

May 27, 2015

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

**RE: In the Matter of Citizens Telecommunications Company of Minnesota, LLC.'s
Proposal to Adopt an Existing Alternative Form of Regulation
Docket No. P407/AR-15-388**

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce in the above referenced matter.

The petition was filed on April 27, 2015 by:

Scott Bohler
Manager, Government and External Affairs
2378 Wilshire Blvd.
Mound, MN 55364

The Department's recommendations are included herein. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY
Rates Analyst

KD/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P407/AR-15-388

I. PROCEDURAL BACKGROUND

On April 27, 2015, Citizens Telecommunications Company of Minnesota, LLC (Citizens) filed a “Notice of Adoption of an existing Alternative Form of Regulation (AFOR) Plan,” notifying the Minnesota Public Utilities Commission (Commission) of its intent, pursuant to Minnesota Statute §237.766, subd. 4, to adopt the existing AFOR Plan of Frontier Communications of Minnesota, Inc. (Frontier), which was approved by the Commission in Docket P405/AR-14-735 on February 13, 2015.¹

II. STATEMENT OF ISSUE

- Whether Citizens’ proposed adoption is in the public interest.
- What procedure should the Commission establish for its public interest review?

III. DISCUSSION OF LAW

Minnesota Statute § 237.766 subd. 4 provides for opting in to an existing AFOR plan and states that:

- a) A telephone company may elect to opt into another company’s plan if:
 - (1) the chosen plan is from a company that is larger than the electing company; or
 - (2) the chosen plan is from an affiliated company; and
 - (3) the plan is currently in effect.

¹ In the Matter of a Petition by Frontier Communications of Minnesota, Inc. for Approval of its Revised Alternative Regulation (AFOR), Order Approving Alternative Regulation Plan as Modified, February 23, 2015.

- b) A telephone company electing to enter an existing plan in lieu of proposing a new plan must operate under the terms of that plan for at least three years. If the original term of the existing plan was longer than three years, then the adopting company must operate under the plan for that longer period.
- c) A telephone company that desires to adopt an existing plan must give notice to the commission at least 90 days prior to the proposed effective date of the adoption and to its customers at least 60 days prior to the proposed effective date.
- d) The Department of Commerce or the Office of the Attorney General may file an objection to a telephone company that has previously operated under a plan from electing to opt into the plan of another company if the electing company is not in substantial compliance with the service quality provisions or has not met the infrastructure obligations of its plan.
- e) If a telephone company has not previously operated under an alternative regulation plan, the rates for its price-regulated services must be capped for the first three years at the rates in effect at the time of opt in, except for any plan provisions that address exogenous changes.
- f) Within 30 days of the electing company filing notice to the commission, interested parties may file comments identifying any aspect of the adoption that the party believes is contrary to the public interest. Reply comments may be filed within 45 days following the notice to the commission. The commission shall accept the adoption unless it finds adoption of the existing plan by the electing telephone company is not in the public interest, in which case it may reject or modify the election to opt into the provisions of the existing plan. If the commission modifies the election, the electing company may withdraw its proposed adoption of the existing plan by filing notice with the commission within 30 days of the commission's modification order.

Minn. Stat. 237.761 subd. 2 defines "price regulated" services as those services that are:

- (1) essential for providing local telephone service and access to the local telephone network;
- (2) integrally related to privacy, health, and safety of the company's customers; and

- (3) for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

Minn. Stat. §237.761 subd. 3 defines specific services as price-regulated and states that:

Price-regulated telephone services are the following:

- (1) residential and business service for local calling, including measured local service, two-party service, private branch exchange (PBX) trunks, trunk type hunting services, direct inward dialing, the network access portion of central office switched exchange service, and public access lines for customer-owned coin-operated telephones;
- (2) extended area service;
- (3) switched network access service;
- (4) call tracing;
- (5) calling number blocking;
- (6) touch tone service when provided separately from basic local exchange service;
- (7) local exchange, white-page, printed directories;
- (8) 911 emergency services;
- (9) installation and repair of local network access;
- (10) local operator services, excluding directory assistance; and
- (11) toll service blocking and 1-900 or 976 access blocking.

IV. ANALYSIS

Citizens' current AFOR Plan became effective November 1, 2012 and will remain in effect through October 31, 2015. The Plan provides, in Section III D ("Duration and Renewal") that:

No later than six months prior to the termination of the Plan, Citizens shall file with the Commission notice that it will exercise its right to extend the Plan for one year, propose a new plan, or revert to rate of return regulation.

If Citizens notifies the Commission that it intends to propose a new plan, interested parties shall have such time as the Commission shall designate to file comments on the proposal submitted by Citizens.

If Citizens notifies the Commission that it intends to renegotiate the Plan, interested parties shall have such time as the Commission shall designate to file comments on the proposal

submitted by Citizens. The Commission shall establish such procedures as it deems necessary to make a determination on the proposal pursuant to Minn. Stat. §237.61. If the Commission rejects or modifies Citizens' proposal in a manner that is unacceptable to Citizens, Citizens may permit the Plan to expire according to its terms and shall be regulated pursuant to applicable Minnesota Statutes and Commission Rules then in effect.

Citizens states in its petition that, pursuant to Minnesota Stat. § 237.766 subd. 4a, it is electing to adopt the AFOR Plan of its affiliate, Frontier Communications of Minnesota, Inc. (Frontier) It states that it has included a "conformed" version of the recently approved Frontier AFOR document modified to reflect "Citizens-specific items such as company name, list of tariffed services, etc." It states that "no changes are required to [Citizens'] tariff."

