

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Complaint by the Minnesota
Department of Commerce Against the Charter
Affiliates Regarding Transfer of Customers

DOCKET NO. P-6716, 5615/C-14-383

**RESPONSE OF THE MINNESOTA DEPARTMENT OF COMMERCE
TO CHARTER PETITION FOR REHEARING**

INTRODUCTION

The Minnesota Department of Commerce (Department) respectfully submits this brief response to the petition for rehearing of Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, LLC (collectively, “Charter Fiberlink”), Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (collectively, “Charter Advanced Services”) (and, with Charter Fiberlink, collectively “Charter”).

THE PETITION SHOULD BE DENIED AS REHEARING IS NOT NECESSARY

The Department recommends that the Commission deny the Charter petition for rehearing without further argument, pursuant to Minnesota Rule 7829.3000,¹ subp. 6. The

¹ Under Minn. Rule 7829.3000, subps. 1 and 2, a party may file a petition for rehearing, amendment, vacation, reconsideration, or re-argument by setting forth the grounds relied upon, errors claimed, amendments desired and the reasons for any amendments.

petition raises no new issues, points to no new and relevant evidence, and exposes no errors or ambiguities in the July 28, 2015 Order to demonstrate that the Commission should rethink the decisions set forth in that Order. The decisions in the Order are consistent with the facts, the law, and the public interest.

Charter's petition for rehearing continues to acknowledge that Charter provides dial tone and access to the public switched network.² The Charter petition continues to make the same erroneous assertions that Charter previously made: that, although the FCC has not done so, the Commission should classify Charter's voice service as an information service because it is capable of a net protocol conversion and is not within the "telecommunications exception." The petition also reiterates Charter's previous alternative claim that its voice service should be classified as an information service because Charter bundles it with a voicemail service that, (like innumerable other products on the market) forwards voicemail in written form, such as email or text, and subscribers with internet access can view their account information on a website. These assertions are not new, and are no more persuasive now than when previously offered.

The Department further does not agree with the Charter petition's many misstatements of fact, law and policy and mischaracterizations of the July 28, 2015 Order.

For example, the Charter petition states: "[t]he Commission's authority over Charter Fiberlink's various regulated service offerings is not at issue in this docket" (Charter petition at page 4) and the Commission therefore erred in finding that it had jurisdiction under state law

² Charter offers only the argument that cell phones also offer dial tone and access to the public switched network, but are not regulated by the Commission, from which it appears to argue that the Commission should similarly treat Charter. The argument disregards the statutory exclusion of "radio common carriers" from the definition of "telephone companies." Minn. Stat. § 237.01 subd. 7.

over Charter. Charter petition at page 22. These assertions are inaccurate. As the Order correctly observes, misconduct by Charter, including misconduct by Charter's certificated CLECs in Minnesota is very much at issue. The Department Complaint alleged that Charter's CLECs, among other things, transferred their residential customers--and **some** of their business customers³--without Commission authorization, which constituted: slamming and loading; an unauthorized withdrawal from a service territory without notice to the Commission or customers; and cause for Charter to cease funding assistance programs for communication-impaired and low-income Minnesotans. Order at page 1. The Department alleged that the violations--and corresponding injury to Minnesota customers--were knowing and intentional. *Id.* at page 2.

By way of a second example, the Charter petition inaccurately asserts that **technological differences** between Charter's voice service and other wireline service necessarily **precludes** Charter's voice service from being treated as a telephone service under Minnesota law. Charter petition at page 22. This assertion is inaccurate because the Commission's Order wisely directed Charter itself to devise a plan for how Charter's voice service could be treated, so as to meet Minnesota's regulatory requirements;⁴ upon receipt of such a plan, if compliance with regulatory provision appears infeasible due to technological differences between Charter's voice service

³ See Department Comments filed January 20, 2015 at page 4.

⁴ The Order states that "Charter...has largely declined to participate in any discovery or discussions regarding its compliance with Minnesota telecommunication regulations. Thus, the record does not reflect the extent to which the Company is in compliance with Minnesota law or demonstrate any commitment to future compliance" and it directs that Charter file a "description of how it will comply with this order." Order at page 14.

and other wireline voice services, the Commission has authority to waive any of its rules if such a waiver is appropriate. Minn. Rule 7829.3200.⁵

The Department respectfully recommends that the Commission deny the petition for rehearing because the decisions in the Order are consistent with the facts, the law, and the public interest.

Dated: August 27, 2015.

Respectfully Submitted,

s/ Linda S. Jensen

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Attorney for the Minnesota
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⁵ Minn. Rule 7829.3200 enables the Commission to vary its rules, in the public interest, when enforcement would impose an excessive burden upon the applicant or others and granting the variance would not conflict with state laws.



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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August 27, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101

RE: In the Matter of the Complaint by the Minnesota Department of Commerce Against the
Charter Affiliates Regarding Transfer of Customers
Docket No. P-6716, 5615/C-14-383

Dear Mr. Wolf:

Enclosed please find a Response of Minnesota Department of Commerce to Charter
Petition for Rehearing.

Respectfully submitted,

s/ **Linda S. Jensen**

Linda S. Jensen

Attorney for Minnesota Department of Commerce

445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Enclosure

cc: Service List

AFFIDAVIT OF SERVICE

**Re: In the Matter of the Complaint by the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers
Docket No. P-6716, 5615/C-14-383**

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Annabel Foster Renner, hereby state that on August 27, 2015, I efiled the attached **Response of Minnesota Department of Commerce to Charter Petition for Rehearing** and served the same electronically and/or by United States Mail, upon all parties on the attached service list, postage prepaid, by depositing the same at St. Paul, Minnesota.

See attached service list for P-6716, 5615/C-14-383

/s/ **Annabel Foster Renner**
ANNABEL FOSTER RENNER

Subscribed and sworn to before me on
this August 27, 2015.

/s/ **LaTrice Woods**
Notary Public – Minnesota
My Commission Expires January 31, 2020.

Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
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Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes