

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Rulemaking to  
Consider Possible Amendments to  
Minnesota Rules parts 7810.4100  
through 7810.6100

PUC Docket No. P-999/R-14-413  
Revisor's ID Number R-04269

**REPLY COMMENTS OF  
CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC  
and  
FRONTIER COMMUNICATIONS OF MINNESOTA, INC.**

On August 4, 2014, the Minnesota Public Utilities Commission (“Commission”) issued a *Notice for Comments* (“Notice”) in this docket, seeking comments regarding possible changes to the Commission’s existing rules, parts 7810.4100 through 7810.6100. In general, the Notice sought input from parties regarding the level and scope of competition in the telecommunications market in Minnesota, as well as any specific proposals for rule changes. Initial comments were filed on December 4, 2014. In response to those initial comments, Citizens Telecommunications Company of Minnesota, LLC (“CTC-Minnesota”) and Frontier Communications of Minnesota, Inc. (“Frontier-Minnesota”, or collectively “Frontier”) offer the following reply comments.

The parties filing initial comments in this docket seemed to sort out into three groups. First, the comments of The Telecommunications Consumer and Small Business Coalition (“Coalition”)<sup>1</sup> and the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) expressed skepticism regarding the extent of competition in the Minnesota telecommunications market. These parties cautioned the Commission about making any substantive changes in the existing rules.

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<sup>1</sup> The Coalition includes: AARP; the Institute for Local Self-Reliance; the Legal Services Advocacy Project; the Minnesota Communications Action Partnership; and the Twin Cities Metro Independent Business Alliance.

Second, CenturyLink, the Minnesota Telecom Alliance (“MTA”), and Frontier described the realities of the telecommunications market that the companies face, and urged the Commission to delete and revise the existing rules to reflect the current state of competition. All three parties provided factual evidence regarding the current state of competition in Minnesota’s telecommunications markets, and the changes in that market over time. All three parties showed that the telecommunications market has moved very far from the single-provider market that prevailed when the Commission’s service quality rules were originally adopted. All three parties offered specific recommendations for revised rule language.

Third, the Joint Competitive Local Exchange Carriers (“Joint CLECs”)<sup>2</sup> and the Minnesota Cable Communications Association (“MCCA”) offered the views of competitive local exchange service providers. While not commenting on specific rule changes, the Joint CLECs and MCCA urged the Commission to be wary of any inadvertent impacts upon wholesale services which may result from changes to the retail service rules under review in this docket.

### **Coalition**

In its comments, the Coalition makes a number of assertions but provides little or no supporting evidence. Their comments consist largely of broad statements of caution and concern, but take no notice of the current state of affairs in today’s telecommunications market. For example, the Coalition asserts that many Minnesotans reside in rural areas of the state where customers rely exclusively on CenturyLink for their basic telecommunication service<sup>3</sup>. The word “many” allows for a wide variety of interpretations, but the fact is that only 7% of outstate Minnesota households rely solely on wireline service, as pointed out in Frontier’s comments. Indeed, even that figure is overstated because many of those 7% likely have access to wireless service but simply have declined to purchase it.

Again, the Coalition asserts that the service provided by competitors is spotty and unreliable<sup>4</sup>. That blanket condemnation strikes Frontier as entirely unjustified. The local service competitors commenting in this docket (the Joint CLECs and MCCA) would likely take

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<sup>2</sup> Members of the Joint CLECs include: Eschelon Telecom of Minnesota, Inc.; Integra Telecom of Minnesota, Inc.; twtelecom of Minnesota, llc.; TDS Metrocom, LLC; and Velocity Telephone, Inc.

<sup>3</sup> Coalition Comments, page 2.

<sup>4</sup> Coalition Comments, page 2.

issue with the assertion, as well. Looking at actual facts in Minnesota, Frontier pointed out in its comments that ILECs serve only about 17% of the access lines in Minnesota, with competitors serving the remaining 83%. It seems hard to believe that 4 out of 5 Minnesota customers would opt to take service that they find “spotty and unreliable” instead of service from an ILEC.

