



85 7TH PLACE EAST, SUITE 280
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1600 FAX: 651.539.1574
AN EQUAL OPPORTUNITY EMPLOYER

June 7, 2017

Daniel P. Wolf
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. P6716/SA-17-407

Dear Mr. Wolf:

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

Request by Charter Fiberlink CCO, LLC to amend its certificate of authority by expanding its service area.

The petition was filed on May 19, 2017 by:

Joel L. Thomas
Friend, Hudak & Harris, LLP
Three Ravinia Drive, Suite 1700
Atlanta, GA 30346-2117

The Department of Commerce recommends that Charter Fiberlink CCO, LLC (Charter Fiberlink CCO) receive approval to expand its local service area to include the local exchanges of Albany, Mission, Clarissa, Kerkhoven, Murdock, Pennock, Melrose, Osakis, Oronoco, and Zumbrota, conditioned upon Charter Fiberlink CCO, LLC either not providing retail service, or satisfying the conditions discussed in the attached comments.

Sincerely,

/s/ DIANE DIETZ
Rate Analyst

DD/ja
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P6716/SA-17-407

I. BACKGROUND

A. PROCEDURAL AND FACTUAL HISTORY

On August 17, 2009, the Minnesota Public Utilities Commission (Commission) granted Charter Fiberlink CCO, LLC (Charter Fiberlink CCO) a conditional certificate of authority, in Docket No. P6716/NA-09-240, to provide statewide long distance service and facilities based and resold local exchange and local niche services in the following exchanges:

Incumbent Carrier
Qwest Corporation

Exchanges
Bemidji, Cass Lake, St. Cloud, St. Joseph, Duluth, Northfield, Little Falls, Sauk Centre, Marshall, Montevideo, Willmar, Rochester, Stewartville, Winona, Faribault, Owatonna, Albert Lea, Austin, Brainerd, Glenwood, Nisswa, Park Rapids, Red Wing, Staples, Tracy, Wadena, Fergus Falls, and exchanges in the Minneapolis/St. Paul Metropolitan Calling Area.

Embarq Minnesota, Inc.

Cokato, Osseo, Eyota, Benson, Aitkin, Alexandria, Browerville, Crosby, Deerwood, Long Prairie, Lewiston, Rollingstone, Bennetville

Citizens Telecom, of Minnesota, LLC

Mound, Byron, Cottonwood, International Falls, Rainer

Frontier Comm. of Minnesota, Inc.

Apple Valley, Rosemount, Lakeville, Fairmont, Farmington, Mankato, Eagle Lake

Mankato Citizens Telephone Co.

Mankato

Mid-Communications, Inc.

Eagle Lake

The following conditions were attached to the operational certificate of authority: 1) submission of a tariff reflecting the rates, terms, and conditions of the services offered by the Company as a condition to receiving operational authority to provide long distance, local niche, and facilities based and resold local exchange services; 2) Commission approval of interconnection agreements with each applicable incumbent local exchange carrier as a condition to receiving operational authority to provide facilities based and resold local exchange services in those exchanges covered by each applicable interconnection agreement wherein the applicant has received conditional certification to provide local service; and 3) Commission approval of a 911 plan covering all exchanges wherein the applicant has received conditional certification as a condition to receiving operational authority to provide facilities based and resold local exchange services in those exchanges covered by the 911 plan.

On October 16, 2009, the Commission approved the interconnection agreement between Charter Fiberlink, LLC (an affiliate of Charter Fiberlink CCO, LLC) and Citizens Telecommunications Company of Minnesota, LLC in Docket No. P407, 405, 5535/IC-09-1099.

On December 3, 2009, the Commission approved the initial 911 plan for Charter Fiberlink CCO.

On December 9, 2009, Charter Fiberlink CCO filed its initial general exchange and interexchange tariffs as compliance filings in Docket P6716/NA-09-240.

On May 26, 2010, the Commission granted conditional approval of the request of Charter Fiberlink CCO to expand its service area to include the Embarq Minnesota, Inc. dba CenturyLink exchange of Dassel in Docket No. P6716/M-10-426. The condition attached to the approval of the proposed service area expansion was the filing and receiving Commission approval of an interconnection agreement with Embarq Minnesota, Inc. dba CenturyLink.

