

**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

COMMENTS OF MINNESOTA CABLE COMMUNICATIONS ASSOCIATION

The Minnesota Cable Communications Association (the “MCCA”) appreciates the opportunity to submit 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 has attached a proposed mark-up of the Commission’s revised draft rules (see Attachment 1). The comments below explain the MCCA’s reasoning behind the proposed revisions. For purposes of clarity, in its comments below, MCCA refers to the headings and numbering used in the Commission’s revised draft rules. However, Attachment 1 provides mark-ups showing proposed renumbered rules.

Section 7810.0100 DEFINITIONS.

In general, the Commission’s revised draft rules incorporate and utilize terms defined in Rule 7810.0100. Since Rule Chapter 7810 currently includes Rules 7810.2900 through 7810.3100 that concern directories, the draft rules begin with making changes to this Chapter and conclude by harmonizing Rule Chapters 7811 and 7812 that deal with Local Service Providers. While this approach can be made to work, on closer

examination, several concerns suggest a better method for proceeding is to amend Rule Chapters 7811 and 7812. For ease of implementation rather than to further any particular policy goals, the MCCA recommends that the proposed draft rules be renumbered and incorporated into Rule Chapters 7811 and 7812.

A close comparison of definitions of terms in Rule Chapter 7810 with Chapters 7811 and 7812 reveals that several of the terms used in the revised draft Rule 7810.0100 are defined differently than they are in Rules 7811.0100 and 7812.0100 and that these differences are material. In addition, and as applied to regulations for white pages directories, these definitions are at odds with the reality of how local service providers satisfy their directory related obligations.

Rule 7810 concerns “telephone utilities” and their provision of “telecommunication services.” Accordingly, 7810 governs local and long distance service providers. Rules 7811 and 7812 are narrower in scope and deal specifically with “local service providers” and the provision of local service. To address this issue, Commission staff has revised draft rule 7810.0100, Subp. 26a to include the definition of a “local service provider” as in Chapter 7811/7812.0100, Subp. 34. However, this is only a partial solution as other significant differences between the definitions provided in 7810.0100 versus 7811/7812.0100 remain.

Importantly, while the terms “customer” and “local calling area” are both defined in Rule 7810.0100 and in Rules 7811/7812.0100, the definitions differ. Rule 7810.0100 defines “customer” as “any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc, provided with telecommunications service by any telephone utility” and “local calling area” as “the area within which

telecommunication service is furnished [to] customers under a specific schedule or exchange rates.” Rules 7811/7812.0100 define “customer” as “a person who has contracted with a local service provider for retail telecommunications service and has been billed by or on behalf of that provider for that service in the person’s name or in the name of an agent or representative designated by the customer” and “local calling area” as “the area within which calls originate and terminate without a toll charge.” One difference between the definitions of “customer” is that under 7810.0100, every recipient of telecommunications service, which includes not just local service but also intrastate long distance, and interstate long distance, is a “customer.” The definition of “customer” under 7811/7812.0100 is narrower and encompasses only customers of local service. The provision of white pages residential directories should be an obligation of local service providers to their local service subscribers and not an obligation of long distance service providers to their customers.

Similarly, the definition of “local calling area” under 7810.0100 is also broader than the definition provided under 7811/7812.0100. The latter definition is limited to toll free areas (*i.e.*, “without a toll charge”) and the former could include not only toll free areas, but any area served under a “specific schedule or exchange rates” which may not be free of tolls. The MCCA believes that local service customers expect their directories to provide only listings that may be called toll free.

Today, the publication and distribution of white pages directories is a service that requires the cooperation of all the local service providers serving a given area. Pursuant to Commission approved interconnection agreements, competitive local service providers deliver their listings to the incumbent local exchange carrier which then arranges for the

publication and delivery of white page directories. Because directories publication and delivery obligations should pertain to local service providers only, the MCCA proposes that the Commission renumber draft rules 7810.0100, Subp. 11a, .2900 and .2950 so as to be part of Chapters 7811 and 7812. Draft rule 7810.0100, Subp. 26a could then be deleted. The definitions in Chapter 7811/7812 simply make more sense as applied to directory issues than definitions from Rule 7810.0100.

