

April 9, 2020

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Reply Comments of the Minnesota Department of Commerce**
Docket No. P6422/M-20-354

Dear Mr. Seuffert:

Attached are the Reply Comments of the Minnesota Department of Commerce (Department) in the following matter:

In the Matter of XO Communications Services, LLC for Approval of Partial Discontinuance of Services and Variance, Docket No. P6422/M-20-354
Minnesota Tariff Nos. 1 and 2 Revisions, MPUC Docket Nos. 20-43 and 20-44.

The petition was filed on January 7, 2020 by:

Shannon M. Heim
Counsel for XO Communications Services, LLC
MOSS & BARNETT
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

The Department recommends **approval** and is available to answer any questions the Commission may have.

Sincerely,

/s/ BRUCE L. LINSCHIED
Financial Analyst

BL/ja
Attachment



Before the Minnesota Public Utilities Commission

Reply Comments of the Minnesota Department of Commerce

Docket No. P6422/M-20-354

I. BACKGROUND

XO Communications Services, LLC's (XO) obtained facilities-based local telecommunications service authority as a result of the merger of XO Minnesota, Inc. and Allegiance Telecom of Minnesota, Inc. in Docket No. 04-1594 on January 3, 2005. One of the requirements of obtaining authority to provide facilities-based local telecommunication service is the provision of single party voice-grade service and touch-tone capability to all customers within [the] service area.¹

On January 7, 2020, XO filed revisions to its Tariff Nos. 1 and 2 in Dockets No. 20-43 and 20-44 including the withdrawal of "XO Basic Business Lines," which XO describes as:

Plain Old Telephone Service (POTS) lines [that] provide basic access service and supply a single voice-grade communication channel for single-line telephones, key telephone systems, modems and other devices that need to access the Public Switched Telephone Network (PSTN)².

The January 7, 2020 filings in Docket Nos. 20-43 and 20-44 include a letter to advise XO customers of the upcoming changes, with an Attachment A that lists the XO services that are being discontinued.

On February 7, 2020, the Department filed its comments recommending to:

1. Require XO to provide a list of existing business local service customers that will lose service upon discontinuance of basic business line service, including contact information.
2. Direct the Consumer Affairs Office to contact the customers on the list provided by XO of the proposed disconnection. The Department may also be requested to make these contacts rather than the Consumer Affairs Office.

¹ Minn. Rule 7812.0600, subp. 1. A. A local service provider (LSP) shall provide, as part of its local service offering, the following to all customers within its service area: A. single party voice-grade service and touch-tone capability.

² Docket Nos. 20-43 and 20-44, XO filing Attachment, XO service #4, XO Basic Business Lines.

On February 27, 2020, XO filed tariff revisions (Docket No. 20-321) that removed the withdrawal language as an interim effort to satisfy the Department's concerns regarding the withdrawal language to which the Department previously objected in its February 7, 2020 comments in Docket Nos. 20-43/44.

On March 6, 2020, XO filed a reply (Docket No. 20-354) to the Department's February 7, 2020 comments providing a sample of the latest customer notice that identifies fifteen (15) alternate carriers, and requesting:

- 1) The partial discontinuance of business voice service to all customers except XO's existing federal, state and local government agency customers and educational institutional customers on a grandfathered basis; and
- 2) To the extent a variance is required, the ability to retain its certificate to serve the grandfathered customers.

II. STATEMENT OF ISSUES

- A. Whether XO satisfies the requirement to serve all basic business line customers?
- B. Whether XO satisfies the requirement to identify other Local service providers (LSP) available to customers?
- C. Whether XO has satisfied the requirements for a variance of the Commission's rules to retain its certificate of authority if it no longer provides basic business lines service?

