

ORDER NO. 15 046

ENTERED: FEB 18 2015

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UCR 166

G. K.,

Complainant,

vs.

FRONTIER COMMUNICATIONS  
NORTHWEST INC.

Defendant.

ORDER

DISPOSITION: COMPLAINT DISMISSED

In this order, we dismiss the complaint for lack of subject matter jurisdiction.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On January 6, 2015, G.K. filed a complaint against, Frontier Communications Northwest Inc. (Frontier) relating to Frontier's alleged failure to fulfill a promise to provide a monthly \$40 credit on purchased telecommunications services until March, 2020. The complainant seeks damages in the amount of \$2,520, an amount equal to \$40 per month from the date the complaint was filed until March of 2020.

On January 20, 2015, Frontier filed an Answer & Motion to Dismiss the complaint. A telephone prehearing conference to address the complaint, answer and motion to dismiss was held on February 6, 2015.

**II. FINDINGS OF FACT**

The facts relevant to our decision are not in dispute. G.K. is a residential retail customer of the defendant, Frontier. G.K. obtains regular telephone service (identified on the customer's bills as "Frontier Digital Phone Essentials") as part of a package of telecommunications service offerings, including cable television programming under the FiOS brand name and High Definition DVR Rental.<sup>1</sup>

On January 13, 2012, Frontier billed the customer \$25.01, the tariffed rate for the voice services identified as Frontier Digital Phone Essentials. Frontier also charged the

<sup>1</sup> See page 4 of attachment to the Complaint.

customer \$41.99 for "FiOS TV Premier" and \$37.99 for "FiOS Internet." Included on the bill was the entry "Specials and Promotions FiOS Conversion Customer thru Mar 13, 2020 (-\$40.00)."<sup>2</sup>

Frontier admits that it printed a bill message on the January and February 2012 bills stating that the \$40 FiOS conversion credit would continue through 2020. Frontier asserted that this entry on the bill was in error, but that the error was subsequently corrected and removed on the March 13, 2012 bill and has not appeared on bills since.<sup>3</sup>

### III. DISCUSSION

The complainant's requested relief is that we enforce the written promise implied on the January 2012 bill that Frontier will provide a \$40 per month discount on internet and DVR rental services until March, 2020 or require the payment of \$2,520 in lieu thereof. In order to do so, the Commission must have the authority to regulate the rates, terms and conditions of those service offerings.

The Communications Act of 1934 as amended by the Telecommunications Act of 1996, separately defines an "Information Service" and "Telecommunications Service" with differing criteria and subject to different levels of regulatory oversight.<sup>4</sup> Frontier is a provider of telecommunications services as a common carrier and is subject to federal and state law when providing telecommunications services such as basic telephone service.<sup>5</sup>

In 2005, the Federal Communications Commission (FCC) ruled that digital subscriber line service, broadband internet access service provided over the same facilities as those providing voice telephone service, was an information service and therefore was not within the Title II regulatory regime.<sup>6</sup> In *Verizon v. FCC*, 740 F. 3d 623, decided January 14, 2014, the Court of Appeals for the District of Columbia Circuit confirmed the FCC's lack of jurisdiction to impose *per se* common carrier regulation on broadband service. As a consequence, under current law, including the federal preemption of jurisdiction on matters relating to the regulation of information services, Frontier's rates, terms and conditions for the offering of internet services such as FiOS to its telecommunications customers, are not within the jurisdiction of the Commission.

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<sup>2</sup> Attachment to Complaint, p. 6.

<sup>3</sup> Answer at 2.

<sup>4</sup> 47 U.S.C. 153 (20), (46), (51) "\*\*\*\*A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications service\*\*\*\*"

<sup>5</sup> 47 U.S.C. 201 *et. seq.*, O.R.S. 759.005 *et. seq.*

<sup>6</sup> *In the Matter of Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking adopted August 5, 2005, (FCC 05-150).

**IV. CONCLUSION**

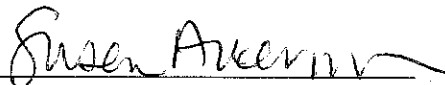
The Commission lacks the authority to grant the relief requested by the complainant.

**V. ORDER**

IT IS ORDERED that:

1. The motion to dismiss filed by Frontier Communications Northwest Inc. is granted.
2. The complaint of G.K. is dismissed; this docket is closed.

Made, entered, and effective FEB 18 2015



**Susan K. Ackerman**  
Chair





**John Savage**  
Commissioner



**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.