

Staff Briefing Papers

Meeting Date **October 4, 2018** Agenda Item *2

Company All Minnesota Telephone Companies and Telecommunications Carriers

Docket No. **P999/CI-18-382**

In the Matter of a Commission Inquiry to Examine
Streamlining Procedures for Consent Dockets

Issue

1. Are the proposed rule variances reasonable?
2. How long should the rules be varied?
3. How should service area and 911 dockets be treated?

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Relevant Documents

Date

Commission Notice Soliciting Comments July 11, 2018

Reply Comments of Minnesota Department of Commerce (DOC) August 20, 2018

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I. Statement of the Issues

1. Are the proposed rule variances reasonable?
2. How long should the rules be varied?
3. How should service area and 911 dockets be treated?

II. Background

Below is the proposal which was attached to the Commission's July 11th 2018 Notice soliciting comments for streamlining the routine telecommunications dockets, which are generally considered on the Commission's consent agenda. These types of dockets include:

New Authority (NA) Minn. Stat. §237.16 Subd. 1; Minn Rules 7812.0200 Subp. 7

Emergency Plan-911 Plan (EP) Minn. Rules 7812.0550 Subp. 3

Property Acquisition (PA) Minn. Stat §237.23; Minn. Rules 7829.1400 Subps. 1 and 4

Relinquish Authority (RL) Minn. Rules 7829.1400 Subps. 1 and 4

Service Authority (SA) Minn. Rule 7812.0300 Subp. 5; Minn. Rules 7829.1400 Subps. 1 and 4

Alternative Miscellaneous (AM) Minn. Rules 7829.1400 Subps. 1 and 4

Miscellaneous Changes (M) Minn. Rules 7829.1400 Subps. 1 and 4

Currently, new authority (NA) dockets are subject to the Minn Rules 7812.0200 Subp. 7 General Certification Requirements. This section provides parties 45 days after the petition is filed to file initial comments on the new authority filing. Reply comments must be filed and served within 20 days after the deadline for initial comments. Given the current telecommunications environment, this appears to be long.

The remaining docket types are all subject to the procedural provisions of Minn. Rule 7829.1400 Commission Action On Miscellaneous Filing; Comments. Subpart 1 of this section provides parties 30 days after a petition is filed to file initial comments. Subpart 4 of this section requires reply comments must be filed and served within 10 days after the deadline for initial comments. Again, given the current telecommunications environment, this appears to be long. A streamlining of the procedures would be consistent with virtually all of these dockets being on the Commission's consent agenda.

The consent calendar process works as follows¹: Once the initial and reply comment periods have concluded, a docketed item is placed on the preliminary agenda on the first of the month.

¹ For illustrative purposes, the assumption is made that the time line begins on the first of the

By the fifth of the month, it is discussed internally with management and the item is placed on the consent agenda by the 7th day. At this point, the items on this consent agenda are ready for the consent commissioner. The consent commissioner (consent calendar subcommittee) may take up to six days (13th day) to sign the consent agenda (13 days total). This time allows for other members of the commission to raise objections. Once the order is issued, parties have a 10 day protest period prior to the order becoming final.² As such, the consent agenda process takes around two to three weeks from start to finish after the comment periods have expired.

If one adds this to the new authority comment cycle that is already a minimum of 65 days, the process is approaching three months. Similarly, for other filings the comment cycle approaches nearly two months. Additionally, if as happens quite often, the Minnesota Department of Commerce (DOC) files comments prior to the comment deadline, the item will simply wait for the time to pass because there is no legal mechanism to accelerate the process at that point. Applicants then often call the Commission to inquire why the filing has not been approved.

Finally, virtually none of these dockets rises to a level where it should take significantly more than 30 days for final disposition. A modification to these procedures is provided below.

Proposal: The procedural schedules outlined for all of the telecommunications dockets be varied in order to better reflect present reality of the telecommunications industry. Initial comments would be due with the Commission as they are currently pursuant to each specific rule. The change comes in the timing of reply comments. Reply comments would be due **five calendar days** after the DOC files initial comments. Again, this streamlining would be consistent and better conform to the Commission's consent agenda process.

This modification will require that the Commission vary Minn. Rules Chapter 7811.0200 Subp 7, Minn. Rules Chapter 7812.0200 Subp. 7, and Minn. Rules Chapter 7829.1400 Subps. 1 and 4. Pursuant to 7829.3200 Other Variances, the Commission shall grant a variance of its rules when it determines that the following requirements are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

With respect to the length of the variance, Minn. Rule 7829.3200 Subp. 3 provides the Commission a large degree of discretion in this area.

month.

