

**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

Possible Amendment to Rules Concerning
White Pages Directory Publication and Distribution MPUC Docket No.: P-999/R-13-459

**REPLY COMMENTS OF MINNESOTA CABLE COMMUNICATIONS
ASSOCIATION**

The Minnesota Cable Communications Association (the “MCCA”) appreciates the opportunity to submit reply comments regarding the revised draft rules published by the Commission in its June 10, 2014 Notice of Comment Period on Possible Rule Amendments. The MCCA continues to advocate its positions in its Comments filed July 31, 2014. However, the MCCA would be agnostic on the question of whether the Commission should continue to require LECs to publish directories, provided certain conditions, discussed below, are met. And while MCCA believes a move toward electronic directories as a default publication format is advisable, the MCCA’s primary concern is that the Commission assess the questions presented in this docket in the context of the requirement that local service providers must cooperate in order for complete directories to be assembled and made accessible on-line or be printed and physically distributed.

**The First Amendment Argument Does Not Provide ILECs a Right to
Discriminate Against Competitive Local Service Providers.**

The Minnesota Telecom Alliance (MTA) urges the Commission to eliminate directory publication requirements. The MTA argues Commission regulations should be limited to prescribing required directory content. The MTA cites *Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952 (9th Cir. 2012) for the proposition that the First Amendment bars the Commission from prohibiting local service providers from physically delivering directories.¹ While MCCA takes no position on this constitutional question, should the Commission view MTA’s argument favorably, it is important for the Commission not to stretch MTA’s First Amendment argument too far. The *Dex* case involved the City of Seattle’s ordinance regulating directory distribution. It did not address the authority of the Washington Utilities and Transportation Commission to establish and enforce requirements prohibiting discrimination by incumbent local exchange carriers (ILECs) against competitive local service providers with respect to directory publication. Courts have upheld directory regulations designed to prevent discrimination by ILECs against competitive local service providers (CLECs). *See, e.g. Bellsouth Adver. & Publ. Corp. v. Tenn. Regulatory Auth.*, 79 S.W. 3d 506, 513-15 (Tenn. 2002) (requiring ILEC to publish competitors’ names on directory cover); *U.S. West Communications, Inc. v. Hix*, 93 F.Supp.2d. 1115, 1132 (D. Colo. 2000)(requiring ILEC to publish the listings of competitive providers just as it publishes its own customer listings).

If Directories Are Required, the Rules Should Ensure that Subscribers Can Access Complete Directories Which Include Listings of All Local Service Providers and that ILECs Engage in a Non-discriminatory Manner with CLECs for Customer Listings to be Published.

There is no dispute in the record of this proceeding that directories should contain the listings of all local service customers in a specific area. A directory is “complete” if it

¹ *MTA Initial Comments at 2-3.*

contains listings for all local service customers in a specific area, regardless of their provider. Nonetheless, the draft rules and the comments of parties other than the MCCA, do not provide a framework for accomplishing the cooperation among local service providers necessarily required to assemble complete directories.

Federal Communications Commission (“FCC”) rules do not require local exchange carriers to publish and deliver directories, but if an ILEC does so, it must include its competitors’ listings in a non-discriminatory manner. 47 C.F.R. § 51.217. Courts have upheld the FCC’s interpretation of its rules to require ILECs to publish directory listings of CLEC customers on equal terms and conditions with their own customers.²

In contrast to FCC rules, Minnesota Rules require local service providers to arrange for the publication and delivery directories, but they have not addressed non-discrimination issues with respect to directory content. In updating the directory rules, the Commission should explicitly recognize the need for coordination among local service providers to assemble complete directories and ensure that such coordination occurs in a fair and reasonable way. In its Comments on the proposed revised rules, the MCCA proposed amendments to the rules to this end.

If Directories Are Not Required, Then Consumers Should Be Advised of the Impact of Rule Changes.

If the Commission decides to eliminate directory publication requirements for ILECs, the Commission should also adopt measures that inform and prepare subscribers for any changes they will experience as a result of new directory rules. Many customers will expect a white pages directory. And to the extent they will no longer receive one,

² *U.S. West Communications, Inc. v. Hix*, 93 F.Supp 2d. 1115, 1133 (D. Colo. 2000).

the Commission should take reasonable and adequate measures to inform customers if they will no longer be receiving a white pages directory.

Conclusion

The MCCA supports the Commission's effort to update the directory rules and encourages the Commission to do so in a manner that promotes and sustains competition in the local exchange market.

Dated: August 11, 2011

MINNESOTA CABLE
COMMUNICATIONS ASSOCIATION

A handwritten signature in cursive script, reading "Anthony S. Mendoza".

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