

August 11, 2014

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce**  
Docket No. P999/CI-12-1329

Dear Dr. Haar:

Attached is the Answer of the Minnesota Department of Commerce to the Petition of the Minnesota Cable Communications Association for Reconsideration of the Commission's July 21, 2014 Order in the following matter:

In the Matter of the Commission Investigation of the Completion of Long-Distance Calls to Rural Areas in Minnesota

The Department recommends the Commission deny MCCA's Petition for Reconsideration.

Sincerely,

BONNIE JOHNSON  
Public Utilities Telecommunications Analyst

GREGORY J. DOYLE  
Manager, Telecommunications

BJ/GJD/ja  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P999/CI-12-1329

**I. BACKGROUND**

On July 21, 2014, the Minnesota Public Utilities Commission (Commission) issued its Order Requiring Interexchange Carriers to Report Call Completion Complaints (Order).

Ten days after the Commission issued its Order, on July 31, 2014, the Minnesota Cable Communications Association (MCCA) filed a Petition for Reconsideration (Petition) of the Commission's Order.

The Department provides this Answer to MCCA's Petition of the Order. Since petitions for reconsideration may be filed within 20 days of the Commission's Order, the Department will provide a separate answer to any additional requests for reconsideration that may be filed in this proceeding.

**II. APPLICABLE RULES**

Petitions for Reconsideration are governed by Minnesota Administrative Rules, Section 7829.3000, subparts 1-6, which state:

**7829.3000 PETITION AFTER COMMISSION DECISION.**

**Subpart 1. Time for request.** A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

**Subp. 2. Content of request.** A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A

request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. Service. A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. Answers. Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. Replies. Replies are not permitted unless specifically authorized by the commission.

Subp. 6. Commission action. The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

### III. THE COMMISSION CONSIDERED AND REJECTED MCCA'S ARGUMENTS

#### A. *THERE IS SUFFICIENT EVIDENCE IN THE RECORD OF INTRASTATE RURAL CALL COMPLETION PROBLEMS*

MCCA Petition states that “the Commission lacks evidence of call completion problems with intrastate long distance calls in Minnesota”<sup>1</sup>. MCCA’s Petition goes on to state that the “Commission readily admits that issues contributing to rural call completion failures are complex, and may well be beyond the Commission’s jurisdiction to **fully** resolve.”<sup>2</sup> Clearly, the Commission understands that it does not have jurisdiction over interstate calls and cannot **fully** resolve this important issue for both intrastate and interstate calls. However, as the Commission recognizes in its Order, “Reliable telephone service is essential to public health, public safety, and a strong economy, and the Commission cannot defer action on these important issues pending completion of the FCC’s action, especially since **this Commission alone has responsibility for uncompleted intrastate calls.**”<sup>3</sup>

Perhaps with the exception of the MCCA, other parties appear to agree that rural call completion problems exists and are not limited to interstate calls. In its March 19, 2014

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<sup>1</sup> MCCA Petition, pg. 2

<sup>2</sup> MCCA Petition, pg. 2. (Emphasis added)

<sup>3</sup> Order, pg. 6. (Emphasis added)

comments at page 2, the Department quoted comments submitted by other parties, which recognize the seriousness of this problem and how it plagues rural areas of Minnesota:

For example, AT&T said it “...understands and shares the concerns discussed by the Minnesota Department of Commerce (“DOC”) in its comments dated January 13, 2014”<sup>4</sup>; Integra appropriately recognizes that “...progress in resolving rural call completion problems has been slower than regulators and many carriers would prefer...”<sup>5</sup>; Minnesota Telecom Alliance (MTA) commented that “[t]he problem of long distance calls completing in rural areas is serious and widespread”; and, tw telecom of minnesota llc (TWTC) said “TWTC appreciates the Commission’s interest in this important matter and supports ongoing efforts to improve call completion in rural portions of Minnesota.”<sup>6</sup>

