

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rules
Governing Telephone Inter-Exchange
Calling, Minn. Rules, parts 7815.0100 to
7815.1600.

ISSUE DATE: December 29, 1987

DOCKET NO. P-999/R-85-599

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

The Minnesota Public Utilities Commission's (Commission's) permanent rules governing Inter-Exchange Calling, and specifically governing Extended Area Service (EAS), for telephone service are currently in effect. See Minn. Rules, parts 7815.0100 to 7815.1500. EAS is a form of inter-exchange telephone calling for which there is no toll charge. Under the Commission's rules, telephone customers may petition for the installation or removal of EAS.

In handling EAS petitions, the Commission has granted rule variances to allow time extensions and other procedural changes to streamline the EAS process. The rules have also been varied in the past to require additional information and to allow for different methods of calculating EAS telephone rates. Because these variances have repeatedly addressed the same problems that exist in the current rules, the Commission proposes to amend the existing rules to solve these problems.

The Commission began the process of amending its EAS rules by soliciting outside comment on March 21, 1985. The Commission received many outside comments and carefully considered the suggestions in the comments.

The next step in the process occurred when the Minnesota Department of Public Service (the Department) requested, on January 2, 1986, that the Commission initiate rulemaking in this area and submitted suggested amendments. In response, the Commission issued its Disposition of Rulemaking Petition on March 5, 1986, stating its intention to amend the EAS rules. Since then, the Commission has been studying the EAS rules and the Department's recommendations in the context of federal and state deregulation of telephone service. The proposed amendments contain most of the Department's recommended changes to the EAS rules.

However, the proposed rule amendments will not resolve the issues or predetermine the outcome of the Commission's current proceeding In the Matter of the Petition of Certain Subscribers in the Exchanges of Zimmerman, Prescott, Waconia, Belle Plaine, North Branch, Lindstrom, New Prague, Cambridge, Hudson, Houlton, LeSueur, Cannon Falls, Delano, Northfield, Buffalo, and Watertown for Extended Area Service to the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-421, P-405, P-407, P-430, P-426, P-520, P-427/CI-87-76 (the Metro EAS case). Rather, if adopted, the proposed rule amendments will apply in Part III of the Metro EAS case. During Part III, the basis of the proposed EAS rates will be calculated. The proposed amendments to part 7815.0900,

TARIFF FILING, change the basis on which EAS rates are calculated under the existing rule. However, the rule change will apply equally to all EAS petitions, not just the Metro EAS case petitions.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

These rule amendments are proposed pursuant to the Commission's authority to:

- make rules pursuant to Minn. Stat. section 237.10 (1986)
- require telephone companies to charge just and reasonable rates and to furnish reasonably adequate service and facilities pursuant to Minn. Stat. section 237.06 (1986);
- regulate the connection and disconnection between the exchange of one telephone company and the toll lines of another telephone company pursuant to Minn. Stat. section 237.12 (1986); and
- regulate the construction of duplicating lines or equipment used for local, rural, or toll telephone service pursuant to Minn. Stat. section 237.16 (1986).

Under these statutes the Commission had the necessary statutory authority to adopt the original EAS rules and continues to have the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Commission to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Commission must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious.

However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Commission is appropriate. The need for the rules is discussed below.

There are basically three problem areas which the proposed rule amendments are intended to rectify. The first area involves the timing of the various steps in the EAS process. The second area involves the information that is submitted to the Commission to aid in its decision-making and the standards that the Commission uses to determine whether granting an EAS petition is in the public interest. Finally, the third area concerns the calculation of the rates charged to provide EAS when an EAS petition proposes the installation of an EAS route and the calculation of a rate reduction when an EAS petition proposes the removal of an existing EAS route.

There are several procedural or "timing" problems in the current rules that need to be solved. For instance, rule variances are often necessary because the different steps in the EAS process cannot be completed in the allotted time and changing the time in one rule part requires changing the time in other rule parts. Another problem occurs when, due to the way the rules are currently structured, the Commission must request the parties to take a particular action before it can determine whether this action is necessary. Yet another problem has been that parties do not have specific timeframes for completing certain steps in the EAS process or for submitting comments and replies on filings. The filing of last minute requests for time extensions and rule variances has also created a hardship for the Commission and the parties.

In the second main problem area, the Commission has found itself requesting certain information during the EAS process, in addition to the information required by the current rules, from the parties. The Commission needs this additional information to make a well-reasoned determination whether granting an EAS petition is in the public interest. However, requesting and receiving this information adds further delay to the process. Moreover, there are other types of information which are discretionary in the current rules. The proposed rule amendments provide a standard for determining when that information is needed in a particular instance so that arbitrary requests will not be made and so that the parties will be on notice that additional information may be required.

Along the same lines, a public meeting is automatically required under the current EAS rules. Experience has demonstrated that a public meeting is not always necessary, particularly when an informational polling of the affected customers is conducted. Furthermore, conducting a public meeting in those situations requires considerable time and expense which is not warranted. For that reason, the rules have been amended by providing a standard to determine when a public meeting is needed. The current EAS rules also list when a contested case hearing conducted by the Office of Administrative Hearings is required. However, instances have arisen in which a contested case hearing was warranted, but were not contemplated by the rules. See Order Varying Rule, Order Consolidating Dockets and Notice and Order for Hearing in the Metro EAS case. Therefore, an additional standard for determining when a contested case hearing is necessary has also been added to the rules. Both of these amendments will reduce the need for rule variances and the resulting delays in the process.

The third and final problem area has been the basis for calculating the proposed EAS rates. The current rules have been varied in the past to allow for formulas other than basing proposed rates on the telephone company's statewide average embedded book cost to provide, or savings due to removal of, EAS service. The Commission has approved formulas that use rates based on:

- EAS rates paid for similar service in the company's other exchanges;
- incremental costs incurred to provide EAS;
- tier rates; and
- incremental costs incurred to provide EAS plus lost toll revenue.

The existing rule needs to be amended so that a consistent standard is established and made known to the participants and the public. The Commission has thoroughly reviewed the circumstances surrounding the basis of rates applied to recent EAS petitions and proposes a rule which establishes an equitable formula for all participants. This formula recognizes the identifiable cost of providing EAS service by allowing the telephone company's actual costs incurred to provide or remove EAS without including lost toll revenues. The Department recommended in their suggested rule that the Commission not grant lost toll revenues. In addition, the formula proposed by the Commission creates a balance between the competing interests of the telephone company and their customers.

Based on the foregoing discussion and the reasons given therein, the proposed EAS rule amendments are needed.

IV. STATEMENT OF REASONABLENESS

The Commission is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Commission's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The overall approach take by the Commission to solve the problems described above has been to use the solutions that have worked well in the past or are a balancing of the affected parties' interests. For instance, the timing and procedural problems have been successfully worked out through rule variances that occurred while processing past EAS petitions. The same holds true for those situations in which the Commission has needed more information to reach a decision and the various standards that assisted the Commission in making that decision. The change in calculating proposed EAS rates are proposed as being equitable to both the companies and their subscribers. Therefore, the proposed rule amendments were chosen by the Commission because they are satisfactory solutions or equitable resolutions to the problems created by the current EAS rules.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Part 7815.0100 DEFINITIONS.

