

Minnesota Public Utilities Commission
Staff Briefing Paper

Meeting Date: October 26, 2017..... * Agenda Item # 3

Companies: Melrose Telephone Company

Docket No. P-415/AM-17-65
In the Matter of a Request to Compel Melrose Telephone Company to Reissue
Customer Notice

Issues: Should the Commission require Melrose to reissue a notice of rate increase?

Staff: Kevin O’Grady.....651-201-2218

Relevant Documents

Melrose Tariff Filing..... January 20, 2017
Comments: DOC..... August 1, 2017
Reply: Melrose..... September 13, 2017
Reply: MTA September 13, 2017
Response to Reply: DOC September 27, 2017

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1. Background

In 2011 the Federal Communications Commission (FCC) established a Universal Service Fund (USF) to provide high-cost support to eligible carriers. The FCC recognized that carriers may have an incentive to offer inordinately low rates to their local residential customers while drawing inordinately more support from the Fund. To reduce this incentive the FCC established limits on carriers' ability to draw high-cost support:

It is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it. Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.

[W]e will limit high-cost support where local end-user rates plus state regulated fees ... do not meet an urban rate floor representing the national average of local rates plus such state regulated fees. ... [T]he purposes of this rule change are to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.

We will phase in this rate floor in three steps, beginning with an initial rate floor of \$10 for the period July 1, 2012 through June 30, 2013 and \$14 for the period July 1, 2013 through June 30, 2014. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual survey of voice rates. Under this approach, the Commission will reduce, on a dollar-for-dollar basis, HCLS and CAF Phase I support to the extent that a carrier's local rates (plus state regulated fees) do not meet the urban rate floor.¹

On May 17, 2017, the FCC modified its rate floor:

Since July 1, 2016, this minimum amount [rate floor] has been \$18, and the Commission previously scheduled increases to \$20 on July 1, 2017 and \$22 on July 1, 2018. After several years of experience with it, we now revisit it to ensure our policies continue to further our statutory obligation ... [P]ending review of the record

¹ Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., FCC 11-161, released November 18, 2011, ¶¶ 237-9 (*Transformation Order*). [footnotes omitted]

that develops in this proceeding, we freeze the rate floor at \$18 for two years unless or until we take further actions in this proceeding.²

On January 20, 2017, Melrose Telephone Company d/b/a Arvig (Melrose), filed a tariff change increasing its local service rates to \$20 per month. Melrose stated that customers would receive a notice of the change with their February statements and that the change would take effect with customers' March statements. Melrose is authorized to increase its rates absent explicit Commission approval although the Commission may investigate the rate increase if it "receives a [valid] petition within 45 days after such notice, from five percent or 500, whichever is fewer, of the customers of the small telephone company".³ The Commission has not received any such petition in response to Melrose' rate increase.

Melrose' filing included a copy of the notice it sent to customers:

Arvig [Melrose] is committed to providing you with the latest in technology, quality service and support. As we continue to rebuild our network facilities and upgrade switching equipment, operational costs continue to increase throughout our industry.

In 2011, the Federal Communications Commission (FCC) issued an order requiring that local telephone service rates meet a minimum "rate floor" in order for the telephone service provider to receive the maximum support available from the Federal Universal Service Fund, which helps to offset the cost of providing telephone service and broadband. The rate floor is determined annually by the FCC.

Beginning with your next invoice, the monthly rate for local telephone service will increase to \$20.00 per month (not including state and federal taxes and charges).

You have the right to petition for review of this rate change. An investigation of this rate change will be conducted if 5% or 500 or more customers, whichever is fewer, petition for an investigation within 45 days of this notice. The petition must be in writing and signed by the customers requesting the investigation. The Minnesota Department of Commerce must receive the petition within 45 days of this notice at: Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, MN, 55101.

Call 888.992.7844 with questions and to take advantage of our Flexible Package options that can save you money.

Melrose' notice of its rate increase, and the implementation of that increase, occurred prior to the FCC's announcement of its rate-floor freeze.

