

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

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Commission
Investigation of the Completion of Long- MPUC Docket No.: P-999/CI-12-1329
Distance Calls to Rural Areas in Minnesota

**MINNESOTA CABLE COMMUNICATIONS ASSOCIATION PETITION FOR
RECONSIDERATION OF THE COMMISSION'S JULY 21, 2014 ORDER**

The Minnesota Cable Communications Association (the "MCCA") respectfully requests that the Commission reconsider its July 21, 2014 Order Requiring Interexchange Carriers to Report Call Completion Complaints (herein the "Order") in this proceeding. The Commission's Order lacks a factual foundation for the exercise of its jurisdiction and unlawfully imposes new regulations of general applicability and future effect without following required rulemaking procedures. Each of these reasons is sufficient for the Commission to rescind or substantially modify the portions of its Order affecting originating long distance carriers in Minnesota.

I. Introduction.

Proceeding solely on the basis of sparse anecdotal information and hearing day testimony from one business, testimony that was not subject to cross-examination, the Commission's Order lacks a sufficient factual foundation for its exercise of authority. The Commission acknowledges that its jurisdiction extends only to intrastate interexchange calls, yet the Order requires carriers to investigate "each call completion

complaint they receive to the Commission and the Department on a quarterly basis.”¹
The record of this proceeding does not contain sufficient evidence that there have been or currently are any problems with the completion of intrastate interexchange calls.

In moving forward with its new investigation and reporting regulations, the Commission rejected the recommendation of the service providers participating in this docket. That recommendation was to wait for the FCC’s national reporting requirements to take effect, evaluate the Minnesota-specific results contained in those reports, and use that data to determine whether there is a problem with completion of intrastate calls in Minnesota. In addition, by imposing new regulatory requirements on every interexchange carrier, most of whom were not parties to this proceeding, the Order’s requirements are new rules imposed in violation of the statutory rulemaking process. For these reasons, further explained below, the MCCA petitions the Commission to reconsider its Order.

II. The Commission Lacks Evidence of Call Completion Problems with Intrastate Long Distance Calls in Minnesota.

The Commission readily admits that “issues contributing to rural call completion failures are complex, and may well be beyond the Commission’s jurisdictional capacity to fully resolve.”² Having acknowledged limits to its jurisdiction, one could fairly expect that the Commission would devote particular attention to establishing that there are call completion problems with intrastate long distance calls that merit significant regulatory actions. However, the record is bereft of examples of such problems. Both the Commission and the DOC have the authority to investigate complaints. The Department has been “investigating complaints concerning calls failing to complete to rural

¹ Order, at 6.

² Id., at 6.

Minnesota customers” since December of 2012, without establishing, at least on the record before the Commission, that any of these complaints involve intrastate long distance calls.³ The Order reflects the statements made by representatives of Mattracks, Inc. at the Commission’s hearing on June 26, 2014, concerning alleged effects of dropped calls on its business.

However, Mattracks offered no proof that intrastate calls were dropped nor did the DOC investigate Mattracks’ call issues to determine that intrastate calls were involved. No other party had the opportunity to question Mattracks or examine documentation Mattracks or the DOC may have produced in relation to the purported call dropping problems. Nor is the MCCA aware of any enforcement actions taken by the DOC or the Commission that involve intrastate long distance call completion problems prior to the issuance of the instant Order. The DOC has had ample time and opportunity to establish that at least some of these problems involve intrastate long distance calls, but the DOC has not created a record showing it has done so.

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.

Importantly, for the Commission’s consideration, Midcontinent’s Affidavit indicates that problems brought to its attention are resolved promptly, never to be seen again in that call center. This indicates that carriers do have the ability to resolve call

³ Id. at 2.

completion issues in a prompt and permanent manner. Other than the testimony of Mattracks at the hearing regarding its local service provider's lack of responsiveness to its complaints, the record is void of information of carriers failing to successfully resolve similar issues when brought to their attention.

Whether rural call completion problems in Minnesota involve intrastate long distance calls is a contested issue of material fact. Under Minn. Stat. § 216B.17, subd. 8, the Commission, after making an investigation . . . and holding a hearing, "shall order that a contested case proceeding be conducted under chapter 14" if it "finds that all significant factual issues have not been resolved to its satisfaction." Absent any record to the contrary, the MCCA questions the DOC's factual finding that intrastate long distance rural call completion problems are extant. The Commission cannot logically conclude that all significant factual issues have been resolved when the record contains no evidence of significant call completion problems occurring with intrastate long distance calls.

