

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications

DOCKET NO. P405-407/CI-18-122

**ANSWER OF THE OFFICE OF THE
ATTORNEY GENERAL TO THE
DEPARTMENT OF COMMERCE’S
PETITION FOR RECONSIDERATION**

I. INTRODUCTION

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) hereby submits this Answer to the May 2, 2018 Petition for Reconsideration (“Petition”) filed by the Minnesota Department of Commerce (“Department”) in response to the Minnesota Public Utilities Commission’s April 26, 2018 Order in this Docket. For the reasons set forth below, the Commission should reopen its Order to address the dispute raised by the Department regarding the Commission’s jurisdiction.

II. BACKGROUND

This Docket was initiated by the Commission’s February 12, 2018 Notice Requesting Comments on Frontier Communications’ Service Quality, Customer Service, and Billing Practices. The Notice referenced the “large volume of complaints” that the Commission had received over the past year and noted that many of the complaints remained unresolved. The Commission met on March 29 and formally opened an investigation of Frontier and its practices and ordered the Office of Administrative Hearings to hold public hearings. During the meeting,

a Frontier representative raised the issue of the Commission's jurisdiction while arguing that some of the complaints the Commission had received were for services outside of the Commission's jurisdiction.

The Commission's April 26, 2018 Order addressed this issue, by requiring that the customer notice should "clarify the limits of the Commission's jurisdiction over internet service."¹ On April 30, 2018, Frontier circulated a draft Notice to customers amongst the parties in this docket. Frontier's draft notice contained the following language, in which it took a very narrow reading of the Commission's jurisdiction over internet services:

The jurisdiction of the MPUC includes telephone services, but does not include Internet services or the speed or quality of access or connections to the Internet or the communications services, such as Voice Over IP, that are provided using only the Internet.²

The Department filed a Petition for Reconsideration and/or Clarification on May 2. The Petition highlights a foundational dispute that has arisen amongst the parties regarding the Commission's jurisdiction over certain aspects of internet service. The Department argued that the Commission should clarify its Order to affirm that "the Commission has substantial authority over telephone companies like Frontier and over the broadband telecommunications networks and advanced telecommunications services that they provide to their telecommunications subscribers."³ The Department requested that the Commission clarify its "authority and responsibilities as they pertain to higher speed broadband offerings" in customer notices and that

¹ *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P-407, 405/CI-18-122, ORDER INITIATING INVESTIGATION AND REFERRING MATTER FOR PUBLIC HEARINGS 3 (Apr. 26, 2018) The Order also authorized the Commission's Executive Secretary to approve the customer notices. *Id.* at 4.

² The entire draft notice is attached to this Answer as Exhibit 1.

³ *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P-407, 405/CI-18-122, PETITION OF THE MINNESOTA DEPARTMENT OF COMMERCE FOR RECONSIDERATION AND/OR CLARIFICATION 2 (May 2, 2018).

the Commission allow customers who receive internet service from Frontier be allowed to participate in public hearings and submit comments.

This dispute is unlikely to be resolved without further Commission action. This would make it impossible for the parties to develop a notice that could “clarify the limits of the Commission’s jurisdiction over internet service.” For the reasons set forth below, the Commission should reopen its Order to address the concerns raised by the Department.

III. LEGAL STANDARD

Any party to a proceeding, or any person who is “aggrieved” and directly “affected” by a Commission order, may file a petition for rehearing or reconsideration within 20 days of the order.⁴ The Commission may reverse or change its original decision if it appears that the “original decision, order, or determination is in any respect unlawful or unreasonable.”⁵ In determining whether to take up reconsideration, the Commission traditionally considers whether the requests “raise new issues,” “point to new and relevant evidence,” or “expose errors or ambiguities” in the Commission’s decisions.⁶

IV. ANALYSIS

The Commission should reconsider its decision. The Commission’s Order tasked Frontier with defining the Commission’s jurisdiction for its notice to customers. In response, Frontier has chosen to define the Commission’s jurisdiction in the most narrow manner possible. This has created a legal dispute that could have significant impact both in this docket and in other Commission matters. For this reason, the Commission should itself decide what language,

⁴ Minn. Stat. § 216B.27; Minn. Rules part 7829.3000, subp. 1.

⁵ Minn. Stat. § 216B.27, subd. 2.

⁶ See, e.g., *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Gas Utility Infrastructure Cost Rider*, Docket No. 14-336, ORDER DENYING RECONSIDERATION (Apr. 10, 2015); *In the Matter of the Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. 13-617, ORDER DENYING RECONSIDERATION (Dec. 22, 2014).

if any, will be included in a public notice regarding the Commission’s jurisdiction. This section will describe the legal and policy reasons why the Commission should reconsider its decision and take action.