III. APPLICABLE LAWS AND RULES

- A. MinnR. 7812.0600, subpart 1 (Local Service Requirements) states:

A local service provider (LSP) shall provide, as part of its local service offering, the following to all customers within its service area:

- A. Single party voice-grade service and touch-tone capability;

- B. MinnR. 7812.0600 subpart 6 (Limitation on exit) states:

An LSP [Local Service Provider] shall not withdraw from a service area unless another LSP certified for that area will be able to provide basic local service to the exiting local service provider's customers immediately upon the date the exiting provider discontinues service. An LSP shall not withdraw from its service area until at least 60 days after it has given written notice to the commission, department, Office of Attorney General-

Residential Utilities Division (OAG-RUD), and its customers. The notice must identify the other LSPs available to its customers.

C. MinnR. 7829.3200 (Other Variances) states:

Subpart 1. When granted. The commission shall grant a variance to its rules when it determines that the following requirements are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest;
- and
- C. granting the variance would not conflict with standards imposed by law.

Subp. 2. Conditions. A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

D. Minn. Stat. § 237.16, (Local Exchange Competition) states:

Subd. 1 (a) For the purpose of bringing about fair and reasonable competition for local exchange telephone services, the commission has the exclusive authority, subject to the authority of a local government unit under sections 237.26 and 237.163 [the public right of way].

IV. ANALYSIS

A. WHETHER XO SATISFIES THE REQUIREMENT TO SERVE ALL BASIC BUSINESS LINE CUSTOMERS.

XO does not wish to serve all basic or voice business customers. XO asks that it be permitted to discontinue tariffed retail voice service to a subset of its business customers in Minnesota and retain service to existing federal, state and local government agency customers and educational institution customers on a grandfathered basis. XO states that it has remaining institutional customers and notes that transition to a new carrier is a more significant undertaking for institutional customers, whereas it claims the business segment of the market benefits from healthy competition.

XO explains that its market share has steadily dwindled, and it can no longer responsibly maintain tariffed retail services to the majority of its business customers. XO states that as of March 6, 2020, it had 43 remaining basic local business customers subject to disconnection. Those customers have been given repeated written notices, bill messages, and personal outreach by XO customer service, and XO believes not many more of the remaining forty-three (43) customers will likely transition before being disconnected from service.

XO's request to only serve institutional customers with basic or voice business service does not satisfy the requirement to serve all customers within its service area as required by MinnR. 7812.0600, subp. 1. XO argues that allowing it to retain its certificate and serve a subset of business customers is preferable to adopting an all or nothing approach that would deprive XO's institutional customers the benefit of continuing service. Business customers have multiple competitors serving their market, whereas institutional customers have a more significant undertaking to transfer to another carrier. Grandfathering or allowing existing institutional customers to obtain basic or voice business service while denying new institutional customers and other business customers the same service violates MinnR. 7812.0600, subp. 1.

B. WHETHER XO SATISFIES THE REQUIREMENT TO IDENTIFY OTHER LOCAL SERVICE PROVIDERS (LSPs) AVAILABLE TO CUSTOMERS?

XO has met the requirement to identify other LSPs that can provide comparable service to customers who have not transferred to another provider. XO's recently issued a notice that provides a list of alternate Local Service Providers. XO identifies fifteen (15) LSPs that serve XO's market and are available to provide business voice service. The notice also refers to the Department's website (<https://mn.gov/puc/telecommunications/utility/>) for information whereby customers can find additional LSPs available in their respective city or township to obtain basic or voice business service.

C. WHETHER XO HAS MET THE REQUIREMENTS FOR A VARIANCE OF THE COMMISSION'S RULES TO RETAIN ITS CERTIFICATE OF AUTHORITY IF IT NO LONGER PROVIDES BASIC BUSINESS LINES SERVICE?

XO requests to continue providing basic business service to existing federal, state, and local government agency customers and educational institution customers and discontinue providing the same service to approximately forty-three (43) business customers. The rationale given is that it is no longer economically feasible to serve customers with business basic voice service and there are plenty of alternate providers as the business segment of the market benefits from healthy competition. XO states that transferring to a new provider is a more significant undertaking for institutional customers because the larger the customer, the more onerous the process is to transition to an alternative carrier, and such customers are being allowed to retain their basic business voice service. If XO's request is accepted, it will no longer be serving all customers basic or voice business service, and a variance of MinnR. 7812.0600, subp. 1 is required.