The Department's review, however, indicates that some provisions that the Commission approved in the Frontier AFOR Plan are not reflected in the "conformed" version, that there are inconsistencies between Frontier's AFOR and Citizens proposed AFOR with respect to the classification of services, and that changes *are* required to Citizens' tariff in order for the Commission to find Citizens' adoption of Frontier's AFOR Plan as approved.

1. *Citizens' conformed AFOR does not include all provisions of the approved Frontier AFOR.*

Frontier's recently approved AFOR provides, in Section B.1.a. "Price Caps for Certain Price Regulated Services" that:

Frontier will implement a rate increase to R1 rates in years two and three of the plan only to the extent that the total rate (R1 rate plus the rate increase plus any applicable EAS additive) does not exceed the FCC-established rate floor in effect at that time.

Citizens' conformed version of the approved Frontier AFOR Plan does not include the above language. The Department notes that in approving Frontier's AFOR Plan, *including the above language*, the Commission found that, with modification to the investment plan, the "Plan settlement agreement is reasonable, is supported by substantial evidence, and is in the public interest." Further, Minn. Stat. §237.766 (4)(a) does not appear to contemplate substantive changes to an existing plan. Modification of the plan is not in the public interest.

2. *Citizens has not modified its tariff to reflect changes to line extension terms, conditions, and pricing methodology.*

The negotiated settlement in the Frontier AFOR proceeding, (which the Commission approved with modifications to the investment plan), included updates to Frontier's tariff to

reflect a method for the pricing of line extensions that is fair to consumers and that provides Frontier with a reasonable expectation of revenue recovery (Attachment A). Citizens' Price Regulated Tariff No. 2 Section 5, page 12, "Line Extensions" (Attachment B) does not reflect a similar methodology or any description of how line extension charges are determined. The public interest requires that consumers be aware of how prices will be determined before they incur the charges. Citizens should be required to update its tariff to reflect a method similar to Frontier's.

3. *Services offered by Citizens that are identical to those offered by Frontier should be classified in the same the same way.*

Minn. Stat. §237.761 subpart 1 requires that an alternative regulation plan must contain provisions that provide for classification of all telephone services as price regulated, flexibly priced, or non-price regulated.

Frontier's approved AFOR reflects that private and semi private² directory listings are price regulated services, while Citizens' conformed AFOR reflects that all directory listings, including non-published and non-listed directory listings are flexibly priced. Price regulated services are defined in Minn. Stat. §237.761 (subd. 2) as those services that are:

- (1) essential for providing local telephone service and access to the local telephone network;
- (2) integrally related to privacy, health, and safety of the company's customers; and
- (3) for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

Non-published and non-listed directory listings (or private and semi-private services) are clearly price regulated services. Further, the plans should be consistent in the way that identical services are regulated. Citizens should be required to update Appendix A of its conformed AFOR to reflect that while other types of special directory listings (such as additional listings or foreign listings) may be flexibly priced, non-published and non-listed directory listings are price regulated services.

4. *Some services are listed both as flexibly priced and price regulated in Citizens' Appendix A.*

Citizens proposed Appendix A reflects toll restriction and intralata operator services both as price regulated and as flexibly priced services. Frontier's approved AFOR reflects both toll restriction and operator services as price regulated services. Toll restriction and operator

² Private directory listings (and non-published directory listings) are those listings that are not published in the white pages directory, and are also not available through directory assistance. Semi-private directory listings (and non-listed listings) are not published in the white pages directory, but are available through directory assistance.

services are among the services specifically identified as price regulated services in Minn. Stat. §237.761 subd. 3. Citizens should clarify that toll service blocking and 1-900 or 976 access blocking, and local operator services are price regulated services, and amend its tariff accordingly.

V. PUBLIC INTEREST REVIEW

The Commission's public interest review necessitates that interested parties and those directly affected by the Plan (including retail customers, interexchange carriers, and local governments) have opportunity to comment on any issues raised by the proposed adoption prior to its implementation. A comment and reply comment period are provided by statute and by Citizens' current AFOR Plan. The Commission should take whatever measures it deems appropriate, that do not conflict with the statute, to ensure the plan is consistent with the public interest.

In conducting its public interest review of past AFOR Plan adoptions³, the Commission has typically scheduled an initial meeting to establish an appropriate procedure. Subsequently or sometimes concurrently, the Commission solicits comments and replies as to the merits of the petition. Settlement negotiations, if warranted, may occur prior to a Commission hearing and final disposition

The Department believes that the proposed adoption requires the modifications identified in these comments. With the concurrence of Citizens, any solicitation of comments should be on a proposed plan that reflects these modifications. The Department wishes to give consideration to the comments or concerns raised by any interested persons when it eventually submits its recommendation to the Commission.

VI. COMMISSIONALTERNATIVES

- A. Direct the Company to work with the Department of Commerce, the RUD-OAG, and Commission staff to finalize the customer notice and to determine the timing of the notice. Citizens has already submitted a proposed customer notice.
- B. Direct the Company to work with the Department of Commerce, the RUD-OAG, and Commission staff to establish a website containing information about its proposed AFOR Plan and a feature permitting interested persons to ask questions and submit comments about the proposed Plan. Require that Citizens share all questions, comments, and responses generated through the website with the Department of Commerce, the RUD- OAG and Commission staff.

³ See, for example, Docket No. P407/AR-12-405.

- C. Order the parties to convene a settlement conference to encourage settlement or stipulation of issues with respect to how the Plan should be modified.
- D. Establish a timeline for filing any settlement reached. After filing a settlement, there should be an opportunity for comments and reply comments before the Commission makes its final determination in this matter.
- E. Other action of the Commission's choosing

VII. DEPARTMENT RECOMMENDATION

The Department recommends Alternatives A, B, C, and D.

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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
Comments**

Docket No. P407/AR-15-388

Dated this 27th day of May 2015

/s/Sharon Ferguson

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