The Commission proposes to amend this rule part by adding three new definitions. All three definitions are intended to clarify the rules and provide guidance to the user.

The first new definition states that "Department" means the Minnesota Department of Public Service. This definition is used extensively in other Commission rules and is, therefore, consistent and well-known.

The second new definition states that "petition sponsor" means the person named on the petition form as representing the petitioners. This definition reflects current practice and it is, therefore, practical to be included in the rule. It is reasonable because it also simplifies and clarifies terminology throughout the rules.

The third and final new definition states that "telephone company" has the meanings given it in Minn. Stat. section 237.01, subs. 2 and 3. Like the definition of "Department", this definition is used extensively in other Commission rules and is consistent and well-known.

Part 7815.0700 PETITION FOR EXTENDED AREA SERVICE

There are several proposed amendments to this part of the EAS rules. Basically, the amendments require that:

- the petition be filed with the Commission and that copies be served on the Department and the affected telephone companies;
- the petition sponsor be made aware of alternatives to EAS service;
- the petition may be challenged for an insufficient number of signatures on the petition; and
- a procedure for resolving challenges to the validity of a petition be followed.

The current EAS rules require that the EAS petition be filed with the Department and that copies be served on the affected telephone companies. Since the Commission makes the final determination as to whether installing or removing EAS is in the public interest, it is reasonable for the Commission to receive the petition. However, the Department needs a copy of the petition because it investigates the petition and prepares information for the Commission based on the petition. Although the current rules do not require that the Commission be notified of the filing, some petition sponsors submit their petitions directly to the Commission. Amending the rules to adopt this procedure makes sense for the Commission and the public.

It also makes sense to clarify that the form on which the petition is made shall be approved by the Commission. The Commission needs the information listed on the petition to aid in its decision-making and, therefore, should be the one to determine what is on the petition form. In fact, the form currently in use has been approved by the Commission. Therefore, it is reasonable to amend the rule accordingly.

This rule part has also been amended to require that the Department and the affected telephone companies describe alternatives to EAS to the petition sponsor. The petition sponsor must be told of the options to EAS when he or she picks up a blank form from the Department or the telephone company. This procedure is often followed by the Department and the telephone companies at present. Many people are not aware of alternatives to EAS that may better suit the needs of the petitioning exchange. It saves time and expense to learn of the options at the beginning of, rather

than midway through, the process. Thus, it is reasonable to automatically provide this information to petition sponsors before an EAS petition is circulated.

The next amendment to this rule part concerns the verification of the signatures on the petition. The existing rule requires the Commission and the telephone companies to use the customer billing records to check the validity of the signatures. However, this is only required if the validity of the signatures have been challenged by a written protest. The Commission proposes to require validation in all instances. The Commission is aware of the fact that some telephone companies automatically check the validity of the signatures by comparison to their billing records. Because a threshold test for granting an EAS petition is obtaining the requisite number of customer signatures, it is reasonable to ensure that this threshold has been met in every instance. Otherwise, the rule has not been complied with, the petition is invalid, and EAS should not be granted. It is more economical to discover early in the process, rather than learning later on, that EAS was not requested by the requisite number of customers.

The Commission further proposes to require the Department, on behalf of the Commission, to investigate the validity of the signatures on the EAS petition rather than requiring the Commission itself to conduct the investigation. The current rule requires that the Commission and the telephone companies examine the customer billing records to make this determination. However, the Department is responsible for investigating EAS petitions, is in regular and constant contact with the affected telephone companies throughout the EAS process, and has a significantly larger staff than the Commission. It would, therefore, be administratively efficient for the Department to work with the telephone companies in this instance, rather than the Commission.

The next amendment to this rule part concerns the reasons for challenging a petition that has been filed with the Commission. The EAS rules state that a petition may be challenged on the validity of the signatures on the petition. The Commission proposes to amend the rule to also recognize challenges to the sufficiency of the number of signatures on the petition. These challenges have a similar basis in that they both relate to satisfying the threshold test for granting an EAS petition. The test is that 15 percent or more of the customers or 600 customers, whichever is less, sign the petition. Obviously, the test cannot be satisfied if an insufficient number of customers sign the petition. Therefore, a consistent and reasonable ground for challenging an EAS petition is the sufficiency of the number of signatures.

Finally, the Commission proposes to amend this rule part by instituting a procedure for handling challenges to EAS petitions. The existing rules do not specify what is to be done if a petition is challenged, other than to say that the Commission and the telephone companies shall check the validity of the signatures. For that reason, a procedure is needed to provide guidance and certainty for the EAS participants.

Under the proposed procedure, any challenges to an EAS petition must be filed with the Commission and the Department. Previously, only the Department received a copy of the challenges. Since the Commission ultimately decides whether the challenges are warranted, it is reasonable to also have the Commission receive this information.

The proposed procedure also states that, after a written protest is filed, the Department and the affected telephone companies have 20 days to file a joint written statement regarding the validity of the signatures with the Commission and the petition sponsor. It is reasonable to require a joint written statement because involving the Department, as the Commission's investigative arm, should reassure the public and the person who protested that the review of the signatures was fairly and accurately conducted. It will also assist the Commission in determining whether more signatures are needed on the petition. Moreover, this procedure is consistent with the previously discussed requirement that the Department and telephone companies use customer billing records to check the validity of the signatures on all petitions. However, only in the event that a written protest is filed, will the Department and telephone companies need a joint written statement regarding their findings.

The proposed procedure goes on to state the consequences of the petition containing invalid or an insufficient number of signatures. Invalid signatures will not be counted. An insufficient number of signatures will result in the petition being returned to the petition sponsor. However, the petition sponsor may obtain the requisite number of signatures and refile the petition without prejudice. The petition is not treated as a denied petition under part 7815.1500 and the petition sponsor need not wait two years before refiling the petition. The policy behind part 7815.1500 is that denied petitions have been reviewed on the merits and conducting another review immediately afterwards is not necessary because the facts would not have changed. It would be unfair to impose a two year delay for returned petitions under this rule part because the petitions have not been reviewed on the merits yet. Therefore, it is reasonable to treat a refiled petition as a new petition for the purposes of this rule part.

Part 7815.0800 TRAFFIC STUDY

Most of the proposed changes to this rule part are procedural. Several changes request additional information.

The first proposed amendment requires a traffic study from each telephone company serving the affected exchanges. The current rule requires a traffic study from only the telephone company serving the petitioning exchange. In practice, the Commission has found that it needs traffic information from the non-petitioning exchange as well. The Commission also has found that it needs traffic information from the long-distance telephone companies serving the exchanges on the amount and type of toll calling. Traffic studies from these telephone companies are necessary so that the Commission can correctly evaluate the existing calling situation. Examining the existing calling situation is crucial to determining whether granting the EAS petition is in the public interest.

The telephone companies have provided this information to the Commission in past cases. See Stipulation of Facts In the Matter of the Petition of Certain Customers of the Glenwood Exchange for the Establishment of Extended Area Service Between the Glenwood Exchange and the Villard Exchange, Docket No. P-430/CP-86-236. Telephone companies have also been aware of the Commission's interest in receiving this information. See Findings of Fact, Conclusions of Law and Order In the Matter of the Petition of Certain Customers of the Osakis Exchange for the Establishment of Extended Area Service Between the Osakis Exchange and the Alexandria Exchange, Docket No. P-552, P-430/CP-86-724 (October 22, 1987).

