

NOTICE OF COMMENT PERIOD

Issued: July 11, 2018

In the Matter of a Commission Inquiry to Examine Streamlining Procedures for Consent Dockets

PUC Docket Number: P999/CI-18-382

Comment Period: Initial comment period closes August 10, 2018 at 4:30pm
Reply comment period closes August 20, 2018 at 4:30pm

The Commission may determine that it will not consider comments received after the close of the comment period.

Issue: Should the Commission streamline procedures for telecommunications consent dockets?

Topics Open for Comment:

- The reasonableness of the proposed variance to comment periods as listed in the Attachment.
- The length of any variance.
- The proposed treatment of service area and 911 plan filings.
- Any related issues the parties deem salient.

Background: The Attachment to this notice contains a staff proposal for streamlining the routine telecommunications dockets, which are generally considered on the Commission's consent agenda. These types of dockets include: New Authority (NA); Emergency Plan-911 Plan (ES); Property Acquisition (PA); Relinquish Authority (RL); Service Authority (SA); Alternative Miscellaneous (AM); and Miscellaneous Changes (M). Generally, the proposal expedites the Commission's consideration by commencing the reply comment period with filing of Department of Commerce comments and reducing the overall length of the reply comment periods from those specified by the Commission's Rules.

Filing Requirements: Utilities, telecommunications carriers, official parties, and state agencies are **required** to file documents using the Commission's electronic filing system (eFiling). All parties,

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participants and interested persons are encouraged to use eFiling: mn.gov/puc, select *eFiling*, and follow the prompts.

Full Case Record: See all documents filed in this docket via the Commission's website at mn.gov/puc, select *Search eDockets*, enter the year (18) and the docket number (382), select *Search*.

Subscribe to receive email notification when new documents are filed in this docket at mn.gov/puc, select *Subscribe*, or click [HERE](#) and follow the prompts.

Questions about this docket or Commission process and procedure? Contact Commission staff, Marc Fournier, at [651-201-2214](tel:651-201-2214) Email: marc.fournier@state.mn.us.

Change your mailing preferences: Email docketing.puc@state.mn.us or call 651-201-2204.

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

Attachment
Proposed Revisions to Telecommunications Docket Comment and Approval Procedures
Docket No. P999/CI-18-382

Below is a proposal for streamlining the routine telecommunications dockets, which are generally considered on the Commission's consent agenda. These types of dockets include:

New Authority (NA) Minn. Stat. §237.16 Subd. 1; Minn Rules 7812.0200 Subp. 7

Emergency Plan-911 Plan (ES) Minn. Rules 7812.0550 Subp. 3

Property Acquisition (PA) Minn. Stat §237.23; Minn. Rules 7829.1400 Subps. 1 and 4

Relinquish Authority (RL) Minn. Rules 7829.1400 Subps. 1 and 4

Service Authority (SA) Minn. Rule 7812.0300 Subp. 5; Minn. Rules 7829.1400 Subps. 1 and 4

Alternative Miscellaneous (AM) Minn. Rules 7829.1400 Subps. 1 and 4

Miscellaneous Changes (M) Minn. Rules 7829.1400 Subps. 1 and 4

Currently, new authority (NA) dockets are subject to the Minn Rules 7812.0200 Subp. 7 General Certification Requirements. This section provides parties 45 days after the petition is filed to file initial comments on the new authority filing. Reply comments must be filed and served within 20 days after the deadline for initial comments. Given the current telecommunications environment, this appears to be long.

The remaining docket types are all subject to the procedural provisions of Minn. Rule 7829.1400 Commission Action On Miscellaneous Filing; Comments. Subpart 1 of this section provides parties 30 days after a petition is filed to file initial comments. Subpart 4 of this section requires reply comments to be filed and served within 10 days after the deadline for initial comments. Again, given the current telecommunications environment, this appears to be long. A streamlining of the procedures would be consistent with virtually all of these dockets being on the Commission's consent agenda.

The consent calendar process works as follows¹: Once the initial and reply comment periods have concluded, a docketed item is placed on the preliminary agenda on the first of the month. By the fifth of the month, it is discussed internally with management and the item is placed on

¹ For illustrative purposes, the assumption is made that the time line begins on the first of the month.

the consent agenda by the 7th day. At this point, the items on this consent agenda are ready for the consent commissioner. The consent commissioner (consent calendar subcommittee) may take up to six days (13th day) to sign the consent agenda (13 days total). This time allows for other members of the commission to raise objections. Once the order is issued, parties have a 10 day protest period prior to the order becoming final.² As such, the consent agenda process takes around two to three weeks from start to finish after the comment periods have expired.

