



85 7TH PLACE EAST, SUITE 500  
SAINT PAUL, MINNESOTA 55101-2198  
MN.GOV/COMMERCE  
651.539.1500 FAX: 651.539.1547  
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April 1, 2015

**PUBLIC DOCUMENT**

Mr. Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East Suite 350  
St Paul Minnesota 55101-2147

**RE: PUBLIC Comments of the Minnesota Department of Commerce**  
Docket No. P6854/M-15-138

Dear Mr. Wolf:

Attached are the PUBLIC comments of the Minnesota Department of Commerce (Department) in the following matter:

Zayo Group, LLC's Request to Discontinue Telecommunications Service to Dunnell Telephone Company

The petition was filed on February 5, 2015 by:

Elisabeth Rolander  
Senior Counsel  
Zayo Group  
400 Centennial Parkway, Suite 200  
Louisville, CO 80027

The recommendation of the Department of Commerce is discussed in the attached comments. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ BRUCE LINSCHIED  
Financial Analyst

/s/ DIANE DIETZ  
Rate Analyst

BL/DD/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

PUBLIC COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P6854/M-15-138

**I. BACKGROUND**

On February 5, 2015, Zayo Group, LLC (Zayo) submitted a petition requesting Minnesota Public Utilities Commission (Commission) approval to discontinue telecommunications service that Zayo provides to its customer, Dunnell Telephone Company (Dunnell, and together with Zayo, the Parties). Zayo stated that Dunnell is seriously delinquent in its payment to Zayo for services rendered and has not responded to Zayo's multiple demands for payment due, other than rejecting Zayo's payment demands. Zayo believes that Dunnell can obtain telecommunications service from another carrier.

On February 10, 2015, the Minnesota Department of Commerce (Department) issued information requests to both Zayo and Dunnell. The Department's information requests attempted to obtain specifics about Zayo's complaint as well as Dunnell's response to Zayo's complaint.

On February 12, 2015, Dunnell responded to the Department's information requests and said that the billing issue arose from Dunnell's order of a second T-1 line. The order was subsequently cancelled. Dunnell presented email correspondence indicating that Zayo would credit Dunnell for the mistaken billing.

On February 16, 2015, Zayo sent an email message to the Department stating that they were declining to respond to the Department's information requests citing Customer Proprietary Network Information (CPNI) concerns regarding its customer's privacy. The Department responded to Zayo's CPNI rationale by citing its authority to investigate telecommunications rates and services under Minn. Stat. §237.081.

On February 25, 2015, the Department followed up with Zayo asking if it intended to respond to the Department's information requests.

On February 26, 2015, Zayo responded that it was still working on the legalities of a response and that it has multiple billing issues with Dunnell.

On March 5, 2015, the Department followed up again with Zayo and explained the procedures that would need to be followed for a formal complaint.

On March 9, 2015, the Department requested a 30-day extension to file comments under MN Rule 7819.1400, subp. 7, and the Commission granted an extension to file comments until April 8, 2015.

On March 25, 2015, Zayo filed responses to the Department's February 10, 2015 information requests.

**A. PARTIES**

Zayo obtained Commission approval to provide local facilities based telecommunications services in Docket No. P6854/NA-11-103 on March 7, 2011.

Dunnell is an independent telephone company as defined by Minn. Stat. §237.01, subd. 3.

**B. REQUESTED ACTION**

Zayo requests Commission approval to discontinue telecommunications service that Zayo provides to its customer, Dunnell. Zayo states that Dunnell is seriously delinquent in its payment to Zayo for services rendered and has not responded to Zayo's multiple demands for payment due, other than rejecting Zayo's payment demands. Zayo believes that Dunnell can obtain telecommunications service from another carrier.

**C. PUBLIC INTEREST**

Zayo does not believe that the public convenience requires that Zayo continue to provide service to Dunnell as Dunnell allegedly can obtain telecommunications service from another carrier. Zayo states that continuing to provide service without payment from Dunnell is commercially detrimental to Zayo.

**II. STATEMENT OF ISSUES**

- A. Has Zayo complied with the requirements for filing a formal complaint?
- B. Should the Commission take action on the petition at this time?

**III. LEGAL REFERENCES**

Minn. Stat. §§237.12, subd. 2 and 237.74, subd. 6 and 9 and Minn. Rules pt. 7812.2210, subp. 11 require a carrier to obtain Commission approval before severing its physical connections with other carriers.

Minn. Rules pt. 7829.1700 lists the requirements for filing a formal complaint.

Minn. Rules pt. 7819.1800 describes the procedures for the initial consideration of a formal complaint.

#### IV. ANALYSIS

##### A. *ZAYO HAS COMPLIED WITH THE REQUIREMENTS TO FILE A FORMAL COMPLAINT*

Zayo's petition to disconnect service to Dunnell should be accepted by the Commission and sent out for comments. Zayo's March 25, 2015 responses to the Department's information requests provide some details regarding its complaint against Dunnell. Minnesota Rule 7829.1700, subp. 1 lists the following requirements for a formal complaint:

- The name and address of the complainant;
- The name and address of complainant's counsel, if any;
- The name and address of respondent;
- The name and address of respondent's counsel, if known;
- The statute, rule, tariff, or commission order alleged to have been violated;
- The facts constituting the alleged violation; and
- The relief sought by complainant.