By requesting this information through the amended rule, the telephone companies will be on notice that traffic studies are needed in every instance. In addition, the Commission will not have to specifically request the information in every case. It will also save time and expense to receive this information at the beginning of the process when it can be more effectively evaluated.

The second proposed amendment concerns the type of traffic study data that will be acceptable. At present, the rule only refers to the Centralized Message Data System (CMDS) or other reliable data. However, the Commission is aware that some telephone companies have switched to a new method of obtaining traffic study data, the Sample Traffic Analysis and Report System (STARS). Both systems are accurate and reliable. It would, therefore, be reasonable for the Commission to specifically cite CMDS and STARS data as being acceptable while not ruling out the submission of other reliable data.

The next amendment further specifies how the telephone companies should present the data in the traffic study. The existing rules do not provide any guidance in that area. The Commission has consistently found that traffic studies did not contain a breakdown between the number of residential versus business calling. A breakdown is necessary for the Commission to assess the current calling situation. Consequently, the Commission would request this information from the telephone companies after the traffic study was filed. See Order Requiring Further Investigation In the Matter of the Petition of Certain Customers of the Dakota Exchange for the Establishment of Extended Area Service Between the Dakota Exchange and the LaCrosse Exchange, Docket No. P-401/CP-86-319 (October 29, 1987).

As with obtaining traffic studies from the affected telephone companies discussed above, this situation led to delay in the processing of EAS petitions and required the Commission to request information on residential and business calling. A more efficient procedure is to state in the rule that all traffic studies must contain a breakdown between business and residential calling data.

The remaining amendments deal with the procedure for filing traffic studies and requests for time extensions.

First, the rule part is amended so that the Commission will receive a copy of the traffic studies. Since the Commission makes the ultimate decision, it is reasonable for the Commission and its staff to have access to this information as soon as it is available for their review.

Second, the rule part is amended to recognize and be consistent with the amendments to part 7815.0700. Amended part 7815.0700 establishes a procedure for handling written protests to the validity of the signatures on the petition or the sufficiency of their number. The amendments to this rule part recognize that if a written protest is filed under part 7815.0700, the 45 day deadline for filing the traffic studies should not begin to run until after the written protest is handled by the Commission. Traffic studies may not be necessary if the petition is returned to the petition sponsor for refiling under part 7815.0700. If and when the petition is refiled, the traffic studies will be due 45 days after the date of the refiling. If, on the other hand, the Commission approves the validity of the signatures or the sufficiency of their number, then the traffic studies are due 45 days after the Commission's Order is issued. Until then, the telephone companies will not know if traffic studies

are necessary. It would be a waste of time and money to require the telephone companies to prepare unnecessary traffic studies.

Third, the proposed amendments require that the petition sponsor and the telephone company which serves the exchange to which the installation or removal of EAS is requested be given a copy of the traffic study. It is reasonable to give them a copy because they are affected by the results of the traffic study and should have an opportunity to review those results.

Part 7815.0900 TARIFF FILING

Subpart 1. Filing proposed rates.

The most important amendment to this subpart is to change the deadline for filing the proposed rates. Currently, the proposed rates must be filed 50 days after the petition is filed. The Commission proposes to change this to 5 days after the traffic study is filed under part 7815.0800.

The reason for this change is that tying the deadline for filing the proposed rates to the initial petition filing date does not take into account a possible time extension for filing the traffic study. In the past, when the Commission has granted a time extension for filing the traffic study, the Commission has also had to grant a time extension for filing the proposed rates. See Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the Janesville Exchange for the Establishment of Extended Area Service Between the Janesville Exchange and the Mankato and Waseca Exchanges, Docket No. P-405, P-414, P-421/CP-86-547 (December 12, 1986).

In addition, the Commission must then grant a time extension for filing the stipulation of facts under part 7815.1000 because the deadline for filing the stipulation of facts is also tied to the date of the initial EAS petition filing date even though the stipulation of facts cannot be prepared without knowing the proposed rates. See Order Approving Request for an Extension of Time to Submit Proposed Rates and Stipulation of Facts In the Matter of the Petition of Certain Customers of the New Prague Exchange for the Establishment of Extended Area Service Between the New Prague Exchange and the Twin Cities Metropolitan Area, Docket No. P-421, P-520/CP-86-537 (February 10, 1987).

The final result is three rule variances are needed whenever a time extension for filing the traffic study is granted. To solve this problem, the Commission proposes to make the deadline for filing the proposed rates contingent upon the date the traffic study is filed. As discussed below for part 7815.1000, the Commission also proposes to make the deadline for filing the stipulation of facts contingent upon the date the proposed rates are filed. By structuring filing deadlines in this manner, a rule variance for each rule part will no longer be necessary when a time extension is granted for only one prior rule part.

Although the Commission proposes to structure the filing deadlines in this manner, the number of days given to prepare the filing has not changed. Fifty days after the date of filing the EAS petition is the same as 5 days after the date of filing the traffic study because the traffic study is due 45 days after the EAS petition is filed. The only way the number of days will be increased is if a time

extension is granted, or if the Commission must rule on the validity of the signatures or the sufficiency of their number. However, this is also true under the current rules. Therefore, none of the participants are burdened or harmed by this procedural change in the rule.

All references to "telephone companies" have been amended by specifying that only the "local exchange telephone companies" must file proposed rates. This change was necessary because a proposed amendment in part 7815.0100 adds the definition of telephone company to the rules and states that telephone company means local exchange and long-distance telephone companies. However, only local exchange companies will provide EAS because it is a local service which replaces long-distance calling. Therefore, long-distance telephone companies need not file proposed EAS rates. These amendments clarify this fact for the public and for the participants in the EAS process.

The following proposed amendments to subpart 1 concern who receives copies of the proposed rates and what information must be included in the filing. The rule is amended to require that the Commission and the petition sponsor receive a copy of the filing. Presently, only the Department receives a copy. Since the Commission makes the final decision, and since the petition sponsor represents the customers who will ultimately pay the rates, it is reasonable for the telephone companies to provide them with a copy of the filing. The amended rule also requires that the filing include the supporting cost studies which justify the proposed rates in the tariff. Without this information, it is practically impossible to evaluate the proposed rates. This information is also necessary to determine whether the proposed rates comply with the requirements of subpart 2 governing the basis of the rates. Requiring that the supporting cost studies be filed with the proposed rates provides the telephone companies with adequate notice that the Commission will be examining the cost studies. It also ensures that the process will not be delayed by the Commission having to order this information be submitted after the proposed rates are filed.

Subpart 2. Basis of rates.

The Commission proposes to amend this subpart by changing the formula for calculating the basis of the proposed EAS rates. This rule amendment is proposed because the existing rules use a formula for determining proposed EAS rates that is inequitable. The current rules base proposed EAS rates on the telephone company's statewide average embedded book cost to provide, or savings due to the removal of, EAS service. However, embedded book cost does not recognize the telephone company's actual, current costs. It only recognizes the telephone company's existing embedded EAS investment.

The Commission has found in prior EAS cases that some telephone companies have either old, very little or no current investments in EAS. See Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the Miltona Exchange for the Establishment of Extended Area Service Between the Miltona Exchange and the Alexandria Exchange, Docket No. P-448, P-430/CP-86-729 (February 24, 1987).

