

Staff Briefing Papers

Meeting Date August 27, 2020 Agenda Item **2

Company All Local service Providers

Docket No. **P-999/CI-20-359, P-6422/M-20-354, and P-6236/M-20-259**

In the Matter of Local Service Providers' Filings under Minnesota Rules 7812.0600 and 7811.0600

Issues

1. Should the Commission interpret its telecommunications rules to require a local carrier to obtain prior Commission approval before discontinuing a local service, if that carrier retains its certificate of authority?
2. What kind of customer notice should be required for local carriers discontinuing services to business customers?

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 **Relevant Documents**

Date

Initial Filing-Notice of Discontinuance of Certain Voice and Data Service Broadwing Communications (20-259)	February 7, 2020
Comments of the Minnesota Department of Commerce (20-259)	March 9, 2020
Initial Filing- Petition of XO Communications Services, LLC for Approval of Partial Discontinuance of Service and Variance (20-354)	March 6, 2020
Commission Notice of Comment Period (20-359)	March 18, 2020

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

 **Relevant Documents**

Date

Comments of the Minnesota Department of Commerce (20-354)	April 9, 2020
CenturyLink (Broadwing) Comments (20-359)	April 17, 2020
Commission Notice of Supplemental Comment Period	May 29, 2020
Supplemental Comments Minnesota Department of Commerce (20-359)	June 24, 2020
Comments of XO Communications Services, LLC and MCIMetro Access Transmission Services Corp. (Verizon) (20-359)	June 26, 2020
Comments of Qwest Corporation DBA CenturyLink QC (20-359)	June 26, 2020

I. Statement of the Issues

- 1) Should the Commission interpret its telecommunications rules to require a local carrier to obtain prior Commission approval before discontinuing a local service, if that carrier retains its certificate of authority?
- 2) What kind of customer notice should be required for local carriers discontinuing services to business customers?

II. Background

Since the passage of the 1996 Telecommunications Act, competition has been introduced and carrier regulation has adjusted to account for this competition. More recently, customers have shifted to technologies other than regulated landline service, such as wireless and VoIP. The Commission often handles a number of routine telecom filings through its consent calendar. These commonly include, but are not limited to:

- Requests for new certificates of authority
- Name changes
- Interconnection agreements and 911 plans
- Relinquishments of certificates of authority (carrier voluntarily choosing not to offer regulated telecom offerings in the state)
- Revocations (carrier may have gone out of business without first relinquishing its authority)

One type of filing that generally does not come to the Commission for approval, either at an agenda meeting or through the consent process, is if a telecom carrier intends to retain its authority but chooses to make changes to its existing tariff services. In most cases, these are filed in edockets and closed by the Department with an administrative form. Appendix A includes two rules that the Commission may want to consider as part of this docket.

Relatively recently, the situation arose in two dockets to suggest there was a difference of opinion between the Department and carriers on the following question: when a CLEC wishes to retain its certificate of authority but discontinue specific business services, is that discontinuance required to obtain prior Commission approval?

Because this seemed to be an issue of first impression and could have impact on future filings, the Commission put the issue out for notice as a generic docket.

III. Parties' Comments

Issue 1: Should the Commission interpret its telecommunications rules to require a local carrier to obtain prior Commission approval before discontinuing a local service, if that carrier retains its certificate of authority?

Filings to discontinue specific services but retain certificate of authority: Notification versus approval

Broadwing Filing

On February 7, 2020, Broadwing Communications filed a courtesy (notification) letter with the Commission. The letter stated Broadwing's belief that notification only to the Commission was required:

Broadwing Communications, LLC (Broadwing or Company) files this letter as an additional courtesy notice to the Minnesota Public Utilities Commission (Commission). In Minnesota, the Company is certificated as an Interexchange Carrier (IXC) and Competitive Local Exchange Carrier (CLEC). The Company does not have tariffs on file with the Commission.

Specifically, on January 24, 2020, the Company filed an application with the Federal Communications Commission (FCC) pursuant to Section 214 of the 1996 Telecommunication Act and related regulations. The Company in its FCC 214 filing seeks authorization to discontinue certain voice and data services. The Company also notified affected business and wholesale customers of the discontinued services by letter dated January 22, 2020. Broadwing has no residential customers. The Company plans to discontinue the affected services on or around March 20, 2020.¹

In comments filed on March 9, 2020 in Docket No. P6236/M-20-259, the Department took the position that Commission rules require Commission approval of this filing rather than just notification. In these comments, the Department recommended the following:

- Find that Broadwing has not satisfied the Commission rules to disconnect its basic business line service without prior Commission approval. Thus, Commission approval is required.
- Require Broadwing to:
 - Provide a list of customers that have not been transferred to an alternate carrier and would lose their basic business local service if disconnected, along with their contact information;

¹ February 7, 2020 filing assigned to Docket P6236/M-20-259.

