



85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
mn.gov/commerce/
651.539.1500 FAX 651.539.1547
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February 18, 2014

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

RE: Comments of the Minnesota Department of Commerce
Docket No. P999/CI-12-1329

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce in response to the January 16, 2014, Notice of Commission Investigation and Solicitation of Comments in the following matter:

In the Matter of the Commission Investigation of the Completion of Long-Distance Calls to Rural Areas in Minnesota

Sincerely,

/s/ BONNIE J. JOHNSON
Public Utilities Telecommunications Analyst

BJJ/ja
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P999/CI-12-1329

I. BACKGROUND

On January 16, 2014, the Commission issued a Notice of Commission Investigation and Solicitation of Comments. The Department suggested the questions that the Commission included in its notice. The questions seek to determine whether there is any action that state regulators could take to both reduce the occurrences of calls failing to terminate in rural areas of Minnesota and, to resolve any rural call completion issues that do occur, in a timely manner. The Department's January 13, 2014 comments include some analysis on the questions raised and the Department will not repeat that analysis in response to the Commission's January 16, 2014 notice. While the Department may provide some additional information with this response, creating a record with the input of all interested parties is the necessary first step to providing some much needed relief on this important issue. The Department anticipates that parties will address the analysis provided in its January 13, 2014 comments and that reply comments may be the Department's primary opportunity to provide additional analysis. The Department supplements its initial comments with the following response to the Commission notice below.

II. DEPARTMENT RESPONSES

1. *Are intermediate providers¹ that provide either transport or switching for intrastate Minnesota calls subject to the Commission's jurisdiction as provided in 237.74, Subd. 12 or other statute?*

Department Response: The Commission has broad authority to regulate intrastate end to end telephone services and investigate any matter relating to telephone service in the state of Minnesota. Obviously if the intermediate provider is authorized to provide interexchange, local or local niche services, the Commission already has jurisdiction over them. The more relevant question with respect to rural call completion may be the Commission's jurisdiction over those intermediate providers that are not already certified in Minnesota.

On its January 13, 2014, comments asking the Commission to open an investigation into the matter of rural call completion (Department Comments), the Department referenced several Minnesota Statutes which confer jurisdiction to the Commission. Minnesota Statutes that may be applicable include:

- Minnesota Statute 237.01, Subd. 6,
- Minnesota Statute 237.081, Subd. 1
- Minnesota Statute 237.081, Subd. 4
- Minnesota Statute 237.121 in part,
- Minnesota Statute 237.16, Subd. 12
- Minnesota Statute 237.46
- Minnesota Statute 237.461
- Minnesota Statute 237.74, Subd. 2
- Minnesota Statute 237.74, Subd. 4
- Minnesota Statute 237.74, Subd. 11
- Minnesota Statute 237.74, Subd. 12

¹ The FCC has defined the term *Intermediate Provider* to mean any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic. See 47 CFR 64.1600(f).

2. *If intermediate providers are subject to the Commission's jurisdiction, should they be required to obtain a certificate of authority or be subject to a certification/registration process?*

Department Response: Yes, however, as discussed at page 12 of the Department Comments, only those terms of regulation that are applicable would require compliance. See also response to question #4.

3. *If intermediate providers are required to be certified or register with the Commission, should retail interexchange carriers be required to only use certified/registered intermediate providers for the termination of toll calls?*

Department Response: If intermediate providers are required to be certified or register with the Commission, then an intermediate provider should not be terminating, or transporting intrastate calls in the state of Minnesota unless it is certified or registered. Therefore, the answer is yes, with respect to intrastate calling.

4. *If intermediate providers are subject to the Commission's jurisdiction, what requirements, as outlined in Minnesota Rules 7811 and 7812 are applicable and which requirements are not applicable?*

Department Response: If intermediate providers are found to be providing interexchange services, the applicable Minnesota Rules are 7811.0400 and 7812.0400. The Department discussed the applicability of regulatory requirements on intermediate providers at page 12 of the Department Comments, which stated:

If intermediate providers are found to be subject to the Commission's jurisdiction, only those terms of regulation that are applicable would require compliance. The Commission may choose to limit regulatory requirements just as it did when it found that inmate service providers are to be regulated as telecommunications carriers. In that matter, the Commission decided that some regulatory requirements, such as a 911 plan, are not required of inmate service providers as they are simply not applicable.² Similar action to limit regulatory requirements could occur with intermediate providers if found to be subject to the Commission's jurisdiction. (Original footnote retained)

² In the Matter of the Petition of the Minnesota Department of Commerce Regarding Regulation of Inmate Telephone Service, Docket No. P999/DI-07-204, *Order Affirming and Modifying Regulatory Treatment of Inmate Telephone Service Providers*, July 26, 2007.