MCCA claims that there is “sparse anecdotal information” and that the “Commission Order lacks a sufficient factual foundation for its exercise of authority.”<sup>7</sup> However, when Commissioner Lipschultz asked if the MCCA members perform the tasks that the Department sought in the reporting by originating interexchange carriers, listed in a-e in 1. B. 2. A on page 22 of the Staff Briefing Papers, MCCA’s representative stated that he had not polled each company but said he did not believe that the 12 companies he represents, 1) have been compiling the information in paragraphs a-e as a matter of course, 2) are not examining every call completion complaint, 3) are not performing root cause of the problem, and, 4) are not determining whether the call is interstate or intrastate, but that some of that *may* happen when the FCC order takes effect.<sup>8</sup> If the companies the MCCA represent are not tracking the troubles, or determining whether the trouble is interstate or intrastate, there is no basis for the claim that the information is anecdotal, especially as it relates to the 12 companies the MCCA represents.

MCCA has included affidavits from 2 of its 12 members with its Petition that appear to be directly related to its comments at the hearing that claim its members do not track information on call failures, but he had not polled them. MCCA states in its Petition that:

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<sup>4</sup> AT&T initial comments, p. 1.

<sup>5</sup> Integra initial comments, p. 2.

<sup>6</sup> TWTC initial comments, p. 8.

<sup>7</sup> MCCA Petition, pg. 1.

<sup>8</sup> Webcast archive of the June 26, 2014 hearing, item 7 on the agenda. Mr. Mendoza discusses this at approximately the 4 hour and 5 minute mark of the hearing. See [http://minnesotapuc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=219](http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=219)

The members of the MCCA are unaware of problems with long distance intrastate rural call completion problems involving such calls originated by their customers and find no proven examples of intrastate long distance call completion problems in the record of this proceeding. Midcontinent Communications and Comcast both testify there have been no complaints of call completion problems with calls to rural exchanges in Minnesota. See attached Affidavits from Midcontinent Communications, and Comcast.<sup>9</sup>

As discussed above, since the MCCA members are not tracking rural call completion issues, doing root cause, and determining if the call was intrastate or interstate, the companies have no basis to claim there are no intrastate rural call completion incidents.

The Department has been directly engaged with consumers and the telephone industry to address complaints on rural call completion. Attachment 1 is a letter provided to the Department by Wiktel, a rural carrier, explaining its experience with trying to resolve call completion issues it had with Comcast in May of 2014. The letter explains:

*For this trouble it was very difficult to get anyone that would help at COMCAST. I searched the internet and found a department to call for troubles. This department gave me to another department. I called at least 3 different departments and would wait on hold explaining my situation and then requesting to talk to a department manager. After talking to the last department and then requesting their manager they said that the manager is not going to help me and will not talk to me.*

After the several failed attempts, Wiktel reported the problem to Onvoy.

The Comcast employee affidavit of Wenda Jackson is limited to reports Comcast received from customer service agents. Complaints received by other teams or departments within Comcast apparently were not captured by the affidavit. Since Onvoy was provided a ticket number for the call completion trouble described in Attachment 1, the report created by the Comcast Business Support and Analytics Team, identified in the Wenda Jackson affidavit, either did not capture the incident, or the incident was not reflected as a call completion trouble. Either way, Comcast clearly has been involved with rural call completion problems.

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<sup>9</sup> MCCA Petition, pg. 3.

The second affidavit provided with the MCCA petition was prepared by Mary Lohnes of Midcontinent Communications. Ms. Lohnes states, among other things, that “[as] can be seen by Midcontinent’s experience, when these infrequent issues do come to its attention, they are identified, investigated, and *permanently* resolved.” The Department’s experience with working call completion problems is that the problems are “permanently resolved” only until they again reappear. Ms. Lohnes admits in her affidavit, that “the “underlying-underlying” sub-carriers were (and still are) unknown to Midcontinent”.<sup>10</sup> However, while carriers are removed from routes, those same intermediate carriers continue to be used on other routes and can be placed back into the routing for the same originating carrier, for the same route, at a later date. If a call completion problem occurred as the result of what Midcontinent refers to as a “sub-carrier,” then Midcontinent, by the admission of its representative, does not know whether problematic sub-carriers continue to carry some of its calls or whether such sub-carriers may soon be back in the routing of their calls.