Those telephone companies which offer old, very little or no EAS consequently have old, very little or no investment in EAS equipment. In most instances, installation of EAS would require a new

investment with attendant costs based on current dollar amounts. If the EAS rates were based on an old, minimal or nonexistent prior EAS investment, the rates could not possibly recover the current costs of providing the service. To recoup their investment, the telephone companies would have to raise their overall rates. As a result, all ratepayers would pay the cost of providing a service which only some of the ratepayers receive. Such a result is inequitable and not in the public interest.

In the past, the Commission varied this rule to apply several different formulas where proposed EAS rates were based on:

- EAS rates paid for similar service in the company's other exchanges, Order Approving Ballot Format and Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the Belle Plaine Exchange for the Establishment of Extended Area Service Between the Belle Plaine Exchange and the Twin Cities Metropolitan Area, Docket No. P-405, P-421/CP-86-55 (June 10, 1986);
- incremental costs incurred to install or remove EAS, Order Granting Petition In the Matter of the Petition of Certain Customers of the Brookston Exchange for the Establishment of Extended Area Service Between the Brookston Exchange and the Duluth Exchange, Docket No. P-407, P-421/CP-85-718 (March 18, 1987); and
- tier rates, Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the North Branch Exchange for the Establishment of Extended Area Service Between the North Branch Exchange and the Twin Cities Metropolitan Area, Docket No. P-421/CP-86-272 (October 30, 1986);
- incremental costs incurred to install or remove EAS plus lost toll revenues, Order Approving Ballot Format And Order Granting Variances From Existing EAS Rule In the Matter of the Petition of Certain Customers of the Zimmerman Exchange for the Establishment of Extended Area Service Between the Zimmerman Exchange and the Twin Cities Metropolitan Area, Docket No. P-427, P-421/CP-85-652 (March 27, 1986).

In instances where the Commission varied the embedded cost methodology in favor of another method, the Commission recognized that rates based on embedded costs would be unfair to the telephone companies' non-EAS customers and a windfall to their EAS customers.

The proposed rule replaces embedded costs with actual costs, rather than incremental costs, for several reasons. There is the potential for the filing of many different incremental costing methodologies, which could result in widely varying rates. Since the range of possibilities is so great, it is reasonable to use actual costs. Actual costs are relatively straightforward and, therefore, would be consistently applied by the telephone companies. Actual costs would also be easier to verify for accuracy.

In addition, incremental costs are more appropriately used as a price floor for competitive services, such as toll calling. Competitive services can provide a contribution to common costs in an amount equal to the difference between the incremental cost and the market price. However, by definition, EAS is a local service. The Commission has never found local service to be competitive. In its most recently enacted statute on the subject of competitive versus non-competitive services, the Minnesota State Legislature did not identify local service, including EAS, as a competitive or even emerging competitive service. See Minn. Stat. Sections 237.57 to 237.68 (1987 Supplement). Because EAS is considered a non-competitive service at this time, it should not be priced as a competitive service using incremental costs, but instead should be priced to provide a reasonable return on the capital investment associated with the service. Therefore, it is reasonable to use actual, rather than incremental, costs in the amended rule.

The Commission also proposes to apply a formula in the rule which recognizes the actual costs of installing or removing EAS, but does not recognize lost toll revenue. The Department recommended not allowing the recovery of lost toll revenue in their suggested rule and the Commission concurs with their recommendation.

The proposed formula balances the competing interests of the telephone companies and their customers. Allowing actual costs, rather than embedded costs or incremental costs, prevents the EAS customers from receiving artificially low rates at the expense of other, non-EAS customers of the telephone company. Prohibiting the recovery of lost toll revenues through EAS would prevent the unjust enrichment of the telephone company and their non-EAS customers and investors at the expense of the EAS customers.

The Commission acknowledges that its decision to not allow recovery of lost toll revenues breaks precedent with its decisions in some of the cases listed above. In the cases where the Commission allowed the local telephone companies to recoup lost toll revenues from the EAS subscribers, the Commission did so because it was concerned that a failure to include the loss of current, not projected, revenue within the EAS rates would mean that the lost toll revenue would have to be recovered from all of a telephone company's general ratepayers.

The Commission, however, has reexamined its position on this issue in light of changes in the industry which have occurred since the Commission made its earlier decisions on the inclusion of lost toll revenues. These changes are largely due to the emergence of competition in the toll market. Entrants into the intrastate toll market, on both the interLATA and intraLATA level, are now beginning to compete with the dominant toll carriers. American Telephone & Telegraph Company is the dominant toll carrier in the interLATA market and Northwestern Bell Telephone Company is the dominant carrier in the intraLATA market. This emerging competition has heightened the interest of competitive carriers in EAS petitions with respect to the recovery of lost toll revenues issue. When the Commission made its earlier decisions to include lost toll revenue, the interests of competitive toll carriers were not considered since none participated in the EAS petition review process.

However, as competition along all toll routes develops, any EAS petition which proposes to replace toll service with the local EAS offering will affect the interests of the toll carriers. In fact, in several EAS petitions, competitive toll carriers have taken an active interest in the resolution of the EAS

petition. See Order Varying Rule And Order Initiating Investigation In the Matter of the Petition of Certain Customers of the Prescott Exchange for Extended Area Service Between the Prescott Exchange and the Twin Cities Metropolitan Area, Docket No. P-421/CP-85-878 (April 21, 1986).

Because an EAS petition now has the potential to involve not only the affected local telephone companies, but affected competitive toll carriers as well, the Commission believes that granting the local companies an automatic recovery of lost toll revenues would give an inappropriate signal to the competitive toll carriers that they could request and receive automatic recovery of any revenues lost due to the replacement of toll with EAS. If an EAS route is found to be in the public interest after all factors are weighed, including the affect of lost toll business, no company should be allowed to recoup the loss. To do so would allow double recovery or a form of cross-subsidization industry-wide for the service provided. Since the toll service is replaced by EAS, any recovery of costs associated with that toll service amounts to a subsidy of a phantom or nonexistant service. It would be unfair to the EAS subscribers to make them pay for both the actual costs of providing EAS and for the costs of providing the toll service which EAS replaces.

The local, pre-rate regulated telephone companies have argued that if lost toll revenue is denied, they would have to recoup these amounts in a general rate case pursuant to Minn. Stat. Section 237.075 (1986). As a result of its reexamination of the issues, the Commission finds that this would not necessarily be a bad result. A rate case would examine all of a telephone company's general costs and revenues. Such a review may disclose that the lost toll revenues do not need to be replaced. This discovery would not be possible if the lost toll revenues were automatically included in the EAS rates.

The purpose of EAS, as stated in part 7815.0200 PURPOSE AND AUTHORITY, is to:

- provide the flexibility required to meet the needs of the customers who reside within the various telephone exchanges;
- reflect the geographical boundaries of individual customer calling patterns;
- reflect the individuals' community of interest;
- offer customers fair and economical rates consistent with the customers' needs; and
- most efficiently utilize telephone facilities.