The MCCA supports the Commission's definition of a "complete directory" although MCCA proposes that this draft rule be renumbered as Rule 7811/7812.0100, Subp. 12a. Whether the Commission agrees with the MCCA's proposed renumbering, it is important to make it clear that a "complete directory" contains listings for every local service customer and not just the customers served by a given local service provider. It would be a disservice to customers if the Commission were to permit local service providers to publish and deliver directories containing only listings for their own customers. Customers should not be forced to search through multiple directories to find a listing. In addition to inconveniencing customers, such an arrangement would provide a reason for customers to prefer a provider that offers the larger, more comprehensive directory. Minnesota Statutes section 237.011, subd. 4, identifies "encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner" as a goal the Commission should consider as it "executes its regulatory duties with respect to telecommunications services." The Commission's rules should not create conditions that influence customers to prefer one provider over another.

7810.2900 FORMAT, CONTENT AND DISTRIBUTION OF DIRECTORIES.

In addition to renumbering this rule to be a part of Chapters 7811/7812, MCCA believes the word “provide” should be replaced with the words “arrange to make available.” This change reflects the reality that most competitive local service providers do not themselves publish or distribute white pages directories. Using the words “arrange to make available” would reflect the fact that competitive local service providers comply with the Commission’s white pages regulations by entering into contractual agreements with incumbent local exchange carriers (“ILECs”) or third party directory publishing companies. MCCA believes the word “provide” could be construed by some to mean that each local service provider must itself physically publish and deliver white pages directories to customers. If so, this is not the way the marketplace works today and is not the way the marketplace will work in the future. Use of the words “arrange to make available” provides the flexibility that local service providers need to reflect the way in which they comply with the Commission’s white pages publication and delivery requirements.

MCCA further proposes that the draft rule be clarified to state that directories need only include listings for local service provider customers (as those terms are defined in Minn. R. 7811/7812.0100). Moreover, MCCA is not clear what the words “served by that directory” in the second sentence of the draft rule mean or modify. They seem unnecessary given the draft rule’s requirement that each customer receive a “complete directory.” MCCA suggests these words be deleted from the draft.

In draft subpart 2.C and 3.C, MCCA suggests the term “telephone company” be replaced with “local service provider.” The term “telephone company” has a distinct meaning under Minnesota Statutes 237.01 which only includes incumbent local telephone

companies. MCCA proposes that directories include the office location of not just ILECs, but also competitive local service providers.

7810.2950 DIRECTORIES: CUSTOMER OPTION.

As with the previous draft rule, MCCA proposes that this rule be renumbered to be a part of Chapters 7811/7812. In subpart 1 of the draft rule, MCCA proposes revisions to again reflect the reality of how competitive local service providers comply with the white pages directory publication and delivery requirements. MCCA recommends the words “publish,” “distribute,” and “deliver,” be replaced with the phrases “arrange for publication,” “arrange for distribution,” and “arrange for delivery.” As with draft rule 7810.2900, MCCA recommends the word “provide” be replaced with “arrange to make available to”

Regarding subpart A of the draft rule 7810.2950, MCCA believes that this provision should reflect a beginning presumption that most customers will receive or otherwise have access to an electronic version of the white pages directory, and that the customer must be afforded the opportunity to receive a printed directory. MCCA believes such presumption is consistent with the goal stated by many parties in this docket to reduce the wasteful effects of unused and unwanted white pages phone books. Under the Commission’s draft rules, all customers must be provided an opportunity to receive a printed directory, a requirement that MCCA supports.

MCCA suggests that subpart B of the rule be deleted entirely. As drafted, subpart B implies that a customer can change his/her preference more frequently than when updated print directories are issued. Thus, for example, the day before a printed directory is to be delivered to a customer’s home, under the rule as drafted, a customer could

switch preferences, and it would be very likely that the local service provider would not be able to honor the customer's requested format choice. This issue is of particular concern to competitive local service providers who are one step removed from the LEC/publisher relationship and who must process all customer change orders through the LEC who in turn passes this information on to the publisher. With draft subpart B deleted, under subpart C customers still would be able to change their format preference as frequently as updated printed directories are issued. This is a more practical requirement that can be more easily implemented by competitive local service providers.

Under draft subpart D, MCCA suggests that a carrier be allowed to request a customer's telephone number in order to request a printed copy of a white pages directory. A customer's telephone number may be necessary for some carriers to identify the service location of the requesting customer. MCCA further suggests that the phrase "or contained on a portable physical medium" is confusing given the draft rule's use of only two format descriptions elsewhere – electronic and printed.