On June 9, 2010, the Commission approved the interconnection agreement between Charter Fiberlink CCO and Embarq Minnesota, Inc. dba CenturyLink in Docket No. P6716, 430/IC-10-424.

On March 21, 2012 in Docket No. P6716/M-12-131, the Commission granted conditional approval of the request by Charter Fiberlink CCO to expand its service area to include the Monticello exchange of Bridge Water Telephone Company dba TDS Telecom. The condition for approval of the service area expansion was the filing and receiving Commission approval of an interconnection agreement with Bridge Water Telephone Company dba TDS Telecom.

On April 30, 2012, the Commission approved the interconnection agreement between Charter Fiberlink CCO and Bridge Water Telephone Company in Docket P6716, 404/IC-12-372.

On May 22, 2012 in Docket P6716/M-12-391, the Commission granted conditional approval of the request of Charter Fiberlink CCO to expand its service area to include the La Crescent exchange of Ace Telephone Association, the Kasson exchange of Kasson – Mantorville Telephone Company, the new London and Spicer exchange of Mid-State Telephone Company dba TDS Telecom, and the Big Lake and Maple Lake exchanges of Windstream Lakedale, Inc. The conditions attached to the approval of the proposed service area expansion was the filing and receiving Commission approval of interconnection agreements with Ace Telephone Association, Kasson – Mantorville Telephone Company, and Mid-State Telephone Company dba TDS Telecom.

On July 6, 2012, the Commission approved the interconnection agreement between Charter Fiberlink CCO and Mid-State Telephone Company dba TDS Telecom in Docket No. P6716, 418/IC-12-602.

On July 6, 2012, the Commission approved the interconnection agreement between Charter Fiberlink CCO and Kasson – Mantorville Telephone Company in Docket No. P6716, 539/IC-12-605.

On July 6, 2012, the Commission approved the interconnection agreement between Charter Fiberlink CCO and Mid-State Telephone Company in Docket No. P418, 6716/IC-12-602.

On October 30, 2012, the Commission approved the interconnection agreement between Charter Fiberlink CCO and Ace Telephone Association in Docket No. P6716, 401/IC-12-1122.

On March 1, 2013, Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (the Charter Fiberlink Companies) transferred their residential service customers to Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (the Charter Advanced Services Companies). Neither of the Charter Advanced Services Companies holds a certificate of authority with the Public Utilities Commission to provide services in Minnesota. The Department of Commerce filed a complaint concerning this transfer on September 26, 2014 in Docket No. P6716, P5615/C-14-383.

On January 2, 2015, in Docket No. P402, 404, 6716/IC-14-1402, the Commission approved an interconnection agreement between Charter Fiberlink CCO and TDS Telecommunications Corporation (originally approved in Docket No. P6716,418/IC-12-602); adding Arvig Telephone Company and Bridge Water Telephone Company to the Interconnection Agreement between Mid-State Telephone Company d/b/a TDS Telecom and Charter Fiberlink CCO.

On January 11, 2016, in Docket No. P6716/SA-15-84, the Commission approved the petition of Charter Fiberlink CCO to amend its existing certificate of authority to allow the Company to provide facilities based and resold local exchange, interexchange and local niche services in the Breezy Point, Ideal Corners, Pequot Lakes and Pine River exchanges of Arvig Telephone Company dba TDS Telecom.

On June 8, 2016, in Docket P6716/SA-16-376, the Commission approved the petition of Charter Fiberlink CCO to amend its certificate of authority to allow the Company to provide facilities based and resold local exchange, interexchange, and local niche services in the Backus and Hackensack exchanges of Arvig Telephone Company dba TDS Telecom and the Altura exchange of Embarq Minnesota, Inc. dba CenturyLink.

On September 7, 2016, the Commission approved the petition of Charter Fiberlink CCO to amend its certificate of authority to allow the Company to provide facilities based and resold local exchange, interexchange, and local niche services in the Hastings exchange of Embarq Minnesota, Inc. d/b/a CenturyLink and the Kandiyohi exchange of Citizens Telecommunications Company of Minnesota, LLC.

