

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: HUXLEY FAMILY PHYSICIANS	DOCKET NO. FCU-2013-0004 (C-2012-0147)
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**ORDER GRANTING REQUEST FOR FORMAL PROCEEDING AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued May 23, 2013)

I. BACKGROUND

On March 7, 2013, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for a formal proceeding for further investigation of a rural call completion complaint. The request has been identified as Docket No. FCU-2013-0004. The Board will grant the request pursuant to Iowa Code § 476.3. The request is based on informal complaint proceedings conducted pursuant to Iowa Code § 476.3 and 199 IAC chapter 6 in a matter identified as File No. C-2012-0147. The record in the informal proceedings can be summarized as follows:

On November 28, 2012, Lynae Millette, Clinic Administrator of Huxley Family Physicians (HFP) in Huxley, Iowa, filed a complaint with the Board alleging HFP has experienced static and problems with telephone calls cutting off for about four years. The complaint also alleged that HFP was not receiving phone calls and faxes from Mary Greeley Hospital in Ames, Iowa. Ms. Millette stated that persons calling HFP

from other hospitals, other clinics and patients have complained about the phone lines. Ms. Millette recounted an incident where Mary Greeley Hospital reported that it was unable to send urgent test results by fax to HFP because it could not get through on the phone or fax lines. Ms. Millette also complained about calls not getting to the after-hours answering service used by HFP. Ms. Millette noted concerns about the consequences if HFP is not able to make or receive a phone call.

Board staff commenced an investigation of the complaint, forwarding the complaint to Huxley Communications Cooperative (Huxley Communications) (identified as the local exchange service provider for HFP); Qwest Corporation, d/b/a CenturyLink (CenturyLink) (identified as the local and long distance service provider for Mary Greeley Hospital); and Bluetone Communications, LLC (Bluetone), formerly known as Bluemile Networks (identified as an underlying carrier for CenturyLink) for response. Huxley Communications stated that since 2008 it has received four calls relating to static or calls being dropped for HFP and that in those instances, it found the trouble to be with HFP's customer-owned key system or a possible call completion issue. Huxley Communications stated it researched the latest issues identified in Ms. Millette's complaint, but its system cannot tell when a call does not complete. Huxley Communications stated the call completion issue should be addressed by the Board.

In its response, CenturyLink detailed the steps its technician took to investigate the issues raised by the complaint and stated that the technician

performed test calls and determined the problem was related to call routing.

CenturyLink stated that it removed Bluetone, the underlying carrier used to route calls, from the routing table for the telephone number in question, and is working with Bluetone to address the issue.

Bluetone responded to the complaint, indicating it is a wholesale provider of telecommunication services to CenturyLink and does not receive trouble reports directly from CenturyLink end-users. Bluetone stated it investigated the complaint regarding the trouble HFP experienced on the dates specified in the complaint and found no trouble reports from CenturyLink regarding the telephone numbers in question. According to Bluetone, CenturyLink would decide whether to report issues to Bluetone. With respect to a trouble report it received from CenturyLink regarding a fax number, Bluetone stated that it was unable to determine a definitive cause for the fax failure, but proactively rerouted the destination number to another vendor in order to provide an alternate route for call completion.

Staff issued a proposed resolution on February 21, 2013. Staff determined that changing the underlying carrier resolved the matter and suggested that if Ms. Millette experiences further problems with phone calls and faxes to HFP not completing, she could ask the person originating the call or sending faxes to contact their telephone provider and to file a complaint with the Board.

On March 7, 2013, Consumer Advocate filed a request for a formal proceeding. According to Consumer Advocate, the problems reported in the

complaint are not unique to HFP and are occurring with sufficient frequency and affecting a sufficient number of rural consumers to justify an investigation. In support, Consumer Advocate cited other complaints being considered by the Board; a declaratory ruling issued by the Federal Communications Commission (FCC) in February 2012,¹ which identified a pattern of call completion and service quality problems with long distance calls to rural areas; a July 2012 resolution of the National Association of Regulatory Utility Commissioners (NARUC), which described call completion failure rates being 13 times higher in rural areas than in non-rural areas, and noted that rural call termination issues persist; a November 2012 press release of the National Exchange Carriers Association, which described the call completion problem as a mounting epidemic; and a February 2013 Notice of Proposed Rulemaking in which the FCC refers to suggestions made by associations of rural carriers that call completion problems "may arise from the manner in which originating providers set up the signaling and routing of their calls, and that many of these call routing and termination problems can be attributed to intermediate providers."² (Request for Formal Proceeding, pp. 4-6, ¶¶ 11-12.)

Consumer Advocate further notes that NARUC observed in its July 2012 resolution that:

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 (Rel. Feb. 6, 2012), "Declaratory Ruling," 27 FCC Rcd. 1351 (Declaratory Ruling).