- Provide the contact information for the Incumbent Local Exchange Carrier (ILEC) in the area; and
 - Provide a link to the local carrier look-up (<https://mn.gov/puc/telecommunications/utility/>) with language indicating that not all carriers provide service to all classes of customer service, nor to all locations in the identified area.
- Direct the Consumer Affairs Office to contact the customers on the list provided by Broadwing of the proposed disconnection. The Department may also be requested to make these contacts rather than the Consumer Affairs Office.
- If the Consumer Affairs Office or the Department are to contact customers, require Broadwing to continue service, if deemed appropriate by the agency making the contacts. Any such continuances would then be brought to the Commission for resolution.
- Require that Broadwing submit a tariff to provide single party voice-grade service if it desires to retain its certificate of authority, unless it seeks and obtains a variance of Minn. Rule 7812.0600, subp. 1.

XO Communications

On March 6, 2020, XO Communications made the following filing, also stating its belief that notification was required, but noting the Department's difference of opinion:

On January 7, 2020, XO filed revisions to tariffs, M.P.U.C. No. 1 and M.P.U.C. No. 2, seeking to discontinue tariffed retail voice services to a subset of its business customers in Minnesota. XO intends to retain service to existing federal, state and local government agency customers and educational institutions on a grandfathered basis. XO will also continue to offer wholesale services and provide non-regulated services in Minnesota. XO believed filing tariff revisions to downsize the categories of customers eligible for service was adequate under Minn. Rule 7811.2210, subp. 3.B. The Department of Commerce ("Department") expressed a concern that the Commission should review and approve the action under Minn. Rule 7812.0600, subp. 1, so out of an abundance of caution and respect for the Department, XO files this Petition seeking approval if required. XO seeks to retain its certificate to provide the limited service, so it requests a variance.²

² March 6, 2020 filing at page 1, assigned to Docket P6422/M-20-354.

In comments filed on April 9, 2020 in Docket No. P6422/M-20-354, the Department took the position that Commission rules require Commission approval of this filing rather than just notification. In these comments, the Department recommended the following:

- 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.
- 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.
- 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.

Party Comments (20-359)

CenturyLink: This proceeding arises in part because of CenturyLink's desire to eliminate redundant services offered by an affiliate, Broadwing Communications, LLC ("Broadwing"), that currently serves one wholesale and eleven retail customers, as a CLEC, in Minnesota. This proceeding should be very straightforward, and in most states, it is. CenturyLink has other affiliates ready to provide service to these customers. Ample other providers also can offer services. The customers are business customers with ample sophistication to adjust. Yet, in Minnesota, such an effort takes a minimum of three months and often much longer.

This delay is unnecessary because of the extensive federal requirements that exist in order to discontinue services. 47 C.F.R. § 63.71 requires written notice to customers; the notice must

include certain language which informs the customer that he or she may file comments with the FCC. Applications are filed with the FCC, a docket number is assigned, and the FCC releases a Public Notice which announces the deadline for comments along with a brief description of the request as well as a proposed effective date. If no comments (or valid objections) are filed, the application is deemed automatically approved on the effective date listed in the Public Notice. Thus, for CenturyLink's disconnection of Broadwing, the initial letter was sent to customers in July 2019. An official notice was sent on October 30, 2019. That letter was withdrawn to make changes in the affected services. An official notice was mailed to customers on January 22, 2020.

Staff's recommendations are an acceptable compromise. A notification process for discontinuing regulated voice service 60 days after notice to business customers and state agencies if no objection is raised. Consistent with its prior comments, CenturyLink further recommends that the requirement in the last sentence of Minn. R 7812.0600 requiring a list of available local service providers be eliminated.

XO: Affirmative confirmation the business customer has transitioned is not necessary. The required 60-day notice to customers is ample time for businesses to select an alternative provider and migrate their services. Businesses are sophisticated customers (in fact many businesses have a department that is dedicated to overseeing all of their communications needs) and have numerous options in choosing an alternative provider. When a business customer has received proper notice, there is no public interest benefit associated with requiring the local service provider to ensure every business customer has transitioned their services to an alternative provider before discontinuing service.

In undertaking its recent multi-state endeavor to partially discontinue services, XO found that only a handful of states require a filing with the state commission (beyond just filing the tariff revisions) prior to a partial discontinuance of intrastate services to a subset of business customers where the provider is not completely exiting the business. In many states, notice to the customer sufficed, with a smaller number of states requiring notice to the state utility commission in addition to the customer.

