

7812.2210 COMPETITIVE LOCAL EXCHANGE CARRIERS (CLEC'S).

Subpart 1. **General scope of regulation.** Competitive local exchange carriers (CLECs) are regulated as provided in this part.

A. The commission shall exercise its regulatory authority over the local services provided by CLECs only to the extent provided for in, or necessary to implement the requirements of, all applicable statutes or this chapter. Except as provided otherwise in this part or other commission rules, the commission shall exercise its authority over a CLEC's local services only upon complaint under subpart 17 and will not require prior approval of a CLEC's tariffs or service offerings.

B. This part applies to a CLEC affiliate of an incumbent local exchange carrier (LEC) only with respect to its operations in geographic areas outside the service area of the affiliated LEC. A CLEC's local service operations inside the service area of its affiliated LEC must be regulated in the same manner as the LEC's local service operations, unless Minnesota Statutes, chapter 237 specifies otherwise or the commission grants a variance in the public interest. For the purpose of this subpart, the definition of an "affiliated CLEC" or "affiliated LEC" follows the definition of an "affiliated company" in Minnesota Statutes, section 237.65, subdivision 1.

Subp. 2. **Tariff filings.** For each local service offering, a CLEC shall file with the commission a tariff that contains the rules, rates, and classifications used by the CLEC in the conduct of its local service business, including limitations on liability. The tariff must be consistent with any terms and conditions in the CLEC's certificate of authority. The CLEC shall file six copies of its tariffs with the commission and shall serve one copy on the department and one copy on the Office of Attorney General - Residential Utilities Division (OAG-RUD). Amendments to the tariffs must be filed in the same manner. These filings are governed by the Minnesota Data Practices Act, Minnesota Statutes, chapter 13. Upon request, a CLEC shall provide a copy of its tariff or make its tariff available for review at a location convenient to the requesting person within five business days.

Subp. 3. **Tariff changes.** A CLEC may offer new local services or change the prices, terms, or conditions of existing local services by filing amendments to its tariffs in accordance with subpart 2. These tariff filings take effect as follows:

A. A new service, price decrease, promotion, or insubstantial change in the terms or conditions of a service may take effect immediately upon filing. A price decrease may take effect without notice to customers.

B. Except as provided in item C, a price increase, a substantial change in a term or condition of a service, or a discontinuation of a service other than basic local service

may take effect 20 days after filing and providing written notice to affected customers as provided in subitems (1) and (2):

(1) The written notice of a price increase must be given in simple and clear language by bill insert, bill notice, or direct mail. To be simple and clear, the notice must bear the heading "NOTICE OF PRICE INCREASE."

(2) The written notice of a substantial change in a term or condition of service or of the discontinuance of a service other than basic local service must be given in simple and clear language by bill insert, bill notice, or direct mail. To be simple and clear, the notice must, at a minimum, bear a heading such as "NOTICE OF CHANGE IN TERMS" or "NOTICE OF DISCONTINUANCE," as appropriate.

C. Notwithstanding items A and B, the filing requirements for a CLEC must not be more stringent than the filing requirements governing any LEC with 50,000 or more subscribers in whose service area the CLEC is providing local service.

Subp. 4. **Cost information.** The commission shall not require a CLEC to file cost information unless the commission determines that cost information is needed to resolve a complaint alleging that the CLEC is violating a standard set forth in subpart 5 or 8.

Subp. 5. **Discrimination.** No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. At a minimum, a CLEC must provide its telecommunications services in accordance with items A to D:

A. A CLEC shall charge uniform rates for local services within its service area. However, a CLEC may, upon a filing under subpart 2:

(1) offer unique pricing to certain customers or to certain geographic locations for promotions as provided in subpart 6;

(2) provide volume or term discounts;

(3) offer prices unique to particular customers, or groups of customers, when differences in the cost of providing a service, market conditions, or LEC pricing practices justify a different price;

(4) offer different prices in different geographic areas when (a) differences in the cost of providing a service, or market conditions, justify a different price; (b) the areas are served by different LECs; (c) different prices are charged by the LEC serving the areas; or (d) an area is not served by an LEC;

(5) pass through any legislatively authorized local taxes, franchise fees, or special surcharges imposed by local or regional governmental units on the services provided by the CLEC in specific geographic areas from which the taxes, fees, or surcharges originate; or

(6) furnish service free or at a reduced rate to its officers, agents, or employees in furtherance of their employment.

