

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **October 2, 2014**

**Agenda Item # 3

Company: **Citizens Telecommunications Company of Minnesota**

Docket No. **P407/AM-14-603**

In the Matter of a Tariff filing of Citizens to Introduce Emergency Connect Service as a Flexibly Priced Service

Company: **Frontier Communications of Minnesota, Inc.**

In the Matter of a Tariff filing of Frontier to Introduce Emergency Connect Service as a Flexibly Priced Service

Docket No. **P405/AM-14-604**

Issue: How should the Commission classify Frontier's and Citizens' Emergency Connect Service?

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Relevant Documents

14-603

Citizens' Initial Filing July 16, 2014
Department's Comments August 12, 2014
Citizens' Comments August 13, 2014
Department's Reply Comments August 21, 2014

14-604

Frontier's Initial Filing July 16, 2014
Department's Comments August 12, 2014
Frontier's Comments August 13, 2014
Department's Reply Comments August 21, 2014

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Statement of Issue

How should the Commission classify Frontier's and Citizens' Emergency Connect Service?

Procedural Background

Citizens Telecommunications Company of Minnesota (Citizens) and Frontier Communications of Minnesota, Inc. (Frontier) are affiliated companies. Both companies are operating under an Alternative Form of Regulation (AFOR) Plan.¹

On July 16, 2014, the companies made individual tariff filings to introduce *Emergency Connect Service*. Both stated that the service is being tariffed under "flexibly priced services, since the service is not included in the list of services defined as "price regulated" in Minn. Stat. §237.761, nor does it provide access to the local telephone network.

In Comments filed on August 12, 2014, the Department of Commerce (Department) disputed the companies' classification of the service as flexibly priced.

The companies filed Joint Reply Comments on August 13, 2014, and the Department filed Reply Comments on August 21, 2014.

Legal Framework

Under the AFOR statutes, specifically in Minn. Stat. §237.761, subd. 1, services are classified as either price-regulated, flexibly priced or nonprice regulated services.

The classification of a service is important mainly because it determines how the service is regulated (e.g. ability to change rates and the ease by which those rates can be changed) under an alternative form of regulation (AFOR) Plan. For example, the statutes generally prohibit any

¹ Citizens' Current AFOR Plan was approved by the Commission in ORDER APPROVING ADOPTION OF EXISTING AFOR PLAN WITH MODIFICATIONS dated OCTOBER 25, 2012 in Docket No. P407/AR-12-405 and expires on November 12, 2015. Frontier's Current AFOR Plan was approved in ORDER APPROVING FRONTIER'S ALTERNATIVE REGULATION PLAN AS MODIFIED dated February 13, 2012 in Docket No. P405/AR-11-562 and expires March 1, 2015. A replacement AFOR Plan has been proposed by the Frontier in Docket No. P405/AR-14-735.

price increase for price-regulated services except for very specific and limited situations. Rate increases for flexibly priced services however may be considered approved if no objection is filed within 20 days after filing.

The pertinent statutory provisions related to the classification of a service and regulatory treatment thereof are contained in the following:

237.761 ALTERNATIVE REGULATION PLAN; SERVICE.

Subdivision 1. Classification of services.

An alternative regulation plan must contain provisions that provide for classification of all telephone services as price regulated, flexibly priced, or nonprice regulated consistent with subdivisions 2 to 5.

Subd. 2. Price-regulated service; definition.

For purposes of this section, the term "price-regulated service" includes only those services that are:

- (1) essential for providing local telephone service and access to the local telephone network;
- (2) integrally related to privacy, health, and safety of the company's customers; and
- (3) for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

Subd. 3. Specific price-regulated services.

Price-regulated telephone services are the following:

- (1) residential and business service for local calling, including measured local service, two-party service, private branch exchange (PBX) trunks, trunk type hunting services, direct inward dialing, the network access portion of central office switched exchange service, and public access lines for customer-owned coin-operated telephones;
- (2) extended area service;
- (3) switched network access service;

- (4) call tracing;
- (5) calling number blocking;
- (6) touch tone service when provided separately from basic local exchange service;
- (7) local exchange, white-page, printed directories;
- (8) 911 emergency services;**
- (9) installation and repair of local network access;
- (10) local operator services, excluding directory assistance; and
- (11) toll service blocking and 1-900 or 976 access blocking.

Subd. 4.Flexibly priced service.

(a) A service not listed in subdivision 3 or not otherwise determined to be price regulated under subdivision 6 or 7 or nonprice regulated must be classified as a flexibly priced service.

(b) Flexibly priced services are regulated consistent with section [237.60](#), [subdivision 2](#), except that:

(1) rate decreases may be effective immediately upon filing and upon notice to affected customers; and

(2) rate increases may be effective 20 days after filing and upon notice to affected customers and are considered approved if no objection is filed or raised by an interested party or the commission within 20 days after the filing. If an interested party files an objection, the commission shall make its determination on the proposed rate increase within 90 days of the filing of the objection.

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Subd. 7.New service; classification; rate.