Additionally, in connection with XO's pending Petition to partially discontinue basic local business service, customers were notified of XO's plans through a variety of channels starting in June 2019 (e.g. bill messages, notice letters, personal outreach). As a result, Minnesota customers had more than eight months to voice objections to the Department or Commission. None did. Waiting on additional action by the Commission under these circumstances seems unnecessary. Accordingly, the Commission should amend its rules to allow discontinuance to proceed without Commission involvement, or at least provide for automatic approval if no objections or concerns are timely raised by customers.

DOC: Companies discontinuing services are required to comply with the Commission's rules unless a variance is received. Discontinuance of regulated voice service, whether business or residential, should not occur without the prior approval of the Commission, even if no objections or concerns are raised. As stated in its comments in the above matters, Minn. R.

7812.0600 requires the provision of single party voice-grade service. LSPs should not be permitted to discontinue a basic service requirement, as listed in Minn. R. 7812.0600, without the Commission granting a variance to Minn. R. 7812.0600. If the Commission approves a variance to the rule, it may at that time address the notification required for customers and whether service may be terminated if a customer has not transitioned to another provider.

Issue #2: what kind of customer notice should be required for local carriers discontinuing services to business customers?

Background

In the Department's March 9, 2020 comments, it recommended that the following process take place for discontinuance of service to these business customers:

Broadwing has approximately 17 customers that will be disconnected if they do not obtain an alternate provider. A service disruption to a business can be severe, and the regulatory agencies currently have no knowledge of who these customers are, and why they have not found an alternative service provider. The Department recommends that Broadwing be required to provide a list of all businesses that have not switched to an alternative provider, including their contact information. The list should be provided no less than 14 days prior to the discontinuance to allow the Commission's Consumer Affairs Office (CAO), or the Department as an alternative, to contact any business in jeopardy of losing service. If it is found that service should not be discontinued to any customer on the date approved by the Commission, the CAO (or Department) could request that Broadwing not discontinue service to that customer so the matter could be quickly brought to the Commission for resolution.

Staff reviewed all relinquishment dockets for the last four years. In no instance did a state agency take over the responsibility of talking to those customers. In fact, in two ETC relinquishments, the PUC (based on the Department's recommendation) left it to the ETC to contact its customers.³ Both of these carriers served residential customers and had customers on Lifeline.

Party Comments

CenturyLink: CenturyLink takes no position on the proposal to include a requirement that a company discontinuing local service provide contact information for the Commission's Consumer Affairs Office (CAO).

³ See Dockets 17-351 and 19-195.

The notice that is submitted to the FCC in compliance with a Section 214 discontinuance is sufficient. It includes an identification of the product being discontinued, action required by the customer and the date of the planned discontinuance. The [currently proposed] requirements are excessive, needlessly burdensome and provide little benefit to the customer. There is no useful purpose for requiring a notice to business customers to identify alternative service providers. Such a list is unlikely to be complete or meaningful given that many alternative providers offer services not regulated by the Commission (e.g., wireless and Charter VOIP services) using facilities that need not be disclosed to the public. CenturyLink believes such a list provides little benefit even to residential customers for the same reasons.

XO: For the discontinuance of regulated voice service to business customers, carriers should not have to provide a list of the local service providers or any other unregulated options. Again, business customers are sophisticated consumers and information on alternative providers is readily available – including on the Commission’s website. Internet search engines also allow a business customer to make a more detailed inquiry based on its service needs. This form of targeted search is more likely to produce meaningful results for the business than a generic list of providers.

A customer notice which contains the list of services that will be discontinued, and the date services will be disconnected if they do not transition their services to another provider, should be sufficient information for a business customer to take action to find an alternative provider. The paths available for filing a complaint with the Consumer Affairs Office are prominently featured on the Commission’s website. For those interstate services regulated by the FCC, there are also regulations and notice requirements that provide the customer with information about objecting to a discontinuance.

DOC: Commission Rules do not require the notice to customers to include the contact information for the Consumer Affairs Office. However, since any discontinuance of local service requires approval from the Commission, inclusion of the Consumer Affairs Office contact information can be included on the notice to affected customers, by order of the Commission.

IV. Staff Analysis

Need for Clarity

First and foremost, staff believes the top priority is to issue a decision clarifying what carriers must and must not do in this type of situation. Broadwing made its filing in February, and XO made its filing in early March. While the record could still be better developed, these carriers have been waiting long enough for some type of clarity from the Commission. Because this was a case of first impression, the Commission opened a generic docket and put questions out for any carrier to respond to. Any decision the Commission makes at its agenda meeting should let all carriers clearly know what filing is required, how the filing will be evaluated, and whether

Commission approval or simply notification is required. As Broadwing noted in its comments, “This proceeding should be very straightforward, and in most states, it is.”⁴

Issue #1: Whether Commission Approval, or Notification, is Required when a Carrier Discontinues a Local Service

Some Context: Current Regulatory Framework

It is undisputed and clear that carriers must get prior Commission approval for certain transactions: carriers must get approval for a Certificate of Authority to provide local or long distance service, to cancel (relinquish) that service, to change aspects of the Certificate of Authority (such as their legal name, or the name they do business under), and for other aspects such as property acquisitions, 911 plans, and interconnection agreements.