² Unless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b).

Subp. 3. Duration. Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

Once the determination is made that a variance is appropriate, the Commission must determine the duration of that variance. The duration of the variance must be long enough in order allow for proper evaluation. However, a variance of longer duration would not present a problem or compromise the process adversely.³ Additionally, a longer variance would allow the regulatory process to adapt to further evolution of the industry.

Proposed Changes to Approval Process for Two Types of Dockets

Additionally, staff proposes two changes in how the Commission approves expansion of service area dockets under Minn. Stat. §237.16 subd. 4, and 911 plan filings under Minn. Rule 7812.0550.

Service Area filings: Under Minn. Stat. §237.16 subd. 4, already authorized local service providers can amend their certificate of authority to include additional areas. Subd. 4 essentially creates a negative check-off approval process: “If no objection is filed with the Commission by any interested party or raised by the commission within 20 days of the filing, it is considered approved....”

Arguably the 30 day comment period in the Commission’s rules does not apply given this statutory timeframe. In energy dockets with similar provisions, the Commission has authorized a notice by the Executive Secretary to be issued if no objections are received within the deadline. Staff recommends the same practice be applied here. Staff would not include petitions of ETCs to expand their service area, given that federal and state law set up different requirements for ETCs.

911 plans: As a condition for receiving a certificate of authority, an initial 911 plan is required by the Commission’s rules under Minn. Rules 7812.0500 for CLECs.⁴ Subpart 3 of Minn. Rule 7812.0550 lays out the factors the Commission should consider in approving a 911 plan. As a practical matter, after years of experience with 911 plans, the Commission’s approval is purely administrative—it is the Minnesota Department of Public Safety and the Metropolitan 911 Board that provide comments in each 911 plan docket stating whether the carrier has met the necessary substantive requirements. The DOC includes a checklist as part of its comments covering other miscellaneous regulatory issues.

³ The rule contains a revocation provision, which allows the Commission to revoke the variance in the event that the variance is not working as intended. This should allay concerns that any possible negative aspects of the variance will essentially be permanent.

⁴ In some cases, carriers may also file 911 plans which are not initial 911 plans, but are updates in later years. The Department of Commerce has already outlined a sufficiently streamlined process for these plans, which is that the Department will close them if no comments within a designated period of time. Thus, the staff proposal here only addresses initial 911 plans, which, pursuant to Minn. Rules 7812.0550, do require Commission approval.

Staff proposes that the approval of these initial 911 plans be executed by notice rather than consent order. In a number of energy dockets where approval is administrative in nature, the Commission has delegated authority to the Executive Secretary to approve rates or other filings.

Staff suggests that the process be the following:

- 1) Initial 911 plan is filed;
- 2) Commission holds docket open until comments are received by Department of Public Safety, Metropolitan 911 Board (if within the metropolitan service area), and Department of Commerce;
- 3) If the comments recommend approval, staff drafts a notice of approval and sends to consent commissioner for review. (For administrative efficiency, if more than one 911 plan is ready, a single notice would be drafted with all ready 911 plans)
- 4) Notice is issued after consent commissioner and executive secretary review.

III. Parties' Comments

DOC: The Department supports the procedural changes proposed by the Commission staff in its July 11, 2018 Notice of Comment Period in the current docket. Under the proposed procedural changes, a party could request a time extension in the event that more than five days were needed to file reply comments. Also, a party could file an objection to a 911 or a non-ETC, service area expansion docket in order to stay the issuance of the Commission's notice of approval and allow for further consideration of a given docket.

The Department is available to work with Commission staff to deal with any procedural issues that may arise in implementing the changes approved here.

IV. Staff Analysis

There are times that enforcement of the rule has proven to be burdensome. For example, in Docket No. P6694/PA-17-757, the company, Education Networks of America (ENA) filed a request to purchase TeleQuality Communications, Inc.. In their request, the parties asked for expedited treatment so that the transaction could close by the end of 2017. The parties stated that closing the transaction by the end of the year would result in financial benefits to the parties and allow the parties to meet important business objectives. Additionally, TeleQuality had only one customer in Minnesota, the impact of the transaction was negligible. However, given the current process, there was no way to expedite it. As such, the current process could have proven to be unduly burdensome in this case given that Minnesota was one of the last states to approve the transaction.

