

**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 Concerning  
White Pages Directory Publication and  
Distribution

MPUC Docket No.: P-999/R-13-459

**COMMENTS OF MINNESOTA CABLE COMMUNICATIONS ASSOCIATION**

Comes now the Minnesota Cable Communications Association (the "MCCA") and, pursuant to the Public Utilities Commission's (the "Commission's") Request for Comments – Possible Amendment to Rules Concerning White Pages Directory Publication and Distribution, submits these Comments in the above-captioned proceeding. The MCCA represents Minnesota's cable communications companies who provide video, voice and high-speed data services to approximately 900,000 Minnesota residents pursuant to franchises issued in over 600 communities throughout Minnesota. For over thirty (30) years, the MCCA has played a leading role in advocating the rights of its members, including, since the opening of Minnesota's local exchange market to competition, representing the interests of members' telephone operating subsidiaries before the Commission on public policy matters affecting telecommunications in Minnesota.

The MCCA appreciates the opportunity the Commission has provided for commenting on whether Minnesota Rules 7810.2900, 7811.0600, and 7812.0600 should be changed. These rules

set out a local exchange carrier's obligations with respect to white pages directory publication and delivery requirements. The white pages include listings for all subscribers, both residential and business, except for those customers who have requested not to be listed, together with other information including emergency call instruction, certain government services listings, listings for utility service calls, and the like. Currently, local exchange service is defined by rule to include the physical delivery of a white pages directory.

The time is ripe to question the assumptions underlying the current directory publication and delivery requirements. MCCA members report that printed white page directories no longer appear to be the principal way many people obtain listing information. Electronic directories may be more easily searched and are capable of more frequent updates than physical directories. They are less expensive to produce and more environmentally friendly than printed directories. Although what information exists concerning consumers' expectations is largely anecdotal, it appears many subscribers prefer not to receive physical directories, particularly residential white pages directories. White page directories of residential subscribers are also increasingly incomplete as growing numbers of households and individuals drop their landline connections and use cell phones exclusively. Cell phone listings are not included in white page directories. It is tremendously inefficient to publish and deliver directories that do not have listings for all residents in an area to recipients who will not use them and would prefer not to have them. The current situation can indeed be improved upon.

**I. There Is No Longer a Need to Mandate Delivery of Physical White Pages Directories to Residential and Business Phone Customers.**

As discussed above, MCCA members believe that growing numbers of both residential and business customers have little use for a physical white pages directory. Universal access to high speed broadband service in Minnesota offers people the possibility of finding directory

information on-line more quickly and easily than searching through a book. In addition, directory listings do not include cell phone listings. Fewer people will bother reaching for a physical directory when it may not contain the desired listing.

Nowhere in Minnesota Statutes is there a specific requirement that telephone service providers must provide their subscribers with a directory, much less a printed one. Minnesota Rule 7810.2900 defines the information directories must contain and cites Minn. Stat. § 237.10 as its authority. Section 237.10 establishes the duty of the commission “to prescribe uniform rules and classifications pertaining to the conduct of intrastate telephone business . . . [and] use its best endeavors toward establishing uniformity in practice in all matters pertaining to regulation of the business of telephone companies between the federal government and state government of this and adjacent states.” Rules 7811.0600 and 7812.0600 state that the basic local service that a carrier is required to provide includes the annual publication and delivery of a white pages directory. These rules cite Minn. Stat. § 237.16 subd. 8 as their authority. This statute directs the Commission to adopt rules to provide “high-quality telephone services throughout the state” and to “prescribe standards for quality of service.” Federal law does not mandate that carriers provide directories to their subscribers, although it does impose the obligation of non-discriminatory treatment toward the directory listings of other carriers. Thus the Commission has a wide range of options before it, and flexibility as it looks toward the future – it may choose to change or discontinue altogether directory publication and delivery requirements.

Given the ability of most Minnesotans to access directory listings electronically, the number of wireless only customers, and the fact that neither Congress nor the Minnesota Legislature has ever mandated white pages directories, it is increasingly unreasonable for

regulatory authorities to require physical white pages directories to be automatically delivered to every business and residential customer.

As long as regulations require non-discriminatory treatment of customer listings and as long as the basic inputs to directories – the listings – are available at reasonable cost to anyone who wants to publish a directory, why not allow market mechanisms to work out how many directories, in various formats, are available to residential and business customers who want them? Where there are multiple service providers, which is the case for all of the areas served by our members, consumers can choose among different offerings, and select a provider on the basis of the directory format offered if that is important to them.

