

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on March 16, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 03-C-0965 - Ordinary Tariff Filing of Frontier Telephone of Rochester, Inc. to Add a Rate and Descriptive Language for a New Rate Element Called FGA-ONP Line Side Transport.

ORDER APPROVING TARIFF AND DISMISSING COMPLAINT

(Issued and Effective March 26, 2004)

BY THE COMMISSION:

BACKGROUND

In May 2002, the Commission determined that USA DataNet, Inc. (DataNet) was liable for properly billed access charges from Frontier Telephone of Rochester, Inc. (Frontier).<sup>1</sup> The Commission directed the parties to work out an agreement for a reasonable payment schedule and indicated that absent such an agreement, the parties could seek further relief.

The parties reached an agreement on previous charges but were unable to agree on the appropriate level of access charges on a going forward basis. To resolve the issue,

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<sup>1</sup> Case 01-C-1119 - Complaint of Frontier Telephone of Rochester Against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges, Order Requiring Payment of Intrastate Carrier Access Charges (issued May 31, 2002).

Frontier filed tariff revisions to its access tariff (PSC NY No. 3) on June 20, 2003. The tariff revisions stipulate that Frontier will bill its already established local access switching rate and a new, reduced local transport rate per minute of use for interLATA and intraLATA type calls to and from an interexchange carrier using Feature Group A service provided by another network provider (ONP). On July 2, 2003, DataNet filed a complaint against Frontier's tariff filing. Others also filed comments.

In its complaint, DataNet raises several arguments why it should not have to pay Frontier's local switching rate and claims that Frontier is incorrect in collecting a portion of the local transport rate element as well. DataNet offers an alternative tariff approach and indicates that if the Commission does not adopt DataNet's proposal, the Commission should reject Frontier's tariff amendments and convene a proceeding to restructure Frontier's access charges. Other parties raise concerns that Frontier's tariff language is broad and, thus, could impact traffic that undisputedly meets the FCC's definition of "information" or "enhanced" services.

In response, Frontier argues that because of the multiple switching and transport functions it provides, it is entitled to charge local switching and transport charges for Feature Group A service provided by an ONP. Frontier explains that, historically, where access service under other feature groups is jointly provided by an incumbent and by an ONP, the carrier serving the end user customer typically bills and collects the local switching charge and its share of local transport from the IXC; the carrier directly serving the IXC bills and collects the other portion of local transport from the IXC. This rate design, including the sharing of local transport, is exactly what Frontier is proposing in its current tariff filing.

Frontier also states that the Commission must reject proposals to restructure Frontier's intrastate access charges as it would violate the terms and conditions of Frontier's Open Market Plan, which provided for a gradual phase down of Frontier's intrastate access rates to their current levels through 2004. To address the concern that the proposed tariff sweeps too broadly and potentially impacts traffic exempt from access charges, Frontier filed new tariff language to specify that the provisions of its revised tariff do not attempt to recover access charges from a provider that significantly uses the public Internet for transport of traffic.

#### DISCUSSION

In our May 31, 2002 DataNet Order, we found that DataNet was liable to Frontier for properly billed intrastate access charges for past and present service. Historically, intrastate access charges have consisted of transport and switching charges. We also declined DataNet's invitation to investigate the validity of Frontier's intrastate access rates and to direct Frontier to establish interim rates equivalent to its comparable interstate access charges. As Frontier indicates, its intrastate access charges were reduced and frozen as part of its Open Market Plan. DataNet's proposals, which would lower and restructure Frontier's intrastate access charges along the federal model, are well beyond the scope of the Commission's Order which specifically required DataNet to pay intrastate carrier access charges to Frontier.

We conclude that DataNet's proposal to apply credit for message unit charges is inapplicable since most of Frontier's customers have flat rate service and in any event, callers to DataNet's services would likely be flat rate customers who would want to avoid message unit charges in order to keep their long distance calling economical. Further,

DataNet's contention that a credit should apply to local usage charges misconstrues the nature of access charges - allowing the LEC recovery of costs not allocated to local rates.

Most importantly, DataNet's proposals would prevent Frontier from recovering its allowable level of intrastate access charges and would not allow Frontier cost recovery of the multiple switching and transport functions it performs to deliver calls from its customer to DataNet. Also, Frontier has filed tariff language to specify that the provisions of its revised tariff do not attempt to recover access charges with respect to traffic of a provider that significantly uses the public Internet for transport of traffic. This resolves the objections that the tariff revision sweeps too broadly and may be affecting calling that involves Voice over Internet Protocol (VoIP).

#### CONCLUSION

Based on our analysis of all the comments and responses, we conclude that Frontier's tariff is fair and reasonable and will be allowed to become effective on March 26, 2004. The tariff properly establishes that DataNet should pay a local switching charge and a new reduced transport rate element called Feature Group A - Other Network Providers (FGA-OPN) transport charge. The revisions, as shown in Appendix A, also recognize that the ONP providing FGA service to DataNet should be allowed to recover some portion of network costs. The revisions will also be allowed to go into effect on March 26, 2004. In addition, the tariffs properly identify the type of traffic that should be subject to access charges.

The Commission orders:

1. Frontier Telephone of Rochester, Inc.'s tariff revisions listed in Appendix A are allowed to become effective on March 26, 2004.

2. The requirements of Section 92(2) of the Public Service Law related to newspaper publication of the changes proposed are waived.

3. USA DataNet, Inc.'s complaint is dismissed.

4. All other relief is denied.

5. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary

Filing by: FRONTIER TELEPHONE OF ROCHESTER, INC.

Amendments to PSC No. 3 - Telephone (Access)

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Issued: June 20, 2003      Effective: July 20, 2003\*

\*Postponed to March 26, 2004 by Supplement Nos. 3,  
4, 5 and 6.

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