The difficulty with rural call completion problems for carriers, in part, has been knowing when/if a problem exists. As the Commission is aware, for a rural call completion problem to be recognized, there must be communication between the originating and terminating parties to the call that an attempt was made and failed. This is a significant hurdle as consumers that are unable to complete a call would likely just try the call again later, or as Mattracks has stated from the perspective of a business, will simply call a competitor. Thus, while the problem is real, it can go unnoticed. Even after the consumer believes that calls are failing, the effort must be taken to pursue a complaint. When the complaint is pursued, the company contacted needs to be able to recognize that it is a call completion problem and pursue appropriate steps for the problem to be fixed. As described by the letter of Wiktel in Attachment A, even a sophisticated caller, like another telephone company, can be frustrated when attempting to report a rural call completion problem when the company receiving the complaint, in this case Comcast, was ill prepared to accept the complaint to address the problem.

Wiktel’s letter confirms that intrastate call completion issues are a reality. Wiktel states it has had hundreds of intra-state and inter-state call failures recorded, some of which have been repaired by inter-exchange carriers and some which reappear. Wiktel is only one of many rural carriers in Minnesota and its customers have been harmed by this issue for over 3 years. This was apparent by the presentation of one of its customer’s, Mattracks, at the Commission’s hearing. Mattracks also pointed out at the hearing that it is only one business in Northern Minnesota impacted by this problem.

Further evidence of the difficulties with the rural call completion problem is provided in a July 28, 2014 *Ex Parte Notice* to the FCC filed by the NTCA – The Rural Broadband Association and the National Exchange Carriers Association. See Attachment 2. The *Ex Parte* notice states:

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<sup>10</sup> MCCA Petition, Midcontinent affidavit, number 6.

The Rural Representatives explained that calls continue to fail to reach rural areas at an alarming rate – jeopardizing public safety, harming businesses and inconveniencing consumers. They suggested that as the industry waits for the Office of Management and Budget to complete its Paperwork Reduction Act review and approve the information collection and record keeping requirements adopted by the Commission to address this problem, that the Commission take concrete steps to bring intermediate providers out of the shadows and into full light. The Rural Representatives noted that there is currently no way for carriers to know who many of the intermediate carriers are and there are no controls in place to ensure that they properly route calls.<sup>11</sup>

The FCC, Rural Carriers, Originating Carriers, Minnesota State Representatives, and Minnesota consumers have all provided information that is in the record in this proceeding that intrastate rural call completion failures exist and are impacting rural carriers, businesses and consumers in rural Minnesota.

***B. IT IS LIKELY THAT THERE IS A MUCH HIGHER NUMBER OF INTRASTATE CALL FAILURES BECAUSE THE CALLS ARE DISGUISED AS INTERSTATE CALLS***

Mr. Christensen, who represented the Minnesota Telephone Alliance (MTA) at the Commission's hearing, explained that many calls that appear to be interstate are in fact intrastate, but the caller id information has been changed. He stated he has slides that he did not bring with him [to the hearing] that shows that calls originated in Baxter, MN, terminated in Little Falls, MN, but, because the call was routed through New York, and were stripped of the originating number by a fly-by-night operation (intermediate carrier), appear as interstate calls.<sup>12</sup> The Department included the slides Mr. Christensen is referring to as Attachment 1 to the Department's January 13, 2014 comments, which were provided to the FCC in an Ex Parte Notice. The slides entitled "Originating caller information is being changed, in the middle of the call flow, from intra to inter State" are on pages 4 and 5 of the Onvoy presentation attached to the April 12, 2013 *Ex Parte Notice*.

There is no dispute that the Commission has jurisdiction over intrastate calls, even if the caller's number was changed to appear as an interstate call.

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<sup>11</sup> Attachment 1, pg. 1.

<sup>12</sup> Webcast archive of the June 26, 2014 hearing, item 7 on the agenda. Mr. Mendoza discusses this at approximately the 4 hour and 46 minute mark of the hearing. See [http://minnesotapuc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=219](http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=219)

C. *THE COMMISSION'S ORDER DOES NOT CONSTITUTE AN UNLAWFUL RULEMAKING*

Another matter MCCA argued at the hearing which was rejected by the Commission, and argued again in its Petition, is that the Commission's Order institutes new rules without a rulemaking proceeding in violation of the law.<sup>13</sup> The Department disagrees.

