014 respectively, Farmers and the Department filed comments opposing Frontier’s Request for Reconsideration or Amendment of the Order Finding Jurisdiction.

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<sup>1</sup> Complaint, page 1.

<sup>2</sup> The Order also stated that “[i]nitial comments by interested parties shall be filed within 30 days of this Order.”(March 3, 2014.). No party other than Frontier filed comments because Frontier had not (and has not yet) filed its answer.

On March 3, 2014, Frontier filed comments, recommending that the matter be referred to the OAH.

On March 6, 2014, Farmers replied to Frontier's March 3, 2014 comments, requesting that the matter be referred to the OAH.

## **II. DEPARTMENT RESPONSE TO FRONTIER'S COMMENTS**

Frontier did not file an answer to the Complaint and, to date, has not answered the Complaint. On March 3, 2014, however, Frontier filed a document it called "Comments," that stated that 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."<sup>3</sup> Frontier added that it *believes* its Motion for Reconsideration stays the time to answer Farmers' Complaint.<sup>4</sup> Frontier provided no legal citation to support such a belief. Rather, the Commission's rules expressly provide otherwise.

Minnesota Rule 7829.3000 addresses petitions for reconsideration or amendment after a Commission decision. In particular, subpart 6 addresses Commission action, and states that 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. Rule 7829.3000 provides as follows:

### **7829.3000 PETITION AFTER COMMISSION DECISION.**

Subpart 1. Time for request. A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. Content of request. A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. Service. A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

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<sup>3</sup> Frontier Comments, page 2

<sup>4</sup> *Id.* (emphasis added).

Subp. 4. Answers. Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. Replies. Replies are not permitted unless specifically authorized by the commission.

Subp. 6. Commission action. 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.

Subp. 7. Second petition not entertained. A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained.

While subpart 6 of the rule *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.

Further, Frontier did not request, nor has any other party requested, that the Commission stay its Order of January 30, 2014. Frontier made no mention of a stay in its February 10, 2014 Request for Reconsideration. In its March 3, 2014 comments, Frontier did not request a stay, nor did it seek an extension of time to file its answer.

Frontier cited Minnesota Rule 7829.1800 Subpart 4 in its March 3, 2014 comments, which provides that “[i]f the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied.” While Frontier referenced this one Commission rule in Chapter 7829, it is not clear why Frontier did not cite Rule 7829.3000, subpart 6, regarding the effect of a motion for reconsideration on the Commission’s order (*i.e.*, no automatic stay).<sup>5</sup>

Frontier has failed to timely answer the Complaint, and raised no new issues in its March 3, 2014 comments that warrant a response. The Commission should thus consider all allegations of the Complaint denied, and move forward without delay to establish an appropriate procedure for

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<sup>5</sup> Also unclear is why Frontier filed as “Comments” what appears to be a reply to other parties’ response to its motion for reconsideration since the document cannot be read to comment on Frontier’s own answer, which it did not file. As such, such a reply is not allowed under Rule 7829.3000, subpart 5, unless specifically authorized by the Commission, which has not occurred.

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Analyst assigned: Katherine Doherty

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consideration of the merits of the case. To the extent there are disputed issues of material fact, the Department supports the Commission referring the matter to the Office of Administrative Hearings for a contested case proceeding.

/sm

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. P522,405/C-13-941**

Dated this 7<sup>th</sup> day of **March 2014**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Robert E.	Cattanach	cattanach.robert@dorsey.com	Dorsey & Whitney LLP	Suite 1500 50 South Sixth Street Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_13-941_C-13-941
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_13-941_C-13-941
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-941_C-13-941
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_13-941_C-13-941
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Kevin	Saville	kevin.saville@ftr.com	Citizens/Frontier Communications	2378 Wilshire Blvd.  Mound, MN 55364	Electronic Service	No	OFF_SL_13-941_C-13-941