MCCA believes two additional subparts should be added to the draft rule as well. Subpart F would, consistent with earlier MCCA advocacy positions in this docket, prohibit any ILEC, ILEC affiliate, or its white pages publisher from marketing telecommunications services to their competitors' customers who are calling regarding a white pages directory issue.¹ Removing the requirement to deliver a printed directory to every customer should not be permitted to have the unintended consequence of giving a marketing advantage to ILECs. In addition, MCCA proposes that a subpart G be added to the draft rule, requiring ILECs to accept electronic files from competitor local service

¹ See *In re Possible Amendments to Rules Concerning White Pages Directory Publication and Distribution*, MCCA Comments at 5-6 (Dec. 6, 2013).

providers passing along the requests of their customers for printed directories or changing their preferred delivery format.² This proposed rule change is also consistent with earlier MCCA advocacy in this docket³ and more importantly, it is consistent with “encouraging fair and reasonable competition for local exchange service in a competitively neutral manner.” Minn. Stat. § 237.011, subd. 4.

**7811/7812.0630 CUSTOMER LISTINGS - NONDISCRIMINATION.
[MCCA Proposed New Rule]**

MCCA suggests a new rule be added to detail an ILEC’s federal obligation to allow competitive local service providers to include their customer listing information in the same directories as the ILEC’s customers. This language is consistent with earlier MCCA advocacy in this docket.⁴ These suggested provisions reflect current federal law, and the concepts are incorporated into many MCCA member interconnection agreements. However, because many of these interconnection agreements are in “evergreen” status, negotiating interconnection agreement language related to white pages directory listings with ILECs could become much more difficult than necessary if ground rules for Minnesota are not established as a matter of rule. Federal law could also change in the future. This docket therefore provides an opportunity for the Commission to permanently codify a pro-competitive policy in accordance with Minn. Stat. § 237.011, subd. 4, establishing under Minnesota law the principle of non-discrimination in an ILEC’s dealings with competitive local service providers with respect to white pages listings

7811/7812.0600 BASIC LOCAL SERVICE REQUIREMENTS.

² *Id.*, at p. 7.

³ *Id.*

⁴ *Id.* at p. 6-7.

With respect to draft subpart F, MCCA's understanding of the phrase "and, upon a customer request and in the customer's preferred format, one copy of any other directory within the local calling area" would mean that each local service provider would not only be required to provide a "complete directory" for customers in its own local service area, but would also be required to provide a copy of a complete directory from another local service provider's calling area. For example, Mediacom, serving a customer in Mound, where Frontier/Citizens is the ILEC, would, upon a customer's request, have to provide a complete directory for Rosemount, where CenturyLink is the ILEC. This could mean that Mediacom would be required to provide a complete printed directory for Rosemount. And depending on how Citizens/Frontier complies with the "complete directory" requirement in Rosemount, the Mediacom customer in Mound may or may not get the desired directory. The rationale for such a policy is unclear. And given the technological capabilities available today for searching and obtaining customer listings on-line as well as the shortcomings of printed directories identified by many parties commenting on this docket, it seems unnecessary and arbitrary to require local service providers to provide complete directories for geographic areas that they do not serve or which are not part of their local calling area. MCCA believes this requirement could result in customer frustration and impose unnecessary costs on local service providers while providing little if any benefit to consumers.

Conclusion

In summary, MCCA supports revising the white pages directory rules to help reduce waste and to reflect the ready availability of directory listing information on-line. The Commission's decision to move forward with a rulemaking on this issue presents it

with a rare opportunity to clarify and adapt the new rules to reflect the realities of today's competitive marketplace. MCCA believes the additional changes it has outlined in Attachment 1 accomplish that goal.

Dated: July 31, 2014

MINNESOTA CABLE
COMMUNICATIONS ASSOCIATION

A handwritten signature in cursive script, appearing to read "Anthony S. Mendoza".

Anthony S. Mendoza, Esq.
J. Jeffery Oxley, Esq.
Mendoza Law Office, LLC
790 S. Cleveland Ave., Ste. 206
St. Paul, MN 55116
(651) 340-8884
tony@mendozalawoffice.com

ATTACHMENT 1 – PROPOSED MCCA REVISIONS TO MPUC REVISED DRAFT RULES

REVISED DRAFT

78110.0100 DEFINITIONS.

Subp. 124a. Complete Directory.