## **II. Any Default Publication Format for White Pages Directories Should Be Electronic.**

If the Commission decides to move forward with rule changes at this time, the MCCA regards electronic publication as the least burdensome, least wasteful, and most environmentally-friendly publication format that reasonably meets the needs of most subscribers. And in the not so distant future, it appears to be the way virtually all consumers will access a white pages telephone directory. For these reasons, any default publication format the Commission may require for white pages directories should be electronic. Minnesota has achieved nearly universal broadband penetration in some form, enabling many Minnesotans to utilize web based electronic white pages directories. However, MCCA recognizes that some consumers still do not have access to electronic white pages directories. The extent of customers who do not have access to electronic directories is a question that could be delegated to a white pages advisory committee for study (discussed further below).

### **III. If Directories Are Available Electronically, Customers Should Only Receive a Physical White Pages Directory Upon Request.**

Delivering physical white pages directories to subscribers that do not want them is inefficient and wasteful. Service providers have a significant incentive to communicate to their subscribers about how to obtain a printed white pages directory and it should be left to each provider to determine how best to do so. However, ideas for the most conspicuous and effective ways to advertise information to customers explaining how they can order a print directory could also be delegated to the white pages advisory committee.

### **IV. As MCCA Has Advocated in Previous Dockets, the Commission Should Ensure that ILECs Accept Electronic Files of Competitors' Customer Listing Data and that ILECs Not Use Their Position as White Pages Publishers to Market to Competitors' Customers.**

Of crucial importance to the MCCA members is that when they rely upon another carrier to provide directory publication and delivery functions, they can be assured that the carrier does not take competitive retail advantage from the process of providing the wholesale service. The nondiscrimination principle endorsed in the FCC's rules and orders with respect to directory listings does not support the use of directory publication and delivery processes to market telecommunications services. The Commission should exercise care that no action occurs that undermines this principle, as it is critical to establishing and maintaining a fair competitive marketplace.

47 C.F.R. § 51.217(b) sets out the general rule that a "local exchange carrier (LEC) that provides . . . directory listings to its customers . . . shall permit competing providers of telephone exchange services . . . to have nondiscriminatory access to that service or feature . . . ." That section further requires that a "LEC shall accept the listings of those customers served by competing providers for inclusion in its directory assistance/operator services databases." Consequently, when, for example, CenturyLink or Frontier as incumbent local exchange carriers,

publish and deliver white page directories to their subscribers, the FCC has required them to accept the subscriber listings of competitors for publication and distribution on equal terms with the ILEC's own listings. This practice has indeed been the case in Minnesota and is reflected in our members' current interconnection agreements. In *U.S. West Communications, Inc. v. Hix*, a federal district court in Colorado explained why the FCC has insisted that this be the case. The court in *Hix* underscored that FCC rules require ILECs to place a competitor's customer listing information in their directories in a non-discriminatory manner.<sup>1</sup> The court found that if competitive phone providers were denied publication of directory listings in ILEC phone books on terms and conditions equal to those provided to ILEC customers, at least two discriminatory effects could occur. First, ILECs could deny publication to competitors' customers. This denial could become a critical marketing or sales tool used to persuade a potential competitor's customer to choose the ILEC over a competitor. Second, each competitor would have to publish a separate directory for its customers. Every telecommunications consumer would need to acquire a number of phone books equal to the number of telecommunications providers in order to obtain a comprehensive directory. The court found such a result would clearly discriminate against competitors in favor of the ILEC since consumers clearly would prefer to have all telephone numbers in one source. Second, if the ILEC did not have a duty to publish directory listings on behalf of competitors' customers on equal terms and conditions, the ILEC would be free to charge competitors' customers higher publication rates. The court also rejected the claim that 47 U.S.C. § 251(b)(3) did not apply because U S West did not own or control the directory publisher.<sup>2</sup> Instead, the court found that U S West was obligated under Section 251(b)(3) to

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<sup>1</sup> 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000).

<sup>2</sup> *Id.* at 1131-1133.

“actually place a customer’s listing information in” the directories it causes to be published “on terms and conditions that are equal to those provided to [its] own customers.”<sup>3</sup>

MCCA has successfully argued in past dockets for competitive protections when ILECs have sought variances from the rule to provide printed white pages directories to customers.<sup>4</sup> The Commission should require local exchange carriers who arrange for the publishing and delivery of printed directories to accept electronic files of customers desiring printed directories from their competitors. However, to the extent that competitive carriers use the incumbent’s wholesale services to provide printed directories to their retail customers, the directory request and delivery process cannot, consistent with federal regulations, be used for the marketing of telecommunications services.

**V. The Commission Should Appoint an Advisory Committee During Any Transition Period.**

The processes by which directories are currently produced require careful coordination between various parties to ensure that the many details involved are handled properly and expeditiously. The MCCA recommends that the Commission appoint an advisory committee consisting of directory publishing experts from both incumbent and competitive providers, along with Commission and Department of Commerce staff. It is important that any change to the current rules be workable, efficient, and competitively neutral, this latter point as required by Minn. Stat. § 237.011 (as the Commission “executes its regulatory duties,” one of its goals should be “(4) encouraging fair and reasonable competition for local exchange service in a

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<sup>3</sup> *Id.* at 1132.