² *In the Matter of Rural Call Completion*, WC Docket No. 13-39, FCC 13-18 (Rel. Feb. 7, 2013) "Notice of Proposed Rulemaking," ¶ 6 (Call Completion NPRM).

[i]t appears that some carriers are not taking the declaratory ruling seriously ... [and] [t]he call termination issues seem unlikely to be resolved unless and until a provider that has failed materially and repeatedly to route calls to destinations as sought by originating carriers faces serious consequences for such failures.

(Request for Formal Proceeding, p. 7, ¶14.)

Consumer Advocate contends that the file in this case raises more questions than it answers and there is still no answer as to who and what caused the difficulties experienced by HFP. With respect to the calls and faxes from Mary Greeley Medical Center, Consumer Advocate states that, according to CenturyLink, the problem was related to call routing and removing Bluetone as the underlying carrier solved the problem. Consumer Advocate states that while CenturyLink explains it is working with Bluetone to address the issue, CenturyLink does not explain what caused the problem or what the issue is. Consumer Advocate also states that Bluetone has not been able to determine a definitive cause for the failure and has re-routed the destination number to another vendor but does not identify either the first or second vendor. (Request for Formal Proceeding, p. 7, ¶¶ 16-17.)

Consumer Advocate identifies several issues needing further investigation, including the routing of calls, changes made to the routing, why CenturyLink and Bluetone decided re-routing would solve the problem, and the performance requirements, metrics, and standards imposed by CenturyLink and Bluetone on other companies to ensure calls complete. (Request for Formal Proceeding, pp. 7-8, ¶¶

18-19.) Consumer Advocate observes that more information is needed to understand the cause of the problems involved in this complaint and what tools can be used to prevent such problems. (Request for Formal Proceeding, p. 8, ¶ 20.) Further, Consumer Advocate states that it is not clear that the problems experienced by HFP have been resolved, as HFP informs Consumer Advocate that it continues to learn of calls or faxes (from locations other than Mary Greeley Hospital) that were attempted but did not complete. (Request for Formal Proceeding, p. 8, ¶¶ 21-22.)

Consumer Advocate acknowledges that the FCC plays a "central role nationally in resolving the problem long-term" (Request for Formal Proceeding, p. 9, ¶ 23), but argues there is an appropriate state role in responding to the problem. Consumer Advocate stresses that the Board has an interest in ensuring that calls are completed to rural destinations in Iowa and in preventing further decline in the quality of service provided in rural Iowa. Consumer Advocate states that further investigation by the Board could uncover violations of the FCC's rules, which could be reported to the FCC with a request for enforcement. Consumer Advocate suggests that the FCC might be more likely to act upon the results of a Board investigation (which would serve to develop the information presently missing in this case). (Request for Formal Proceeding, pp. 9-10, ¶¶ 23-25.)

Finally, Consumer Advocate asserts that the Board has authority over the delivery of intrastate telecommunications services. Consumer Advocate suggests that Board investigation could reveal remedial or enforcement tools already at the

Board's disposal or could show a need for a new law or regulation. Consumer Advocate emphasizes the seriousness of the call completion problem, noting that failure of calls and faxes to complete affects public health, safety, and welfare, particularly in a case such as this where it has been alleged that a physicians' clinic was not able to communicate with a hospital. Consumer Advocate contends that further investigation will contribute to the solution in this context as carriers will know they are being watched. (Request for Formal Proceeding, p. 10, ¶¶ 26-29.)

On March 21, 2013, CenturyLink responded to the request for formal proceeding, stating a formal proceeding is not necessary. CenturyLink states that the primary complaint in this matter alleges facts relating to the failure of faxes to complete to HFP from the Mary Greeley Hospital on the weekend of November 24 and 25, 2012. According to CenturyLink, its investigation found the issues were caused by the underlying carrier; it removed that carrier from the call routing; and subsequent tests have shown that calls and faxes are now accurately completing to HFP. CenturyLink observes that the request for formal proceeding focuses on the industry-wide problem of rural call completion and names multiple carriers that are allegedly causing the call completion problems experienced by HFP. According to CenturyLink, because the FCC is adequately addressing the larger issue by adopting rules governing call completion and call quality, further action by the Iowa Utilities Board is unnecessary.

II. DISCUSSION

In February of 2012, the FCC issued a Declaratory Ruling that addresses call completion issues, following up on the work of the FCC's Rural Call Completion Task Force which had investigated the problem of calls to rural customers which are delayed or fail to connect. The FCC explained it was issuing the Declaratory Ruling in response to requests for action and in response to evidence showing "a pattern of call completion and service quality problems on long distance calls to certain rural areas" and intended "to clarify the scope of the Commission's prohibition on blocking, choking, reducing or restricting telephone traffic." (Declaratory Ruling at ¶ 1.) The FCC clarified that its prohibition against blocking, choking, reducing, or restricting telephone traffic extends to routing practices that have those effects. (Declaratory Ruling, ¶ 3.) The FCC also clarified that such practices may constitute unjust and unreasonable practices in violation of section 201 of the Communications Act of 1934, as amended, and may violate a carrier's duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services. (Declaratory Ruling, ¶ 4.) Finally, the FCC emphasized that carriers are responsible for the actions of their agents or other persons acting for or employed by the carriers, i.e., underlying providers. (Declaratory Ruling, ¶¶ 4, 15.) The FCC explained that it can take appropriate enforcement action pursuant to its statutory authority, including cease-and-desist orders, forfeitures, and license revocations, against carriers engaging in the prohibited activities discussed in the Declaratory Ruling.