If this is added to the new authority comment cycle that is already at 65 days, the process is approaching three months. Similarly, for other filings the comment cycle approaches nearly two months. Additionally, if as happens quite often, the Minnesota Department of Commerce (DOC) files comments prior to the comment deadline, the item will simply wait for the time to pass because there is no legal mechanism to accelerate the process at that point. Applicants then often call the Commission to inquire why the filing has not been approved.

Finally, virtually none of these dockets rises to a level where it should take significantly more than 30 days for final disposition. A modification to these procedures is provided below.

Proposal: The procedural schedules outlined for all of the telecommunications dockets be varied in order to better reflect present reality of the telecommunications industry. Initial comments would be due with the Commission as they are currently pursuant to each specific rule. The change comes in the timing of reply comments. Reply comments would be due **five calendar days** after the DOC files initial comments. Again, this streamlining would be consistent and better conform to the Commission's consent agenda process.

This modification would require that the Commission vary Minn. Rules Chapter 7811.0200 Subp 7, Minn. Rules Chapter 7812.0200 Subp. 7, and Minn. Rules Chapter 7829.1400 Subps. 1 and 4. Pursuant to 7829.3200 Other Variances, the Commission shall grant a variance of its rules when it determines that the following requirements are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

² Unless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b).

With respect to the length of the variance, Minn. Rule 7829.3200 Subp. 3 provides the Commission a large degree of discretion in this area.

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

If a determination is made that a variance is appropriate, the Commission must determine the duration of that variance. The duration of the variance should be long enough to allow for proper evaluation. However, a variance of longer duration would not present a problem or compromise the process adversely.³ Additionally, a longer variance would allow the regulatory process to adapt to further evolution of the industry. The Commission invites comments on the appropriate duration of any variance.

Proposed Changes to Approval Process for Two Types of Dockets

Additionally, staff proposes two changes in how the Commission approves expansion of service area dockets under Minn. Stat. §237.16 subd. 4, and 911 plan filings under Minn. Rule 7812.0550.

Service Area filings: Under Minn. Stat. §237.16 subd. 4, already authorized local service providers can amend their certificate of authority to include additional areas. Subd. 4 essentially creates a negative check-off approval process: “If no objection is filed with the Commission by any interested party or raised by the commission within 20 days of the filing, it is considered approved....”

Arguably the 30 day comment period in the Commission’s rules does not apply given this statutory timeframe. In energy dockets with similar provisions, the Commission has authorized a notice by the Executive Secretary to be issued if no objections are received within the deadline. Staff recommends the same practice be applied here. Staff would not include petitions of ETCs to expand their service area, given that federal and state law set up different requirements for ETCs.

911 plans: As a condition for receiving a certificate of authority, an initial 911 plan is required by the Commission’s rules under Minn. Rules 7812.0500 for CLECs. Subpart 3 of Minn. Rule 7812.0550 lays out the factors the Commission should consider in approving a 911 plan. As a

³ The rule contains a revocation provision, which allows the Commission to revoke the variance in the event that the variance is not working as intended. This should allay concerns that any possible negative aspects of the variance will essentially be permanent.

practical matter, after years of experience with 911 plans, the Commission's approval is purely administrative—it is the Minnesota Department of Public Safety and the Metropolitan 911 Board that provide comments in each 911 plan docket stating whether the carrier has met the necessary substantive requirements. The DOC includes a checklist as part of its comments covering other miscellaneous regulatory issues.

Staff proposes that the approval of these initial 911 plans be executed by notice rather than consent order. In a number of energy dockets where approval is administrative in nature, the Commission has delegated authority to the Executive Secretary to approve certain filings.

Staff suggests that the process be the following:

- 1) Initial 911 plan is filed;
- 2) Commission holds docket open until comments are received by Department of Public Safety, Metropolitan 911 Board (if within the metropolitan service area), and Department of Commerce;
- 3) If the comments recommend approval, staff drafts a notice of approval and sends to consent commissioner for review. (For administrative efficiency, if more than one 911 plan is ready, a single notice would be drafted with all ready 911 plans)
- 4) Notice is issued after consent commissioner and executive secretary review.

Staff welcomes alternative proposals that accomplish the same goal.

Issues to be Addressed in Comments

- Please provide comments on the reasonableness of varying rules governing the comment periods for telecommunications dockets.
- Please provide comments on the appropriate duration of any rule variance to be approved by the Commission.
- Please provide comments on the proposed treatment of service area and 911 plan filings.
- Any other issues the parties deem salient.