

Minnesota Public Utilities Commission
Staff Briefing Paper

Meeting Date: October 23, 2014.....** Agenda Item # 1

Companies: Charter Fiberlink CCO, LLC; Charter Fiberlink CC VIII; Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC

Docket No. P-6716, 5615/C-14-383
In the Matter of the Complaint by the Minnesota Department of Commerce (DOC) against the Charter Affiliates regarding Transfer of Customers

Issues: Does the Commission have jurisdiction over the matter and are there grounds for further investigation of the allegations?

Staff: Kevin O’Grady.....651-201-2218

Relevant Documents

DOC Complaint September 26, 2014

The attached materials are work papers of Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

Introduction

On September 26, 2014, the Minnesota Department of Commerce (DOC) filed a Complaint arguing that:

- (1) Customers of the Charter Fiberlink Companies were transferred to the Charter Advanced Services Companies without prior Commission approval;
- (2) The transfers have significantly and negatively affected Minnesota's Telephone Assistance Plan (TAP) and Telecommunications Access Minnesota (TAM) program;
- (3) Charter's claim to the Federal Communications Commission (FCC) that the Minnesota PUC has no jurisdiction over its services is not supported by Charter; and
- (4) The Charter Advanced Services companies have not filed for certification.

DOC Complaint

DOC has named four companies in its Complaint. DOC refers to the four companies as follows:

Charter Affiliates (or Charter) refers to all four companies collectively;

Charter Fiberlink Companies refers to Charter Fiberlink CCO, LLC, and Charter Fiberlink CC VIII. These companies have obtained authority from the Commission to operate in Minnesota as Competitive Local Exchange Carriers (CLECs); and

Charter Advanced Services Companies refers to Charter Advanced Services (MN), LLC, and Charter Advanced Services VIII (MN), LLC. Neither company holds a certificate of authority from the Commission.

DOC argues that the Charter Fiberlink Companies have transferred all of their residential customers to the Charter Advanced Services Companies, that is, from the CLECs certified by the Commission to the entities not certified by the Commission. Subsequent to that transfer, CC Fiberlink, LLC (an entity not named in the Complaint) petitioned the FCC, on behalf of the

Charter Affiliates, for authorization to discontinue providing “discounted local interconnected VoIP service to existing customers marketed as Lifeline service.” In a separate petition to the FCC, CC Fiberlink, LLC, on behalf of the Charter Affiliates, sought authorization to “discontinue offering to new customers interconnected VoIP services characterized as stand-alone basic local telephone service.”

DOC argues that the Charter Advanced Services Companies do not collect and remit TAP and TAM fees thus inappropriately burdening the customers of other carriers that bear the cost of TAP and TAM services.

DOC challenges Charter’s assertion that because of changes to state law it is no longer required to offer the stated services in Minnesota. Until Charter obtains a Commission Order that changes the regulatory status of the services it provides to its customers, there simply is no change. Having not obtained Commission approval to terminate the provision of local service in Minnesota, the services for which Charter received certification as a telecommunications carrier remain under the jurisdiction of the Commission. The burden of proof rests with Charter that it and its services are not subject to the Commission’s jurisdiction.

DOC believes that, with respect to services provided by the Charter Advanced Services Companies, it is Charter’s claim that the Commission has no jurisdiction over:

- (a) Resolution of consumer complaints;
- (b) Protections concerning price discrimination in Chapter 237 and Commission rules;
- (c) The protections concerning terminating service to customers in Chapter 237 and Commission rules;
- (d) Requirements that allow other carriers to physically connect to its network;
- (e) Consumer protection laws regarding disclosure, anti-slamming and cramming;
- (f) Any notice requirements, including notices for price increases and significant changes in the terms and conditions of service in Chapter 237 and Commission rules;
- (g) Any protections in Chapter 237 and Commission rules with respect to services provided to other carriers, including the disconnection of services that impact end use customers;

- (h) Any protections in Chapter 237 and Commission rules that enable a customer to terminate service and switch to another carrier, including termination liability assessments that unreasonably lock the customer into a service they no longer want;
- (i) Any protections in Chapter 237 and Commission rules that attempt to promote and advance competition;
- (j) Any protections in Chapter 237 and Commission rules that support universal service, including providing service to all customers under the terms and conditions of an approved tariff;
- (k) Any protections in Chapter 237 and Commission rules intended to maintain just and reasonable rates;
- (l) Any protections in Chapter 237 and Commission rules intended to protect low income consumers, including making the TAP program available;
- (m) Requirements for the collection and remittance of fees pertaining to the TAP and TAM fees;
- (n) Requirements to submit regulatory assessments to recover Commission and DOC expenses associated with telecommunications regulatory activity;
- (o) Annual reporting requirements used to determine regulatory assessments; and
- (p) Commission approval for the change in either the ultimate control of the company or the operating company serving the customer.

Formally, DOC states its allegations as follows:

- (1) On or around March 1, 2013, the Charter Fiberlink Companies assigned the rights to serve their residential customers, including customers participating in the TAP program, to the Charter Advanced Services Companies.
- (2) The customers of the Charter Fiberlink Companies were transferred to the Charter Advanced Services Companies without prior Commission notice or approval.
- (3) The customers of the Charter Fiberlink Companies were transferred to the Charter Advanced Services Companies without meaningful notice or prior consent of its customers, in violation of Minn. Stats. §§ 237.661 and 237.663.