However, the Commission’s rules have endorsed a long standing practice that because local service providers operate in a competitive environment, they are free to change their service offerings with a tariff filing that does not need prior Commission approval. Minn. Rules part 7812.2210 subpart 1A states in part:

the commission shall exercise its authority over a CLEC's local services only upon complaint under subpart 17 and will not require prior approval of a CLEC's tariffs or service offerings.⁵

Local service providers frequently change their local offerings; they provide multiple service offerings, increase rates, change a service, grandfather a particular service to make it unavailable to new customers, and in some cases, discontinue a local service.

7812.0600, the rule the Department cites to, also does not explicitly reference any Commission approval needed for discontinuance of local service. Rather, the rule includes a list of minimum requirements for local service, such as access to 911 and access to long distance. In short, the rule is a substantive service quality rule, intended to prevent a race to the bottom in light of competition. The rule only references a notification to the Commission, not a petition for approval, and even that reference is to withdrawing from a service area, which is not the same situation presented here.⁶

⁴ CenturyLink April 17 comments at 1.

⁵ The rule later references discontinuance of local service, and mandates that CLECs must include a notice to customers, but still references no mandate of Commission approval.

⁶ 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. Minn. Rules 7812.0600 subpart 6.

Staff has included the two applicable rules as Appendix A but notes that the decision to be made here is not purely legal; the Commission could still choose on policy grounds to vary the rule.

It is worth noting that XO Communications still has an over 500 page tariff on file with the Commission with many local services. Staff conducted a search in its eassessments system, and found many dockets where regulated carriers discontinued services. Introducing new services to meet the needs of customers and discontinuing obsolete or outdated service is a natural part of a competitive marketplace.

Whether to Require Commission Approval or Not

It is fair to say that these Commission rules were written at a time when the telecommunications industry, and regulation, were very different. The rules often do not anticipate situations that happen routinely now.

One Option: Do not require Commission Approval but Specify 60 day advance filing

Staff respectfully suggests that the record is not developed enough for the Commission to interpret its rules to require prior Commission approval before discontinuance of a service, if the carrier is also not relinquishing their authority. First, no party cites examples where this was the prior practice or interpretation. The Department does indeed quote Commission rules requiring a CLEC to offer local voice service, but nowhere in that rule does it require prior Commission approval to discontinue particular voice services. One interpretation, and perhaps the most balanced and practical interpretation of the rule given today's environment, is that CLECs such as Broadwing and XO must file tariff filings 60 days in advance of the discontinuance, which would give the Department or others sufficient time to object or comment if there was a concern with the discontinuance. Should the Commission wish to do so, it has the authority to require particular content on the customer notice the carrier sends to its impacted customers (addressed below in Issue #2).

Another Option: Require Commission Approval

Another option is for the Commission to interpret its rule to require prior Commission approval. If the Commission believes there is a compelling legal or policy reason to interpret the rule in this manner, it should do so. This is an option, but then the Commission must make another decision—whether to vary the rule, as suggested by Broadwing and XO. This is a policy decision. Staff suggests that the Commission ask what purpose prior approval would serve. There are many, many providers offering telecommunications service to business customers, both regulated and unregulated. Staff respectfully suggests that the most important policy is to ensure these business customers receive clear notice and sufficient opportunity to move to a different service and/or provider. Service offerings may change more frequently to adapt to new technologies and to the needs of business customers.

Issue #2

Option 1: individual, affirmative notice by CAO or Department to each individual business customer prior to discontinuance (Department suggestion)

Staff notes that requiring individual, affirmative contact by a state agency to each business customer is a new suggestion that is not a current or past practice on either the telecommunications side of the Commission's work, nor even its more highly regulated energy side. It is common practice for the Commission to require a regulated entity notify its customers, and in some cases the Commission reviews and approves the notice, depending on the particular circumstances of the docket. However, to have either CAO or the Department contact each individual customer before discontinuance of a service introduces some unknowns into the process⁷. Simply requiring the carrier to be the point of contact for the customer is the safer option because the carrier has the existing relationship with the customer. CAO could be listed on the customer notice if the business customer chooses to contact an independent third party.

As cited previously even residential customers losing their TAP or Lifeline provider have not received individual outreach directly by CAO or the Department; the Commission has simply required the carrier to provide notice. If any customer group should need the most protection in terms of customer notice, it would be residential customers, and perhaps residential Lifeline customers.