It would be contrary to these stated purposes to allow the telephone companies to recover from the EAS subscribers both their actual EAS costs and their lost toll revenues. EAS is granted when the needs of the customers are best met by expanding their area of local calling to reflect their community of interest. Moreover, including lost toll revenues in EAS rates would not be fair or economical for the EAS subscribers because installing EAS recognizes that certain toll calls should be local calls. If lost toll revenues were recouped, there would be no reason to install EAS. Customers would be better off continuing to pay toll charges because at least toll charges do not include EAS costs.

For all of the above reasons, the Commission proposed that the rule be amended to allow actual costs of EAS installation, but not lost toll revenues. The proposed language lists in detail the type of actual costs that will be included in proposed EAS rates. Those costs are the specific additional costs incurred, operating expenses, actual cost for new facilities constructed specifically to provide for EAS, net book value of existing facilities transferred from another service to EAS, and a return on the capital investment associated with the installation and provision of EAS. This list is intended to cover the actual costs that would result from the installation and provision of EAS. All of these items recognize the identifiable cost of providing or removing EAS service and are, therefore, reasonable.

The proposed amendment to the basis of rates in subpart 2 goes on to address the replacement and early retirement of an existing asset and the installation of a new asset needed to provide EAS. The Commission specifically addressed this situation in the rule because it had several concerns.

First, if an existing asset, such as a switch, needs to be replaced and retired and if a new asset is needed to take its place, but the new asset is also capable of providing non-EAS services, then the telephone company can depreciate and assign maintenance costs in a variety of ways. For that reason, the Commission needs to ensure that the telephone company uses a method that results in just and reasonable EAS rates.

By requiring the telephone companies to file a proposed schedule detailing how the depreciation and maintenance costs are to be assigned, the Commission is able to conduct the review necessary to determine whether the proposed EAS rates should be approved under proposed subpart 6 of this rule. The filing requirement also puts the telephone companies and other EAS participants on notice that this information will be considered by the Commission and will be available for their review as well. Moreover, filing a proposed depreciation and maintenance cost schedule is not an undue burden on the telephone companies because they prepare this information in their regular course of operations.

Second, the Commission has set out in the proposed rule amendment a method for assigning all depreciation and maintenance costs of the new asset to EAS rates during a specific time period. The time period runs from the date the new asset is installed until the date the prematurely replaced and retired asset is completely depreciated according to the Commission's certified depreciation schedules. This time period is important because the new asset would be installed earlier than scheduled due to the provision of EAS. However, the old asset would not be fully depreciated. Therefore, depreciation and maintenance costs of the new asset would be assigned to EAS while other rates continued to recover the depreciation costs of the early retired asset until it was fully depreciated. Absent this provision in the rule, the result would be double recovery of these costs by the telephone company. See Findings #78-81 in the Findings of Fact, Conclusions and Recommended Order of the Administrative Law Judge In the Matter of the Petition of Certain Customers of the Zimmerman Exchange for the Establishment of Extended Area Service Between the Zimmerman Exchange and the Twin Cities Metropolitan Area, Docket No. P-427, P-421/CP-85-652 (March 18, 1987).

Further, by specifying in the rule how costs are to be assigned, the Commission ensures that the proposed EAS rates are just and reasonable. The proposed rule also sets forth a method that is

uniform, consistent, and clearly laid out for all participants in the EAS process. Moreover, by requiring the telephone companies to file a proposed schedule in this manner, the Commission can ensure compliance with the rule and thereby afford a measure of protection for the other EAS participants.

Third, proposed subpart 2 contains an additional protection by requiring the telephone companies to file information to permit an adequate review of the costs assigned to EAS. This information is due 60 days before the prematurely retired asset is fully depreciated. With this information, the Commission can determine what adjustments need to be made to the rates of those services that use the new switch, including EAS. The EAS rates had been recovering all of the depreciation and maintenance costs of the new switch. At this time, the old switch would be fully depreciated and would have been replaced, whether or not the EAS route had been installed. The depreciation and maintenance costs of the new switch need to be reviewed and possibly reallocated to all services that use the switch.

Subpart 3. Basis of rates; proposal to eliminate extended area service.

The next amendment to this rule part is the creation of subpart 3 which states that the factors discussed above for establishing the basis of rates for proposals to install EAS shall also be used to determine the basis of EAS rates when the EAS request is for the elimination of EAS. This is fair and reasonable because substantially the same issues arise in this context as they do in requests for the installation of EAS. It would be unnecessary and redundant to restate the same language in this subpart.

Subpart 4. Cost or savings apportionment.

The existing rule contains language regarding cost or savings apportionment. That language says that the cost of providing or savings from removing EAS shall be equally divided between the telephone exchanges unless the Commission determines that an alternative method is fair and reasonable.

In past cases, the Commission has received numerous requests for alternative cost or savings apportionment from the telephone companies serving the affected exchanges. See Order Approving Ballot Format And Order Granting Variances From Existing EAS Rule In the Matter of the Petition of Certain Customers of the Waconia Exchange for the Establishment of Extended Area Service Between the Waconia Exchange and the Twin Cities Metropolitan Area, Docket No. P-430, P-421/CP-86-5 (June 5, 1986).

The problem has been that the rule does not address how these requests should be handled. For that reason, the Commission proposes to amend this rule part by inserting the necessary process.

The proposed amendment states that all requests must be filed with the Commission and served on the Department, the petition sponsor, and the other affected local exchange telephone companies. In this way, the ultimate decisionmaker and all the EAS participants will be notified of the request and have an opportunity to react to it. Furthermore, the request must explain the reasons for the request. Without this information, the Commission would be unable to reach a well-reasoned

decision and the other EAS participants would be unable to submit meaningful comments, if they so chose.

Subpart 4 also coincides with amendments to another rule part. The lettered items in part 7815.1000 STIPULATION OF FACTS, have been changed to replace the original item J with a new item J and to remove the original item K. For that reason, the cite to these items in subpart 4 need to be amended. Such an amendment results in clarity and consistency in the rules. For all of the above reasons, the proposed amendments in subpart 4 are reasonable.

Subpart 5. Objections to tariff.

Subpart 5 has been added to this rule part to govern objections to the proposed EAS rates. The Commission's experience in this area has been that the Department and the telephone companies may not be able to stipulate to proposed rates. For that reason, objections to the filed tariff have been made informally by not stipulating to proposed rates. The result is that the petition sponsor may not be aware of the disagreement between the Department and the telephone companies. Therefore, the petition sponsor is unable to comment on the problems which gave rise to the disagreement.

This proposed rule subpart allows the Department and the telephone companies to make their disagreement known before the stipulation of facts is due. It also allows the petition sponsor to see the proposed rates, which is reasonable because the input of all the participants is invaluable to the Commission in its decisionmaking process and must be encouraged wherever possible.

The process proposed in the rule ensures that all the participants receive a copy of an objection, that they have an opportunity to submit replies, and that they receive a copy of any replies. It is reasonable to set up the handling of objections in this way because it is the standard legal comment and reply process used in other proceedings before the Commission and other state and federal agencies.

The process is also consistent with other comment and reply processes in that a timeframe for submitting the objections and replies is spelled out in the proposed rule. Objections are due 20 days after the proposed EAS rates are filed and replies are due 10 days after an objection is filed with the Commission. Twenty day and 10 days are reasonable amounts of time in which to analyze the tariff and prepare or respond to an objection. Less time is needed to respond to an objection because the tariff has already been reviewed and analyzed.