On May 19, 2017, Charter Fiberlink CCO filed a petition to amend its certificate of authority to allow the Company to provide facilities based and resold local exchange, interexchange and local niche services in the following exchanges:

Incumbent Carrier	Exchange(s) and Rate Centers
Albany Mutual Telephone Association	Albany
Consolidated Telephone Company	Mission
Eagle Valley Telephone Company	Clarissa
Mid-State Telephone Company	Kerkhoven, Murdock and Pennock
Melrose Telephone Company	Melrose
Osakis Telephone Company	Osakis
Pine Island Telephone Company	Oronoco
Zumbrota Telephone Company	Zumbrota

II. STATEMENT OF ISSUES

- 1) Whether the Commission should grant Charter Fiberlink CCO's petition and authorize its expansion into new local exchange territories.

III. LEGAL REFERENCES

Minn. Stat. §237.16, subd. 4 mandates that local service providers must obtain an amended certificate of authority before expanding their service areas. An amended certificate is deemed approved within 20 days of the petition's service date unless the petition involves an acquisition under Minn. Stat. §237.23 or an objection is filed within 20 days of the petition's service date.

Minn. Rule 7811.0200, subp. 1 states that no person may provide telecommunications service in areas served by LECs with fewer than 50,000 subscribers in Minnesota without first obtaining a certificate under this part and parts 7811.0300 to 7811.0600.

Minn. Rule 7812.0200 subp. 3B states in part: the applicant plans to provide local service in the area, either through resale, the purchase of unbundled network elements, or use of its own facilities, within 36 months after the date of the applicant's petition.

Minn. Rule 7812.0200 subpt. 4. Automatic revocation for failure to serve. The local service provider (LSP) certified under part 7812.0300 or 7812.0350 must offer services, consistent with part 7812.0600, throughout its entire local service area within 36 months after the later of the following three dates:

- A. the date of the commission order granting the applicant's certificate of authority;
- B. the date of the commission order under part 7812.1100, approving the necessary agreements resulting from the negotiations that provided the basis under subpart 3, item A, for granting the certificate; or
- C. July 28, 1997.

Failure to offer basic local service throughout the entire service area as required in this subpart results in the automatic revocation of the local service provider's certificate with respect to those areas in which the LSP is not offering basic local service, unless the LSP demonstrates to the satisfaction of the commission, under subpart 5, that its failure to offer basic local service throughout the entire service area results from factors beyond the local service provider's control

Minn. Rule 7811.0200, subp. 4 states in part: "Unless a local service provider demonstrates to the satisfaction of the commission, under subpart 5, that its failure to offer basic local service throughout its entire service area within 36 months is the result of factors beyond the LSP's control, the commission shall revoke the LSP's certificate with respect to those areas in which the LSP is not offering basic local service.

Minn. Rule 7811.0300, subp. 5, states that a local service provider (LSP) shall not provide local service in an area for which it does not have a valid certificate under this part or acquire ownership or control of another LSP without first obtaining an amended certificate from the commission applicable to the area into which the LSP proposes to expand.

Minn. Rules pt. 7811.0300, subp. 5, describes the requirements and the decision criteria for granting an amendment to a certificate of authority for a change in service area.

Minn. Rules pt. 7811.0550, subp. 1 requires a competitive local exchange carrier to obtain Commission approval of a comprehensive 911 plan before providing local service in an area.

Minn. Rules pt. 7811.0600, subp. 1 requires local service providers to offer certain basic services enumerated in this section of the rules. Among these basic services is single party service, which must be offered to all customers within the service area of the local service provider.

Minn. Stat. section 237.09 subd. 2 (a) requires that a telephone company that offers or provides a service or services, service elements, features, or functionalities on a separate, stand-alone basis to any customer shall provide that service, service element, feature, or functionality pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors.

Minn. Stat. section 237.70 and Minn. Rules pt. 7817.0400, subp. 8 requires local carriers to collect and remit Telephone Assistance Program (TAP) fees and provide the TAP program to eligible low income customers.

Minn. Stat. section 237.52 requires local carriers to collect and remit Telecommunications Access Minnesota (TAM) fees to the State of Minnesota.