In sum, the Commission should rescind its Order and either refer the question of whether there are significant intrastate long distance call completion problems to an Administrative Law Judge, or proceed on a case by case basis to investigate rural call completion complaints. It may be that such investigations will generate a sufficient record of intrastate long distance rural call completion problems to provide a reasonable foundation for the Commission to assert jurisdiction as well as a factual basis for further action. The Commission should not, however, conclude on scant evidence that there are significant call completion problems with intrastate long distance calls in Minnesota and

burden all originating long distance providers with new obligations to combat a non-existent intrastate problem.

III. The Commission's Order Constitutes an Unlawful Rulemaking

Minnesota Statutes section 14.02, subd. 4, defines a "rule" as "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Minnesota Statutes section 14.05, subd. 1, requires agencies to follow specific rulemaking procedures when they adopt new rules. The Commission's Order institutes new rules without a rulemaking proceeding in violation of law.⁴

The Commission's Order applies to every originating interexchange carrier operating in Minnesota and consequently is of "general applicability." It not only binds parties to the proceeding, it also binds every originating long distance service provider in Minnesota.⁵ Most providers of long distance services in Minnesota did not participate in this proceeding. The industry participants in this proceeding included five originating long distance carriers and two carrier associations, the MTA and the MCCA. Both the MTA and the MCCA represent local services providers who also provide long distance service. But local service providers are only a minority of the companies who provide long distance services in Minnesota. The Commission's website provides contact

⁴ None of the exceptions to the requirement of rulemaking procedures enumerated in Minn. Stat. § 14.03 apply in this case.

⁵ The Commission has permissibly determined that rulemaking procedures are not required when the actions of only one carrier that is party to a proceeding will be affected by the decision. *See, e.g., In the Matter of a Complaint by the Minnesota Telecom Alliance against Qwest Communications, Inc. regarding Traffic Terminating from Qwest Communications, Inc. Tandem Switches*, Minn. Pub. Utils. Comm'n, Doc. No. P-421/C-04-200 (Jul. 2004) at 8-9, but here the Order affects hundreds of companies. <https://www.edockets.state.mn.us/eAssessment-public/company/searchServiceProvider.action?serviceType=1&sortChar=1&cityOrTship=1>

information for 273 companies that it has authorized to provide long distance service in the state. Consequently, a large majority of the companies most affected by the Commission's new regulations have had no voice in their making.

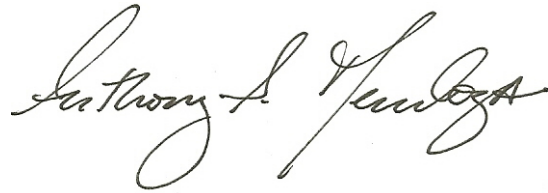
As to the "future effect" aspect of the statutory definition of a rule, as a result of the Order, every originating carrier of long distance services in Minnesota is now subject to multiple new requirements spanning investigation, analysis, and reporting obligations, including any remedial efforts that have been taken with intermediate carriers. Clearly the Order has "future effect" as well as being of "general applicability." As such, the Commission's Order with respect to originating long distance carriers constitutes an impermissible rulemaking and must be rescinded.

IV. Conclusion

The MCCA asks that the Commission reconsider its July 21, 2014 Order and rescind its new regulations over originating long distance interexchange carriers. The Commission has failed to establish that the requirements imposed by its Order are within its jurisdiction as the record lacks evidence of intrastate rural call completion problems. Further, because the Order imposes new regulations that affect all originating intrastate long distance carriers, most of which were not parties to the proceeding, the Order is an unlawful rulemaking. In view of these fatal defects, the Commission should rescind the portions of its Order that apply to originating long distance carriers in Minnesota and limit its efforts to pursuing investigations of rural call completion problems on a case by case basis.

MINNESOTA CABLE
COMMUNICATIONS ASSOCIATION

Dated: July 31, 2014

A handwritten signature in black ink, reading "Anthony S. Mendoza". The signature is written in a cursive style with a large, looping initial "A" and a long, sweeping underline.