“Complete directory” means a directory that includes the information compiled under Rule 78110.06102900, subpart 1, whether printed, electronically published, or some combination thereof. For example, a complete directory may comprise a printed subset of exchanges in a local calling area relevant to customers in a particular geographic area or community of interest, and publication of the remainder of the local calling area either electronically or in separate printed volumes.

Subp. 26a. Local Service Provider.

~~“Local Service Provider” or “LSP” means a telephone company or telecommunications carrier providing local service in Minnesota pursuant to a certificate of authority granted by the commission. Local service provider includes both local exchange carriers and competitive local exchange carriers.~~

7812.0100 DEFINITIONS.

Subp. 12a. Complete Directory.

“Complete directory” means a directory that includes the information compiled under Rule 7812.0610, subpart 1, whether printed, electronically published, or some combination thereof. For example, a complete directory may comprise a printed subset of exchanges in a local calling area relevant to customers in a particular geographic area or community of interest, and publication of the remainder of the local calling area either electronically or in separate printed volumes.

78110.2900-0610 FORMAT, CONTENT AND DISTRIBUTION OF DIRECTORIES.

Subpart 1. Basic Requirements.

Telephone directories shall be regularly compiled and shall contain ~~each customer’s~~the name, telephone number, and, if practicable, address of all LSP customers within a local calling area, except they shall not contain non-published telephone numbers. Upon issuance, a local service provider shall arrange to provide-make available to all its customers ~~serviced by that directory at every service address~~—a complete directory consistent with the customer option provisions of Rule 78110.06202950. Upon commission request, a local service provider shall furnish to the commission a copy of each directory issued, whether printed or electronic.

Subp. 2. Printed Directories.

Printed directories shall:

- A. display on the front cover the name of the local service provider, the area included in the directory, and the year and month of issue;
- B. display in the front portion of the directory information pertaining to emergency calls, including information for police and fire departments; and
- C. contain instructions, appropriate to the area served by the directory, concerning placing local and long distance calls, calls to repair and directory assistance services, calls to local, state, and federal government offices, and the location of ~~telephone company~~LSP business offices;

Subp. 3. Electronically Published Directories.

Any electronic directory to which a Local Service Provider directs its customers shall comply with the provisions of parts 78110.29000610, subpart 1 and 78110.29500620. Electronically published directories shall:

- A. display the name of the local service provider;
- B. make available information pertaining to emergency calls, including information for police and fire departments;
- C. make available instructions concerning placing local and long distance calls, calls to repair and directory assistance services, calls to local, state, and federal government offices, and the location of ~~telephone company~~LSP business offices; and
- D. be prominently displayed on, and accessible to customers from, the company’s website;

7812.0610 FORMAT, CONTENT AND DISTRIBUTION OF DIRECTORIES.

Subpart 1. Basic Requirements.

Telephone directories shall be regularly compiled and shall contain the name, telephone number, and, if practicable, address of all LSP customers within a local calling area, except they shall not contain non-published telephone numbers. Upon issuance, a local service provider shall make available to its customers at every service address a complete directory consistent with the customer option provisions of Rule 7812.0620. Upon commission request, a local service provider shall furnish to the commission a copy of each directory issued, whether printed or electronic.

Subp. 2. Printed Directories.

Printed directories shall:

- A. display on the front cover the name of the local service provider, the area included in the directory, and the year and month of issue;
- B. display in the front portion of the directory information pertaining to emergency calls, including information for police and fire departments; and
- C. contain instructions, appropriate to the area served by the directory, concerning placing local and long distance calls, calls to repair and directory assistance services, calls to local, state, and federal government offices, and the location of LSP business offices;

Subp. 3. Electronically Published Directories.

Any electronic directory to which a Local Service Provider directs its customers shall comply with the provisions of parts 7812.0610, subpart 1 and 7812.0620. Electronically published directories shall:

- A. display the name of the local service provider;
- B. make available information pertaining to emergency calls, including information for police and fire departments;
- C. make available instructions concerning placing local and long distance calls, calls to repair and directory assistance services, calls to local, state, and federal government offices, and the location of LSP business offices; and
- D. be prominently displayed on, and accessible to customers from, the company's website;

78110.2950-0620 DIRECTORIES: CUSTOMER OPTION.

Subpart 1. Customer Option.