MCCA argues that the Commission Order applies to every originating interexchange carrier in Minnesota and most providers of long distance services in Minnesota did not participate in the proceeding. MCCA states that the "Commission's website has contact information for 273 companies that it has authorized to provide long distance service in the state," and "consequently, a large majority of the companies most affected by the Commission's new regulations have had no voice in their making."<sup>14</sup>

The Commission issued a notice soliciting comments from interested parties regarding the issues raised in the Department's January 13, 2014 petition on January 16, 2014. This notice included all IXC's. In fact, a count shows that the Commission served a true and correct copy of the notice soliciting comments to 503 persons by electronic filing, electronic mail, courier, interoffice mail, or by US mail.

On June 13, 2014 the Commission gave notice of the of its public hearing to be held on June 26, 2014, and made Staff Briefing Papers available to interested parties, attached to the Commission agenda for the June 26, 2014 hearing and was available via the eDockets system. The process was transparent and each interested originating interexchange carrier in Minnesota had the opportunity to participate in the proceeding at the level they chose to participate.

Regarding MCCA's argument that the Commission's Order is generally applicable and has future effect and requires a rulemaking <sup>15</sup> MCCA's argument ignores that the Commission has broad authority to act by order under Minnesota Statute 216B.23. subd. 2. The Department does not believe that a rulemaking is necessary and if used, would only serve to delay the implementation of actions that can reduce call completion problems.

Attachment 3 to this reply is excerpts from a Commission Order in P999/M-05-1169 where the Commission considered the same argument as MCCA makes in this proceeding. In that proceeding, ACC and Western Wireless argued that if the Commission wished to adopt new ETC designation criteria it must do so by rule rather than by Commission Order. ACC and Western Wireless sought for the Commission to simply adopt the FCC's proposed ETC designation standards, as those standards would be generally applicable to all carriers seeking ETC designation.

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<sup>13</sup> MCCA Petition, pg. 5.

<sup>14</sup> MCCA Petition, pp. 5-6.

<sup>15</sup> MCCA Petition, pg. 5.



The Commission's Findings and Conclusions in Attachment 3 are included in Section II of the Order entitled *Adoption of Policy by Rulemaking or Order*. The Commission found that 1) it had discretion to decide by Order, 2) it was appropriate to do so, 3) the docket was open and fair, 4) the Commission served notice on potentially interested parties, 5) the Commission gave notice of its public hearing on the matter, and distributed Commission staff briefing papers to interested parties in advance of the hearing, 6) heard the parties' oral presentations and rebuttal arguments, and, 7) finally, based on all of these inputs, the Commission decided to modify the FCC's proposed requirements.

The action the Commission has taken to resolve intrastate rural call completion issues that jeopardize public health, public safety and the economy, is appropriate and necessary.

*D. CONCLUSION*

While the Department continues to agree that the Commission should exercise care to ensure it takes no action that may conflict with FCC orders, there are several steps the Commission has ordered that could help reduce intrastate rural call completion problems. None of these steps conflict with the FCC's actions and will provide assistance to those Minnesota rural carriers and their customers' who have been impacted by this problem for years.

MCCA provides no new information that would compel the Commission to reconsider its order. MCCA's order for reconsideration should be denied.

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# ATTACHMENT 1



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**212 South Main St., Karlstad, MN 56732      Phone: (218) 436-5214      Fax: (218) 436-3102**  
**Alan D. Lundeen, Plant Manager**

August 7, 2014

Greg Doyle, Manager Telecommunications  
Bonnie Johnson, Telecom Analyst  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500, Saint Paul, MN 55101

RE: MCCA Petition

Thank you for your interest and continual collecting of data regarding Rural Call Completion issues. Wikstrom Telephone and its customers have been harmed by the continual non- completion of calls, both inter and intrastate for over 3 years.

