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April 8, 2013

VIA ELECTRONIC FILING

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101

Re: In the Matter of Possible Amendment to Rules Governing Utility Proceeding,
Practice, and Procedure, Minnesota Rules Chapter 7829; Docket No. U-999/R-13-
24

Dear Dr. Haar:

Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC submit the attached comments in connection with the above-referenced proceeding.

If you have any questions regarding the foregoing, please contact the undersigned.

Sincerely,

/s/ Kennard B. Woods
Attorney for Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC

KBW/jh

Enc.

cc: Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC
(with enclosure)
Charles A. Hudak, Esq.
(without enclosure)

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

Possible Amendment to Rules Governing
Utility Proceeding, Practice, and Procedure,
Minnesota Rules Chapter 7829

MPUC Docket No.: U-999/R 13-24

**COMMENTS OF CHARTER FIBERLINK CCO, LLC
AND CHARTER FIBERLINK CC VIII, LLC**

Pursuant to the Notice from the Minnesota Public Utilities Commission (the "Commission") dated February 15, 2013, Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (collectively, "Charter Fiberlink") submit these comments. Most of the revisions proposed by the Commission for Minnesota Rules Chapter 7829 are not controversial and, in many cases, provide changes consistently with the evolution in the Commission's procedures in recent years. Hence, Charter Fiberlink provides comments on only five (5) subjects of the Commission's proceeding.¹

Definition and Filing of "Protected Data"

The Commission proposes a new definition, "Protected data," to be set forth in section 7829.0100, Subp. 18. "Protected data" would consist of "nonpublic data pursuant to Minn. Stat. 13.37" or data subject to a claim of privilege. Although Minn. Stat. § 13.37 is entitled "general nonpublic data," the statute refers to two types of data, "nonpublic data" and "private data on

¹ As the Commission is aware, some of the same statutory changes that prompted this proceeding also affect Minnesota Rules Chapter 7810. Therefore, a similar proceeding concerning Chapter 7810 would appear to be appropriate, including to ensure conformity in procedures.

individuals,” as protected information consisting of trade secrets and other classified information.²

In addition, although the proposed definition refers to data “identified as non-public data under Minn. Stat. § 13.37,” the statute does not set forth the procedure for identifying protected data.

Accordingly, Charter Fiberlink proposes the following clarifying revisions to section 7829.0100, Subp. 18:³

“Protected data” means data filed with the commission that is either

- a. ~~properly identified as nonpublic data~~ **or private data on individuals** under the Minnesota Government Data Practices Act, Minnesota Statutes 13.37, or
- b. data that is protected from disclosure pursuant to the rules of privilege recognized by law.

Likewise, Charter Fiberlink suggests that section 7829.0500, which sets forth the procedure for identifying protected data, should be clarified as follows:

7829.0500 ~~TRADE SECRET AND PROPRIETARY INFORMATION~~
PROTECTED DATA.

Subpart 1. Confidentiality protected.

Nothing in this chapter requires the public disclosure of **protected data**~~privileged proprietary information, trade secrets, or other privileged information.~~

Subp. 2. Procedure for excision.

Persons filing documents containing ~~proprietary information, trade-protected data~~ or other privileged information shall file one copy of the document with the information redacted, and one copy without redactions, designated as required in subpart 4 and identified as a nonpublic document during the electronic submission process. excise this information in all copies but the original and six copies. The first page or cover page of a document from which protected information has been excised must be clearly captioned in bold print “PUBLIC DOCUMENT— NONPUBLIC (or PRIVILEGED) DATA HAS BEEN EXCISED. The beginning and end of the excised protected data must be identified.

Subp. 3. Identification of excised material.

When a person classifies an entire document, or a substantial part of a document, as protected ~~information~~**data**, the person shall file a description of the excised material

² Minn. Stat. § 13.37, subd. 2, refers to Minn. Stat. 13.02 for the definition of those terms. Minn. Stat. § 13.02, subd. 9, defines “nonpublic data” as “data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.” Minn. Stat. § 13.02, subd. 12, defines “private data on individuals” as “data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data.”

³ The revisions to the rules proposed by the Commission are set forth as strikethroughs or underlines. The revisions proposed by Charter Fiberlink are in bold and consist of double strikethroughs or double underlines.

that includes at least the following information: the nature of the material, its authors, its general import, and the date on which it was prepared.

Subp. 4. Document containing protected information.

The first page or cover page of a document containing protected ~~information~~ data must be clearly marked in bold print "~~TRADE SECRET INFORMATION~~ NONPUBLIC DOCUMENT — NOT FOR PUBLIC DISCLOSURE" or with words of similar import. Every page on which protected information appears must be similarly marked and the protected information must be underlined, placed in brackets, or otherwise clearly identified as the information which is to be protected from disclosure.

Subp. 5. Statement required.

In all cases where a person or entity files data with the commission that is identified as ~~protected data non-public or privileged~~, an accompanying statement justifying the state agencies treating the data as protected data must also be filed. This justification must include an explanation of how the data either is classified as ~~non-public~~ under Minnesota Statutes section 13.37, or is privileged under a rule of privilege recognized by law.

The foregoing clarifications of section 7829.0500 are consistent with and refer to the proposed definition of “protected data.”

Definition of “Utility” for Purposes of Chapter 7892

The Commission proposes to revise the definition of “utility” to be set forth in section 7829.0100, Subp. 21, by striking “telephone company” and replacing it with “telecommunications service provider.” The telecommunications-related entities regulated by the Commission, and as defined in Chapter 237 of the Minnesota Code, consist of “telephone companies” and “telecommunications carriers.”⁴ To be consistent with the statutory terms, Charter Fiberlink suggests that, in the alternative to “telecommunications service provider” as proposed by the Commission, the term “telephone company” be retained and the term “telecommunications carrier” be added to the definition of “utility” in section 7829.0100, Subp. 21.

