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May 27, 2016

**VIA ELECTRONIC FILING**

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
Saint Paul, Minnesota 55101

Re: In the Matter of the Application of Charter Fiberlink CC VIII, LLC for an Amended Certificate of Authority to Provide Facilities-Based Local Exchange Services, Resold Local Exchange Services, Interexchange Services and Local Niche Services in Additional Exchanges; MPUC Docket No. P5615/SA-16-375

Dear Mr. Wolf:

Enclosed is the Reply Comments of Charter Fiberlink CC VIII, LLC in connection with the above-referenced matter. Please file these Reply Comments in your usual fashion.

If you have any questions regarding the foregoing, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads "Kennard B. Woods".

Kennard B. Woods  
Counsel for Charter Fiberlink CC VIII, LLC

KBW/nh

Enc.

cc: Charter Fiberlink CC VIII, LLC  
(with enclosure)  
Charles A. Hudak, Esq.  
(without enclosure)

STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

Request by Charter Fiberlink CC VIII, LLC to )  
amend its certificate of authority by )  
expanding its service area. ) Docket No. P5615/SA-16-375

Request by Charter Fiberlink CCO, LLC to )  
amend its certificate of authority by )  
expanding its service area. ) Docket No. P6716/SA-16-376

**REPLY COMMENTS OF CHARTER FIBERLINK CCO, LLC AND CHARTER  
FIBERLINK CC VIII, LLC**

/s/ Charles A. Hudak

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May 27, 2016

Charter Fiberlink CCO, LLC, and Charter Fiberlink CC VIII, LLC (collectively, “Charter Fiberlink” or the “Charter Fiberlink Entities”) hereby reply to the May 17, 2016 Comments submitted by the Department of Commerce (“DOC”) in the above-captioned proceedings.

**I. The Minnesota Public Utilities Commission’s (“Commission”) Separate Docket Related To Services Offered by Other Charter Affiliates Is Not Related to the Present Docket.**

The DOC’s Comments in both of the above-captioned dockets include the following statement:

In its February 5, 2016 comments on the compliance filing of Charter Fiberlink CC VIII (and the other Charter affiliates) in Docket No. P6716, 5615/C-14-383, the Department recommended that the Commission direct the Charter affiliates to comply with certain specified regulatory protections immediately. The regulatory protections described in the Department’s February 5, 2016 comments are the basic safeguards that ensure customers receive adequate service. The Department recommends that the Commission act on the recommendations made in the Department’s February 5, 2016 comments on Docket No. P6716, 5615/C-14-383 prior to acting on the current service area expansion proposal. If the Commission chooses to act on the current docket prior to acting on the Department’s February 5, 2016 comments in Docket No. P6716, 5615/C-14-383, Charter will need to comply with whatever the Commission orders for all of its approved service areas.

Charter Fiberlink agrees with the final sentence in this paragraph, and believes that it renders unnecessary DOC’s recommendation that the Commission act in Docket No. P6716, 5615/C-14-383 (the “VoIP Docket”) prior to acting in these proceedings.

The VoIP Docket addresses whether two other Charter affiliates, Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (collectively, “Charter Advanced Services” or the “Charter Advanced Services Entities”), which offer retail VoIP service, must do so subject to state-law rules governing telephone services. In the VoIP docket, the Commission has issued an Order holding that the Commission has jurisdiction to regulate

Charter Advanced Services, but the Commission has not yet acted on Charter Advanced Services' proposed Compliance Plan for complying with the Commission's regulations. As the Commission is aware, the Commission's Order in the VoIP docket is currently the subject of litigation in federal court, which is currently in discovery. *See Charter Advanced Services (MN), LLC v. Heydinger*, Case No. 15-cv-03935-SRN-HB (D. Minn.) (the "Federal Litigation").

The DOC's comments correctly state that "[if] the Commission chooses to act on the current docket prior to acting on the Department's February 5, 2016 comments in Docket No. P6716, 5615/C-14-383, Charter will need to comply with whatever the Commission orders for all of its approved service areas." On this point, there is no dispute. If Charter Advanced Services prevails in the Federal Litigation, the Commission's regulations will be inapplicable statewide; if Charter Advanced Services does not prevail, then Charter Advanced Services will comply statewide with the result of any Commission order in the VoIP Docket.

Because there is no disagreement that the results of the VoIP Docket and of the Federal Litigation will have statewide effect, the DOC's recommendation that the Commission act on Charter Advanced Services' proposed Compliance Plan in the VoIP Docket before acting in these dockets is unnecessary.

*First*, there is no substantive link between the VoIP Docket and the instant dockets. As noted above, the VoIP Docket (and the Federal Litigation) address whether the Charter Advanced Services entities are subject to the Commission's telephone regulations. The Charter Advanced Services entities are not parties to the instant proceedings; the sole parties here are Charter Fiberlink entities, and there is no dispute that the Charter Fiberlink entities are regulated carriers subject to the Commission's authority. The Commission's approval of Charter

Fiberlink's applications to expand their service areas here should not be linked to the Commission's decision in a docket addressing distinct issues regarding distinct Charter entities.