A. STATE COMMISSION AUTHORITY OVER INTERNET SERVICES IS A CONTESTED LEGAL ISSUE IN MINNESOTA AND ACROSS THE COUNTRY.

The Department’s Petition has, at a minimum, demonstrated that there is a legal dispute in this docket regarding the extent of the Commission’s jurisdiction over some of the services provided by Frontier. The Department provided a number of federal and state law sources that support a more expansive view of the Commission’s jurisdiction than Frontier’s draft notice indicated in its narrow recitation of jurisdiction. Moreover, broader disputes concerning the jurisdiction of state commissions over internet service have been occurring in other proceedings in Minnesota and across the country. The Commission has itself weighed in on this issue, and Frontier’s proposed language is contrary to the Commission’s position. Moreover, Frontier’s proposal could be read to eliminate any jurisdiction that the Commission is granted over internet service by the Telecommunications Act of 1996 (“TCA”).

Frontier’s proposed language is contrary to the position the Commission has taken regarding its own jurisdiction. In 2015, the Commission determined that it had regulatory authority over fixed, interconnected Voice over Internet Protocol (“VoIP”) services provided by Charter Communications.⁷ Frontier’s draft statement contradicts this position, asserting that the Commission’s jurisdiction “does not include . . . communications services, such as Voice Over IP, that are provided using only the Internet.”⁸ While the Charter matter is currently pending at

⁷ *In the Matter of the Complaint of the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, Docket No. P-6716,5615/C-14-383, ORDER FINDING JURISDICTION AND REQUIRING COMPLIANCE FILING *passim* (Jul. 28, 2015).

⁸ Frontier’s April 30, 2018 Draft Notice.

the 8th Circuit, there is clearly a stark difference between the statements of Frontier and the legal position of the Commission regarding authority concerning VoIP. Frontier’s proposal would have the Commission approve a statement it has itself argued is incorrect.

The Department’s Petition also referenced the cooperative federalism that animates the TCA.⁹ The TCA explicitly creates a role for both the Federal Communications Commission (“FCC”) and state commissions to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”¹⁰ This role is shared between federal and state regulators and courts have consistently affirmed this regulatory structure.¹¹ The FCC itself has emphasized the “vital role” for states to play regarding the provision of IP-enabled services “in protecting consumers from fraud, enforcing fair business practices, for example, in advertising and billing, and generally responding to consumer inquiries and complaints.”¹²

The Commission’s Order in this docket has allowed Frontier to propose a narrow, blanket statement regarding the Commission’s jurisdiction over all aspects of internet service. At a minimum, the Department’s Petition and the discussion above highlight the gravity of the dispute into which the Order has waded. State commissions have a robust duty—emanating from both

⁹ *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P-407, 405/CI-18-122, PETITION OF THE MINNESOTA DEPARTMENT OF COMMERCE FOR RECONSIDERATION AND/OR CLARIFICATION 2 (May 2, 2018).

¹⁰ 47 U.S.C.A. § 1302(a). The statute defines “advanced telecommunications capability” as “without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and vide telecommunications using any technology.” 47 U.S.C.A. § 1302(d)(1).

¹¹ *See, e.g. Verizon v. Fed. Comm’n. Comm’n.*, 740 F.3d 623, 638 (Jan. 14, 2014) (noting, in response to an argument that Congress could not have delegated regulatory authority to both federal and state regulators, that “Congress has granted regulatory authority to state telecommunications commissions on other occasions, and we see no reason to think it would not have done the same here.”).

¹² *In the Matter of Vonage Holdings Corporation*, 19 F.C.C.R. 22404, 22405 (Nov. 12, 2004) (emphasis added). *See also In the Matter of Restoring Internet Freedom*, Docket No. 17-108, 2018 WL 305638 at *71 (noting that the FCC “appreciate[s] the many important functions served by our state and local partners, and we fully expect that states will” continue to serve a consumer protection role). This Answer takes no position on any ongoing disputes between the states and the FCC or the legality of the FCC’s Order.

state and federal law—to protect consumers and respond to inquiries and complaints. The effect of Frontier’s restrictive interpretation of the Commission’s jurisdiction would be to blunt the efforts of the state in carrying out this duty. The next subsection will describe why it is important, from a policy perspective, that the Commission not submit to an overly restrictive view of its jurisdiction in this docket.