It should be noted that the proposed language in subpart 4 refers to "any other interested person". This language would also include any entity, such as an affected telephone company, because the term "person" is applied in the broader, statutory sense and is not restricted to just individuals. The group of people who can file objections should not be limited to just the regular EAS participants because the EAS rates will affect others. Therefore, it is reasonable to amend the rule to include other interested persons.

Subpart 6. Consideration of proposed rates.

The final amendment to part 7815.0900 is the addition of a new subpart governing the consideration of proposed EAS rates. Subpart 6 sets out a procedure for a Commission decision as to whether the proposed rates were determined in accordance with this rule part.

Commission review at this point avoids the problem of having to redo part of the EAS process in the event the Commission discovers after the stipulation of facts is filed (part 7815.1000) that the proposed rates do not comply with this rule part. See Investigation And Order Granting Variance From Existing EAS Rule In the Matter of the Petition of Certain Customers for the Establishment of Extended Area Service Between the Waconia Exchange and the Twin Cities Metropolitan Area, Docket No. P-430, P-421/CP-86-5 (August 6, 1986).

Moreover, since the proposed rates are also part of the informational polling under part 7815.1050, an improperly computed tariff could affect the outcome of the informational polling. In this instance, the informational polling would have to be redone. Therefore, the Commission should review the tariff up front to promote administrative efficiency and economy. Stating this procedure in the rule also provides certainty and notices the public and the participants that the Commission will review the proposed rates for compliance.

The proposed amendment goes on to state that the Commission has 45 days after the rates are filed to make its determination. However, in the event that an objection is filed under subpart 5, the 45 day timeline does not begin until after the deadline for filing replies in subpart 4 has ended. Forty-five days is reasonable because it affords the Commission and staff sufficient time to review, analyze, discuss, and decide whether the rates have been properly calculated and, then, issue a formal order approving or rejecting the proposed tariff.

In the event that the Commission rejects proposed EAS rates, the rule allows the telephone company to refile a new tariff within 20 days of the Commission's formal order rejecting the tariff. It is reasonable to allow the telephone companies to refile the tariff. Otherwise, the entire EAS petition may fail for an invalid reason. See Order Granting Petition In the Matter of the Petition of Certain Customers of the Brookston Exchange for the Establishment of Extended Area Service Between the Brookston Exchange and the Duluth Exchange, Docket No. P-407, P-421/CP-85-718 (March 18, 1987).

In other words, EAS should not be denied simply because the tariff was not accurately prepared by the telephone company. Moreover, the tariff may only need minor corrections to bring it into compliance with subpart 1 of this part. Twenty days is a reasonable amount of time for the telephone company to bring the tariff into compliance and is consistent with other timelines used elsewhere in this and other rules.

Part 7815.1000 STIPULATION OF FACTS

The Commission proposes to amend this rule part in several respects. First, the rule is amended to coincide with timing changes that were made in another rule part. Second, additional information is required to be in the stipulation of facts. Third, information previously required has been moved to a new rule part discussed below. See part 7815.1050 INFORMATIONAL POLLING.

The timing change is for filing the stipulation of facts. Currently, the stipulation is due 60 days after the EAS petition is filed under part 7815.0700. The Commission proposes to amend this to 20 days after the Commission approves the proposed EAS rates under part 7815.0900. This change is similar to the timing changes made in part 7815.0900, and was made for the same reasons.

Numerous variances have been made to this rule part in prior EAS cases when time extensions were granted for parts 7815.0800 and 7815.0900. See Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the Osakis Exchange for the Establishment of Extended Area Service Between the Osakis Exchange and the Alexandria Exchange, Docket No. P-552, P-430/CP-86-724 (February 24, 1987).

Variances were needed because the 60 day deadline does not recognize changes to the timeline in preceding rule parts. By recognizing the preceding step in the EAS process, the proposed amendment solves this problem and saves the Commission and the participants considerable time and expense.

The actual amount of time has also been amended by this change. Without a time extension in part 7815.0900, it was 10 days between filing the proposed rates and filing the stipulation of facts. The amendment changes this to 20 days between the Commission's order finding compliance with part 7815.0900 and filing the stipulation of facts. Ten days has been added to the process because, again, the Commission has received numerous time extension requests to file the stipulation. See Order Granting Variances From Existing EAS Rule And Order Approving Balloting in North Branch Exchange In the Matter of the Petition of Certain Customers of the North Branch Exchange for the Establishment of Extended Area Service Between the North Branch Exchange and the Twin Cities Metropolitan Area, Docket No. P-421/CP-86-272 (October 30, 1987).

Moreover, it is clear that 10 days is insufficient time for the Department and the telephone companies to gather, review, analyze and agree to the information required for the stipulation. It is, therefore, reasonable to add 10 more days to this deadline. By extending the deadline for filing stipulations, time extensions should no longer be necessary and, for that reason, the rule does not provide for them.

It should also be pointed out why the timeline begins to run after the Commission's order, rather than after the proposed rates are filed. The proposed amendments to part 7815.0900 make this change necessary. The new focal point in part 7815.0900 is the Commission's order. Until the Commission determines that the proposed rates comply with part 7815.0900, the stipulation of facts cannot be completed because the stipulation must include the approved, proposed rates.

A minor amendment has also been made to this rule part. The stipulation of facts must now be filed with the Commission and the petition sponsor. Previously, only the Commission received a copy. This amendment makes it clear that, as the decisionmaker, the Commission should receive a copy. In addition, as an affected participant and the initiator of the process, the petition sponsor is also entitled to a copy of the stipulation.

The next change concerns the information that must be included in the stipulation. In prior EAS cases, the Commission has requested the additional information that is proposed here. See Findings

of Fact, Conclusions of Law and Order In the Matter of the Petition of Certain Customers of the Villard Exchange for the Establishment of Extended Area Service to the Alexandria Exchange and the Glenwood Exchange, Docket No. P-430/CP-86-236 (October 22, 1987).

The availability of 911 services and the available alternatives to EAS are important facts the Commission needs to know to make a final determination. Both of these facts have a direct bearing on the needs of the subscribers in the exchange. Considering their needs is one of the purposes of these rules. See part 7815.0200. Therefore, requiring this information in the rules is reasonable so that the Commission need not make special requests that delay the process and so that the telephone companies and the Department are aware of what must be in the stipulation of facts.

The final change to this rule part removes the current item J from the list of facts that must be in the stipulation. Item J reappears in part 7815.1050 and was moved for the reasons discussed below.

Part 7815.1050 INFORMATIONAL POLLING

The Commission proposes to amend the EAS rules by moving item J of part 7815.1000 into its own rule part. Item J was moved for several reasons.

Primarily, informational polling was moved to its own rule part because conducting an informational polling takes approximately 60 days. However, the current rule states that the stipulation of facts is due 60 days after the petition is filed and the amended rule states that the stipulation of facts is due 20 days after the proposed rates are approved. By requiring that the informational polling be part of the stipulation of facts, the due date for the stipulation of facts has been unnecessarily extended to include the polling results. See Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customer of the North Branch Exchange for the Establishment of Extended Area Service Between the North Branch Exchange and the Twin Cities Metropolitan Area, Docket No. P-421 /CP-86-272 (October 30, 1986).