Minnesota Rule 7812.0400, Subpart 1 states: “A petition to provide interexchange service, but not local service, must include all the information required for local resale service petitions under part 7812.0350.”

Minnesota Rule 7812.0350, Subpart 2 states: A petition for authority to provide local service as a reseller must include the information required under part 7812.0300, subpart 2, items A to L, except for the information relevant to facilities-based service identified or contemplated in part 7812.0300, subpart 2, items G and K. The applicant shall provide any additional information needed to demonstrate that it satisfies the requirements for certification under subpart 3.

Thus, if intermediate providers are found to be subject to the Commission’s jurisdiction, the following information may be all that is applicable from Minnesota Rule 7812.0300, Subpart 2:

From item A: The legal name, address and telephone number should be provided. The telephone number should be answered 24/7 to address call completion problems.

From item C: Any affiliation to an authorized telecommunications carrier in Minnesota should be disclosed.

From item D: The nature of the applicant's business, including a list of the services it provides should be submitted to ensure proper regulatory requirements are applied.

From item L: a copy of the applicant's certificate to conduct business from the Minnesota Secretary of State.

5. *If intermediate providers are not subject to the Commission’s jurisdiction, are there any actions that the Commission can take to ensure that calls to rural Minnesota customers are properly completed?*

Department Response: Yes, the Department believes there are actions the Commission can take. See, for example, the Department’s response to numbers 7, 8, 9, 10, and 14 below.

6. *If intermediate providers are not subject to the Commission’s jurisdiction, should the responsibility for any call termination problems rest solely with the originating interexchange carrier?*

Department Response: Whether or not intermediate providers are determined to be within the Commission’s jurisdiction, there is no dispute that the originating interexchange carrier has the responsibility to ensure a call completes.³ The FCC issued a declaratory ruling on February 6,

³ *Declaratory ruling*, June 28, 2007, para. 1, states that “Today, on our own motion, we issue this Declaratory Ruling...to clarify the obligation of interexchange carriers (IXCs) and commercial mobile radio service (CMRS) to

2012, that confirmed that under section 217 of the Act, carriers are responsible for the actions of their agents or other persons acting for or employed by the carriers,⁴ which include intermediate providers a carrier may employ to route or complete calls. So the answer to the question is yes, in the absence of Commission jurisdiction over intermediate providers, the responsibility of any call termination problem rests solely with the originating interexchange carrier.

7. *If intermediate providers are not subject to the Commission's jurisdiction, what requirements should the Commission place on the originating interexchange carriers to ensure call termination problems do not occur?*

Department Response: In the FCC's February 6, 2012 declaratory ruling, the FCC said "we clarify that a carrier that knows or should know that calls are not being completed to certain areas, and that engages in acts (or omissions) that allow or effectively allow these conditions to persist, may be liable for a violation of section 201 of the Act." In that same paragraph of the ruling the FCC clarified "that a carrier remains responsible for the provisions of service to its customers even when it contracts with another provider to carry the call to its destination."⁵

The Minnesota Commission may be able to do more to hold interexchange carriers accountable for call completion problems. The Commission may require that all originating interexchange carriers report each call completion complaint it receives to the Commission and Department on a monthly basis, until such time that the Commission determines that the data is no longer needed. The data should include root cause analysis on all call completion complaints for any intrastate call completion problem,⁶ regardless of who reports the incident to the carrier, and should identify whether an intermediate provider in the call path was responsible for call failure, the name of the intermediate provider responsible, and whether the responsible intermediate provider was removed from a particular route as a result.