² Notice of Proposed Rulemaking and Order. WC Docket No. 10-90 et al., FCC 17-61, released May 19, 2017, ¶ 1. [footnotes omitted]

³ See Minn. Stat. § 237.773, in general, and Subdivision 3(c) in particular.

2. Controversy

2.1 Concerns of the Department of Commerce

DOC acknowledges that the customer notice was accurate at the time it was sent. “But, it is unlikely that customers would petition for an investigation if it was conveyed that the new rates were being set pursuant to an FCC order. If customers had known that rates were being increased above the price floor, it seems more likely that customer petitions for an investigation would have been filed.” DOC does not believe that Melrose acted improperly. “Rather, the question before the Commission, given the timing of the change by the FCC in the price floor, is whether consumers should receive an accurate notice and be given the opportunity to petition for an investigation of the rate increase.”⁴

DOC has two concerns regarding the customer notice. **First**, it argues that the notice suggested that the new rates reflected a rate floor imposed by the FCC. As such, customers may have had little motivation to petition for an investigation. Further, Melrose did not reduce its rate to \$18 when the rate floor was lowered. **Second**, DOC argues that, for three exchanges, the rate floor exceeds the \$20 floor because Melrose did not estimate the rate floor to include Extended Area Service (EAS) rates as required by the FCC when calculating the floor. This fact too, DOC argues, may have led some consumers to challenge the rate increase if they had known of it. DOC states that “unless the notice provides accurate information upon which customers may choose to act, it is reasonable for the law [Minn. Stat. § 237.773, Subd. 3(c)] to be interpreted to allow customers to petition for an investigation after customers receive an accurate notice.”⁵

DOC acknowledges that issuance of another notice could cause customer confusion. As such, it suggests that a notice could be sent only to those exchanges where customers experienced an increase (the rate increase/decrease varied over the exchanges due to the FCC’s Access Recovery Charge, an FCC revenue shifting program).

In sum, DOC states:

Given the facts brought to light since the Department filed its initial comments, and the fact that there has never been a sufficient number of petitioners to result in an investigation of rates for a small company under an AFOR plan,⁶ the Department

⁴ DOC Response, September 27, 2017, p. 2.

⁵ DOC Initial Comments, p. 3.

⁶ Staff note: The Commission is familiar with AFOR Plans as approved for large companies such as CenturyLink QC, Citizens and Frontier. Minn. Stat. § 237.773 makes provision for “small company AFORs.” Companies of less

believes the position of the MTA and Melrose is reasonable. The Commission may choose to take no action on this matter.⁷

2.2 Melrose Response

Melrose focuses on its belief that its notice was accurate when made. Melrose argues that its situation is unlike that of other carriers whose rates had not been implemented before the FCC's new directive. Reissuing a notice would cause considerable customer confusion. Melrose does not believe that Minn. Stat. § 237.733 (regulating Melrose' rate changes) can reasonably be interpreted to address subsequent changes to the underlying facts.

2.3 MN Telecom Alliance Response

MTA recommends the Commission take no action. The information in Melrose' notice was completely accurate when issued and when the rates went into effect. Further, MTA argues that there is no provision in Minn. Stat. § 237.773 subd. 3 (c) that addresses changes after the fact. MTA believes that any advantages that may derive from reissuing a notice will be outweighed by the confusion among customers caused by another notice.

3. Staff Comment

Minn. Stat. § 237.773, Subd. 3(c) states:

[A] small telephone company may increase rates for local services A small telephone company proposing an increase shall provide 60 days' advance written notice to its customers including individual rates affected and the procedure necessary for the customers to petition for investigation. If the commission receives a petition within 45 days after such notice, from five percent or 500, whichever is fewer, of the customers of the small telephone company, the department and the company shall jointly determine if the petition is valid and, if so, may investigate the

than 50,000 subscribers may elect, at their discretion, to be regulated pursuant to that statute. Unlike "large company AFORs" which receive much scrutiny and must be approved by the Commission, the small companies at their request are relieved of significant oversight of their rates in exchange for holding their rates fixed for at least two years after they elect such regulation.