IV. ANALYSIS

The current service area filing includes a descriptive narrative delineating the petitioner's proposed service area changes and does not involve an acquisition under Minn. Stat. §237.23. In its petition, Charter Fiberlink CCO included documentation showing that the Company has provided notice of the service area expansion to the affected municipalities in compliance with the requirements of Minn. Stat. section 237.16, subd. 4 and Minnesota Rules pt. 7812.0200, subpt. 6. The Commission approved the interconnection agreement between Charter Fiberlink CCO and Mid-State Telephone Company in its July 6, 2012 Order in Docket No. P418, 6716/IC-12-602.

Charter Fiberlink CCO seeks to expand its service area in the current docket, but there is no evidence that Charter Fiberlink CCO, either currently serves, or will serve, retail customers. All retail customers are served by the Charter Advanced Services companies and the Charter affiliates maintain that Charter Advanced Services is not subject to the Commission's jurisdiction.¹ Charter Fiberlink CCO has no retail customers so it does not collect TAM, TAP or 911 fees and it files no fee remittance reports with the Department of Public Safety. The Charter Advanced Service companies do collect and remit 911 fees, but TAM and TAP fees are neither assessed nor remitted.

With respect to the TAP program, Charter Fiberlink CCO has no customers subscribing to the TAP program since it has no retail customers. Charter Advanced Services has asserted that its services and operations are outside of the Commission's jurisdiction and the carrier does not believe it has any obligation to offer the TAP program in Minnesota.

For service areas where Charter Fiberlink CCO has been granted authority, it is not clear that this Charter affiliate will ever provide retail local exchange services in compliance with the requirements of Minn. Rule 7811.0200, subp. 4 and Minn. Rule 7812.0200, subp. 3(B), which require an applicant to provide local service throughout its service area within 36 months. The Department believes it is appropriate to take no action to address the existing

¹ October 22, 2014 comments of the Charter affiliates in Docket No. P6716, 5615/C-14-383, page 7.

authority granted to Charter Fiberlink CCO until the litigation between the Charter entities and the Commission is complete. If, however, the Commission believes there are laws or rules that need to be enforced at this time, the Department will do so.

Before becoming operational in the expanded service area normal conditions that would be placed on this service area expansion would be for Charter Fiberlink CCO to: 1) file any necessary updates to its tariff; 2) update its 911 plan; and 3) receive Commission approval of interconnection agreements with the incumbent local exchange carriers, or state how interconnection will be achieved through a third party with an interconnection agreement. In this case, however, Charter Fiberlink CCO will not be serving customers. Thus, tariff changes, 911 plan update and interconnection agreements do not appear to be relevant. To the extent that 911 plan updates are needed for the Charter Advanced Services companies, the Department of Public Safety will need to address.

V. ALTERNATIVES

1. Whether the Commission should grant an amended certificate of authority to Charter Fiberlink CCO, LLC to expand its service area.
 - A. Grant approval of the petition of Charter Fiberlink CCO, LLC to expand its service area to include the following exchanges.

Incumbent Carrier	Exchange(s) and Rate Centers
Albany Mutual Telephone Association	Albany
Consolidated Telephone Company	Mission
Eagle Valley Telephone Company	Clarissa
Mid-State Telephone Company	Kerkhoven, Murdock and Pennock
Melrose Telephone Company	Melrose
Osakis Telephone Company	Osakis
Pine Island Telephone Company	Oronoco
Zumbrota Telephone Company	Zumbrota

The grant of approval is conditioned upon Charter Fiberlink CCO, LLC not providing service to any retail customers. Should Charter Fiberlink CCO, LLC wish to provide retail service, the following conditions apply: (i) filing any necessary tariff updates, (ii) filing any necessary updates to the 911 plan, (iii) filing and receiving Commission approval of interconnection agreements with Albany Mutual Telephone Association, Consolidated Telephone Company, Eagle Valley Telephone Company, Melrose Telephone Company, Osakis Telephone Company, Pine Island Telephone Company, and Zumbrota Telephone Company.

- B. Deny the petition of Charter Fiberlink CCO, LLC.
- C. Other action the Commission deems appropriate

VI. RECOMMENDATION

- A. Grant approval of the petition of Charter Fiberlink CCO, LLC to expand its service area to include the following exchanges.