B. A tariff providing for prices unique to particular customers or groups of customers under item A, subitem (3), shall identify the service for which a unique price is available and the conditions under which the unique price is available.

C. In addition to the exceptions provided in item A, a CLEC may also charge different rates for local services within its service territory upon a prior finding by the commission that the CLEC has good cause to do so.

D. To the extent prohibited by federal law or the commission, a CLEC shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers.

Subp. 6. **Promotions.** A CLEC may promote the use of a local service by offering a waiver of part or all of the recurring or nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. The promotion may be aimed at certain customers or to certain geographic locations. The customer group to which the promotion is available must be based on reasonable and nondiscriminatory distinctions among customers. Any single promotion in a given area must not be effective for longer than 90 days at a time. A promotion may take effect upon a tariff filing in accordance with subpart 2. The promotional tariff should include the dates of the promotion, prices, and a brief description of who is eligible for the promotion and the benefits, restrictions, and commitments of the promotion.

Subp. 7. **Packaging services.** A CLEC may offer local service as part of a package that may include goods and services other than telecommunications services. In addition to the tariff requirements that apply to the telecommunications elements of the package, the tariff must also contain a general description of the nontelecommunications components of the package. Nothing in this subpart is intended to give the commission or the department regulatory authority over the nontelecommunications services provided by a CLEC.

Subp. 8. **Prices.** A CLEC's local services are not subject to any rate or price regulation except that the commission may, upon complaint, order a CLEC to change a price or pricing practice or take other appropriate action if the commission determines, after an investigation under subpart 17, that:

A. the price or pricing practice unreasonably restricts resale in violation of Minnesota Statutes, section 237.121, paragraph (a), clause (5);

B. the price or pricing practice is unreasonably discriminatory in violation of subpart 5;

C. the price or pricing practice is deceptive, misleading, fraudulent as those terms are defined in state or federal law, or is otherwise unlawful under state or federal law;

D. the price or pricing practice will impede the development of fair and reasonable competition or reflects the absence of an effectively competitive market as determined on the basis of factors such as:

- (1) the timely availability of comparable substitutes from other local service providers;
- (2) the availability of facilities-based competitors; and
- (3) evidence of rivalrous price competition, as demonstrated by the existence of multiple competitors competing on price for the same or similar services; or

E. the price or pricing practice has caused or will result in substantial customer harm.

Subp. 9. **Prohibited practices.** A CLEC must comply with Minnesota Statutes, section 237.121, which proscribes certain conduct in the provision of telecommunications services.

Subp. 10. **Interconnection.** A CLEC must allow physical connections to its network and pay appropriate compensation for interconnection with and access to the networks of other local service providers as determined by the commission consistent with the requirements of the federal act.

Subp. 11. **Commission approval to discontinue service or physical connection to another carrier.** In accordance with Minnesota Statutes, section 237.74, subdivisions 6, paragraph (a), and 9, a CLEC must obtain prior commission approval before discontinuing a service or physical connection to a telephone company or a telecommunications carrier if end users would be deprived of service because of the discontinuance or disconnection.

Subp. 12. **Public right-of-way.** To the extent that a CLEC owns or controls, or seeks to own or control, a facility in the public right-of-way that is used or is intended to be used for transporting telecommunications or other voice or data information, the CLEC shall comply with Minnesota Statutes, sections 237.162 and 237.163, which provide for the use and regulation of the public rights-of-way.

