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Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: June 25, 2015 **Agenda Item # 6

Company: **Zayo Group, LLC.**

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

**In the matter of Zayo Group’s Request to Discontinue Telecommunications
Service to Dunnell Telephone Company.**

**Issues: Should the Commission grant Zayo Group’s request to discontinue
telecommunications service to Dunnell Telephone Company?**

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Relevant Documents

Initial filing by Zayo Group February 2, 2015
Comments by the Department of Commerce April 1, 2015
Reply Comments, by Zayo Group April 7, 2015
Letter by Department of Commerce April 9, 2015
Supplemental Comments by the Department of Commerce May 21, 2015

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I. Statement of the Issues

Issues Should the Commission grant Zayo Group's request to discontinue telecommunications service to Dunnell Telephone Company?

II. Background

Zayo's Petition to Disconnect Dunnell for Non-payment

On February 5, 2015, Zayo Group, LLC (Zayo) petitioned the Minnesota Public Utilities Commission (Commission) for approval to discontinue the provision of telecommunications service to its customer, Dunnell Telephone Company (Dunnell). Discontinuance requires an Order from the Commission.¹ In its petition Zayo alleges that Dunnell is seriously delinquent in its payment to Zayo for services rendered and that Dunnell has not responded to Zayo's multiple demands for payment. Zayo further alleged in its petition that Dunnell can obtain telecommunications service from another carrier.

Zayo was granted authority on March 7, 2011 to provide facilities based and resold local services.² It is a telecommunications carrier as defined under Minn. Stat. §237.01, subd. 6. It presently provides to Dunnell a private line at Digital Signal Level 1 (DS1), also known as Transmission Level 1 (T-1).

The Dunnell Telephone Company was formed in 1957 and it is wholly owned since July, 2014 by KCL Enterprises, LLK (KCL). Dunnell is an incumbent local exchange carrier (ILEC) defined as an independent telephone company under Minn. Stat. §237.01, subd. 3. It provides telephone service to approximately [TRADE SECRET DATA BEGINS TRADE SECRET DATA ENDS] access lines.³ Dunnell is a one-exchange company operating wholly inside the State of Minnesota with its central office switch located in Dunnell, Minnesota.⁴ Dunnell is located in southwestern Minnesota's Martin County between Sherburn, Minnesota and Estherville, Iowa south of I-90 on State Highway 4.

¹ Minn. Stat. §237.74, subd. 9 Discontinuance. If a physical connection exists between a telephone exchange system operated by a telephone company and the toll line or lines operated by a telecommunications carrier, neither of the companies shall have the connection severed or the service between the companies discontinued without first obtaining an order from the commission upon an application for permission to discontinue the physical connection. See also Minn. Stat. §237.12, subd. 2.

² Docket No. P6854/NA-11-103.

³ Docket No. P517/PA-14-511, Trade Secret Comments of the Minnesota Department of Commerce, June 30, 2014, p.2.

⁴ June 8, 2015 Email response of Bruce Linschide, Minnesota Department of Commerce, to inquiry of Mark Oberlander, Minnesota Public Utilities Commission.

The Minnesota Department of Commerce (Department) initiated discovery and a conference call in an attempt to clarify the facts of this dispute and to attempt resolution. Through this process Zayo has provided copies of: recent invoices sent to Dunnell, a service order, communications between Zayo and Dunnell, and a spreadsheet summarizing Dunnell's charges and payments dating back to 2012. In its February 22, 2015 response to Department discovery, Dunnell alleges that no payments are due or in arrears. The Department indicates that Dunnell has been asked numerous times and declined to provide documentation of payments claimed by Dunnell but not acknowledged as having been received by Zayo.

In its May 21, 2015 Supplemental Comments, the Department states that "... [T]he parties have been unable to engage in constructive discussions, including reaching agreement on what is in dispute and the impact on customers."

KCL Acquisition of Dunnell (Docket No. P517/PA-14-511)

An agreement to acquire Dunnell was made with KCL Enterprises, LLK (KCL) on June 13, 2014 and approved by the Commission on July 11, 2014 in Docket No. 14-511. Staff observes that in this subsequent proceeding, Zayo's billing records show that no further payments were received by Zayo from Dunnell after **[TRADE SECRET DATA BEGINS TRADE SECRET DATA ENDS]** Staff notes the juxtaposition of these events for consideration of possible relevance.

KCL is a Texas limited liability company formed on May 5, 2014 for the purpose of acquiring the stock of Dunnell. KCL's sole member is Charles D. Mattingly, Jr. Dunnell's president/secretary/treasurer, **[TRADE SECRET DATA BEGINS TRADE SECRET DATA ENDS]**, received an employment agreement from KCL to provide customer and network support in the company's business office in the City of Dunnell.

