PrairieWave

VIA OVERNIGHT MAIL

March 26, 2003

Edward Garvey
Deputy Commissioner, Telecommunications
Department of Commerce
85 7th Place, Suite 500
St. Paul, MN 55101

RE: Frontier Communications

Dear Mr. Garvey,

As you know PrairieWave Telecommunications, Inc. (PrairieWave) is a competitive local exchange telecommunications provider (CLEC) in several communities in Minnesota where Frontier Communications of Minnesota, Inc. (Frontier), is the incumbent local exchange carrier (ILEC). In the past few months Frontier has engaged in certain business practices, which PrairieWave believes should be brought to your attention. This letter is motivated in part by the recent complaint filed by the Department of Commerce and Attorney General against McLeodUSA Telecommunications Services, Inc. in Docket No. P5323/C-03-140. The concerns are as follows:

1. Liability for Early Termination of Term Contracts.

In the Department's complaint one of the allegations against McLeodUSA is that it has not demonstrated that the high dollar early termination fees are cost-based, necessary to recoup losses, or otherwise fair and reasonable as required by Minnesota Statute 237.06. The McLeodUSA contract attached to the complaint has an early termination liability of 30% of the last three months' average billing times the remaining term of the contract. On the other hand Frontier has a tariff provision (Section 2.4.3.B) (Ex. A)[1], which is also in its term contracts, that requires a customer terminating a contract early pay 100% of the remaining full charges as though service had been provided for the full term of the agreement. If 100% of the remaining charges is reasonable, 30% is at least on its face more so. PrairieWave doubts that the Frontier tariff provision was ever actually held to the standard spelled out in the McLeodUSA complaint. But that is not the issue.

Recently a PrairieWave customer contacted PrairieWave about the customer's early termination liability to Frontier. PrairieWave found out about the liability from the customer after the fact,

[1] Please compare Section 2.4.3.B with the recently filed Versaline tariff Section 3.13.2.B (Ex. B). In this latter section it is unclear what the penalty is for early termination. Is it the price for the entire term of the contract or just for the remaining term? Also compare this with the contract provision on page 3 (paragraph 2.b) for its Versaline product (Ex. C).

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i.e., after the customer left Frontier and became a PrairieWave customer. PrairieWave does not seek to improperly interfere with the contracts of competitors. PrairieWave encourages customers to honor their word as embodied in a signed, contractual document. The customer apparently tried to resolve the liability with Frontier, with a copy of the correspondence to the Consumer Affairs Office of the Commission. The customer's letter is attached (Ex. D). Also attached is the unsigned response of the Consumer Affairs Office (Ex. E). What is interesting in the Consumer Affairs' response is the disclaimer of jurisdiction over "contractual matters." Although unsigned, at least the Consumer Affairs Office responded to the customer's carbon copy. Frontier responded to its now former customer with a notice from its outside collection agency.

It is hard to understand the basis for the jurisdictional disclaimer given the citations you provide in your McLeodUSA complaint. When ILECs are allowed to shackle customers with onerous early termination penalties, it is extremely difficult for a CLEC to get into the local exchange market. The word "penalties" is used advisedly. Although this letter is not a legal brief on the difference between an acceptable cost recovery mechanism (or liquidated damages) and a penalty, there is a substantive difference. One hundred percent of the remaining contract term liability does seem to cross that line between cost recovery and penalty. The customer's letter does suggest a reasonable measure of cost recovery.

In the past several years CLECs have sought regulators' help in trying to give customers a "fresh look" at existing early termination liability provisions imposed by ILECs. This fresh look would be limited in time and scope (e.g. a CLEC would not be able to substitute its penalty for early termination), but would provide an opportunity for customers to respond to competitive offers in a new, competitive market. That might be a solution here, but a more timely response would be to investigate whether the 100% termination liability does meet the tests of cost-based, cost recovery, reasonableness and fairness.

2. Below Cost Pricing.

Attached is an offer made by a Frontier sales representative to a PrairieWave customer, who just happens to be one of the biggest business customers PrairieWave has in Worthington (Ex. F). The offer effectively gives the customer a $2.59 business line rate ($7.59 per line per month less a $5.00 credit per line per month) for the three-year term of the contract. The customer is also offered a $4.59 business line rate for a one-year contract. In addition, there is a $42.50 "reward" per month toward directory advertising, a total reward for three years of over $1500. The long distance offer is $.07 per minute with a $3.99 monthly charge and 30 minutes per month free long distance calling per month per line. The offer mentions that it is a "product," but after a careful review of Frontier tariffs, including the most recent Frontier Choices Tier Bundles filings, there is nothing tariffed to correspond to the attached offer.

Publicly available filings on the Citizens Communications Company acquisition of Frontier in 2001, indicate that Citizens paid approximately $3,328 per access line. At the $2.59 line rate it would take over 107 years to recover that cost. If you factor in competitive losses to PrairieWave, to spread that cost over the remaining access lines, it would take over 144 years to recover the cost of the acquisition. These numbers do not take into account the $2.10 for free long distance per month or the loss of directory revenue. The high speed DSL rate ($44.95 per month), assuming that it is a required part of the offer, does not even begin to cover the losses. Frontier is not that economically foolish. Offers like this are indicative of only one thing – an attempt by the monopoly ILEC to put the CLEC out of business. The other obvious conclusion is that other Frontier customers in Worthington and elsewhere in Minnesota will inevitably pick up the cost of an offer like this.

Frontier's behavior in these two instances, if allowed, will have a significant detrimental effect on the ability of any CLEC to enter any Frontier market in Minnesota. So far as PrairieWave can tell this behavior is for now limited to the Worthington exchange customers. Customers in other Frontier exchanges have not had similar experiences. All customers in Minnesota seeking valid competitive alternatives will eventually be the losers.

PrairieWave is available to discuss these matters with you at your convenience.

Sincerely,

William P. Heaston
Corporate Counsel
(605) 965-9894
wheaston@prairiewave.com

cc: Dan Lipschultz

Exhibit F

Price Quote from Frontier Communications of MN

frontier
A Citizens Communications Company

Frontier Communications of MN
14450 Burnhaven Drive
Burnsville, Minnesota 55306-4918

Date: 3-11-2003

To: Chad

Company: Gordy's Inc.

Fax Number: 507-376-9612

From: Cindi Thelen

Title: Slaes Associate

7 **Page(s) to follow**

cynthia_thelen@frontiercorp.com
Faxing from (952) 435-1162 / Phone (952) 435-4435
FRONTIER COMMUNICATIONS
Burnsville, Minnesota 55306

Chad,

Your line rate would be $7.69 per line on a 3 year term or $9.59 on a one year term.
The long distance plan that would fit your calling habits would be simple 7 that is $3.99 one time monthly fee with 7 cents in and out state calling. High speed DSL $44.95 every month.

We offer a $5.00 credit per line every month and 30 min. free calling (LD) per line per month.

No hook up fees to switch and you can keep all your same #'s.

All the customers on this product can add or change the line features for free anytime to the lines you have.

$42.50 credit towards a directory add with us will also be given monthly as a reward for doing business with us.

Ps. This information is to be kept between Frontier Communications and you the customer.

Thank you Cindi Thelen