Therefore, it is reasonable to make the process more time efficient by moving informational polling from the stipulation of facts to its own rule part. Since polling is the only optional item in the current rule governing stipulation of facts it is also reasonable to move it from the stipulation of facts.

In addition, item J's prior location created a dilemma for the Commission. By requiring that the stipulation of facts include the results of an informational polling, the current rule forced the Commission to decide whether an informational polling was necessary before it had a chance to review the stipulation of facts. Without the community of interest information contained in the stipulation of facts (the remaining items in proposed part 7815.1000), it is difficult for the Commission to decide whether an informational polling is necessary. The Commission has frequently requested the Department to provide the draft stipulation of facts when deciding whether to conduct an informational polling. See Findings of Fact, Conclusions of Law and Order In the Matter of the Petition of Certain Customers in the Henning Exchange for the Establishment of Extended Area Service Between the Henning Exchange and the Deer Creek Exchange, Docket No. P-407, P-421/CP-86-157 (August 5, 1986).

For instance, the results of the traffic study or the average monthly toll billings (items A and K of the current part 7815.1000 STIPULATION OF FACTS) may disclose that there is very little toll calling. While these facts alone are not dispositive of an EAS petition, they strongly suggest that there is no community of interest between the two exchanges. In that situation, an informational polling would be an unnecessary and costly expense. This also explains why the Commission did not adopt the Department's suggestion to place the rule governing informational polling before the rule governing stipulation of facts.

Another reason why informational polling was given its own rule part has to do with the conduct and content of the polling. Prior to this rule proposal, the Commission determined on a case-by-case basis how the polling should be conducted and what the polling instrument should contain. As polling was used more often, it became apparent that a uniform and consistent approach was needed. The Commission proposes this rule part as a reasonable approach.

Proposed part 7815.1050 states that the Commission shall determine whether an informational polling is necessary within 20 days after receiving the stipulation of facts. Twenty days is proposed as a reasonable time in which the Commission can review, analyze, meet to discuss the question, and issue a formal order requiring an informational polling. This translates into two working weeks. A lesser amount of time would be an undue burden on the Commission and a greater amount of time should not be necessary.

The proposed rule also provides a standard for determining whether an informational polling should be conducted. The test is whether, after reviewing the stipulation of facts, the Commission determines that the polling results would aid the Commission in making a final decision on the petition. As explained above, it is reasonable for the Commission to decide this issue after seeing the stipulation of facts so that the Commission does not make its decision in a vacuum.

Determining whether the polling results would aid the Commission in its final decision is a logical standard to apply because that is the basic reason for conducting the poll and has been used effectively in the past. See Order Approving Ballot Format And Order Granting Variances From Existing EAS Rule In the Matter of the Petition of Certain Customers of the Belle Plaine Exchange for the Establishment of Extended Area Service Between the Belle Plaine Exchange and the Twin Cities Metropolitan Area, Docket No. P-405, P-407/CP-86-55 (June 10, 1986).

On the other hand, if the polling results would not aid the Commission's decision-making process, then polling is not necessary. See Findings of Fact, Conclusions of Law and Order In the Matter of the Petition of Certain Customers of the Henning Exchange for the Establishment of Extended Area Service Between the Henning Exchange and the Deer Creek Exchange, Docket No. P-407, P-421/CP-86-157 (August 5, 1986).

Therefore, as explained above, this is a reasonable standard to apply when determining whether to conduct an informational polling.

In the event that a polling is conducted, the results automatically become a part of the record so that the Commission can consider the polling results when it makes its final decision. However, the polling results are not dispositive of an EAS petition. The polling does not constitute a referendum

vote in which a majority vote determines the outcome. To make that clear, the proposed rule states that the Commission makes a final decision based on all the information in the record, not just the informational polling. This is the same weight given to polling results in the current rule, part 7815.1000, which states that no single item in the stipulation of facts is dispositive of an EAS petition.

The next section of the proposed rule addresses the conduct of the polling. The rule states that the Department is responsible for developing the polling instrument because they proposed that procedure in their suggested rules and because they have done so in the past. See Order Granting Variances From Existing EAS Rule In the Matter of the Petition of Certain Customers in the Tyler Exchange for the Establishment of Extended Area Service Between the Tyler Exchange and the Russell Exchange, Docket No. P-407, P-575/CP-81-197 (July 7, 1982).

The rule also states that the Commission is responsible for approving the polling instrument. This is reasonable because the Commission has recently been approving the polling instrument and because it is the Commission which uses the results of the polling in its final decision. See Order Approving Ballot Format And Order Granting Variances From Existing EAS Rule In the Matter of the Petition of Certain Customers in the Waconia Exchange for the Establishment of Extended Area Service Between the Waconia Exchange and the Twin Cities Metropolitan Area, Docket No. P-430, P-421/CP-86-5 (June 5, 1986). In addition, the Department recommended in their suggested rules that the Commission continue to approve the polling instrument.

At this point in the proposed rule, the Commission details what should be in the polling instrument, the ballot, and the informational notice. The language is intended to provide guidance to the Department and to provide a standard for Commission approval of the polling instrument in future cases.

The informational polling instrument consists of a ballot and an informational notice. The ballot is used to determine customer opinion on installing or removing EAS by asking questions for the customers to answer. Asking questions is a reasonable and efficient way to gather accurate public opinion. The ballot also contains the proposed EAS rates because one of the customers' most important considerations will be the cost of EAS. It is reasonable to provide the information they consider necessary to form an opinion.

An informational notice will accompany the ballot to explain to customers the petition, the EAS process, and their right to object to the petition. Customers need this information to form a well-reasoned opinion about EAS.

The information that must be in the notice is listed in the rule and has been used by the Commission in recent informational polling notices. See Order Approving Informational Polling In The Brookston Exchange And Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the Brookston Exchange for the Establishment of Extended Area Service Between the Brookston Exchange and the Duluth Exchange, Docket No. P-407, P-421/CP-85-718 (August 5, 1986).

The notice must include a background summary of the case and the role of the participants is necessary so that customers are aware of the case's history and the EAS process. The purpose of the ballot and the weight given to the ballot is important so that the customers know that their vote does not determine the final outcome of the petition. The traffic study and average monthly toll billings data will indicate to the customers the community's calling pattern and toll usage. An estimated date for EAS installation or removal indicates to the customers when their telephone bills would likely change based on the proposed rates listed on the ballot. Finally, a description of under what circumstances a contested case hearing would be held and the format for an objection to the petition are included in the notice so that the customers are fully aware of the process and know how to object to EAS, if they wish to do so.

The remaining portion of the proposed rule sets out the steps in the informational polling, who is responsible, and when each step must be completed. The Department has 20 days to prepare the polling instrument and the Commission has 20 days to review and approve, modify, or reject the polling instrument. If the polling instrument is rejected, the Department has 20 days to correct the deficiencies in the polling instrument as directed by the Commission's order and resubmit the corrected instrument. Twenty days was chosen as a reasonable time period to be consistent with the 20 days given for the Commission to determine whether a polling was necessary. The Commission expects that two working weeks is a reasonable amount of time for the Department and the Commission to do their respective work under the proposed rule.

