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September 6, 2013

Dr. Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

Re: Docket No. U-999/R 13-24

Dear Dr. Haar:

Enclosed for filing are Comments from the Minnesota Cable Communications Association regarding Possible Amendment to Rules Governing Utility Proceeding, Practice, and Procedure, Minnesota Rules Chapter 7829.

Very truly yours,

MENDOZA LAW OFFICE, LLC

A handwritten signature in black ink, appearing to read "Anthony S. Mendoza". The signature is fluid and cursive, with the first name "Anthony" being the most prominent.

Anthony S. Mendoza

Enclosures

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

Possible Amendment to Rules Governing
Utility Proceeding, Practice, and Procedure,
Minnesota Rules Chapter 7829

MPUC Docket No.: U-999/R 13-24

CERTIFICATE OF SERVICE

Valerie Mendoza hereby certifies that on the 6th day of September, 2013, she e-filed a true and correct copy of Minnesota Cable Communication's Comments by posting it on www.edockets.state.mn.us.

/s/ Valerie Mendoza
Valerie Mendoza

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COMMENTS OF THE MINNESOTA CABLE COMMUNICATIONS ASSOCIATION

Pursuant to the Notice from the Minnesota Public Utilities Commission (the “Commission”) dated August 7, 2013, the Minnesota Cable Communications Association (the “MCCA”) submits these comments.

The MCCA supports the Commission Staff’s adoption in its July 25, 2013, Briefing Papers of the definition and arrangements for the filing of “protected” (*i.e.*, confidential) data proposed by MCCA members Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (collectively, “Charter Fiberlink”).¹ The MCCA also supports the Commission Staff’s proposed revision to the definition of “utility” and the clarification that would result from such revision regarding the entities that are subject to the procedural rules.² The MCCA , however, recommends that several proposed revisions to the Chapter 7829 rules be modified, as follows.

¹ See pp. 3, 5-6 of the Commission Staff’s Briefing Papers.

² See p. 20 of Staff’s Briefing Papers. As revised by Staff, the definition would be as follows: ‘Utility’ means a gas or electric service provider, or telephone utility under Rule 7810.0100, subp. 37, subject to the jurisdiction of the commission.

I. The Proposed Rule Governing Advocacy Before the Commission Should Be Conformed to the Scope of Advocacy Permitted by the Federal and State Judicial Rules

The Commission Staff has proposed the following as new rule 7829.0250³:

A person who signs a filing or enters an appearance at a commission meeting, by doing so, represents that the person is authorized to do so and has had a good faith belief that statements of fact made are true and correct, and that legal assertions made are warranted by existing law or by a reasonable extension or reversal of existing law.

The MCCA does not object to the Commission’s overall effort to promulgate a rule governing the scope of advocacy before the Commission. However, the proposed rule as phrased would limit advocacy before the Commission to arguments “warranted by existing law or by a *reasonable* extension or reversal of existing law” (emphasis added) – a greater constraint on advocacy than is the case under the federal and state rules of civil procedure. Rule 11 of the Minnesota Rules of Civil Procedure permits state judicial advocacy that is “warranted by existing law or by a *nonfrivolous* argument for the extension, modification, or reversal of existing law or the establishment of new law.”⁴ (Emphasis added.) The same judicial advocacy requirement that applies in the Minnesota courts should apply at the Commission.

Another difference between the proposed rule and its judicial Rule 11 counterparts is that the proposed rule, because of its reference to “enter[ing] an appearance at a commission meeting,” implies that oral presentations before the Commission fall within its scope. Federal Rule of Civil Procedure 11, however:

applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court,

³ The Commission Staff originally proposed the same language as rule 7829.0411.

⁴ Minn. R. Civ. P. 11.02(b). The applicable Minnesota Rule of Civil Procedure in this regard is virtually identical to its counterpart in the Federal Rules of Civil Procedure. The applicable federal rule refers to claims, defenses, and other legal contentions “warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ. P. 11(b)(2).

when counsel may make statements that would not have been made if there had been more time for study and reflection.⁵

The limitation in scope to exclude “matters arising for the first time during oral presentations” is similar to the state judicial rule,⁶ and the limitation makes sense when one considers the many circumstances – sometimes spontaneous (as when called upon by a Commissioner) – in which oral advocacy can take place before a tribunal. The same considerations should apply to oral advocacy before the Commission.

Based on the foregoing, the MCCA urges the Commission to conform the proposed rule in relevant part to Minn. Rule of Civil Procedure Rule 11, as follows⁷:

REPRESENTATIONS TO THE COMMISSION.

Any person who signs a **pleading, motion or similar** filing or enters an appearance at a commission meeting, by doing so, represents that he or she is authorized to do so and has a good faith belief that statements of fact made **therein** are true and correct, and that legal assertions **made by him or her therein** are warranted by existing law or by a ~~reasonable~~ **nonfrivolous argument for the** extension or reversal of existing law **or the modification or establishment of regulations.**

II. The Commission Does Not Have Authority to Impose Sanctions for Violation of the Proposed Rule Governing Advocacy Before the Commission

In the August 7th Notice the Commission invited comment on the following, which would be added as subpart 2 in new rule 7829.0250:

If, after notice and an opportunity for comment and reply, the commission determines that subpart 1 [the constraint on advocacy] has been violated, the commission may impose a sanction on any party or participant who violated subpart 1 or is responsible for the violation. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

⁵ See Notes of Advisory Committee on Rules—1993 Amendment, Fed. R. Civ. P. 11.