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Beverly Jones Heydinger	Chair
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In the Matter of the Commission Investigation
of the Completion of Long-Distance Calls to MPUC Docket No.: P-999/CI-12-1329
Rural Areas in Minnesota

**AFFIDAVIT OF MARY LOHNES, MIDCONTINENT COMMUNICATIONS
IN SUPPORT OF MCCA's PETITION FOR RECONSIDERATION**


Your Affiant, under oath, states as follows:

1. I am the Regulatory Affairs Manager for Midcontinent Communications, a certificated communications provider within the State of Minnesota.
2. Midcontinent Communications primarily provides services to rural communities in the States of Minnesota, North Dakota, and South Dakota.
3. As part of my employment with Midcontinent Communications, I investigate all types of telephone issues brought to Midcontinent's attention by customers and non-customers including call completion issues.
4. I have reviewed the files of Midcontinent searching for call completion issues in Minnesota, including both calls originating from or terminating to a Minnesota telephone number. My review went back to January 1, 2011. I found no call completion issues or complaints in Minnesota for Midcontinent during this time-frame.
5. In my review, I found four total call completion issues in other states with Midcontinent since 2011. All four issues were investigated and corrected in a timely manner.
6. During investigation of the call completion issues, resolution was obtained with the help of the underlying carrier. That underlying carrier had its own underlying carriers. These "underlying-underlying" sub-carriers were (and still are) unknown to Midcontinent. In working together, Midcontinent and the initial underlying carrier resolved the issue and,

when necessary, re-routed the call path to the complainants rate center. That re-route resulted in no further complaints concerning that customer or rate center.

7. I believe that simply disqualifying an underlying carrier which may have more than one call completion issue would not resolve the problem in that the underlying-underlying sub-carrier would not be identified. As can be seen with Midcontinent's experience, when these infrequent issues do come to its attention, they are identified, investigated, and permanently resolved.

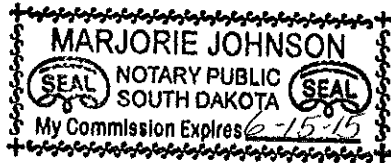
Dated this 29th day of July, 2014.

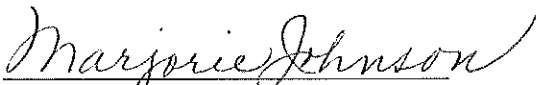


Mary Lohnes

Subscribed and Sworn to before me, a Notary Public, this 29th day of July, 2014.

(SEAL)





Notary Public

My Commission Expires: June 15, 2015

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In the Matter of the Commission Investigation
of the Completion of Long-Distance Calls to Rural Areas in Minnesota MPUC Docket No.: P-999/CI-12-1329

**AFFIDAVIT OF WENDA JACKSON, COMCAST IN SUPPORT OF MCCA's
PETITION FOR RECONSIDERATION**

My name is Wenda Jackson. I am employed by Comcast as the Supervisor of Executive Customer Relations for the Twin Cities Region. My office is located at 10 River Park Plaza, St. Paul, MN, 55107.

I reviewed a report created by Comcast's Business Support and Analytics team of complaint tickets created by Comcast's customer service agents from customers in the Twin Cities market from July 2013 to July 2014.

Based on a careful review of any complaints that referenced call degradation, or an inability to complete outbound calls or receive inbound calls, I determined that none of the complaints in the report were due to the customer's inability to complete an intrastate call to a rural exchange or receive an intrastate call in a rural exchange.

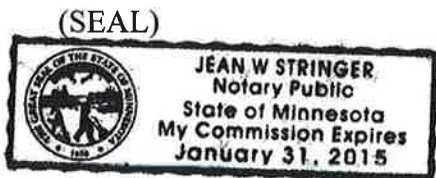
I have no knowledge of complaints to Comcast's customer service agents regarding Comcast Xfinity Voice customers having trouble completing or receiving intrastate calls in rural exchanges in the last year.


Dated this 30 day of July, 2014.



Wenda Jackson

Subscribed and Sworn to before me, a Notary Public, this 30 day of July, 2014.





Notary Public
My Commission Expires:
1-31-15