The Commission could also order that continued use of an intermediate carrier that is known to have poor call completion performance, or has been removed from a particular route by any originating interexchange carrier due to poor performance on more than one occasion, should no longer be allowed to carry any intrastate calls in Minnesota. If an originating interexchange carrier does not ensure that a poorly performing intermediate carrier is excluded in the routing of its calls, the Commission may conclude that the originating interexchange carrier has violated Minnesota Statute 237.121 (a)(2) which states it may not "intentionally impair the speed, quality,

complete their customers interexchange calls." (2007 Declaratory Ruling) at https://prodnet.www.neca.org/wawatch/wwpdf/062907_2.pdf

⁴ Declaratory Ruling, February 6, 2012, para. 4. (2012 Declaratory Ruling) at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-154A1.pdf.

⁵ Declaratory Ruling, February 6, 2012, para. 11. (2012 Declaratory Ruling) at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-154A1.pdf.

⁶ The call failure can include, blocking, dropped calls, call routing problems, long set-up times with false ringing and carriers changing call signaling information. See Department Comments, pg. 1.

or efficiency of services, products, or facilities offered to a consumer under a tariff, contract or price list.” If the Commission determines the originating interexchange carrier knew, or should have known the intermediate carrier had poor performance and has violated Minnesota Statute 237.121 (a) (2), the Commission could use its authority under Minnesota Statutes 237.46 and 237.461 to address the violations.

8. *Should there be “point of contact” information for any intermediate carrier so that any call failures identified can more readily be addressed?*

Department Response: Yes. No carrier, including intermediate providers whether subject to Commission jurisdiction or not, should object to having information on file that would allow resolution of a call completion problem. If there is such an objection, the Commission should consider why that intermediate provider should be allowed to transport calls in the state of Minnesota.

9. *Should there be a requirement that any contract between an originating interexchange carrier and an intermediate carrier require the full cooperation of the intermediate carrier to resolve any call failures, including any inquiries by regulatory agencies?*

Department Response: Any requirement imposed on a regulated entity that better prevents calls from failing to terminate should be considered. Seeking greater cooperation from all parties involved in the routing of a failed call seems reasonable. See also the response to question # 6.

10. *What processes are in place to monitor call completion problems?*

Department Response: The Department is not aware of a defined process that is required by all originating long distance carriers. Responses by the carriers may help serve to establish appropriate processes and/or monitoring of call completion problems.

11. *What data has been collected to demonstrate that calls through the originating interexchange carrier are completing?*

Department Response: The Department looks forward to the responses by the carriers on how they are ensuring that the calls they originate are completing.

12. *If an originating interexchange carrier, do the contracts you have with intermediate providers:*

- a) ensure that all calls will be completed?
- b) require that if the intermediate carrier cannot complete the call, it must be handed back for completion?
- c) ensure that the intermediate carrier is not providing a false ring back?

- d) require that the intermediate carrier is not changing the originating number?
- e) establish how quickly a call must be completed to the terminating end-user?

Department Response: Not applicable to the Department.

13. Do confidentiality clauses in contracts with intermediate providers exist that would prevent the disclosure of information needed to determine where a call failed in the call path? If so, explain why such clauses do, or do not, interfere with resolution of call completion issues.

Department Response: The Department looks forward to responses by the carriers concerning confidentiality clauses.

14. How should the Commission deal with intrastate calls in which the calling party number has been stripped, or altered so that the call appears interstate when in fact the call is intrastate?

Department Response: If an originating interexchange carrier, or an intermediate carrier involved in the routing of its calls, alters the call signaling information⁷ for the purpose of committing fraud, the Commission may conclude that the originating interexchange carrier has violated Minnesota Statute 237.121 (a)(2) which states it may not “intentionally impair the speed, quality, or efficiency of services, products, or facilities offered to a consumer under a tariff, contract or price list.” Changing the call signaling information to evade intrastate access compensation should be found to be such a violation. The Commission could use its authority under Minnesota Statutes 237.46 and 237.461 to address the violations.

/ja

⁷ In the November 8, 2013 Report and Order and Further Notice of Proposed Rulemaking at paragraph 6, the FCC states the “The Commission adopted rules requiring telecommunications carriers and providers of Interconnected VoIP service to include the calling party’s telephone number in all call signaling, and **required intermediate providers to pass this signaling information, unaltered, to the next provider in a call path.** (Emphasis added)

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
Comments**

Docket No. P999/CI-12-1329

Dated this **18th** day of **February 2014**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_12-1329_DI-12-1329
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_12-1329_DI-12-1329
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_12-1329_DI-12-1329
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_12-1329_DI-12-1329