1. Wikstrom has facts regarding the ongoing call failures and tracks them regularly in its exchanges with test lines established for all of its exchanges.
2. Wikstrom has had hundreds of intra-state and inter-state call failures recorded, some of which have been repaired by inter-exchange carriers and some which reappear.
3. Wikstrom supports the ongoing collection of call failure reports and strong enforcement action against those originating carriers, their agents, and subcontracted interexchange carriers.
4. Wikstrom has had a direct call failure from Comcast customers, and this is the dialogue from one of our technicians on the problems he had trying to find a Network technician to help fix the originating calls from Comcast on May 21, 2014.

*“For this trouble it was very difficult to get anyone that would help at COMCAST. I searched the internet and found a department to call for troubles. This department gave me to another department. I called at least 3 different departments and would wait on hold explaining my situation and then requesting to talk to a department manager. After talking to the last department and then requesting their manager they said that the manager is not going to help me and will not talk to me. I do not know the reason for this and it seemed like they were very busy. I called Onvoy and they said that they knew the COMCAST Department to contact and they opened up a ticket(Ticket#172150). It would have been nice if these other departments could have got me to the Correct Department. Now I know for the future to go directly to Onvoy to trouble shoot Long Distance Troubles with COMCAST. I and Onvoy was never able to get a response as to what was wrong and after a few weeks I had the originating caller do 10 test calls and they all worked so COMCAST must have fixed something. Onvoy and I both agreed to clear the ticket at that point.”*

Wikstrom Telephone does not believe the order should be reconsidered, unless to strengthen the language that requires interexchange carriers that fail to deliver calls be removed from any unlimited long distance plans.

Sincerely

A handwritten signature in black ink, appearing to read 'Alan Lundeen', written in a cursive style.

Alan Lundeen

## ATTACHMENT 2



July 28, 2014

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

***Re: In the Matter of Rural Call Completion, WC Docket Number 13-39***

Dear Ms. Dortch:

On Thursday, July 24, 2014, the undersigned, representing NTCA – The Rural Broadband Association, and Robert Gnapp and Colin Sandy from the National Exchange Carriers Association, (collectively, the “Rural Representatives”) met with the following representatives of the Federal Communications Commission: Daniel Alvarez, Terry Cavanaugh, Claude Aiken, John Visclosky, and Margaret Dailey. Richard Hovey participated via telephone.

The Rural Representatives explained that calls continue to fail to reach rural areas at an alarming rate -- jeopardizing public safety, harming businesses and inconveniencing consumers. They suggested that as the industry waits for the Office of Management and Budget to complete its Paperwork Reduction Act review and approve the information collection and record keeping requirements adopted by the Commission to address this problem, that the Commission take concrete steps to bring intermediate providers out of the shadows and into full light. The Rural Representatives noted that there is currently no way for carriers to know who many of the intermediate carriers are and there are no controls in place to ensure that they properly route calls.

As proposed in comments on the Commission’s Further Notice of Proposed Rulemaking in this proceeding, the Rural Representatives recommended that every provider in control of call routing be required to register with the Commission and certify that it does not engage in the blocking or restricting of calls to rural areas or that it strips or modifies call detail information. The providers would also certify that they have in place processes to monitor performance and that they route calls only to other certified intermediate providers or directly to terminating local exchange carriers. Additionally, the Rural Representatives recommended that the Commission create a carrier contact list so that other carriers experiencing call completion problems know whom to contact at the originating carrier for resolution. It was explained that these

Ms. Marlene H. Dortch

July 28, 2014

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requirements would be minimally burdensome, but would help ensure the quality of providers “in the middle.”