At the time the company first offers a service, it shall file a tariff or price list and the proposed classification for the service under the plan along with a written explanation of why the proposed classification is consistent with this section. New services classified as flexibly priced or nonprice regulated may be offered on one day's notice to the commission and the department. New services classified as

price regulated may be offered pursuant to the terms set forth in the plan. A service is not considered a new service if it consists of a repackaging including bundling, unbundling, or repricing of an already existing service. If no interested party or the commission objects to the company's proposed classification within 30 days of the filing of the petition, the company's proposed classification of the service is approved. If an objection is filed, the commission shall determine the classification of the service within 90 days of the filing of the new service.

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237.762 ALTERNATIVE REGULATION PLAN RATE, PRICE.

Subdivision 1. Initial rate.

An alternative regulation plan approved by the commission under this section must provide that the recurring and nonrecurring rates or prices that may be charged by a telephone company for price-regulated services are no higher than the approved rate or prices on file with the commission for those services on the date of the filing of the plan. Furthermore, no plan may in any way change the terms or conditions of any access charge settlements approved by the commission or exempt any company from compliance with any commission access charge order issued before the filing of a plan. The plan must address implementation of additional access charge reductions that may occur during that portion of the plan that extends beyond expiration of commission-approved settlements.

Subd. 2. New service; rate.

For services offered by the telephone company for the first time after August 1, 1995, the rates or prices must equal or exceed the total service long-run incremental cost of the service.

Subd. 3. Rate change.

(a) An alternative regulation plan must set forth the procedures under which the telephone company may reduce the rates or prices for price-regulated services below the initial rates or prices or thereafter increase the rates or prices during the term of the plan. The rates or prices may not be reduced below the total service long-run incremental cost of providing the service. Except as provided in paragraph (b), the rates or prices may not exceed the initial rates or prices for the service determined under subdivision 1 for the first three years of the plan. After a plan has been in effect for three years, price-regulated rates may be changed as appropriate under a procedure set forth in an approved plan. Rates for price-regulated services may not be increased unless the company has demonstrated substantial compliance with the quality of service standards set forth in the plan.

(b) An approved plan may allow changes in rates for price-regulated services after two years to reflect:

(1) changes in state and federal taxes;

(2) changes in jurisdictional allocations from the Federal Communications Commission, the amount of which the telephone company cannot control and for which equal and opposite exogenous changes are made on the federal level; and

(3) substantial financial impacts of investments in telecommunications infrastructure which are made: (i) if the investments, for any 12-month period, exceed 20 percent of the gross plant investment of the company; or (ii) are the result of government mandates to construct specific telephone infrastructure, the mandate applies to local telephone companies, and the company would not otherwise be compensated through some other manner under the plan.

Subd. 4. Bundled rates.

When the rates or prices for services are unbundled, the price for each basic network function must be set to equal or exceed its total service long-run incremental cost. Before August 1, 1997, if the rates or prices for price-regulated services are bundled, the bundled rate or price may not exceed the sum of the unbundled rates or prices for the individual service elements or services or the total initial bundled rate or price for those service elements or services.

Subd. 5. Income-neutral change.

Other than as authorized in this subdivision, an initial alternative regulation plan must not permit income-neutral rate changes for price-regulated services during the plan except as is necessary to implement extended area service or any successor to that service. Any plan must provide that after the rules issued pursuant to section [237.16](#) are adopted, rates for price-regulated services may be increased, as approved by the commission, to the extent necessary to carry out the purpose of those rules. However, rate increases, if any, for those services must be incorporated with a universal service fund so that the effective rate for the customers of those services does not increase during the first three years of the plan.

Subd. 6. Rate for other service.

The telephone company shall file price lists with the commission for all flexibly priced or non-price-regulated services. The rate or price for each flexibly priced and non-price-regulated service must be equal to or exceed the total service long-run incremental cost of providing that service. In any proceeding regarding the

appropriateness of a rate or price for a flexibly priced or non-price-regulated service, the telephone company has the burden of proving that the rate or price is above the total service long-run incremental cost of providing that service.

Subd. 7.Packaged services.

This section does not prevent a telephone company from packaging any service classified as price regulated or flexibly priced pursuant to section [237.761](#), subdivisions 2 to 4, with any other service, or engaging in promotional activities concerning such services, so long as:

(1) the company also continues to offer these price-regulated and flexibly priced services as separate stand-alone services at prices required by this section; and

(2) at the time the packaged offering is introduced, or at the time the package price is subsequently changed, the packaged rate or price may not exceed the sum of the unpackaged rates or prices for the individual service elements or services.

Positions of the Parties

Citizens and Frontier

Citizens and Frontier describe Emergency Connect Service as a limited service that allows calls to be placed to 911 only. The service does not allow for any inbound calling. Persons placing calls to someone with Emergency Connect Service will receive a recording that the number is not in service. Customers can only place outgoing calls to 911 and in some instances to 611 for the company call center. The companies charge a monthly rate of \$4.99.

The companies explain that the service is not included in the list of services defined as “price regulated” in Minn. Stat. §237.761, nor does it provide access to the local telephone network. Therefore, they classify the service as flexibly priced and included in their Flexibly Priced Services Tariffs.