Both Broadwing and XO Communications will continue to retain their CLEC certificates of authority. This situation is less concerning than when a carrier relinquishes their entire certificate; Broadwing and XO will still operate, still have customer service staff available to answer customers' or former customers' questions, and in some cases may be able to offer alternative services to those customers.

Option 2: require carriers to attach a copy of their customer notice with their filing, which shall include contact information for the Consumer Affairs Office

Although not specifically required by rule, the Commission could specify that in any filing 60 days prior to the discontinuance of a local voice service, the CLEC must attach a copy of its customer notice to its customers, and that notice shall include information about contacting the CAO. Staff notes that this would add more clarity than the current situation. No party seemed to object to this idea.

⁷ Just a few of the unknowns would be the transfer of the customer list and contact information to the state agency, the workload and timeline involved in individually contacting each business customer, what happens if CAO cannot reach of the business customer, and how to document in the record once each customer has been contacted, to memorialize when the discontinuance can officially take place.

V. Decision Options

Issue A: Should the Commission interpret its telecommunications rules to require a local carrier to obtain prior Commission approval before discontinuing a local service, if that carrier retains its certificate of authority?

1. Find that prior Commission approval is not required prior to discontinuing local service, if that carrier retains its certificate of authority to provide local service. Carriers discontinuing a local service shall make a filing in edockets at least 60 days prior to the discontinuance of service. *(Staff note: per the Commission's normal rules, anyone may file an objection within the 60 days.)* OR
2. Find that prior Commission approval is required prior to discontinuing a local service. Carriers discontinuing a local service shall make a filing in edockets at least 60 days prior to the discontinuance of service, and may not discontinue the service until Commission approval has been received. OR
3. Find that Minn. Rule part 7812.0600 requires prior Commission approval for discontinuing a local service, but vary the rule pursuant to 7829.3200. *(Staff note: this may have the same practical result as decision option 1.)*
4. Clarify that this process applies to local service providers that are not ETCs. *(Staff option)*

Issue B: what kind of customer notice should be required for local carriers discontinuing services to business customers?

Staff notes this issue can be decided independently of Issue #1. That is, whether or not the Commission requires Commission approval of the discontinuance of a local service, it could still require a particular type of customer notice.

1. If the Commission determines that it only needs to clarify Minn. R. 7812.0600, subparts 1 and 6 so that a local service provider (LSP) discontinuing a regulated voice service for business customers: *(Department proposal)*
 - 1a. needs only to provide notification to the business customers, not receive affirmative confirmation from each individual customer that they have transitioned service to another provider; or
 - 1b.
 - i Provide a list of customers that have not been transferred to an alternate carrier and would lose their basic business local service if disconnected, along with their contact information;

- ii. Provide the contact information for the Incumbent Local Exchange Carrier (ILEC) in the area;
 - iii. Provide a link to the local carrier look-up (<https://mn.gov/puc/telecommunications/utility/>) with language indicating that not all carriers provide service to all classes of customer service, nor to all locations in the identified area;
 - iv. Direct the Consumer Affairs Office to contact the customers on the list provided by an LSP of the proposed disconnection or request the Department to make these contacts rather than the Consumer Affairs Office; and
 - v. If the Consumer Affairs Office or the Department are to contact customers, require an LSP to continue service, if deemed appropriate by the agency making the contacts. Any such continuances would then be brought to the Commission for resolution. **OR**
2. In its 60 day advance filing with the Commission, provide a copy of the notice it has issued to affected customers. Such notice shall include contact information for the Consumer Affairs Office. *(Staff proposal; parties issued no objections)*
- Optional 2a: Vary the last sentence of Minn. Rules part 7812.0600 subpart 6 to clarify that local service providers need not only identify other certificated local service providers to affected customers, but both LSP and uncertificated options to the affected customers.

VI. Staff Recommendations

Appendix A

7812.0600 BASIC SERVICE REQUIREMENTS.

Subpart 1. **Required services.** 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.
911 or enhanced 911 access;
- C.
1 + intraLATA and interLATA presubscription and code-specific equal access to interexchange carriers subscribing to its switched access service;
- D.
access to directory assistance, directory listings, and operator services;
- E.
toll and information service-blocking capability without recurring monthly charges as provided in the commission's ORDER REGARDING LOCAL DISCONNECTION AND TOLL BLOCKING CHARGES, Docket No. P-999/CI-96-38 (June 4, 1996), and its ORDER GRANTING TIME EXTENSIONS AND CLARIFYING ONE PORTION OF PREVIOUS ORDER, Docket No. P-999/CI-96-38 (September 16, 1996), which are incorporated by reference, are not subject to frequent change, and are available through the statewide interlibrary loan system;
- F.
one complete directory per year for each local calling area, which may include more than one local calling area, consistent with the customer option provisions of part [7810.2950](#) and, upon a customer's request and in the customer's preferred format among the formats offered by the local service provider, one copy of any other directory within the local calling area;
- G.
a white pages and directory assistance listing, or, upon customer request, a private listing that allows the customer to have an unlisted or unpublished telephone number;
- H.
call-tracing capability according to chapter 7813;
- I.
blocking capability according to the commission's ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF CUSTOMER LOCAL AREA SIGNALING SERVICES, Docket No. P-999/CI-92-992 (June 17, 1993) and its ORDER AFTER RECONSIDERATION, Docket No. P-999/CI-92-992 (December 3, 1993), which are incorporated by reference, are not subject to frequent change, and are available through the statewide interlibrary loan system; and

J.

telecommunications relay service capability or access necessary to comply with state and federal regulations.