The Rural Representatives also briefly discussed call cause codes, expressing support for the Commission’s position that covered originating carriers are required to report them because they serve as a useful indicator of rural call completion problems.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

Jill Canfield  
Vice President of Legal and Industry  
Assistant General Counsel

Cc: Daniel Alvarez  
Terry Cavanaugh  
Martha Heller  
Claude Aiken  
John Visclosky  
Margaret Dailey  
Richard Hovey

## ATTACHMENT 3



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers

ISSUE DATE: October 31, 2005

DOCKET NO. P-999/M-05-1169

ORDER ADOPTING FCC REQUIREMENTS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS, AS MODIFIED

**PROCEDURAL HISTORY**

**I. New Federal Communications Commission Requirements for Federal ETC Designation and Annual Reporting Requirements**

On March 17, 2005, the Federal Communications Commission (FCC) issued an Order<sup>1</sup> adopting five new requirements for carriers seeking federal ETC designation<sup>2</sup> and encouraging states to adopt these requirements for their ETC designation proceedings as well:

- (1) a five-year plan demonstrating how high-cost universal service support will be used to improve service coverage, service quality, or capacity in every wire center in which designation is sought.
- (2) demonstrated ability to remain functional in emergency situations.
- (3) demonstrated ability to satisfy consumer protection and service quality standards.

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<sup>1</sup> FCC Order in CC Docket 96-45, FCC 05-46 (March 17, 2005); 47 CFR (hereafter FCC Rule) § 54.202(a) (1-5), hereafter FCC Rule § 54.202

<sup>2</sup> Under the Federal Telecommunications Act of 1996, telecommunications carriers must be designated "eligible telecommunications carriers," or ETCs, to qualify for subsidies from the federal Universal Service Fund. State regulatory commissions have primary responsibility for granting ETC designations, but the FCC acts on designation requests from carriers who are not subject to state commission jurisdiction, such as in tribal lands. See 47 U.S.C. §214(e)(2) and (6) of the Federal Telecommunications Act of 1996.

*Handwritten initials: DR/BA*

On September 14, 2005, the Minnesota Independent Coalition (MIC), American Cellular Corporation and Alltel, Inc. (ACC/Alltel)<sup>5</sup>, and Citizens/Frontier filed Reply Comments.

The Commission met to consider this matter on October 13, 2005.

## FINDINGS AND CONCLUSIONS

### **I. Summary of Order**

This Order considers whether the Commission should adopt the FCC's suggested standards for initially designating a telephone company as an ETC. The Commission concludes that it has the discretion to use the FCC criteria without first conducting a rulemaking and further decides that it will do so, with certain modifications addressed more specifically below.

### **II. Adoption of Policy by Rulemaking or Order**

In comments filed August 4, 2005, ACC and Western Wireless argued that if the Commission wished to adopt new ETC designation criteria it must do so by rule rather than by Commission Order. ACC and WWC stated that if the Commission adopted the FCC's proposed ETC designation standards, those standards would be generally applicable to all carriers seeking ETC designation in the future and allegedly a rule under Minn. Stat. § 14.02, subd. 4.

The other parties commenting on this issue<sup>6</sup>, including the RUD-OAG, disagreed, stating that the Commission has authority to apply the FCC proposed requirements in any proceeding without rulemaking since the Commission has the discretion under Minnesota law to implement policy either by rulemaking or in individual cases.

The Commission finds that it has the discretion to decide in this Order whether the FCC's suggested requirements will apply to petitions seeking ETC status<sup>7</sup> and that it is appropriate to do so. The Commission's industry-wide proceeding in this docket has been open, fair, and exhaustive. At the outset, the Commission served notice on potentially interested parties that the

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<sup>5</sup> In its September 14, 2005 Reply Comments, ACC, which had filed its initial comments on August 4, 2005 in conjunction with WWC, reported that WWC had subsequently become a subsidiary of Alltel Corporation (Alltel). ACC's Reply Comments, therefore, were filed in conjunction with Alltel and ACC/Alltel maintained the positions expressed by ACC/WCC in their August 4, 2005 comments.

<sup>6</sup> Citizens and Frontier, MIC, and the RUD-OAG.

<sup>7</sup> *In re Intra-LATA Equal Access and Presubscription*, 532 N.W.2d 583, 588 (Minn.Ct.App.1995), *review denied* (Minn. Aug. 30, 1995); *In the Matter of the Proposal by Lakedale Telephone Company to Offer Three Additional Class Services*, 561 N.W.2d 550 (Minn.Ct.App. 1997); and *Bunge Corp. v. Commissioner of Revenue*, 305 N.W.2d 779 (Minn.1981).