The Coalition also asserts that there is no reliable way to discern who truly has a choice in telephony and who does not<sup>5</sup>. The Department of Commerce posts on its website a list of available competitive local service providers, by city and township. Even that list is incomplete, however, as it only identifies carriers certificated by the Commission. It does not include wireless and other providers that do not require Commission certification. As mentioned in our comments, during 2012 and 2013 Frontier ported out numbers (in other words, existing customers left Frontier to competitors) in 152 of our 161 exchanges. CenturyLink noted that it serves less than 50% of households in 201 of its 219 exchanges statewide. That is indisputable evidence of competition in those exchanges.

The Coalition concludes that the crux of the request to amend Minnesota’s service quality standards is the search for the legal authority to provide diminished service to hundreds of thousands of Minnesotans<sup>6</sup>. However, Frontier perceives this effort rather to be an attempt to modify the Commission’s rules to be reflective of, and appropriate to, the current telecommunications market in Minnesota. That market includes customers with all kinds of desires and values regarding the telecommunications service that they want to purchase, and various competitors vying to sell those desired services.

## **OAG**

The OAG comments also question the existence of competition, and note that the Service Quality Rules ensure that consumers in Minnesota can enjoy high quality, low cost telephone service in the absence of effective competition<sup>7</sup>. Implicit in that description is an understanding that, in the presence of effective competition, there is no (or at least a diminished) need for service quality rules. And it is this state of effective competition that the OAG will not see. As Frontier and CenturyLink both noted in their comments, the number of customers served by those carriers

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<sup>5</sup> Coalition Comments, page 2

<sup>6</sup> Coalition Comments, page 5.

<sup>7</sup> OAG Comments, page 4.

has dropped precipitously in the recent years; nearly a 50% line loss for Frontier and a 67% line loss for CenturyLink. Those departing customers did not migrate out of Minnesota<sup>8</sup> or swear off telecommunications<sup>9</sup>; they migrated to other carriers. An unbiased look at these facts shows quite clearly that competition is alive and well in Minnesota.

Instead of facing these facts about customers choosing competitive carriers, the OAG addresses CenturyLink's concerns about the existing rule regarding service repair by imagining an isolated rural consumer in Minnesota whose only method of communication is through a wireline telephone<sup>10</sup>. The OAG further imagines that a carrier might prioritize the repair of a broadband connection over the repair of the voice service for this imagined isolated rural customer. However, one might just as easily imagine a customer whose broadband connection and voice are both out, and who wants their broadband service repaired in preference to their voice service. It is not a stretch of imagination to presume that there are more Minnesota customers in this latter category (preferring broadband restoral over voice restoral) than the former.

Dismissing the evidence of real world facts about market share and competitive options, the OAG devotes considerable space to a discussion of antitrust law, and in particular the U.S. Department of Justice and Federal Trade Commission guidelines regarding mergers. As Frontier noted in its comments, those guidelines regarding mergers are not apropos to what the Commission is reviewing here. No one is suggesting there will be a reduction in the number of competitors. But the OAG does make a very important observation, "The appropriate inquiry thus focuses on the change in consumer demand – often described in terms of reasonable 'substitutability' or 'interchangeability' of one product with another—in evaluating whether products compete."<sup>11</sup> Frontier agrees wholeheartedly that looking at customer actions, rather than some kind of exercise in price elasticity or other theoretical metric, is the appropriate measure of the status of competition.

The facts regarding customer actions show that customers have the ability to meet their telecommunications needs from various carriers, and beyond having those options, they act upon them. As noted above, Frontier and CenturyLink both presented evidence in their comments that

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<sup>8</sup> Rather, Minnesota's population is growing.

<sup>9</sup> Only about 1% of Minnesotans have no telephone service.

<sup>10</sup> OAG Comments, page 5.

<sup>11</sup> OAG Comments, page 7.

significant numbers of their customers have moved to different carriers. ILECs serve only about half of the total wireline customers in the state. Over one-third of Minnesotans have decided that they do not want a wireline service at all, opting to only use wireless products. Nationwide, nearly two-thirds of those aged 25-29 have only wireless phones (and there is no reason to doubt the statistic for Minnesota is any less).