XO meets the requirements to obtain a variance found in MinnR. 7829.3200, and should be granted a variance of MinnR. 7812.0600, subp. 1 (the Rule), which requires a LSP to provide single party voice grade service and touch tone capability to all customers within its service area.

1. Enforcement of the Rule requiring XO to eliminate basic business service to its one remaining institutional customer avoids placing an excessive burden on the LSP or the customer. Transition to a new carrier is a significant undertaking for institutional customers, and granting a narrow variance to XO preserves service for an important anchor institution.
2. Granting the variance would not adversely affect the public interest. A variance to XO of the Rule to provide basic or voice service to all business customers permits one institutional customer to maintain the status quo for its lines. Other business customers appear to have a choice of competitors from which to choose business voice service.
3. Granting the variance would not conflict with standards imposed by law. Reasonable and fair competition for local exchange telephone service, as required by Minn. Stat § 237.16, should not be threatened as XO has identified other LSPs that can provide basic business service. XO has complied with customer and government agency notice requirements of 60 days in MinnR. 7812.0600, subp. 6 with the proposed effective date of May 8, 2020.³ Granting a variance of the requirement in MinnR. 7812.0600, subp. 1 to provide all customers with single-party voice grade service enables one institutional customer to avoid the significant undertaking of transitioning to a new carrier and does not present the same problem to non-institutional/governmental customers that do not have as many lines to transfer.

V. COMMISSION OPTIONS

1. Find that XO satisfied the Commission rules to disconnect its basic business line service, and may terminate service to those customers that have not switched service to an alternative service provider.
2. At least 10 days prior to the disconnection of a business customer, require XO to provide a list of all customers that will have their service terminated, including the business contact name and telephone number, to enable the Commission's Consumer Affairs Office, or alternatively Department staff, to contact those businesses concerning the impending disconnection.

³ XO's March 6, 2020 reply comments in Docket No. 20-354, Section IV Requested Approval of Transfer and Procedure. Subsection A. Timing, p. 5.

3. Approve XO's request to obtain a variance to MinnR. 7812.0600, subp. 1 as provided by Minn. Rule 7829.3200, to retain its certificate of authority and to only provide basic business line service to grandfathered governmental/institutional customers within its service area.
4. Take other action as the Commission determines appropriate.

V. DEPARTMENT RECOMMENDATION

The Department recommends options 1, 2 and 3.

/ja

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
Reply Comments**

Docket No. P6422/M-20-354

Dated this **9th** day of **April 2020**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_20-354_M-20-354
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-354_M-20-354
Dan	Craigie	daniel.craigie@state.mn.us	Department of Public Safety	445 Minnesota St. Suite 1725 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-354_M-20-354
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_20-354_M-20-354
Pete	Eggimann	PEGGIMANN@MN-MESB.ORG	Metropolitan Emergency Services Board	2099 University Ave W Ste 201 St. Paul, MN 551043431	Electronic Service	No	OFF_SL_20-354_M-20-354
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_20-354_M-20-354
Carey	Gagnon	carey.gagnon@verizonwireless.com	Verizon Wireless	3131 S Vaughn Way #550 FL 5 Aurora, CO 80014	Electronic Service	No	OFF_SL_20-354_M-20-354
Shannon	Heim	shannon.heim@lawmoss.com	Moss & Barnett A Professional Association	150 S. 5th Street, Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-354_M-20-354
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-354_M-20-354
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-354_M-20-354

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Dana	Wahlberg	dana.wahlberg@state.mn.us	Department of Public Safety	Town Square Ste 137 444 Cedar St St. Paul, MN 551015126	Electronic Service	No	OFF_SL_20-354_M-20-354