<sup>4</sup> See MCCA Comments in *Petition of Frontier Communications of Minnesota, Inc. and Citizens Telecommunications Company of Minnesota, for a Waiver of Rule 7810.2900 Regarding the Distribution of Telephone Directories*, P-405/AM-12-140 (May 15, 2012); *Petition of Dex Media East, Inc. for a Variance of Rules 7810.2900 and 7812.0600 Regarding the Distribution of Printed Residential White Pages Directory to All Customers Served by CenturyLink in the State of Minnesota*, P-405/AM12-1236 (Jan. 7, 2013 and Jan. 31, 2013).

competitively neutral regulatory manner”). Looking to such an advisory committee for guidance will help to focus the Commission’s efforts on the practical and competitive issues involved in implementing specific rule changes. In the event the Commission chooses to form a committee, the MCCA membership will participate.

The advisory committee should be charged with eliminating uncertainty about the likely consequences of possible rule changes. Information that is Minnesota-specific about white pages delivery preferences could be helpful to inform the advisory committee’s discussion, especially any marked differences in preferences between rural and urban areas.

Further, the Commission should charge the committee with studying threshold questions with the aim of trying to find a consensus vision for the future of white pages directory services in Minnesota. For example, in Minnesota today Frontier and Qwest handle the directory delivery obligations of competitive providers. From the standpoint of directory users, it is surely desirable to maintain the current system whereby they receive one directory that is as comprehensive as possible rather than having to arrange to receive a directory from each company serving the area. As stated, the MCCA’s position is that federal law, as discussed above, requires incumbent carriers to publish the listings of competitive providers. The effect of rule changes or eliminations is made more uncertain by the fact that interconnection agreements between carriers regarding directory publication and delivery were established to comply with current rules. On information and belief, the majority of interconnection agreements between competitive providers and Frontier or Qwest in Minnesota are in evergreen status, meaning that either party under the agreement has the right to initiate negotiations over new terms and conditions. The Commission should consider how the interplay between administrative rules and intercompany negotiations will be resolved in the future. Rules that are ostensibly fair to all



parties could have anticompetitive effects. For example, if ILECs were relieved of responsibilities under interconnection agreements with competitive providers to publish white pages directories, under current MPUC rules, and arguably under the draft rules, ILECs could take the position that every competitive carrier serving a portion of the metro area would have to publish and deliver directories for the competitive carrier's customers, and perhaps for customers of other carriers serving any part of the metro area. The burden of compliance with such a rule would be far more onerous for competitive carriers (who are not in the publishing and distribution business) to fulfill than for incumbents. It would be useful for the advisory committee to explore whether companies could voluntarily agree to cooperate to produce more comprehensive rather than less comprehensive directories. The Commission should consider following Colorado's lead and implement a rule that places responsibility of publishing a comprehensive white page directory on the incumbent local exchange carrier. *See* Rule 4 C.C.R. 723-2-2504(1).<sup>5</sup> MCCA has discussed above several other tasks that could be delegated to an advisory committee for study.

## **VI. Conclusion.**

MCCA members urge the Commission to eliminate the requirement that local exchange service providers must provide a printed white pages directory to each subscriber. The Commission should continue to support federal protections that ensure nondiscrimination by ILECs providing wholesale directory listing services to competitive providers, and to protect against the anti-competitive marketing of telecommunications by ILECs by virtue of their position as wholesale service providers. MCCA supports appointing an advisory committee to

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<sup>5</sup> For an informative analysis of many of the issues concerned in this rulemaking, *see also*, "In the Matter of the Proposed Amendments to Rules Regulating Telecommunications providers, Services and Products, 4 Code of Colorado Regulations 723-2, Section 2307," Recommended Decision of Administrative Law Judge Mana L. Jennings-Fader Adopting Amendments to Rule 4 CCR 723-2-2307 and to Rule 4 CCR 723-2-2504, 2013 Colo. PUC LEXIS 989 (Sept. 27, 2013).

further study potential changes to the white pages directory listing rules. If the Commission determines an advisory committee is unnecessary and chooses to require local exchange carriers to provide directories, any default format should be electronic publication. Physical directories should only be provided to customers who affirmatively request them. The Commission should ensure that ILECs accept electronic files of competitors' customer listing data and that ILECs not use their position to market to competitors' customers.

MINNESOTA CABLE COMMUNICATIONS  
ASSOCIATION

Dated: December 6, 2013

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

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