In seeking approval for the acquisition, KCL represented that it had the technical, managerial, and financial resources to bring operational efficiencies and an upgrading of the main trunk line for Dunnell from copper to fiber. (See Docket No. 14-511, July 11, 2014 Joint Petition pages 6-8.) The Commission issued its Order for Approval of Stock Transfer on July 11, 2014.

Staff observes that the following portions from the Stock Transfer Agreement may be relevant to the present discussion.

[TRADE SECRET DATA BEGINS

[Omitted information contained trade secret information and reference to footnote No. 5 regarding DOC Comments of June 30, 2014, page 4.⁵]

TRADE SECRET DATA ENDS]

Staff has not located any other references in the Stock Transfer Agreement of other disputes with Zayo, or of payments by Dunnell to Zayo being in arrears.

III. Parties Current Positions

DUNNELL

Dunnell declined to answer the Department's question "How much of the current amount that Dunnell owes to Zayo is in arrears?"

It's position is presented in its February 12, 2015 discovery response and is attached to "Trade Secret Comments of the Minnesota Department of Commerce" filed on April 1, 2015. In Dunnell's response to Department discovery, Dunnell declares:

"We are up to date on the existing T-1 (Circuit# DHYX/013372) that is in service [and wish to continue receiving this service from Zayo]. ... Zayo provided an additional T-1 and this is the dispute which again Zayo acknowledges in Exhibit

⁵ DOC Comments of June 30, 2014, page 4.

A that was terminated and yet Zayo continued to bill. ... There is no money owed due to the disconnection of the T-1 shown in Exhibit A.” (Emphasis added.)

Exhibit A to Dunnell’s discovery response is an e-mail exchange in which Zayo states “Zayo has agreed to remove the Early Termination Fee for the discontinued T1 and credit the account.” (Emphasis added) The exchange references Billing Account 113833-002272.

With regards to the effect of Zayo’s requested termination, in Dunnell’s response to Department discovery, Dunnell declares:

The T-1 (Circuit# DHYX/013372) that currently connects Zayo is the ONLY way to connect to Onvoy and the [S]S-7 that Onvoy provides. ... This is our path to Onvoy (Zayo’s sister company) to the outside world. ... There is no other carrier that Dunnell is aware of to get these services.

In an apparent reversal of position, in an informal telephone conversation on June 16, 2015, Commission Staff received a call from a Dunnell representative indicating that Dunnell was in the process of arranging alternative service from CenturyLink to replace that provided by Zayo.

Dunnell informed the Department that on or around May 8, 2015 the Carrier mailed a check to Zayo in the amount of [TRADE SECRET DATA BEGINS . TRADE SECRET DATA ENDS] Dunnell indicated that its check cleared the bank on our around May 13, 2015. Zayo has indicated to the Department that it has not received this payment nor a response to any of several requests for documentation of the payment having been made.⁶

ZAYO

Zayo seeks approval to discontinue telecommunications service to Dunnell alledging that Dunnell remains seriously delinquent in its payments. Zayo indicates that the current remaining balance due is **TRADE SECRET BEGINS** , **TRADE SECRET ENDS** which excludes the early termination liability (ETL) charges disputed earlier by Dunnell.

On March 25, 2015 in reply to the Department’s discovery, Zayo provided approximately 45 pages of supporting documentation including:

- 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.

⁶ DOC Trade Secret Supplemental Comments, May 21, 2015, p. 2.

- 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.

On April 7, 2015 Zayo filed Reply Comments in response to the Department's Comments of April 1, 2015 which indicated that Zayo had not filed sufficient documentation evidence to support its disconnection request. Importantly, in this filing Zayo provided additional documentation and clarification as follows:

Zayo currently has two separate billing disputes with Dunnell. The first dispute is for payment for termination charges due to the early termination of Service Order 373428, which Zayo disconnected in response to Dunnell's early termination request. Zayo is not asking the MN PUC to rule on this dispute, as it is billing and not service related. (Emphasis added.)

However, Zayo is asking the MC PUC to rule on Zayo's request to discontinue the current T1 Sonet Service that Zayo is providing to Dunnell under Service Order 301187 (circuit ID DHYX/013372//ZYO). Dunnell renewed this Service pursuant to the letter agreement dated May 2, 2012 (attached).

Dunnell is seriously delinquent in its payment to Zayo for Services rendered, and has not responded to Zayo's multiple demands for payment due (attached are 3 communications to Dunnell's attorney, to which a response was not received). As indicated in the attached Statement of Account (SOA), Dunnell has not remitted payment for Service rendered since July 2014.

On May 21, 2015 Zayo presented the current table summary of service fees, late charges, total current charges, past due amounts, due date, amount paid, payment date and remaining balance due on a monthly basis since March 1, 2012.⁷ It reflects Zayo's correction of a billing error for Dunnell's canceled line's early termination liability (ETL) in the amount of [TRADE SECRET BEGINS TRADE SECRET DATA ENDS]. Zayo indicates that it has credited Dunnell for billing errors and for interest on those ETL charges. The alleged balance due as of April 30, 2015 is indicated as being [TRADE SECRET DATA BEGINS

TRADE SECRET DATA ENDS]

⁷ Department's TRADE SECRET Supplemental Comments, Attachment 1, May 21, 2015.