More recently, in February 2013, the FCC issued a Notice of Proposed Rule Making focused on the call completion issue.³ The FCC sought comment on rules to help address problems in completion of long-distance calls to rural customers. The FCC mentions evidence that retail long-distance providers may not be adequately examining the rural call completion performance that results from use of wholesale call delivery services by intermediate providers employed by the long-distance providers. The FCC intends to "consider measures to improve the Commission's ability to monitor the delivery of long-distance calls to rural areas and aid enforcement action." (Call Completion NPRM, ¶ 3.)

Noting that lack of data impedes investigations (Call Completion NPRM, ¶ 17), the FCC sought comment on reporting and data retention requirements that would give the Commission information about a long-distance provider's performance to certain areas. The FCC proposed to adopt rules that would require originating long-distance voice service providers to collect and retain basic information on call attempts and to periodically analyze and summarize call completion and report the results to the Commission. (Call Completion NPRM, ¶ 17.)

In the NPRM, the FCC reviewed the steps it had taken in response to the call completion problem. The FCC stated it is conducting ongoing investigations of several long-distance providers and addressing daily operational problems reported by rural customers. (Call Completion NPRM, ¶ 11.) The FCC also described the

³ *In re: Rural Call Completion*, WC Docket No. 13-39, FCC 13-18 (Call Completion NPRM). (Rel. February 7, 2013). Initial comments in this proceeding were due May 13, 2013. Reply comments must be filed with the FCC by May 28, 2013.

Web-based complaint intake process that allow rural customers and carriers to alert the Commission about call completion problems and informs them how to file complaints.

Even as investigation and enforcement measures proceed at the federal level, it is appropriate to take steps at the state level to respond to a problem with potential to disrupt calls to rural consumers in Iowa. Iowa Code § 476.3(1) provides that a public utility shall furnish "reasonably adequate service" in accordance with tariffs filed with the Board. That section also provides, in relevant part, that when Consumer Advocate files a petition for formal proceeding with the Board, the Board shall grant the petition if the Board determines that "there is any reasonable ground for investigating the complaint." Reasonable grounds for further investigation can exist where there are numerous unanswered and relevant questions regarding the precise circumstances of a complaint.

The Board finds there are sufficient grounds to open a docket to conduct further investigation into this particular complaint. The Board agrees with Consumer Advocate that the responses of CenturyLink and Bluetone have not answered all of the important questions that the case presents. The record developed to date does not provide enough specific information for the Board to fully understand the roles and responsibilities of the various providers in causing, identifying, or correcting the problems experienced at HFP. For example, CenturyLink has not fully explained how removing a carrier from a routing table solved the problems in this case and how long

that fix will be effective, nor has CenturyLink fully explained what measures it is taking with its underlying carrier in this instance, Bluetone, to prevent call failures in the future. Also, with respect to the fax failure, Bluetone explains that it re-routed the number to another vendor, but does not identify either the first carrier or the new carrier or the alternate carrier.

The Board anticipates that further investigation will allow the Board to better understand what tools are available to carriers in Iowa to prevent the kinds of call completion problems alleged in the complaint and to respond to problems as they occur. Docketing the complaint for further investigation will enable the Board to gather more specific information about CenturyLink's use of (and standards for) underlying carriers and extent to which use of certain underlying carriers and routing practices have contributed to call completion problems. These are only examples of the unanswered questions in this case; further investigation may identify other relevant questions. The Board finds that reasonable grounds have been shown for further investigation.

The Board will grant Consumer Advocate's petition for formal proceeding and will assign the matter to its administrative law judge for further proceedings.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for formal proceeding filed by the Consumer Advocate Division of the Department of Justice on March 7, 2013, relating to File No. C-2012-

0147, is granted pursuant to Iowa Code § 476.3. The matter is identified as Docket No. FCU-2013-0004. The issues for investigation are as identified in the petition, as described in the body of this order, and as they may develop during the course of the proceedings.

2. Docket No. FCU-2013-0004 is assigned to Administrative Law Judge Amy L. Christensen for further proceedings, pursuant to Iowa Code § 17A.15 and 199 IAC 7.3.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Swati A. Dandekar

ATTEST:

/s/ Joan Conrad
Executive Secretary

Dated at Des Moines, Iowa, this 23rd day of May 2013.