B. POLICY CONSIDERATIONS.

There are two policy considerations that support Commission action to reopen its Order to address the issue of jurisdiction raised by the Department’s Petition. First, a restrictive statement on the Commission’s jurisdiction would hinder the ability of the Commission and others to gather important information in this early stage of the investigation. Public hearings present a rare opportunity for members of the public to directly address companies and regulators and the Commission should not acquiesce to Frontier’s efforts to limit participation. Second, now that the issue of its jurisdiction has been raised, it is important that the full Commission take action given the far-reaching consequences of its statement regarding jurisdiction.

1. The Commission is still in an information-gathering phase of the investigation.

A restrictive statement on the Commission’s jurisdiction could deter customers from attending public hearings. This would hamper the ability of the Commission and the other governmental parties to gather information about the issues affecting Frontier customers. As the previous section demonstrated, the duty to respond to consumer inquiries and complaints—even on matters regarding the provision of internet services—is a foundational role for states in this sphere. The Commission can only respond to inquiries and complaints if they are allowed to hear them. The narrowly-drawn jurisdictional line proffered by Frontier would not allow the Commission to accomplish this task.

In addition, a restrictive jurisdictional statement would also hamper the ability of the Commission to oversee another important function—promoting the expansion of broadband in the state.¹³ As the Department also noted, the FCC directs consumers to state commissions for inquiries about the availability of broadband.¹⁴ And based upon the complaints in the record thus far, the availability of broadband is a critical concern for many Minnesotans. Regardless of the actions it ultimately takes in this docket, the Commission could provide an important venue for these consumers to describe the limitations in their area. Based upon this information, the Commission and/or other state entities could take appropriate measures to address these concerns.

Several Commissioners noted a concern at the March 29 meeting that some attendees of public hearings might not be able to get an issue resolved by the Commission or its staff at the hearing. There are understandable reasons to ensure that any customer notice accurately describe the purpose of the public hearing. The concerns expressed at the March 29 meeting, however, overlook a critical function of public hearings, which is to promote the exchange of information between customers and the Company and regulators. Especially in an investigation such as this, it is important that the Commission and other parties cast a wide net when inviting public comments. Or, said another way, the Commission should not allow Frontier to cast a net that is too small. Public comments at hearings are not always directly on-point to the matter at hand. It would not be difficult to find examples from general rate case public hearings where the public testimony at times drifted from the confines of the lines drawn in the public notice.

¹³ See *In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications*, Docket No. P-407, 405/CI-18-122, PETITION OF THE MINNESOTA DEPARTMENT OF COMMERCE FOR RECONSIDERATION AND/OR CLARIFICATION 3–7 (May 2, 2018) (describing the statutory authority of the Commission to consider and encourage broadband development in the state).

¹⁴ *Id.* at 7 (quoting language from the FCC’s website, which directs customers to “[t]alk with your . . . state public service commission to see what is being done or can be done to get broadband in your area.”).

Nevertheless, these comments became part of the record and, more importantly, attendees leave having had an opportunity to directly address the company and its regulators.

In addition, comments from dozens of individuals are already a part of the record in this docket. A portion of the hundreds of comments entered via the Commission's SpeakUp! function do relate, in some way, to internet service. Like any other public comment in any other docket, there may be a way for the Commission to directly address the concern expressed in the comment—or there may not be. This fact does not foreclose action from another governmental entity, nor does it mean that the comment should have been prevented from being submitted. In the same vein, the Commission should not seek to dissuade public participation simply because citizen comments may not be directly responsive to its request for public input.¹⁵

To the extent that the Commission or its staff is concerned about the ability to address citizen concerns that may be outside the purview of what the Commission is able to address directly, the OAG will have staff available at the public hearings to take citizen complaints regarding Frontier.

2. It is unreasonable for the Commission to address the jurisdictional question without input from the full Commission.

The second policy rationale for reconsideration is that the full Commission should address the dispute over the Commission's jurisdiction. The Commission's April 26 Order authorized the Executive Secretary to approve the customer notice drafted by Frontier. This was not unreasonable before the current dispute over the Commission's jurisdiction had been raised. It is common for the Executive Secretary to be delegated authority to approve notices and other

¹⁵ For example, the Commission asked for comments on whether Frontier complied with the Commission's service quality rules on Speak Up! As of May 4, 2018, there were 91 responses from citizens to this prompt, but none of the responses referenced any of the specific service quality rules found in Minn. R. § 7810. This underscores the important role that public participation plays in the regulatory system; that is, to provide much-needed color and context to the more technical concerns of regulators.