DEPARTMENT

The Department in its May 21, 2015 Supplemental Comments states:

The Commission should grant Zayo's petition to discontinue service to Dunnell unless:

- Dunnell pays the undisputed amount that is has been billed by Zayo, and agrees to abide by a determination of the Commission with respect to disputed charges; or
- Dunnell is able to demonstrate harm to end-use customers. If such a demonstration is made, in the absence of payment to Zayo, the Commission will need to develop a plan for the discontinuance of service in consideration of the customer impact.

Documents received thus far indicate that Dunnell has an unpaid balance with Zayo of [TRADE SECRET BEGINS . TRADE SECRET ENDS] Further:

The Department has attempted to work with the Parties to address the complaint and to establish what charges are disputed and what charges are undisputed. The Department has also attempted to learn what the consequence would be to Dunnell's end-use customers if Zayo were given approval to discontinue the provision of service. However, the Parties have been unable to engage in constructive discussions, including reaching agreement on what is in dispute and the impact on customers.

Since expense is being incurred by Zayo without any apparent compensation, given the lack of cooperation between the parties, this matter should come before the Commission as soon as feasible. Zayo has now provided sufficient documentation to support its claims on billings to Dunnell and payments received.

IV. Staff Analysis

NON-PAYMENT

The question before the Commission is whether or not to grant Zayo's petition to discontinue telecommunications service to Dunnell for on-going non-payment for services provided. Zayo has provides substantial documentation that it was owed [TRADE SECRET DATA BEGINS TRADE SECRET DATA ENDS] as an adjusted balance as of April 30, 2015. Based on the information and documents received, the Department and Commission Staff agree that Zayo appears to have demonstrated that it is owed this amount.

Dunnell stated in its February 12, 2015 discovery response to the question “How much does Dunnell currently owe Zayo?” that “We are up to date on the existing T-1 ...” for the continuing provision under Service Order 301187 of the Private Line/DS1 Circuit No. DHYX/013372//ZYO (Legacy Circuit ID T1/23309). However, Dunnell provided no evidence of any payments having been made since being acquired by KCL in July 2014 and declined repeated requests to do so. Dunnell has not provided any documentation to rebut Zayo’s assertion that it is also owed for many other missed payments dating back to March 1, 2012.

A separate billing dispute over Dunnell having been mistakenly assessed early termination fees for canceling services provided under Service Order 373428 appears to have been resolved between the companies and likely no longer relevant to the decision now before the Commission.

Staff observes that in the 2014 Stock Transfer Agreement, Dunnell’s previous owner appears to acknowledge the dispute over having been billed for early termination liability. However, Commission Staff is not aware of any other acknowledgement in that document of disputes or non-payment issues with Zayo.

In the discovery responses, Dunnell’s current owner acknowledges the existing service received from Zayo under Service Order 301187, and Dunnell’s desire for it to continue at that time, but makes no demonstration that he has paid for this service since KCL acquired Dunnell. It appears that upon acquisition, Dunnell’s payments to Zayo diminished from intermittent, to none at all.

CUSTOMER IMPACT

Zayo alleged that other carriers were available to meet the needs of Dunnell’s customers so disconnection need not be a detriment to customer service.

Dunnell opposed disconnection initially stating that “There is no other carrier that Dunnell is aware of to get these services.” However, informal communication to Commission Staff from a Dunnell representative on June 16, 2015, indicated that Dunnell is already in the process of making arrangements to replace Zayo with CenturyLink as its provider.

V. Staff Recommendation

Commission Staff concur with the Department in its May 21, 2015 Supplemental Comments, that the Commission should grant Zayo’s petition to discontinue service to Dunnell unless:

1. Dunnell demonstrates payment of the undisputed amount billed by Zayo and agrees to abide by a determination of the Commission with respect to disputed charges; or
2. Dunnell demonstrates harm to end use customers would result from granting Zayo’s petition.

In granting Zayo's petition to discontinue service to Dunnell, the Commission should also address the process by which this is accomplished to ensure that obligations to Dunnell's telephone service continues uninterrupted.

VI. Commission Options

1. Postpone the decision, requiring the parties to file additional information as determined necessary during the Commission Meeting.
2. Refer the matter to the OAH for a contested case hearing.
3. Deny the petition.
4. Deny the petition without prejudice.
5. Deny the petition; and Order Dunnell to provide to the Commission within 20 days of the Order a monthly payment plan to bring its accounts with Zayo up to date within 6 months; reporting monthly payments to the Commission as compliance filings.
6. Approve the petition, requiring continuing service by Zayo as both parties prepare a disconnection plan due 20 days after the Order that provides Dunnell's customers service after Zayo discontinues service.