Likewise, a mere name change is subject to the 30 comment and 10-day reply cycle. When a company files such a request with the Commission, it has already registered the new trade name

with the Minnesota Secretary of State's Office. In this case, the burden may come in the form of marketing, letterhead, and tariffing issues. All of these things are delayed because a company must await Commission approval of the name change.

With respect to the public interest metric, the variance would not adversely affect the public interest and will avoid unnecessary delay of the Commission's consideration of a telecommunications filing.

Additionally, there are no statutory provisions that would prohibit the variance; therefore, the requirement should be varied pursuant to Minnesota rules 7829.3200.

Finally with respect to the length of the variance, Minn. Rule 7829.3200 Subp. 3 provides the Commission a large degree of discretion in this area.

Subp. 3. **Duration.** Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

Staff recommends that the Commission approve a variance of at least five year rounded out to the end of the fifth year. Five years would provide adequate time to provide for a reasonable evaluation of the variance. However, a variance of longer duration would not present a problem or compromise the process adversely.⁵ Additionally, a longer variance would allow the regulatory process to adapt to further evolution of the industry

V. Decision Options

1. Are the proposed rule variances reasonable?
 - A. Determine that the rule variance requirements have been met and that variances consistent with those specified on Attachment A are therefore warranted.
 - B. Determine that the proposed rule variances are not reasonable and reject them.
2. How long should the rules be varied?
 - A. Grant a variance until December 31, 2019.
 - B. Grant a variance until December 31, 2024.

⁵ The rule contains a revocation provision, which allows the Commission to revoke the variance in the event that the variance is not working as intended. This should allay concerns that any possible negative aspects of the variance will essentially be permanent.

3. How should service area and 911 dockets be treated?
 - A. Approve the procedures outlined in Attachment A for the disposition of service area and 911 dockets.
 - B. Do not approve new procedures for the disposition of service area and 911 dockets.

VI. **Staff Recommendation**

Staff recommends that the Commission adopt alternative #1A, 2B, and 3A.

Attachment A: Proposed Rule Variances and Processes

New Authority Filings

7811.0200 Subp. 7. Comment periods. Comments on a petition must be filed and served within 45 days after the petition is filed. Responsive comments must be filed and served within ~~20~~5 days after the Department of Commerce files comments ~~deadline for initial comments~~.

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Telecommunications Dockets that are eligible for Consent Calendar Treatment (Property Acquisition, Name Change, Relinquishments, and similar categories)

Minn. Rules Chapter 7829.1400 Subps. 1 and 4

Subpart 1. Initial comments. In the absence of a commission order or notice establishing a different comment period, a person wishing to comment on a miscellaneous filing shall do so within 30 days of its filing with the commission. A person wishing to comment on a new telephone service, competitive or noncompetitive, shall do so within ten days of its filing with the commission. Comments must be served on the persons on the utility's general service list for the filing, as well as on the filing utility. For purposes of telecommunications filings subject to the Commission's consent calendar process, the initial comment period shall end when the Department of Commerce files comments recommending approval.

Subp. 4. Reply comments. For purposes of telecommunications filing subject to the Commission's consent calendar process, unless otherwise directed by the commission, the utility and other persons have ~~ten~~ five days from the date the Department of Commerce files comments ~~expiration of the original comment period~~ to file reply comments. Reply comments must be served on the utility and persons who have filed comments on the miscellaneous filing. Reply comments must be limited in scope to the issues raised in the initial comments.

Proposed New Process for 911 Plans Requiring Commission Approval Under Minn. Rules 7812.0550 subp. 1, and Service Area Expansions Under Minn. Stat. §237.16 subd. 4.

Staff suggested process for 911 plans:

- 1) Initial 911 plan is filed;
- 2) Commission holds docket open until comments are received by Department of Public Safety, Metropolitan 911 Board (if within the metropolitan service area), and Department of Commerce;
- 3) If the comments recommend approval, staff drafts a notice of approval and sends to consent commissioner for review. (For administrative efficiency, if more than one 911 plan is ready, a single notice would be drafted with all ready 911 plans)
- 4) Notice is issued after consent commissioner and executive secretary review.

Staff Suggested Process for Service Area Expansions Under Minn. Stat. §237.16 subd. 4:

Pursuant to Minn. Stat. §237.16 subd. 4's requirement that if no objection is received within 20 days of a filing expanding a service area, staff would no longer use the consent calendar process (which results in a Commission Order beyond the 20 day deadline in statute) and instead issue a Notice Approving the service area expansion. This process will not apply to Eligible Telecommunications Carriers (ETC) expanding their service area.