Subp. 2.

Separate flat rate service offering.

At a minimum, each LSP shall offer the services identified in subpart 1 as a separate tariff or price list offering on a flat rate basis. An LSP may also offer basic local service on a measured rate basis or in combination with other services. An LSP may impose separate charges for the services set forth in subpart 1 only to the extent permitted by applicable laws, rules, and commission orders.

Subp. 3. **Service area obligations: all LSPs.**

An LSP shall provide its local services on a nondiscriminatory basis, consistent with its certificate under part [7812.0300](#) or [7812.0350](#), to all customers who request service and whose premises fall within the carrier's service area boundaries or, for an interim period, to all requesting customers whose premises fall within the operational areas of the local service provider's service area under part [7812.0300](#), subpart 4, or [7812.0350](#), subpart 4. The obligation to provide resale services does not extend beyond the service capability of the underlying carrier whose service is being resold. The obligation to provide facilities-based services does not require an LSP that is not an eligible telecommunications carrier (ETC) to build out its facilities to customers not abutting its facilities or to serve a customer if the local service provider cannot reasonably obtain access to the point of demarcation on the customer's premises.

Subp. 4. **Service area obligations: ETCs.**

An LSP designated an ETC by the commission must provide local service, including, if necessary, facilities-based service, to all requesting customers within the carrier's service area on a nondiscriminatory basis, regardless of a customer's proximity to the carrier's facilities. An LSP may assess special construction charges approved by the commission if existing facilities are not available to serve the customer.

Subp. 5. **CLEC service areas.**

Competitive local exchange carriers (CLECs) may designate service areas different from the service areas of local exchange carriers (LECs).

Subp. 6. **Limitation on exit.**

An LSP 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.

Subp. 7. **Service disconnection.**

An LSP may disconnect a customer's basic local service as allowed under parts [7810.1800](#) to [7810.2000](#), except that it shall not disconnect basic local service for nonpayment of toll or information service charges or any service other than basic local service.

7812.2210 COMPETITIVE LOCAL EXCHANGE CARRIERS (CLEC'S).

Subpart 1. General scope of regulation. Competitive local exchange carriers (CLECs) are regulated as provided in this part.

A. The commission shall exercise its regulatory authority over the local services provided by CLECs only to the extent provided for in, or necessary to implement the requirements of, all applicable statutes or this chapter. Except as provided otherwise in this part or other commission rules, the commission shall exercise its authority over a CLEC's local services only upon complaint under subpart 17 and will not require prior approval of a CLEC's tariffs or service offerings.

B. This part applies to a CLEC affiliate of an incumbent local exchange carrier (LEC) only with respect to its operations in geographic areas outside the service area of the affiliated LEC. A CLEC's local service operations inside the service area of its affiliated LEC must be regulated in the same manner as the LEC's local service operations, unless Minnesota Statutes, chapter 237 specifies otherwise or the commission grants a variance in the public interest. For the purpose of this subpart, the definition of an "affiliated CLEC" or "affiliated LEC" follows the definition of an "affiliated company" in Minnesota Statutes, section 237.65, subdivision 1.

Subp. 2. Tariff filings. For each local service offering, a CLEC shall file with the commission a tariff that contains the rules, rates, and classifications used by the CLEC in the conduct of its local service business, including limitations on liability. The tariff must be consistent with any terms and conditions in the CLEC's certificate of authority. The CLEC shall file six copies of its tariffs with the commission and shall serve one copy on the department and one copy on the Office of Attorney General - Residential Utilities Division (OAG-RUD). Amendments to the tariffs must be filed in the same manner. These filings are governed by the Minnesota Data Practices Act, Minnesota Statutes, chapter 13. Upon request, a CLEC shall provide a copy of its tariff or make its tariff available for review at a location convenient to the requesting person within five business days.

Subp. 3. Tariff changes. A CLEC may offer new local services or change the prices, terms, or conditions of existing local services by filing amendments to its tariffs in accordance with subpart 2. These tariff filings take effect as follows:

A. A new service, price decrease, promotion, or insubstantial change in the terms or conditions of a service may take effect immediately upon filing. A price decrease may take effect without notice to customers.