⁶ Minn. R. of Civil P. 11.02 states: “By presenting to the court (whether by signing, filing, submitting, or *later advocating*) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . .” (Emphasis added.)

⁷ The revisions to the rules proposed by the Commission are set forth as strikethroughs or underlines. The revisions proposed by the MCCA are in bold and consist of double strikethroughs or double underlines.

Thus, in the event the Commission would not regard a party's advocacy as "reasonable," the Commission would be able to impose a sanction.

There is no express statutory authority, however, for the Commission to impose such a sanction. Generally, the Commission has only such authority as has been conferred upon it by statute. *See Senior Citizens Coalition of Northeastern Minnesota v. Minnesota Public Utilities Commission*, 355 N.W.2d 295 (Minn. 1984); *Petition of Minnesota Power for Authority to Change Its Schedule of Rates for Retail Electric Service*, 169 P.U.R.4th 664 (Minn. App. 1996). The authority cited by the Commission Staff for the proposed rule is Minn. Stat. § 216A.05, Subd. 1, which states:

The functions of the commission shall be legislative and quasi-judicial in nature. *It may make such investigations and determinations, hold such hearings, prescribe such rules, and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize. . . .*

(Emphasis added.) The Minnesota legislature is not authorized to impose sanctions regarding the scope of advocacy before it, other than imprisonment for contempt for certain narrowly prescribed acts, and, thus, nor is the Commission.⁸ Moreover, in those instances where the Minnesota legislature has believed the Commission should have authority to issue sanctions, the Minnesota legislature already has expressly provided the Commission with such authority – *i.e.*, to order penalties in certain situations involving the employment of Commissioners, Minn. Stat. § 216A.036, and to order sanctions for certain *ex parte* communications. Minn. Stat. § 216A.037. Therefore, the MCCA respectfully submits that the Commission does not have authority to enact new rule 7829.0250, subp. 2.

⁸ See Minn. Stat. §§ 3.14, 3.15 and 3.151.

III. The Period Applicable to Responses to Motions Should Be Clarified in Proposed New Rule 7829.0410

The Commission Staff proposes that responses to motions be filed within fourteen (14) days. At the same time, however, Commission Staff proposes that parties filing motions advise responding parties that any response must be filed within ten (10) days. This internal inconsistency in proposed new rule 7829.0410 should be clarified to provide for fourteen (14) days in both instances.

IV. The Official Service List for A Proceeding Should Not Be Limited to One Individual Per Party or Participant

The proposed amendments to rule 7829.0700 would require that the official service list for each proceeding be limited to one individual per party or participant. Such an arbitrary limitation is unnecessary and inadvisable. Because notices from the Commission and from parties are sent electronically, there is little or no burden involved in distributing a notice to more than one person representing a party or participant. Moreover, a company should be able to designate more than one contact, so that notice will be effectively conferred when, for example, the primary company contact is on leave because of illness, the birth of a child, death in the family, or other reasons necessitating absences from work. Therefore, the MCCA recommends that notices not be limited as proposed by the Commission Staff.

V. The Applicability of Revised Rule 7892.1300, Subp. 3, Should Be Clarified and a Description of the Impact on the Utility of a Filing Is Unnecessary and Should Not be Required if the Filing is Submitted by a Telephone Utility Not Subject to Rate-of-Return Regulation

Rule 7892.1300 applies to tariff and price list filings. The Commission Staff proposes to delete subpart 4, which addresses “Content of filing not subject to specific filing rules,” and expand subpart 3, addressing “Content of filing subject to specific requirements,” by adding the following:

F. if the contents of the filing are not established by another commission rule, a description of the filing, its impact on rates and services, its impact on the utility and affected ratepayers, and the reasons for the filing.

Because subpart 3 would pertain to filings whose contents are not subject to specific filing rules, as well as to filings whose contents are subject to specific filing requirements, the heading to subpart 3 should reference merely “Content of filing” rather than “Content of Filing subject to specific requirements.”

In addition, there is no reason for subpart 3(F) to require that the filing describe the “impact on the utility” if the utility submitting the filing is a telephone utility not subject to rate-of-return regulation; *i.e.*, if the filing entity is a CLEC, a provider of competitive toll services, or an ILEC whose retail rates are subject to alternative regulation, . In such instances, the Commission has no need to assess the utility’s revenue requirement⁹ and no need to require cost support for the filing; indeed, the MCCA understands that, with respect to those of its members that file tariffs or price lists with the Commission, a description of the “impact on the utility” is not currently required. Accordingly, the MCCA suggests the following change to proposed subpart 3:

F. if the contents of the filing are not established by another commission rule, a description of the filing, its impact on rates and services, its impact on ~~the utility and~~ affected ratepayers, and the reasons for the filing.

CONCLUSION

For the reasons stated herein, the MCCA respectfully requests that the Commission revise the proposed rules consistently with these Comments.

Dated: September 6, 2013

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⁹ See, e.g., Minn. Stat. 237.072(a) (regarding ILECs subject to alternative regulation).