Local Service Providers may publish or arrange for publication of printed or electronic directories, or some combination thereof. Local service providers that do not make an electronic directory available shall distribute or arrange for distribution of a printed directory to each customer, except where an offer is made and explicitly refused by the customer. Local Service Providers that make an electronic directory available must deliver or arrange for delivery of a printed directory if that is the customer's format preference. Local service providers offering an electronic directory in lieu of any portion of a printed directory shall provide-make available to each customer a complete directory, and shall:

- A. present customers an opportunity to establish-request a printed directory-format-preference;
- ~~B. permit customers to establish or change their directory format preference at any time;~~
- ~~C.~~B. _____ notify customers how they can change their directory format preference no less frequently than when updated print directories are issued;
- ~~D.~~C. _____ not require customers to divulge any personally identifiable information other than their name, and-delivery address, and phone number in order to request a complete-printed directory-that is printed or contained on a portable physical medium;
- ~~E.~~D. _____ not require users to create an account, log in, or otherwise provide any personally identifiable information in order to access an electronic directory; and
- E. not obtain, use, or retain any personally identifiable information from customer use of or request for a directory, except for the limited purpose of providing a directory in the format requested;
- F. not market services, including through its affiliate or publisher, other than directories to such requesting customers; and-
- ~~F.~~G. _____ accept electronic files from competing local service providers identifying such requesting

customers.

Subp. 2. When No Customer Option is Specified.

Consistent with subpart 1, local service providers shall determine whether customers who do not state a directory format preference will receive a printed directory, have access to an electronically published directory, or a combination thereof. Local service providers shall notify customers how the complete directory will be made available provided, including how to access any electronically published portion.

7812.0620 DIRECTORIES: CUSTOMER OPTION.

Subpart 1. Customer Option.

Local Service Providers may publish or arrange for publication of printed or electronic directories, or some combination thereof. Local service providers that do not make an electronic directory available shall distribute or arrange for distribution of a printed directory to each customer, except where an offer is made and explicitly refused by the customer. Local Service Providers that make an electronic directory available must deliver or arrange for delivery of a printed directory if that is the customer's format preference. Local service providers offering an electronic directory in lieu of any portion of a printed directory shall make available to each customer a complete directory, and shall:

- A. present customers an opportunity to request a printed directory;
- B. notify customers how they can change their directory format preference no less frequently than when updated print directories are issued;
- C. not require customers to divulge any personally identifiable information other than their name, delivery address, and phone number in order to request a printed directory;
- D. not require users to create an account, log in, or otherwise provide any personally identifiable information in order to access an electronic directory;
- E. not obtain, use, or retain any personally identifiable information from customer use of or request for a directory, except for the limited purpose of providing a directory in the format requested;
- F. not market services, including through its affiliate or publisher, other than directories to such requesting customers; and
- G. accept electronic files from competing local service providers identifying such requesting customers.

Subp. 2. When No Customer Option is Specified.

Consistent with subpart 1, local service providers shall determine whether customers who do not state a directory format preference will receive a printed directory, have access to an electronically published directory, or a combination thereof. Local service providers shall notify customers how the complete directory will be made available, including how to access any electronically published portion.

7811.0630 CUSTOMER LISTINGS - NONDISCRIMINATION.

A. If a local service provider wishes to list its customers' telephone numbers in the same directory as another local service provider, such local service provider must permit the listings on a nondiscriminatory basis.

B. Local service providers shall provide publishers and any other person or businesses with reasonable, nondiscriminatory access to subscriber listing information for the purpose of publishing telephone directories and all such information shall be provided at reasonable rates and subject to reasonable terms and conditions.

7812.0630 CUSTOMER LISTINGS - NONDISCRIMINATION.

A. If a local service provider wishes to list its customers' telephone numbers in the same directory as another local service provider, such local service provider must permit the listings on a nondiscriminatory

basis.

B. Local service providers shall provide publishers and any other person or businesses with reasonable, nondiscriminatory access to subscriber listing information for the purpose of publishing telephone directories and all such information shall be provided at reasonable rates and subject to reasonable terms and conditions.

7811.0600 BASIC LOCAL SERVICE REQUIREMENTS.

Subpart 1. Required services.

F. one complete directory per year, which may include more than one local calling area, consistent with the customer option provisions of part 78110.2950-0610 ~~and, upon a customer request and in the customer's preferred format, one copy of any other directory within the local calling area;~~

7812.0600 BASIC SERVICE REQUIREMENTS.

Subpart 1. Required services.

F. one complete directory per year, which may include more than one local calling area, consistent with the customer option provisions of part 78120.2950-0610 ~~and, upon a customer request and in the customer's preferred format, one copy of any other directory within the local calling area;~~