Incumbent Carrier	Exchange(s) and Rate Centers
Albany Mutual Telephone Association	Albany
Consolidated Telephone Company	Mission
Eagle Valley Telephone Company	Clarissa
Mid-State Telephone Company	Kerkhoven, Murdock and Pennock
Melrose Telephone Company	Melrose
Osakis Telephone Company	Osakis
Pine Island Telephone Company	Oronoco
Zumbrota Telephone Company	Zumbrota

The grant of approval is conditioned upon Charter Fiberlink CCO, LLC not providing service to any retail customers. Should Charter Fiberlink CCO, LLC wish to provide retail service, the following conditions apply: (i) filing any necessary tariff updates, (ii) filing any necessary updates to the 911 plan, (iii) filing and receiving Commission approval of interconnection agreements with Albany Mutual Telephone Association, Consolidated Telephone Company, Eagle Valley Telephone Company, Melrose Telephone Company, Osakis Telephone Company, Pine Island Telephone Company, and Zumbrota Telephone Company

/ja

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, 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 Nos. **P6716/SA-17-407**

Dated this **7th** day of **June, 2017**.

/s/Linda Chavez

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_17-407_SA-17-407
James	Beattie	jbeattie@bevcomm.com	Rural Communications Holding Corp.	123 W 7th Street Blue Earth, MN 56013	Electronic Service	No	OFF_SL_17-407_SA-17-407
Mark	Birkholz	mark.birkholz@arvig.com	Redwood County Telephone Company	150 2nd Ave SW Perham, MN 56573	Electronic Service	No	OFF_SL_17-407_SA-17-407
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_17-407_SA-17-407
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_17-407_SA-17-407
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_17-407_SA-17-407
Ian	Dobson	Residential.Utilities@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_17-407_SA-17-407
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_17-407_SA-17-407
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_17-407_SA-17-407
Bruce	Hanson	bruce@hcinet.net	Sacred Heart Telephone Co.	1104 19th Ave SW Ste B Willmar, MN 56201	Electronic Service	No	OFF_SL_17-407_SA-17-407

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Charles	Hudak	chudak@fh2.com	FRIEND, HUDAK & HARRIS, LLP	3 Ravinia Dr Ste 1450 Atlanta, GA 303462131	Electronic Service	No	OFF_SL_17-407_SA-17-407
Steve	Katka	skatka@albanytel.com	Albany Mutual Telephone Association	131 6th St Albany, MN 56307-8322	Electronic Service	No	OFF_SL_17-407_SA-17-407
Stephen	Meradith	Stephen.Meradith@windstream.com	Windstream	655 W. Broadway, Ste. 850 San Diego, CA 92101	Electronic Service	No	OFF_SL_17-407_SA-17-407
Michael R.	Moore	michael.moore@charter.com	Charter Communications, Inc.	12405 Powerscourt Dr St. Louis, MO 63131	Electronic Service	No	OFF_SL_17-407_SA-17-407
Jean	Pauk	jean.pauk@tdstelecom.com	TDS Telecom	525 Junction Road Madison, WI 53717	Electronic Service	No	OFF_SL_17-407_SA-17-407
Carrie	Rice	carrie.rice@consolidated.com	Consolidated Communications Enterprise Services, Inc.	221 E Hickory St Mankato, MN 56001-3610	Electronic Service	No	OFF_SL_17-407_SA-17-407
David	Schornack	david.schornack@arvig.com	Tekstar Communications, Inc.	150 2nd St SW Perham, MN 56573	Electronic Service	No	OFF_SL_17-407_SA-17-407
Gregory	Springer	greg.springer@ctctelcom.net	C-I Communications, Inc.	1102 Madison St PO Box 972 Brainerd, MN 56401	Electronic Service	No	OFF_SL_17-407_SA-17-407
Cynthia	Sweet	csweet@acentek.net	Ace Telephone Association	PO Box 360 207 East Cedar Houston, MN 559430360	Electronic Service	No	OFF_SL_17-407_SA-17-407
Joel L	Thomas	JThomas@fh2.com	Friend, Hudak & Harris, LLP	Three Ravinia Dr Ste 1700 Atlanta, GA 30346	Electronic Service	No	OFF_SL_17-407_SA-17-407

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Beth	Tollefson	btollefson@kmtel.com	Kasson & Mantorville	18 2nd Avenue NW Kasson, MN 55944	Electronic Service	No	OFF_SL_17-407_SA-17-407
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-407_SA-17-407
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_17-407_SA-17-407
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-407_SA-17-407