Although the DOC's comments refer to the "compliance filing of Charter Fiberlink CC VIII (and the other Charter affiliates) in Docket No. P6716, 5615/C-14-383," thereby implying that the VoIP Docket addresses *Charter Fiberlink's* compliance with the Commission's regulations, this characterization is misleading. The sole disputed issue in the VoIP Docket is whether the *Charter Advanced Services* entities should also be subject to the Commission's regulations—the application of the Commission's authority to the *Charter Fiberlink* entities is not in dispute, and the Charter Fiberlink entities are nominal parties to the VoIP Docket only because DOC chose to name them in its Complaint. The disputed issue in the VoIP Docket has no bearing on whether Charter Fiberlink's requests to expand its service area should be approved, and there is no reason that any other dockets involving the Charter Fiberlink entities should be deferred or stayed during the pendency of the VoIP Docket. Accordingly, the DOC in the proceedings initiated by Charter Fiberlink's previous applications for expanded service authority acknowledged that any concerns with compliance with the Order in Docket No. P6716, P5615/C-14-383 could be addressed in that proceeding and should not be the subject of objections to Charter Fiberlink's applications.<sup>1</sup>

*Second*, linking these proceedings to the VoIP Docket in the manner requested by DOC would interfere with the orderly judicial review process currently underway in federal court. As the Commission is aware, Charter Advanced Services has argued in the VoIP Docket that the Commission should defer action on its Compliance Plan until the Federal Litigation is resolved, and Charter Fiberlink adheres to that position here. If the Commission were to rush to issue a

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<sup>1</sup> See DOC's November 25, 2015 letter filed in Docket Nos. P6716/SA-15-84 and P5615/SA-15-85.

decision in the VoIP Docket before the court in the Federal Litigation has had a chance to evaluate the evidence and reach a decision on the merits, it would require the Charter Advanced Services entities to seek emergency judicial relief, which would embroil the parties in costly and unnecessary ancillary litigation in the middle of discovery. Moreover, an immediate order on Charter Advanced Services' Compliance Plan could subject Charter Advanced Services to compliance costs that would be unnecessary if Charter Advanced Services were to prevail in the Federal Litigation.

For those reasons, Charter Fiberlink recommends that the Commission proceed to reach a decision in these proceedings while allowing the VoIP Docket and Federal Litigation to proceed in an orderly fashion.

**II. A Written Agreement Between the Charter Fiberlink Entities is Not Necessary.**

With regard to the docket addressing Charter Fiberlink CC VIII, LLC, the DOC states:

While Charter Fiberlink CC VIII does not have an interconnection agreement with Embarq Minnesota, Charter Fiberlink CC VIII's affiliate (i.e., Charter Fiberlink CCO) received approval of an interconnection agreement with Embarq Minnesota in Docket No. P6716, 430/IC-10-424. Charter Fiberlink CC VIII may make use of this interconnection agreement by filing a letter with the Commission stating that it has formed a competitive local exchange carrier (CLEC) to CLEC agreement with its affiliate.

To the extent DOC is contending that the Charter Fiberlink Entities should be required to form a formal written agreement with one another in order to exchange traffic, this is unnecessary.

As Charter Fiberlink CC VIII, LLC's application already explains, "[t]hrough Charter Fiberlink CCO, LLC, which is affiliated and shares a common management team with Charter Fiberlink CC VIII, interconnection arrangements were made with Mid-State Telephone Company d/b/a TDS Telecom. An amendment adding Arvig Telephone Company as a party to

the interconnection agreement between Charter Fiberlink CCO, LLC and Mid-State Telephone Company d/b/a TDS Telecom was approved by the Commission on January 2, 2015.” Charter Fiberlink CC VIII, LLC’s Application further states that it will obtain interconnection through Charter Fiberlink CCO, LLC in the Embarq areas pursuant to the same arrangement as in the Arvig areas: “Likewise, through Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII has an interconnection agreement with Embarq Minnesota, Inc. d/b/a CenturyLink, which was approved by the Commission on May 24, 2010.” *Id.* In Charter Fiberlink CC VIII, LLC’s previous applications for expanded service authority, it made substantially similar representations, which the DOC and the Commission found acceptable, of the affiliation and common management structure with Charter Fiberlink CCO, LLC and of the latter’s interconnection arrangements.<sup>2</sup>

Because Charter Fiberlink CC VIII, LLC can utilize the interconnection of its affiliate Charter Fiberlink CCO, LLC in the Embarq areas as set forth in the application, there should not be any need for a formal written agreement between the two Charter Fiberlink Entities documenting that arrangement. DOC does not provide any authority for the proposition that two CLECs under common ownership and management require a written agreement in order to exchange traffic with one another, and Charter is not aware of such a requirement under the Commission’s rules. To the extent the Commission requires a representation as to the existence of such an intercompany arrangement, the facts set forth in the Application already document and set forth the Charter Fiberlink Entities’ intentions to exchange traffic in such a manner.

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<sup>2</sup> *See, e.g.*, Order Granting Certificate of Authority to Charter Fiberlink CC VIII, Docket No. P5615/M-12-392, May 22, 2012 (“Through Charter Fiberlink CCO, LLC, which is affiliated and shares a common management team with Charter Fiberlink CC VIII, interconnection arrangements are being made with Ace Telephone Association, Kasson-Mantorville Telephone Company, and Mid-State Telephone Company d/b/a TDS Telecom”).

Dated: May 27, 2016

Respectfully submitted,

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**STATE OF MINNESOTA**  
**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Matt Schuerger	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner

Request by Charter Fiberlink CC VIII, LLC to )  
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expanding its service area. )                   Docket No. P6716/SA-16-376

**CERTIFICATE OF SERVICE**

STATE OF GEORGIA            )  
  )ss  
COUNTY OF DEKALB        )

Kennard B. Woods, being first duly sworn, hereby states that on the 27th day of May, 2016, the foregoing Reply Comments were served on the attached list of persons by electronic mail or by depositing a true and correct copy thereof via U.S. Mail, first class postage prepaid.

/s/ Kennard B. Woods

SWORN TO BEFORE ME this  
27<sup>th</sup> day of May, 2016

/s/ Nicola Haynes  
NOTARY PUBLIC  
My Commission Expires Sept. 22, 2016

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