Subp. 13. **911/TAM/TAP.** Each CLEC is subject to Minnesota Statutes, sections 237.52 (Telecommunications Access Minnesota), 237.70 and 237.701 (Telephone Assistance Program), and 403.11 (911 Emergency Services). Amounts collected as surcharges under these sections must be remitted to the commissioner of public safety in the manner prescribed in Minnesota Statutes, section 403.11.

Subp. 14. **Consumer protection laws on disclosure, antislamming, cramming.** A CLEC shall comply with the requirements of Minnesota Statutes, sections 237.66, 237.661, and 237.663.

Subp. 15. **Regulatory expense assessment.** A CLEC is subject to assessment by the department for the regulatory expenses of the department and the commission, as provided by Minnesota Statutes, section 237.295.

Subp. 16. **Mergers and acquisitions.** In accordance with Minnesota Statutes, section 237.74, subdivision 12, before acquiring ownership or control of any provider of local service in Minnesota, either directly or indirectly, a CLEC must demonstrate to the commission that the present or future public convenience and necessity require or will require the acquisition. To make this determination, a CLEC must show that the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates, and service quality.

Subp. 17. **Investigations and complaints; proceedings.** Investigations and complaints regarding CLEC compliance with this chapter are governed by items A to H.

A. After giving notice to the CLEC, the commission may investigate any matter brought forth under its own motion or raised in a complaint against a CLEC of a possible violation of this chapter. A complaint may be brought by a telephone company; by a telecommunications carrier; by the department; by the OAG-RUD; by the governing body of a political subdivision; or by no fewer than five percent or 100, whichever is the lesser number, of the subscribers or spouses of subscribers of the CLEC.

B. If, after an investigation, the commission finds that a significant factual issue has not been resolved to its satisfaction, the commission may order that a contested case hearing be conducted under Minnesota Statutes, chapter 14, unless the complainant, the CLEC, and the commission agree that an expedited hearing under Minnesota Statutes, section 237.61 is appropriate, or the commission orders an expedited proceeding under Minnesota Statutes, section 237.462, subdivision 6.

C. In any complaint proceeding authorized under this subpart, the CLEC bears the burden of proof, unless:

(1) the complaint alleges the CLEC's prices fail to satisfy the price uniformity requirements of subpart 5, item A, in which case the burden is on the complainant to prove that the price differences are not justified; or

(2) the commission determines that the burden should be placed on the complainant based on factors such as which party has control of critical information regarding the issue in dispute.

D. A full and complete record must be kept by the commission of all proceedings before it upon any formal investigation or hearing. All testimony received or offered must be taken down by a stenographer appointed by the commission and a transcribed copy of the record furnished to any party to the investigation upon paying the expense of furnishing the transcribed copy.

E. If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules, or practices violate an applicable provision of this chapter, the commission shall take appropriate action, which may include ordering the CLEC to:

- (1) change the rate, tariff, charge, schedule, or practice;
- (2) make the service reasonable, adequate, or obtainable; or
- (3) take other appropriate action.

F. A copy of an order issued under this subpart must be served upon the person against whom it is directed or the person's attorney, and notice of the order must be given to the other parties to the proceedings or their attorneys.

G. A party to a proceeding before the commission or the OAG-RUD may make and perfect an appeal from the order in accordance with Minnesota Statutes, chapter 14.

H. This subpart does not preclude the parties from pursuing voluntary mediation, arbitration, or other alternative dispute resolution. Upon the filing of a complaint, the commission may vary deadlines to allow for voluntary dispute resolution by the parties. However, in accordance with part 7829.1600, if the complainant desires formal action by the commission, the commission shall resolve the dispute.

Subp. 18. **Enforcement; penalties and remedies.** A CLEC is subject to the penalties and remedies provided in Minnesota Statutes, sections 237.461, 237.462, and 237.74, subdivision 11.

Subp. 19. **Annual reports.** On or before May 1 of each year, a CLEC shall complete and return to the department the annual report form prepared by the department.

Statutory Authority: *MS s 216A.05; 237.10; 237.16*

History: *25 SR 1677; L 2003 1Sp1 art 2 s 104; L 2004 c 228 art 1 s 74*

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