

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

A & H Enterprises,)	Formal Complaint No. 1313
dba Platte Valley Internet,)	
Columbus, Nebraska,)	
)	
Complainant,)	
vs.)	ORDER DISMISSING
)	COMPLAINT
Citizens Communications,)	
dba Frontier,)	
)	
Defendant.)	Entered: March 2, 2004

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

This matter comes before the Nebraska Public Service Commission (Commission) on the Formal Complaint of A & H Enterprises, d/b/a Platte Valley Internet (Platte Valley) of Columbus, Nebraska, against Citizens Communications, d/b/a Frontier (Frontier). In its complaint, filed with the Commission on July 18, 2003, Platte Valley alleged that Frontier was incorrectly billing Platte Valley for end-user charges on dial-up circuits leased from Frontier.

On August 8, 2003, Frontier filed its Answer to the Platte Valley formal complaint. Based upon its investigation, Frontier concluded that Platte Valley was being properly billed the applicable end-user access charge (SLC).

The Commission subsequently scheduled this matter for hearing. A public hearing was held in the Commission Library on October 1, 2003. Appearances were entered by Danny R. Harris, General Manager for Platte Valley; Kevin Saville and Patty Casurella, on behalf of Frontier, and Chris Post, on behalf of the Commission staff.

Mr. Harris testified that Platte Valley's main complaint was in regard to the method that Frontier utilized to calculate the end-user fee. He indicated that when Platte Valley initially entered the Internet service market, the local phone company informed them that the end-user fee would be charged once per circuit. However, through subsequent changes, Platte Valley is now being charged for each of the 24 channels on the circuit. Mr. Harris also indicated that he has no choice but to buy a full, 24-channel, T-1, as Frontier does not allow the lease of only portions of a T-1.

Mr. Saville and Ms. Casurella, testifying on behalf of Frontier, explained that the charge was based upon the Federal Communications Commission's (FCC) rule, Section 69.104. The rule requires an Incumbent Local Exchange Carrier (ILEC) to assess SLC charges "upon end-users that subscribe to local exchange telephone service" and that such charges should be "assessed **for each line** between the premises of an end-user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions." 47 C.F.R. 69.104(a) (emphasis added). Additionally, Mr. Saville and Ms. Casurella testified that Frontier's local and federal tariffs state that a separate SLC charge should be applied to each individual line provided to an end-user.

In January 2003, Frontier began to impose a SLC charge of \$9.20 on each of the 24 channels in the T-1 lines provided to Platte Valley. This price represents the maximum amount that Frontier may charge under the FCC rules and their local and federal tariffs. Mr. Saville testified that a company has some flexibility setting a price for a SLC charge. He explained that a company may set the figure between the maximum charge allowed and no charge at all. Ms. Casurella stated that Frontier had decided to set the charge at the maximum based on their evaluation of company costs.

Prior to January 2003, Frontier had inadvertently failed to include any SLC charges to the 24 channels in the T-1 lines provided to Platte Valley. Mr. Saville testified that Frontier was unaware of this possible application of SLC charges until the National Exchange Carrier Association, Inc. (NECA) filed a petition with the FCC to amend Section 69.104. NECA requested that the rule be amended to allow no more than five SLC charges to any one T-1 line. The FCC has not yet made a ruling on the proposed amendment.

Mr. Saville explained that the petition brought the possibility of applying an expanded SLC charge to the attention of Frontier. Applying this newfound understanding of the rule, Frontier, after providing adequate notice, began to impose the current SLC charge on all 24 channels in the T-1 lines provided to Platte Valley. This charge has aggregated to the disputed amount of \$6,187.41.

As relief, Platte Valley requests that this Commission order Frontier to excuse Platte Valley from the disputed charges for improperly calculating the SLC fees. Having reviewed the Complaint filed by Platte Valley and Frontier's response, and having reviewed and considered the submissions and arguments of the parties, the Commission finds that it lacks jurisdiction

over the matters asserted in the Complaint, and finds that the Complaint should be dismissed for the reasons set forth herein.

With that said, this Commission is not persuaded that Frontier has fairly calculated the SLC charge being billed Platte Valley for their use of Frontier's T-1 facilities. It is clear from the testimony presented that companies have a fair amount of flexibility in setting the amount of their SLC charges and how many SLC charges they will require an end user to pay. Here, Frontier has calculated its SLC charge to provide itself with the greatest windfall possible. It has done so based on knowledge obtained from a petition that suggests applying a SLC charge to all channels in a T-1 leads to an unfair result and which seeks to limit those charges to a maximum of five. This Commission does not believe Frontier is required to or should apply the federal rule as expansively as it has.

However, under the FCC's rule, Section 69.104, ILEC companies are allowed to assess SLC charges *for each line* provided to end-users. The rule may only be amended by petition to the FCC. This Commission lacks jurisdiction as a state administrative agency to provide relief from the federal rule. Only the FCC may provide the remedy requested.

Accordingly, for the reasons set forth above, the Commission is of the opinion and finds that Platte Valley's complaint should be dismissed and that Platte Valley should pay any remaining balance of the originally disputed amount of \$6,187.41 or establish a payment plan with Frontier to pay the balance within 30 days of the entering of this order or face disconnection.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the complaint filed by A & H Enterprises, d/b/a Platte Valley Internet, be, and is hereby, dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that A & H Enterprises, d/b/a Platte Valley Internet pay any remaining balance of the originally disputed amount of \$6,187.41 or establish a payment plan with Citizens Communications, d/b/a Frontier within 30 days from the entering of this order or face disconnection.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of March 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director