- (4) The Charter Advanced Services Companies and the Charter Fiberlink Companies are under common ownership and control.
- (5) The Charter Advanced Services Companies do not have, and have not sought, a certificate of authority from the Commission to provide telecommunications service in Minnesota.
- (6) Charter violated Minn. Stats. §§ 237.16, subd. 1; 237.23; 237.74, subd. 12 and Minn. Rules Part 7812.0200, subp. 1, by transferring assets and changing the operating company serving end-use customers without either notice to the Commission or prior Commission approval. The transfer occurred on March 1, 2013, whereby the Charter Fiberlink Companies assigned the rights to serve their residential service customers to the Charter Advanced Services Companies, resulting in an uncertified company providing services to consumers that were formerly provided by a certified entity.
- (7) Charter violated Minn. Rules Part 7812.0300 by providing service to customers through an uncertified company, that were formerly provided by a certified company, without fulfilling the filing requirements required of telecommunications service providers.
- (8) Charter violated Minn. Rules Part 7812.0600 by providing service to customers through an uncertified affiliate company, without meeting the basic service requirements for a local service provider to offer its customers within its service area.
- (9) Charter violated Minn. Stat. § 237.52, subd. 3, by not collecting TAM fees from customers that were transferred to an uncertified company, and not remitting TAM fees as provided in Minn. Stat. § 403.11, subd. 1(d).
- (10) Charter violated Minn. Stat. § 237.70 pertaining to the collection and remittance of the TAP fee.
- (11) Charter violated Minn. Stat. § 237.70 by not providing the TAP assistance program to new qualifying subscribers.
- (12) Charter advertises “No added fees like the phone company charges you” creating a competitive advantage for itself by evading the collection and remittance of the TAP and TAM fees.
- (13) Charter has discontinued offering the TAP program to qualifying customers in violation of the Order of the Commission in the 08-1322 Docket dated January 28, 2009 adopting

a complaint settlement in which Charter agreed that prior Commission approval would be received prior to discontinuing TAP.

- (14) Charter's position concerning the transfer of customers to an unregulated entity conflicts with Charter's representations in a past interconnection agreement arbitration before the Commission, the 08-952 Docket, where Charter represented to the Commission that it is a facilities-based local service provider that provisions service over its own switch and transmission facilities, and thus, has the right to request that the Commission compel ILECs to interconnect with it at a single physical Point of Interconnection (POI) in Qwest territory in each Local Access and Transport Area (LATA) in which Charter, as a CLEC, has local end user customers, and to provide any related services and elements at cost-based rates.
- (15) Charter has violated Minn. Stat. §237.295, subd. 2, by not filing an annual report reflecting intrastate revenues for service to customers, as Charter transferred customers of a certified company to an uncertified company without obtaining prior Commission approval. In so doing, Charter has evaded the requirement to pay regulatory assessments to recover Commission and DOC expenses associated with telecommunications regulatory activity.

Disposition of Formal Complaints

Minn. Rules 7829.1800, subparts 1, 2 and 4, respectively, set forth the procedure for Commission review of a formal complaint:

The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

And,

On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the

complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

And,

If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied.

Minn. Rules 7829.1900, subparts 2 and 3, respectively, make provision for the filing of comments by interested parties:

A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments must be served on the complainant, respondent, department, Residential Utilities Division of the Office of the Attorney General, and any other known parties.

And,

A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, Residential Utilities Division Of the Office of the Attorney General, and any other known parties.

Staff understands the DOC Complaint to have requested the initial comment period be extended for all interested parties to 30 days following the 20-day Answer period. Minn. Rules Part 7829.1900, Subp. 9, states:

At the request of the department, the commission shall extend the comment periods established in this part up to an additional 30 days, except for comment periods set by statute.

Accounting for the DOC request, Staff believes the comment period would be as follows (presuming the Commission finds jurisdiction and grounds to investigate):

Answer due 20 days after the Commission order;

Comments due 50 days after the Commission order; and

Replies due 60 days after the Commission order.

Staff Analysis

Minn. Rules 7829.1800, subpart 1, dictates that the “commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation.”

Staff believes the Commission has sufficient grounds to investigate the matter. DOC has raised issues of considerable significance regarding matters that directly affect customer protections. Staff also believes the Commission has jurisdiction sufficient to serve the Complaint upon the respondents. The Charter Fiberlink Companies have been certified by the Commission to operate as Competitive Local Exchange Carriers (CLECs) in Minnesota. As such, they are required to provide services in Minnesota pursuant to Minn. Rule 7812. DOC provides arguments supporting Commission jurisdiction on pages 7-9 of its Complaint. Should challenges to the Commission’s jurisdiction arise, those questions may be addressed in the Answer and the subsequent comments.

Commission Options Re: Grounds for Investigation

- A.1. Find that there are not reasonable grounds to investigate the complaint. Dismiss the Complaint. Close the docket.
- A.2. Find that there are reasonable grounds to investigate the matter.

Staff recommends option A.2.

Commission Options Re: Jurisdiction

- A.1. Find that the Commission does not have sufficient jurisdiction to investigate the matter. Dismiss the Complaint. Close the docket.
- A.2. Find that the Commission has sufficient jurisdiction to investigate the matter. Presuming the Commission has found reasonable grounds to investigate, serve the complaint on the Charter Affiliates, and require the Charter Affiliates to file an answer to the complaint within 20 days of the issuance of the Commission order. Interested parties should file comments within 50 days of the issuance of the Commission order. Replies should be filed within 60 days of the Commission order. Grant the Executive Secretary authority to modify the schedule as necessary.

- A.3. Take other action.

Staff recommends option B.2.