In Joint Comments, the companies argue that the service does not meet any, more so, all of the following conditions required in Minn. Stat. §237.761, subd. 1-3 for a service to be classified as price-regulated:

1. Essential for providing local telephone service and access to the local telephone network.

The companies cite Minn. Rule 7810.0100, Subd. 3 for the definition of a “Local exchange service” as “telecommunications service provided within local exchange service areas in accordance with the tariffs. It includes the use of exchange facilities required to establish connections between stations within the exchange and between stations and the toll facilities serving the exchange.” Since Emergency Connect Service does not provide for connections “between stations within the exchange” nor “between stations and the toll facilities serving the exchange, the service is not a local exchange service and does not meet this condition.

2. Integrally related to privacy, health and safety of the company’s customers.

The companies argue that the service provides two capabilities: calling 911 and calling the call center. Both capabilities are available to customers through other services, so neither capability is new. But the service is new, it is not currently offered. Frontier reasons that since the service does not currently exist, it could not be integral to the privacy, health and safety of customers.

3. No reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

According to the companies, customers have a number of reasonable alternatives to call 911 and the companies’ call center. All regular residential and business, as well as bundled services of Frontier and Citizens and their competitors offer those capabilities.

The companies believe that the service is not the same service listed as number 8 in Minn. Stat. §237.761, subd. 3. That provision refers to “911 emergency services” which the companies relate to the trunking, routing, database, and other services provided to the entities operating the 911 network and not the ability of the customer to dial 911 to access the emergency service network. If the Department’s reasoning is followed, then every service that allows a customer to call 911, including all the bundled service offerings in the companies’ flexibly priced tariffs, is a price-regulated service.

Department

The Department disagrees with the companies' classification of the service and asserts that the service should be classified as price-regulated. According to the Department, the service falls squarely in the price-regulated service definition in Minn. Stat. §237.761, subd. 2, because it 1) provides access to the local network; 2) is integrally related to health and safety of the company's customer; and 3) no reasonable alternative exists within the relevant market or geographic area on comparable terms and conditions. These are specifically listed as conditions for classifying a service as price-regulated under the statute. Moreover, 911 emergency service is specifically listed in Minn. Stat. §237.761, subd. 3 (8) as a price-regulated service.

In Reply Comments, the Department argues that reliance on Minn. Stat. §237.761, subd. 3 (8) should be enough to classify the service as price-regulated. Minn. Stat. §237.761, subd. 3 (8) specifically lists "911 emergency services" as price-regulated services, which is the primary functionality of Emergency Connect Service. The statute does not include any restrictions that the price regulated service means only trunking, routing, databases and other services provided to the entities operating the 911 network. "911 emergency services" to retail customers are critical to customer safety and appropriately classified as price-regulated.

Staff Analysis

The current issue is whether Emergency Connect Service should be classified as price-regulated or flexibly priced service. A critical component to that determination is whether Emergency Connect Service is the same service defined in Minn. Stat. §237.761, subd. 3 (8) as "911 emergency service."

Staff turns to Chapter 403 of the Minnesota Statutes, which delineates the provision of and responsibilities for 911 Emergency and Public Safety Communications in the state, for guidance on how 911 emergency service is defined. In Staff's mind, the digits 9 1 1 and the term emergency are synonymous, and therefore the following definition of "911 service" equally applies to "911 emergency service" as well:

403.02 Subd. 17. 911 service.

"911 service" means a telecommunications service that automatically connects a person dialing the digits 911 to an established public safety answering point. 911 service includes:

- (1) customer data and network components connecting to the common 911 network and database;
- (2) common 911 network and database equipment, as appropriate, for automatically selectively routing 911 calls to the public safety answering point serving the caller's jurisdiction; and
- (3) provision of automatic location identification if the public safety answering point has the capability of providing that service.

Policy Implications

The importance of 911 service or 911 emergency service cannot be overemphasized. Billions of dollars are invested in technologies and facilities and networks so that responders can immediately respond to an emergency call. 911 service, with its consequential life and death issues, transcends beyond what technologies are used or can be used, or in this case whether it is classified as price-regulated or flexibly priced service. What immediately comes to mind when the term 911, or 911 service, or 911 emergency services is used is the ability of a person to connect to a public safety answering point (psap) when the primary emergency telephone digits 9 1 1, designated as the nation's emergency service access digits, are dialed.

Both federal and state laws reflect the critical nature of reaching the appropriate answering locations when emergency calls are attempted. Staff believes that such reasoning underlies the inclusion of item 8 in the list of price-regulated services.

Based on the definition in Minn. Stat. §403.02, subd. 17, Staff agrees with the Department that Emergency Connect Service, with its function of connecting the 9 1 1 caller to the psap is a service identified as item 8 in Minn. Stat. §237.761, subd. 3, and therefore classified as a price-regulated service.

Commission Options

1. Find that Emergency Connect Service is a price-regulated service.
2. Find that Emergency Connect Service is a flexibly priced service.
3. Take other action determined by the Commission.

Staff Recommendation

Staff recommends Option 1.