



Offices in
Minneapolis
Saint Paul
St. Cloud

470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300 telephone
(612) 337-9310 fax
www.kennedy-graven.com
Affirmative Action, Equal Opportunity Employer

JAMES M. STROMMEN
Attorney at Law
Direct Dial: (612) 337-9233
Email: jstrommen@kennedy-graven.com

September 23, 2016

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

VIA ELECTRONIC FILING

Re: *In the Matter of the Application of Mobilitie Management, LLC for Authority to Provide Local Niche Service in Minnesota*
MPUC Docket No. P6966/NA-16-607
Comments of the Suburban Rate Authority

Dear Mr. Wolf:

The Suburban Rate Authority (SRA), a joint powers association of thirty-one (31) suburban municipalities, files these comments to the above amended application.¹

COMMENTS

This application has been brought to the SRA's attention due the actions of the applicant's parent or affiliated entity, Mobilitie, LLC ("Mobilitie"). As a company with local niche certification from the Commission, Mobilitie has applied to SRA and other Minnesota cities for right of way ("ROW") placement of poles, towers and other equipment within the ROW. Its representations to certain cities about Mobilitie's rights to the ROW have drawn the attention of the Department. In an August 4, 2016 letter from the Department to Mobilitie, filed in this docket, the Department opined that Mobilitie has no exemption from local government ROW management authority granted under Minn. Stat. § 237.163.²

The SRA supports the Department position that Mobilitie has no exemption from municipal authority to manage its ROW. The SRA also has questions about this local niche certification application by Mobilitie Management ("MM"), and the type of entity MM is under Minnesota Statutes chapter 237.

¹ SRA member list is attached.

² Department of Commerce letter dated August 4, 2016, attached.

A. Local Government ROW Management Authority and Local Niche Providers

The SRA is aware of no federal preemption under the Telecommunication Act of 1996 or Minnesota law that precludes the ROW management authority granted by the Legislature to Minnesota local government units (cities, counties, townships) (“LGUs”) over the various ROW users that seek to provide telecommunication services to end users in an LGU. See, 47 U.S.C. § 253 (c (7), (e); Minn. Stat. §§ 237.162 and 237.163; Minn. R. ch. 7819. Nor is the SRA aware of any state or federal law that expressly grants ROW access authority to wireless communication providers. Further, the SRA questions what type of chapter 237 telecommunication entities are created by virtue of certification as a “local niche” provider, if any. “Local niche” is not defined or referenced in Minnesota Statutes, chapter 237, the statute defining all telecommunications entities under the jurisdiction of the Commission.

MM has not specifically defined itself in the context of chapter 237. In its August 18, 2016 letter responding to a Department inquiry about MM’s intent to become a local niche provider, its parent, Mobilitie, explained that MM seeks to provide:

...transport, backhaul, and broadband data and other voice and data services as well as other infrastructure to potential customers including not only wireless carriers, but emergency responders, public safety agencies, backhaul providers, and other telecommunications services providers with the technical capabilities necessary to expand their networks.³

Since a local niche service provider means “a telecommunications carrier that provides local niche service” is MM also seeking a certification to be a telecommunications carrier? Or has MM already been certified as a telecommunications carrier? A “telecommunications carrier” is defined in Minn. Stat. § 237.01, subd. 6 as a company authorized to furnish interexchange telephone service or local telephone service, and no other service. Yet local niche service is defined by Minnesota Rule as “point to point” telecommunications services under Commission jurisdiction that are *not* local service or interexchange service. Minn. R. 7811.0100, subp. 31. It is unclear to the SRA from these definitions how a local niche provider and telecommunications carrier fit together, given these definitions.

In any case, to come under the jurisdiction of the Commission, a local niche provider must provide telecommunications services to end users and not be merely an equipment provider. Does the applicant need to show that it has end-user commitments to be a provider of local niche telecommunications services to end users, or that it merely hopes to someday? Does MM become a telecommunications carrier by virtue of a local niche certification, or must it show the Commission that MM is such a carrier or other PUC regulated entity before receiving the local niche certification?

³ Mobilitie Management letter dated August 18, 2016, attached.

Daniel P. Wolf
September 23, 2016
Page 2

While Mobilitie is not the applicant here, the SRA is concerned with the overlap of intended local niche business and apparent ROW access sought by both Mobilitie and MM. Minnesota cities would appreciate clarification regarding the type of entities Mobilitie and MM are under chapter 237 and the basis for that status. This will assist in identifying what rights, if any, they have to place facilities in the public ROW.

Respectfully submitted,

KENNEDY & GRAVEN, CHARTERED

/s/ James M. Strommen

James M. Strommen
Attorneys for the Suburban Rate Authority

JMS:lml

Attachments

cc: Service List

SUBURBAN RATE AUTHORITY MEMBER CITIES

2016

Bloomington	Minnetonka
Brooklyn Park	Mound
Burnsville	Orono
Chanhassen	Plymouth
Circle Pines	Robbinsdale
Deephaven	Roseville
Eden Prairie	St. Anthony Village
Edina	St. Louis Park
Fridley	Shakopee
Golden Valley	Shoreview
Hastings	Spring Lake Park
Hopkins	Spring Park
Lauderdale	Victoria
Maple Grove	Wayzata
Maple Plain	Woodbury
Maplewood	

August 4, 2016

Chester Bragado
Mobilitie, LLC
2220 University Drive
Newport Beach, CA 92660

RE: Inquiries Regarding Mobilitie, LLC, Docket Nos. P6636/NA-07-470, P6966/NA-16-607

Dear Mr. Bragado:

The Minnesota Department of Commerce (Department) and Minnesota Public Utilities Commission (PUC) have received numerous communications from Minnesota municipalities concerning Mobilitie. The municipalities are indicating that representatives of Mobilitie are claiming that Mobilitie is not subject to right-of-way regulation by the Minnesota municipalities since Mobilitie holds a certificate of authority issued by the Minnesota Public Utilities Commission to provide telecommunications service.