⁴ “Telephone company” is defined in Minn. Stat. §237.01, subd. 7 and “telecommunications carrier” is defined in Minn. Stat. § 237.01, subd. 6.

Representations to the Commission

The Commission proposes new section 7829.0411 (Representation to the Commission). The new rule is apparently related to Minnesota Rule of Civil Procedure 11, which imposes similar obligations in state judicial cases, and would require a person who signs a filing or enters an appearance before the Commission to represent thereby that he or she is authorized to do so, has a good faith belief that statements of fact made are true and correct, and that legal assertions made are “warranted by existing law or by a reasonable extension or reversal of existing law.” The term “reasonable” may be susceptible to differing interpretations. Even assuming that the standard of “reasonableness” is to be “objective,” the proposed standard is more limiting to parties and their counsel than the standard applicable to judicial pleadings in Minnesota, and would have the tendency to stifle legitimate debate concerning the scope of regulation. Minnesota Rule of Civil Procedure 11.02(b)⁵ refers to a “nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.” In addition, Minnesota Rules of Civil Procedure 11.01, 11.02 and 11.04 recognize that Rule 11 sanctions apply only to the assertions of the persons representing parties and do not apply to assertions other than in the context of pleadings, motions and similar filings.⁶ Hence, if the Commission determines that a Rule 11-type regulation is necessary, it would

⁵ 11.02 Representations to Court:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . .

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

⁶ Rule 11.02 is set forth above in relevant part. The other two rules state as follows:

11.01 Signature:

Every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney’s individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each document shall state the signer’s address and telephone number, if any, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. If authorized by order of the Minnesota Supreme Court, a document filed,

be better to conform the new regulation to Minnesota Rule of Civil Procedure 11, in the following respects:

7829.0411 REPRESENTATIONS TO THE COMMISSION.

Any person who signs a **pleading, motion or similar** filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has a good faith belief that statements of fact made **therein** are true and correct, and that legal assertions **made by him or her therein** are warranted by existing law or by a **reasonable nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.**

Uncontested Proceeding Subcommittee

The Commission proposes new section 7829.1250, pursuant to which the Commission could delegate uncontested cases not involving “novel” issues to a subcommittee for disposition when “no person has requested that the proceeding not be delegated to a subcommittee.” The authority for adopting this rule is 216A.03, Subd. 8. That statute sets forth, in relevant part, the following subparts, which establish several procedural rights to the parties under such circumstances:

(b) Upon objection by a party, a participant, or a commissioner, a decision by a subcommittee must be referred to the full commission. Subcommittee decisions for which no objection is filed with the commission within ten days from the date of receipt of the written decision of the subcommittee are deemed decisions of the full commission. If referred to the full commission, the full commission may rely on the record developed by the subcommittee but shall treat the subcommittee decision as advisory.

(c) In either their initial or reply filings with the commission, a party or a participant may request that the commission not delegate the proceeding to a commission subcommittee. The request must be granted.

So that it is clear that the rights of parties retain the procedural rights established by Minn. Stat. § 216A.03, Subd. 8, Charter Fiberlink suggests that subparts (b) and (c) of the statute, or references to the procedures set forth in those subparts, be added to section 7829.1250.

signed, or verified by electronic means in accordance with that order constitutes a signed document for the purposes of applying these rules.

The filing or submitting of a document using an E-Filing System established by rule of court constitutes certification of compliance with the signature requirements of the applicable court rules.

11.04 Inapplicability to Discovery:

Rules 11.01-.03 do not apply to discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Miscellaneous Filings

As new 7829.1300, Subp. 6, the Commission proposes that compliance filing be submitted within ten (10) days of a Commission order. Ten calendar days is often insufficient to give a party a realistic opportunity to comply with a Commission order, and prompts requests for additional time to which the Department of Commerce and the Commission must respond. Charter Fiberlink recommends at least a twenty (20) day period for compliance filings. Charter Fiberlink also requests that the Commission provide some illustration or explanation for the applicability of Subp. 3 and Subp. 4, respectively. Each subpart refers to “specific filing rules,” the present or absence of which necessitates or obviates a “description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.” In practice the application of these subparts has not been clear and any clarification as to their applicability would be useful to the regulated industries.

CONCLUSION

For the reasons stated herein, Charter Fiberlink requests that the Commission revise the proposed rules consistently with these Comments.

Respectfully submitted,

Dated: April 8, 2013

By

/s/ Charles A. Hudak, Esq.

/s/ Kennard B. Woods, Esq.

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AFFIDAVIT OF SERVICE

STATE OF GEORGIA) Possible Amendment to Rules Governing Utility
) ss Proceeding, Practice, and Procedure,
COUNTY OF DEKALB) Minnesota Rules Chapter 7829

MPUC Docket No.: U-999/R 13-24

Kennard B. Woods, being first duly sworn on oath, deposes and states that on the 8th day of April, 2013, copies of the foregoing in the above referenced matter were mailed to the following:

Dr. Burl W. Haar *
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place E, Suite 350
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Ms. Linda Chavez *
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* via e-filing

/s/ Kennard B. Woods, Esq.
*Attorney for Charter Fiberlink CCO, LLC and
Charter Fiberlink CC VIII, LLC*

SWORN TO BEFORE ME this
April 8, 2013

/s/ Carol Jean Hawley
NOTARY PUBLIC
My Commission expires: January 19, 2015