B. Except as provided in item C, a price increase, a substantial change in a term or condition of a service, or a discontinuation of a service other than basic local service may take effect 20 days after filing and providing written notice to affected customers as provided in subitems (1) and (2):

(1) The written notice of a price increase must be given in simple and clear language by bill insert, bill notice, or direct mail. To be simple and clear, the notice must bear the heading "NOTICE OF PRICE INCREASE."

(2) The written notice of a substantial change in a term or condition of service or of the discontinuance of a service other than basic local service must be given in simple and clear language by bill insert, bill notice, or direct mail. To be simple and clear, the notice must, at a minimum, bear a heading such as "NOTICE OF CHANGE IN TERMS" or "NOTICE OF DISCONTINUANCE," as appropriate.

C. Notwithstanding items A and B, the filing requirements for a CLEC must not be more stringent than the filing requirements governing any LEC with 50,000 or more subscribers in whose service area the CLEC is providing local service.

Subp. 4. Cost information. The commission shall not require a CLEC to file cost information unless the commission determines that cost information is needed to resolve a complaint alleging that the CLEC is violating a standard set forth in subpart 5 or 8.

Subp. 5. Discrimination. No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. At a minimum, a CLEC must provide its telecommunications services in accordance with items A to D:

A. A CLEC shall charge uniform rates for local services within its service area. However, a CLEC may, upon a filing under subpart 2:

(1) offer unique pricing to certain customers or to certain geographic locations for promotions as provided in subpart 6;

(2) provide volume or term discounts;

(3) offer prices unique to particular customers, or groups of customers, when differences in the cost of providing a service, market conditions, or LEC pricing practices justify a different price;

(4) offer different prices in different geographic areas when (a) differences in the cost of providing a service, or market conditions, justify a different price; (b) the areas are served by different LECs; (c) different prices are charged by the LEC serving the areas; or (d) an area is not served by an LEC;

(5) pass through any legislatively authorized local taxes, franchise fees, or special surcharges imposed by local or regional governmental units on the services provided by the CLEC in specific geographic areas from which the taxes, fees, or surcharges originate; or

(6) furnish service free or at a reduced rate to its officers, agents, or employees in furtherance of their employment.

B. A tariff providing for prices unique to particular customers or groups of customers under item A, subitem (3), shall identify the service for which a unique price is available and the conditions under which the unique price is available.

C. In addition to the exceptions provided in item A, a CLEC may also charge different rates for local services within its service territory upon a prior finding by the commission that the CLEC has good cause to do so.

D. To the extent prohibited by federal law or the commission, a CLEC shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers.

Subp. 6. Promotions. A CLEC may promote the use of a local service by offering a waiver of part or all of the recurring or nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. The promotion may be aimed at certain customers or to certain geographic locations. The customer group to which the promotion is available must be based on reasonable and nondiscriminatory distinctions among customers. Any single promotion in a given area must not be effective for longer than 90 days at a time. A promotion may take effect upon a tariff filing in accordance with subpart 2. The promotional tariff should include the dates of the promotion, prices, and a brief description of who is eligible for the promotion and the benefits, restrictions, and commitments of the promotion.

Subp. 7. Packaging services. A CLEC may offer local service as part of a package that may include goods and services other than telecommunications services. In addition to the tariff requirements that apply to the telecommunications elements of the package, the tariff must also contain a general description of the nontelecommunications components of the package. Nothing in this subpart is intended to give the commission or the department regulatory authority over the nontelecommunications services provided by a CLEC.

Subp. 8. Prices. A CLEC's local services are not subject to any rate or price regulation except that the commission may, upon complaint, order a CLEC to change a price or pricing practice or take other appropriate action if the commission determines, after an investigation under subpart 17, that:

A. the price or pricing practice unreasonably restricts resale in violation of Minnesota Statutes, section 237.121, paragraph (a), clause (5);

B. the price or pricing practice is unreasonably discriminatory in violation of subpart 5;

C. the price or pricing practice is deceptive, misleading, fraudulent as those terms are defined in state or federal law, or is otherwise unlawful under state or federal law;

D. the price or pricing practice will impede the development of fair and reasonable competition or reflects the absence of an effectively competitive market as determined on the basis of factors such as:

(1) the timely availability of comparable substitutes from other local service providers;

(2) the availability of facilities-based competitors; and

(3) evidence of rivalrous price competition, as demonstrated by the existence of multiple competitors competing on price for the same or similar services; or

E. the price or pricing practice has caused or will result in substantial customer harm.

Subp. 9. Prohibited practices. A CLEC must comply with Minnesota Statutes, section 237.121, which proscribes certain conduct in the provision of telecommunications services.