The Department has consulted with PUC staff and we are aware of nothing in Minnesota statutes or rules that exempts a PUC certificated carrier from the requirements of a local government units concerning rights-of-way. While Mobilitie, LLC holds a certificate of authority to provide local niche service, and the application of Mobilitie Management, LLC is currently pending, this does not give Mobilitie an exemption from the requirements of the local government units. See Minnesota Statute 237.163.

The Department requests that Mobilitie cease from asserting that PUC authority has exempted it from the regulatory requirements of local government units. If such communications continue, the Department will pursue whatever remedies it may have available to it under Minnesota law. If you have any questions, please feel free to contact me at 651-539-1876 or by email at diane.dietz@state.mn.us.

Sincerely,

/s/ DIANE DIETZ
Public Utilities Analyst

DD/lt

cc: Keenan P. Adamchak, Marashlian and Donahue, PLLC, The CommLaw Group
Michelle Rebholz, Minnesota Public Utilities Commission

August 18, 2016

VIA EMAIL & ELECTRONIC FILING

Ms. Diane Dietz, Public Utilities Analyst
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101
diane.dietz@state.mn.us

**Re: Mobilite Management, LLC
Application for Authority to Provide Local Niche Service in Minnesota
(Docket No. 16-607)
*Response to Staff Inquiry***

Dear Ms. Dietz:

Mobilite Management, LLC ("Mobilite Management," or "Applicant"), by its undersigned counsel hereby submits this Response to your inquiry dated August 16, 2016.

Mobilite Management hereby responds to each of your inquiries as follows:

- 1. An affiliate of the applicant, Mobilite, LLC, currently has certification to provide local niche services in Minnesota and has been reporting zero jurisdictional revenues each year since receiving its certification. Please explain why Mobilite Management is also seeking certification to provide local niche services? Will the two affiliates be serving different customer groups?**

Mobilite, LLC ("Mobilite") was established to provide small cell, distributed antenna systems, RF transport, and other infrastructure to expand wireless providers' data networks. In doing so, Mobilite has established business relationships with several wireless carriers across all fifty states and the District of Columbia in providing such services.

In contrast, Mobilite has created Mobilite Management as a separate venture in order to provide transport, backhaul, and broadband data and other voice and data services as well as other infrastructure to potential customers including not only wireless carriers, but emergency responders, public safety agencies, backhaul providers, and other telecommunications service providers with the technical capabilities necessary to expand their networks. Unlike Mobilite, Mobilite Management intends to focus on a broader range of customers in the provision of its services.

Given the established relationships that Mobilite currently maintains with its wireless carrier customers, and the expanded portfolio of service offerings to be provided to potential customers through Mobilite Management, the company's management determined that it would be able to more effectively deliver its services to its current and potential customers through separate entities. Accordingly, as management established multiple entities to address different business opportunities

for the company, having two affiliated entities with local niche authority in Minnesota will provide management with more flexibility in offering its services to customers in the state.

- 2. Tariff page 36, section 3.18 states that customers are responsible for payment of collection costs. The Department does not believe this tariff provision is in compliance with the general requirements of the Commission's rules and policies and the Commission has rejected such provisions when they have been proposed by other carriers. A provision allowing for the recovery of collection costs does not involve services that are regulated by the Commission. Please revise this section of proposed tariff page 36 to eliminate the reference to recovery of collection costs.**

Please see page 36 of the revised tariff attached hereto for revised language removing the reference to recovery of collection costs.

- 3. Will the applicant be using any assumed names? If so, please explain.**

No. Mobilitie Management will not be using any assumed names in the provision of services in the State of Minnesota. Accordingly, Applicant will only operate under its legal name, "Mobilitie Management, LLC."

- 4. Attachment 5.E. states that the applicant will be providing interconnected VoIP services in Minnesota. Paragraph "b" states that the applicant will be using "switched network." Will these VoIP services be fixed, interconnected VoIP services or will they be nomadic?**

Mobilitie Management will not rely upon any one method for delivering service. Instead, the nature of each end-user's service will depend on the specific network configuration and service delivery method chosen by the customer. The type of deployment chosen by a specific customer will determine whether Mobilitie Managed provides a fixed or nomadic Interconnected VoIP solution.

- 5. How will the applicant provide 911 services to its VoIP customers?**

Mobilitie Management will provide 911 service to its Interconnected VoIP customers. Mobilitie Management will make arrangements with its underlying providers to facilitate provision of 911 service.

Should you have any questions regarding the contents of this Supplemental Response, please do not hesitate to contact the undersigned.

Respectfully submitted,



Michael P. Donahue

Counsel for Mobilitie Management, LLC

Enclosures