⁷ DOC Response, September 27, 2017, p. 2.

proposed rate increase to determine if it is appropriate in light of rates charged by other local exchange telephone companies for comparable services, taking into account calling scope, quality of service, the availability of competitive alternatives, service costs, and the features available to the customers. Within 30 days of validating the petition, the department shall file a report with the commission which shall then approve appropriate rates for those services. Rates established by the commission under this paragraph shall not be increased within one year of implementation.

DOC makes no claim that Melrose' local rate increase, or the magnitude of the increase, is directly prohibited by state or federal statute. However, as DOC notes, Melrose does face incentives established by the FCC such that if its rates are too high or too low its federal support would be reduced in proportion to the amount its revenues are above or below federally-determined thresholds. Melrose' customer notice indicates that it had an incentive to increase rates to \$20 per month, specifically "in order for the telephone service provider to receive the maximum support available from the Federal Universal Service Fund, which helps to offset the cost of providing telephone service and broadband."

Staff understands DOC's argument to be that, as of May 2017, the incentive (or the necessity?) to increase rates has been reduced by FCC action and that if customers were to be made aware of that change they may petition the Commission to investigate the rate increase. It is difficult to speculate as to whether Melrose' customers, in response to a different notice, would care in sufficient numbers to petition the Commission. Would customers respond to new information stating that Melrose is not compelled via statute to raise its rates to \$20, that Melrose had discretion in raising rates, or that Melrose did not establish its rate as precisely equal to the rate floor as calculated by the FCC (as argued by DOC)?

DOC notes that there has never been an instance where a threshold number of customers have petitioned the Commission. Staff, relying on memory, believes that is an accurate statement.

To recognize that customers may be confused by a new notice does not require much speculation. All parties agree that there is a significant potential for such confusion.

There may be a policy issue here in that the revenue Melrose receives from its customers over and above the rate floor, is revenue that it doesn't receive from the federal Universal Service Fund. That is, Melrose could lower its local rates to the rate floor and, presumably recover the difference from the USF. It may be a matter of concern that Melrose receives its rate increase directly from customers as opposed to drawing from the USF. But even if that concern arises Staff believes that Melrose has the discretion to make that choice (and, presumably, Melrose contemplated the effects of a rate increase on customer sales and satisfaction). Further, any such concern begs the question as to whether the Commission has the authority to investigate

Melrose' local rates absent a petition. This, in turn, begs the threshold question of whether Minn. Stat. § 237.773 can be interpreted to allow the Commission to require Melrose to re-notify its customers. Staff believes that it is difficult to read the statute to support a reach-back in light of changed facts. If the Commission could do so, and if a threshold petition is received, the Commission would need to consider whether it should “investigate the proposed rate increase to determine if it is appropriate in light of rates charged by other local exchange telephone companies for comparable services, taking into account calling scope, quality of service, the availability of competitive alternatives, service costs, and the features available to the customers.”⁸

Commission Options

1. Take no action. Close the docket.
2. Require Melrose Telephone Company, d/b/a Arvig to issue a new customer notice, to be approved by the Executive Secretary, in consultation with the Department of Commerce. The notice shall explain the circumstances regarding the local rate increase and allow customers 45 days from the release of the notice to file a petition for an investigation, pursuant to Minnesota Statute 237.773 subd. 3(c).
3. Require Melrose Telephone Company, d/b/a Arvig to issue a new customer notice to customers in the Kimball, Melrose, and Greenwald exchanges, where EAS was not accounted for when the earlier notice to customers stated the Arvig would be setting rates at the FCC price floor. The notice is to be approved by the Executive Secretary, in consultation with the Department of Commerce. The notice shall explain the circumstances regarding the local rate increase and allow customers 45 days from the release of the notice to file a petition for an investigation, pursuant to Minnesota Statute 237.773 subd. 3(c).

⁸ Minn. Stat. § 237.773 subd. 3 (c).