In its comments, the OAG states that there is a need to demonstrate that wireline customers are willing and able to substitute wireless or VoIP service if circumstances warrant<sup>12</sup>. The numbers just presented clearly make that demonstration. Consumers are voting with their feet and their wallets, obtaining their telecommunications needs for all types of providers. As Frontier noted in its comments, in situations that reflect true substitution (one service or the other, but not both), Minnesota customers are between five and twelve times more likely to choose wireless to wireline service.

Later, the OAG contended that “the burden is on CenturyLink to provide sufficient, economically sound evidence that, if it imposed a SSNIP (small but significant non-transitory increase in price) or reduced the resources used to maintain wireline service quality, this would cause a sufficient number of customers to switch to other telephone providers to make the practice unprofitable.”<sup>13</sup> As mentioned above, these theoretical tests used as part of a merger evaluation do not bear upon the matters at issue in this docket. However, it is notable that even absent this theoretical SSNIP or reduction in resources, significant numbers of ILEC customers have switched to other providers. Indeed, one could view the ILECs’ recent history of customer loss to competitors as a giant experiment where the SSNIP was \$0 (certainly a small increase in price).

The OAG suggests that wireless service is not a competitive substitute for wireline service.<sup>14</sup> One suspects that this will come as a surprise to the 35%+ of Minnesotans that use wireless service exclusively instead of wireline service. That position is also at odds with the findings of the Commission. As mentioned in Frontier’s comments, the Commission has found repeatedly in several dockets that wireless service is indeed a competitive alternative to wireline service.<sup>15</sup>

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<sup>12</sup> OAG Comments, page 7.

<sup>13</sup> OAG Comments, page 10.

<sup>14</sup> OAG Comments, page 11.

<sup>15</sup> For example, Dockets PT6182,6181/M-02-1503; PT6213/M-03-591; PT6153/AM-01-686.

The OAG quotes the language of a U.S. Department of Justice complaint to the effect that, “There are no cost-effective alternative to mobile wireless telecommunications services. Because neither fixed wireless services nor wireline services are mobile, they are not regarded by consumers of mobile wireless telecommunications services as reasonable substitutes.”<sup>16</sup> The OAG concludes that wireless service and wireline service are different product markets. It may very well be the case that wireline service is not a substitute for mobile wireless service. But that does not mean that wireless service is not a substitute for wireline service. Consider two devices: a double-ended wine screw / bottle cap opener and a simple church key bottle opener. If one has a bottle of wine, then the double-ended wine screw / bottle cap opener is the only choice; the simple church key bottle opener won’t do the trick. Viewed from this angle, the two devices do not compete (as the DOJ described the mobile wireless market). But, if one has a bottle of beer to open, then either device can be used; competition exists (as we see in the market for local service).

### **MTA and CenturyLink**

Both these parties suggested specific language for rule changes. Both also suggested the substitution of the term “telecommunications provider” for “telephone utility”, with the intent of making clear that the rules applied uniformly to all telecommunications service.<sup>17</sup> Frontier agrees with this intent, to make clear that the rules apply to all telecommunications providers. However, the term currently used in this chapter of the rules, “telephone utility” is defined as meaning, “any person, firm, partnership, cooperative organization, or corporation engaged in the furnishing of telecommunication service to the public under the jurisdiction of the commission.”<sup>18</sup> Frontier believes that this current definition extends to all telecommunications providers, as it stands. Thus, the current term of “telephone utility” should be retained, especially since other portions of Chapter 7810 not subject to this investigation use the term “telephone utility”.

### **Conclusion**

Frontier urges the Commission to revise its service quality rules, to reflect the current consumer communication needs. Frontier believes that the changes to the rule language that

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<sup>16</sup> OAG Comments, page 13.

<sup>17</sup> MTA Comments, page 17; CenturyLink Comments, page 23.

<sup>18</sup> Rule 7810.0100, Subpart 37.

Frontier proposes are appropriate and necessary to better meet customer needs, and requests that the Commission to adopt those changes.

Dated March 13, 2015

Respectfully submitted,

CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC  
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