With its initial petition and its subsequent responses to the Department's information requests, Zayo has fulfilled the basic filing requirements relating to a formal complaint. Zayo alleges that Dunnell is seriously delinquent in its payment to Zayo for services rendered and has not responded to Zayo's multiple demands for payment due, other than rejecting Zayo's payment demands. In responding to the Department's information requests, Zayo has provided details relating to its complaint.

##### B. *THE COMMISSION SHOULD REJECT THE COMPLAINT.*

Dunnell's February 12, 2015 response to the Department's information requests state the following:

- Dunnell is up to date on payments for the existing T-1 circuit that is in service provided by Zayo.
- No outstanding payments are owed to Zayo due to the disconnection of a second T-1 circuit provided by Zayo.
- Zayo acknowledged that no money was owed on the second T-1 circuit, but continued to issue bills anyway.
- Dunnell's attorney attempted contact with Zayo's legal counsel, but the phone calls were not returned by Zayo.
- Dunnell's existing T-1 circuit from Zayo is its only path to Onvoy, Zayo's affiliate company, and to the outside world.

Dunnell's position is that there are insufficient grounds to support the complaint filed by Zayo. Dunnell explained that Zayo's complaint is the result of a misunderstanding within Zayo's operational staff. Along with its information request responses, Dunnell included an email exchange between its representative and Zayo's representative indicating that Zayo agreed to give Dunnell credit for early termination charges related to the disconnection of a second T-1 circuit. Dunnell also states that it pays the monthly charge for its existing T-1 circuit from Zayo and is unaware of any other charges from Zayo. Dunnell further states that there is no other carrier available to connect with Zayo's affiliate, Onvoy, and provide the SS7 services that Onvoy provides to the outside world.

Zayo's March 25, 2015 response to the Department's information requests includes the following:

- Copies of monthly invoices issued by Zayo to Dunnell from June 2013 to the present time.
- A spreadsheet showing amounts allegedly invoiced to Dunnell and amounts allegedly paid by Dunnell from August 2012 to the present time.
- Past due notices sent by Zayo to Dunnell.
- A letter sent by Dunnell to Zayo in September, 2014 disputing the billing amounts alleged to be overdue.
- A generic copy of the Wholesale Master Service Agreement on which Zayo bases its claim for the outstanding charges.
- A copy of the May 2, 2012 letter from Zayo stating the services and fees subject to renewal.

Zayo's information request responses provide some clarification regarding the amounts alleged to be due and the basis for the disagreement with Dunnell.

Along with its February 12, 2015 information request responses, Dunnell included a copy of a January 29, 2014 email message **[TRADE SECRET DATA HAS BEEN EXCISED]**. Dunnell had a reasonable basis for relying on the statements made in the January 29, 2014 email message and appears to have, in fact, relied on the assurances made in the email message. The record contains no documentation indicating that, subsequent to Zayo's January 29, 2014 email message, Dunnell changed its position on the need for the additional T-1 line or responsibility for the associated early termination charges at issue in the current complaint. The documentation provided in the information request responses of Zayo and Dunnell indicate that Dunnell took reasonable and timely steps to resolve the current billing dispute. For these reasons, the Department recommends that the Commission reject Zayo's complaint and close the current docket.

**V. COMMISSION ALTERNATIVES**

1. Determine that the Commission has jurisdiction over Zayo's petition and deny the petition as it lacks documentation to support Zayo's claim for payment.
2. Deny Zayo's petition because it does not meet the requirements of a formal complaint and reasonable grounds do not exist to investigate the allegation.
3. Determine that the Commission has jurisdiction over Zayo's petition and that an investigation is warranted. Take further action as the Commission deems appropriate.

**VI. RECOMMENDATION**

The Department recommends Alternative 1:

Determine that the Commission has jurisdiction over Zayo's petition and deny the petition as it lacks documentation to support Zayo's claim for payment.

/lt

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Public Comments**

**Docket No. P6854/M-15-138**

Dated this **1<sup>st</sup>** day of **April 2015**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_15-138_M-15-138
Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd  St. Paul, MN 55113	Electronic Service	No	OFF_SL_15-138_M-15-138
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_15-138_M-15-138
Charles	Forst	charles.forst@zayo.com	Zayo Group, LLC	400 Centennial Pkwy Ste 200  Louisville, CO 80027	Electronic Service	Yes	OFF_SL_15-138_M-15-138
John	Lindell	agorud.ecf@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_15-138_M-15-138
Charles	Mattingly	kim@vncenterprises.com	Dunnell Telephone Company, Inc.	P O Box 728  Judson, Texas 75660	Electronic Service	No	OFF_SL_15-138_M-15-138
Elisabeth	Rolander	elisabeth.rolander@zayo.com	Zayo Group, LLC	2660 Redcliff Drive  Broomfield, CO 80023	Electronic Service	Yes	OFF_SL_15-138_M-15-138
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_15-138_M-15-138