Subp. 10. Interconnection. A CLEC must allow physical connections to its network and pay appropriate compensation for interconnection with and access to the networks of other local service providers as determined by the commission consistent with the requirements of the federal act.

Subp. 11. Commission approval to discontinue service or physical connection to another carrier. In accordance with Minnesota Statutes, section 237.74, subdivisions 6, paragraph (a), and 9, a CLEC must obtain prior commission approval before discontinuing a service or physical connection to a telephone company or a telecommunications carrier if end users would be deprived of service because of the discontinuance or disconnection.

Subp. 12. Public right-of-way. To the extent that a CLEC owns or controls, or seeks to own or control, a facility in the public right-of-way that is used or is intended to be used for transporting telecommunications or other voice or data information, the CLEC shall comply with Minnesota Statutes, sections 237.162 and 237.163, which provide for the use and regulation of the public rights-of-way.

Subp. 13. 911/TAM/TAP. Each CLEC is subject to Minnesota Statutes, sections 237.52 (Telecommunications Access Minnesota), 237.70 and 237.701 (Telephone Assistance Program), and 403.11 (911 Emergency Services). Amounts collected as surcharges under these sections must be remitted to the commissioner of public safety in the manner prescribed in Minnesota Statutes, section 403.11.

Subp. 14. Consumer protection laws on disclosure, antislamming, cramming. A CLEC shall comply with the requirements of Minnesota Statutes, sections 237.66, 237.661, and 237.663.

Subp. 15. Regulatory expense assessment. A CLEC is subject to assessment by the department for the regulatory expenses of the department and the commission, as provided by Minnesota Statutes, section 237.295.

Subp. 16. Mergers and acquisitions. In accordance with Minnesota Statutes, section 237.74, subdivision 12, before acquiring ownership or control of any provider of local service in Minnesota, either directly or indirectly, a CLEC must demonstrate to the commission that the present or future public convenience and necessity require or will require the acquisition. To make this determination, a CLEC must show that

the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates, and service quality.

Subp. 17. Investigations and complaints; proceedings. Investigations and complaints regarding CLEC compliance with this chapter are governed by items A to H.

A. After giving notice to the CLEC, the commission may investigate any matter brought forth under its own motion or raised in a complaint against a CLEC of a possible violation of this chapter. A complaint may be brought by a telephone company; by a telecommunications carrier; by the department; by the OAG-RUD; by the governing body of a political subdivision; or by no fewer than five percent or 100, whichever is the lesser number, of the subscribers or spouses of subscribers of the CLEC.

B. If, after an investigation, the commission finds that a significant factual issue has not been resolved to its satisfaction, the commission may order that a contested case hearing be conducted under Minnesota Statutes, chapter 14, unless the complainant, the CLEC, and the commission agree that an expedited hearing under Minnesota Statutes, section 237.61 is appropriate, or the commission orders an expedited proceeding under Minnesota Statutes, section 237.462, subdivision 6.

C. In any complaint proceeding authorized under this subpart, the CLEC bears the burden of proof, unless:

(1) the complaint alleges the CLEC's prices fail to satisfy the price uniformity requirements of subpart 5, item A, in which case the burden is on the complainant to prove that the price differences are not justified; or

(2) the commission determines that the burden should be placed on the complainant based on factors such as which party has control of critical information regarding the issue in dispute.

D. A full and complete record must be kept by the commission of all proceedings before it upon any formal investigation or hearing. All testimony received or offered must be taken down by a stenographer appointed by the commission and a transcribed copy of the record furnished to any party to the investigation upon paying the expense of furnishing the transcribed copy.

E. If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules, or practices violate an applicable provision of this chapter, the commission shall take appropriate action, which may include ordering the CLEC to:

(1) change the rate, tariff, charge, schedule, or practice;

(2) make the service reasonable, adequate, or obtainable; or

(3) take other appropriate action.

F. A copy of an order issued under this subpart must be served upon the person against whom it is directed or the person's attorney, and notice of the order must be given to the other parties to the proceedings or their attorneys.

G. A party to a proceeding before the commission or the OAG-RUD may make and perfect an appeal from the order in accordance with Minnesota Statutes, chapter 14.

H. This subpart does not preclude the parties from pursuing voluntary mediation, arbitration, or other alternative dispute resolution. Upon the filing of a complaint, the commission may vary deadlines to allow for voluntary dispute resolution by the parties. However, in accordance with part 7829.1600, if the complainant desires formal action by the commission, the commission shall resolve the dispute.

Subp. 18. Enforcement; penalties and remedies. A CLEC is subject to the penalties and remedies provided in Minnesota Statutes, sections 237.461, 237.462, and 237.74, subdivision 11.

Subp. 19. Annual reports. On or before May 1 of each year, a CLEC shall complete and return to the department the annual report form prepared by the department.