Commission was considering adopting the FCC's requirements and invited written comments and reply comments. The Commission gave notice of its public hearing on the matter and distributed Commission staff briefing papers to interested parties in advance of the hearing. At the hearing, the Commission heard the parties' oral presentations and rebuttal arguments. Finally, based on all these inputs from the parties and as discussed in the following section, the Commission duly considered all the parties' comments and, in response, has decided to modify the FCC's proposed requirements.<sup>8</sup>

### III. Consideration of the FCC's Suggested Requirements

#### A. Sprint's Comments

Sprint stated that the requirements adopted by the Commission in the 741 Docket<sup>9</sup> concerning annual certification requirements for existing ETCs should apply equally to entities seeking initial ETC designation in Minnesota.

Specifically, Sprint noted that the Commission should require only a two-year plan at the study area level, rather than a five-year plan at the wire center level, as suggested by the FCC and require that ETCs offer local usage plans comparable, but not identical, to those offered by the incumbent LECs.

#### B. Frontier and Citizens' Comments

Citizens and Frontier filed joint comments urging the Commission to adopt the FCC's standards for ETC designations, with the same minor modifications the Commission adopted in the 741 Docket.

The Companies argued that employing the FCC criteria as modified would provide for a more predictable ETC designation process and improve the long-term sustainability of the universal service fund. Moreover it would allow for a competitively neutral treatment for all carriers. Citizens and Frontier also noted that, since American Cellular Corporation currently has an ETC application pending before the Commission, the Commission should take this opportunity to clearly articulate its standards for ETC designation.

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<sup>8</sup> See *In re Intra-LATA Equal Access and Presubscription* (supra footnote 8) in which the Court cited similar procedural openness and fundamental fairness of process as a basis for finding that the Commission had discretion to adopt policy by rule or by Order, i.e., on a case-by-case basis. Supra at 590. The Commission notes that interested parties also had notice regarding the FCC's proposed requirements and had an opportunity to participate in the FCC's formulation of them.

<sup>9</sup> *In the Matter of Possible Changes to the Commission's Annual Certification Requirements Related to Eligible Telecommunications Carriers' Use of the Federal Universal Service Support*, Docket No. P-999/M-05-741, ORDER SETTING FILING REQUIREMENTS AND OPENING PROCEEDING TO CONSIDER ADOPTING FCC STANDARDS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS (July 21, 2005).

## CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. P999/CI-12-1329**

Dated this **11<sup>th</sup>** day of **August 2014**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_12-1329_Official
Karl	Anderson	ka1873@att.com	AT&T	225 W Randolph St FL 25D  Chicago, IL 60606-1838	Electronic Service	No	OFF_SL_12-1329_Official
Thomas	Bailey	tbailey@briggs.com	Briggs And Morgan	2200 IDS Center 80 S 8th St Minneapolis, MN 55402	Electronic Service	No	OFF_SL_12-1329_Official
Andrew	Carlson	acarlson@briggs.com	Briggs And Morgan	2200 IDS Center 80 South Eighth Street  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_12-1329_Official
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_12-1329_Official
Douglas	Denney	douglas.denney@integratel.com	Integra Telecom	1201 Lloyd Blvd, Suite 500  Portland, OR 97232	Electronic Service	No	OFF_SL_12-1329_Official
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_12-1329_Official
Pamela	Hollick	pamela.hollick@twtelecom.com	TW Telecom	4625 W 86th St Ste 500  Indianapolis, IN 46268-7804	Electronic Service	No	OFF_SL_12-1329_Official
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	90 South 7th Street Suite #4800 Minneapolis, MN 554024129	Electronic Service	No	OFF_SL_12-1329_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_12-1329_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Anthony	Mendoza	tony@mendozalawoffice.com	Mendoza Law Office, LLC	790 S. Cleveland Ave. Suite 206 St. Paul, MN 55116	Electronic Service	No	OFF_SL_12-1329_Official
Gregory R.	Merz	gregory.merz@gpmlaw.com	Gray, Plant, Mooty	80 S 8th St Ste 500  Minneapolis, MN 55402-5383	Electronic Service	No	OFF_SL_12-1329_Official
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_12-1329_Official