Company communications to customers in dockets such as rate cases. There are rarely, if ever, instances where such notices or communications raise issues of concern for other parties, and even where concerns are raised, it is rare for the concerns to be so fundamental to Commission jurisdiction and function. This instance is different. And while it is likely that the Commission did not anticipate the legal conflict that would arise from the dispute over the jurisdictional language, now that it has, the Commission should reopen its decision in order to address the issue that has arisen out of its Order. It would be unreasonable for the Commission to, effectively, elucidate the extent of its jurisdiction without the ability of the full Commission to seek comment from other parties, weigh considerations, and ultimately address the issue directly with its full authority.

IV. RECOMMENDATION

The extent of the Commission's jurisdiction regarding aspects of internet service is now in dispute following the restrictive language offered by Frontier in its draft notice to customers. The Commission should remember, however, that this dispute has been raised in the context of notifying Frontier's customers about upcoming public hearings. For the legal and policy reasons described above, the Commission should reopen its Order to address the issue raised by the Department in its Petition.

The Commission should clarify its Order to require that no statement as to jurisdiction be included in the notice to Frontier customers. This would reserve the issue of jurisdiction until it becomes necessary to address and would allow parties to continue with the information-gathering phase of this investigation. As stated above, the Commission has an obligation to gather information from consumers and to respond as appropriate to concerns. An attempt to narrow the scope of the investigation at this stage would hinder the ability of the Commission

and other state government entities to hear from customers. For this reason, the Commission should not attempt to resolve a complex dispute that does not need to be resolved at this phase.

In the alternative, if the Commission wishes to resolve the question about the extent of its jurisdiction over aspects of internet service, it should open a comment period on this issue so that parties can provide information and a decision can be made with a full record. This topic was first raised during the March 29 agenda meeting and has since developed into a fully-disputed issue in the days following circulation of Frontier's April 30 draft notice. As the Department's Petition and these Comments have shown, the question of jurisdiction should not be treated summarily because there could be far-reaching consequences as a result of the Commission's action or inaction. A comment and reply period would allow parties to fully brief this issue and would allow for the full Commission to take action to address this issue.

Dated: May 14, 2018

Respectfully submitted,

LORI SWANSON
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s/ **Joseph A. Dammel**

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ATTORNEYS FOR OFFICE OF THE
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DRAFT FOR DISCUSSION ONLY (4/30)

Public notice of the hearing dates, times, and locations also will be published in local newspapers in our service area.

Submit Written Comments

Comment Period

- **Comments accepted through _____, 2018, at 4:30 p.m.**
- Comments must be received by 4:30 p.m. on the close date
- Comments received after the comment period closes may not be considered

Online

Visit www.mn.gov/puc, select *Speak Up!* To find this docket (18-122), and add your comments to the discussion.

U.S. Mail

If you wish to include an exhibit or other attachment, please send your comments via U.S. Mail.

Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Written comments are most effective when the following items are included:

1. The Docket Numbers in the subject line or heading.
 - MPUC Docket Number P407,405/CI-18-122
2. Your name and connection to the docket.
3. The specific issues that concern you.
4. Any knowledge you have about the issues.

Important: Comments will be made available to the public on the MPUC's website, except in limited circumstances consistent with the Minnesota Government Data Practices Act. The MPUC does not edit or delete personally identifying information from submissions.

Accommodations

If any reasonable accommodation is needed to enable you to fully participate in these meetings (e.g., sign language or large print material), please contact the Office of Administrative Hearings at (651) 361-7000 (voice) (651) 361-7878 (TTY) at least one week in advance of the meeting.



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May 14, 2018

Mr. Daniel Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

**Re: In the Matter of a Commission Inquiry into the Service Quality, Customer Service, and Bill Practices of Frontier Communications
Docket No. P407, 405/CI-18-122**

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find both the Office of the Attorney General – Residential Utilities and Antitrust Division's Answer to Petition for Reconsideration.

By copy of this letter all parties have been served. An affidavit of service is also enclosed.

Sincerely,

s/ **Joseph A. Dammel**

JOSEPH A. DAMMEL

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Enclosures

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_18-122_Official Service List
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_18-122_Official Service List
Brent	Christensen	bchristensen@mnta.org	Minnesota Telecom Alliance	1000 Westgate Drive, Ste 252 St. Paul, MN 55117	Electronic Service	No	OFF_SL_18-122_Official Service List
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-122_Official Service List
Ian	Dobson	residential.utilities@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_18-122_Official Service List
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