Finally, the proposed rule requires the Department to conduct the informational polling and submit the polling results to the Commission within 60 days after the Commission approves the polling instrument. The Department has traditionally, though not recently, conducted the informational polling and recommended that it continue to do so in its suggested rule. Sixty days has also historically been the amount of time it takes to conduct the poll, analyze the results, and prepare for Commission review. It should be noted that 60 days includes time for customers to respond to the ballot and submit objections to the petition. For these reasons, 60 days is a reasonable amount of time.

Part 7815.1100 PUBLIC MEETING

The Commission proposes to amend this rule part in several respects. The requirement for having a public meeting and the first step in the timeline have been changed. The current rule states that a public meeting shall be scheduled within 5 days receipt of the stipulation of facts. Under the proposed amendment, a public meeting will be held if the Commission determines that a public meeting would aid the Commission in making a final decision on the petition. If so, the Commission can either order a public meeting when it schedules an informational polling or within 20 days receipt of the polling results.

A public meeting is no longer automatically required because the Commission has found in the past that if an informational polling is conducted, a public meeting may not be necessary. See Order Granting Variance From Existing EAS Rule And Order Adopting Notice Of Objection Procedure In the Matter of the Petition of Certain Customers in the Belle Plaine Exchange for the

Establishment of Extended Area Service Between the Belle Plaine Exchange and the Twin Cities Metropolitan Area, Docket No. P-405, P-421/CP-86-55 (August 6, 1986).

For instance, holding a public meeting may be redundant where an informational polling has already reached all of the customers directly. For a small exchange, an informational polling may also be less costly than a public meeting. It would be reasonable to not require a public meeting in those situations.

There may be also be instances in which a public meeting, and not an informational polling, is more efficient in providing the Commission with the information it needs to aid in making its final decision. That may occur if the exchange is very large and the cost of mailing the ballot and notice is exorbitant compared to holding a public meeting. See the Department's Recommendation and Stipulation of Facts In the Matter of the Petition of Certain Customers of the Villard Exchange for the Establishment of Extended Area Service Between the Villard Exchange and the Alexandria Exchange and the Glenwood Exchange, Docket No. P-430/CP-86-236 (May 8, 1987).

However, the situation may be that when an informational polling is ordered or after one is conducted, the Commission finds that a public meeting would aid it in making a final decision. See Informal Order Approving Public Meeting In the Matter of the Petition of Certain Customers of the Zimmerman Exchange for the Establishment of Extended Area Service Between the Zimmerman Exchange and the Twin Cities Metropolitan Area, Docket No. P-427, P-421/CP-85-652 (May 15, 1986).

The rule should not preclude the Commission from making that determination by stating that informational polling and public meetings are mutually exclusive. There may be instances in which the informational polling results are inconclusive or raise more questions than they answer. Or, the Commission may anticipate when it orders an informational polling that the results might be insufficient by themselves. The original rule recognized that both an informational polling and a public meeting may be necessary. Therefore, it is reasonable for the proposed rule amendment to provide for these contingencies.

In summary, the proposed rule amendment avoids duplication by allowing for the Commission to determine whether it needs both or only one method of collecting public opinion about EAS. In this way, the rule promotes administrative efficiency and economy while still ensuring that the Commission receives the information it needs to aid it in making a well-reasoned decision.

The standard for determining whether a public meeting should be held is the same standard that is used in determining whether an informational polling should be conducted under part 7815.1050. That is, whether the information to be obtained will aid the Commission in making its final decision on the petition. The test is reasonable for this rule part for the same reasons that is was reasonable for informational pollings. It is logical and ensures that the Commission will have the information it needs. See Order Approving Ballot Format and Order Granting Variances From Existing EAS Rule In the Matter of the Petition of Certain Customers of the Zimmerman Exchange for the Establishment of Extended Area Service Between the Zimmerman Exchange and the Twin Cities Metropolitan Area, Docket No. P-427, P-421/CP-85-652 (March 27, 1986).

Moreover, setting the deadline for ordering a public meeting at 20 days is consistent with the 20 day deadlines that appear in part 7815.1050 INFORMATIONAL POLLING. Twenty days is a reasonable amount of time for the Commission to review and analyze the stipulation of facts and possibly the informational polling results, meet to discuss whether a public meeting should be held and, if so, issue a formal order to that effect.

Part 7815.1200 HEARING

The Commission proposes to amend the existing rule by changing the timeline, by adding a standard for determining whether a contested case hearing should be held, and by making the rule consistent with other rule amendments.

The proposed change to the timeline is to remove the requirement that an EAS petition be assigned to the Office of Administrative hearings, if necessary, within 10 days after the public meeting in part 7815.1100. This deadline was removed from the rule because a public meeting is no longer required in every instance. As described above for part 7815.1100, an EAS petition may not need a public meeting. Therefore, to be consistent with part 7815.1100, the reference to public meeting has been removed.

The Commission also proposes to add another standard for determining when a contested case hearing is necessary. If the Commission finds that a material issue of fact exists and if there is a reasonable basis underlying the fact such that a hearing would aid the Commission in its final determination, then a contested case hearing will be held. Although the Commission has authority to order a contested case hearing independent of these rules, its authority should also be stated in the EAS rules so that the participants are aware that the Commission may find on its own motion that a contested case hearing is necessary. See Minn. Stat. sections 237.06, 237.081, and 237.12 (1986) and see Order Varying Rule, Order Consolidating Dockets And Notice And Order For Hearing in the Metro EAS case (March 20, 1987).

Furthermore, the proposed rule is reasonable because it is modeled after, and uses the same criteria as, the Minnesota Pollution Control Agency's rule governing contested case hearings. See Minn. Rules, part 7000.1000, subpart 3.

Finally, this rule part is amended to recognize that the record for a contested case hearing should contain the information required for the stipulation of facts as well as the informational polling. This change was necessary because the stipulation of facts no longer contains the informational polling results. Under previously discussed rule amendments, the informational polling results will be gathered separately from the stipulation of facts. See proposed Minn. Rules, part 7815.1050. Therefore, it was reasonable to ensure that the record will contain all the data which the original rule intended to capture.

Part 7815.1400 FINAL ORDER OF THE COMMISSION

Most of the proposed amendments to this rule part make it consistent with changes to other rule parts. One amendment changes the deadline for issuing a final order.

If a contested case hearing is not necessary, then it will not be assigned to the Office of Administrative Hearings pursuant to part 7815.1200. To tie these two rule parts together and to make their interconnection clear, the rule is amended so that part 7815.1200 is referred to in this part.

When a contested case hearing is not necessary, the final step in the EAS process may be one of several possibilities. After the stipulation of facts is reviewed, the Commission may determine that an informational polling or a public meeting is not necessary. In that situation, the final order would be due after the stipulation of facts. The Commission may also determine that either an informational polling or public meeting is needed. Or, perhaps both are needed. In those situations, the final order would be due after one or both of the informational polling and public meeting are concluded. To account for these various possibilities, the proposed amendment states that the final order is due after the public meeting; or after the informational polling if there is no public meeting; or after the stipulation of facts if there is no public meeting or informational polling. This method is reasonable because it recognizes and accounts for the various outcomes.

The current rule does not recognize any of these possibilities other than the public meeting. In the event that there is no public meeting, there is no deadline under the rule. The proposed rule amendment imposes a deadline on the Commission in each possibility to ensure certainty and consistency in the process.

The current rule also imposes a 30 day (after the public meeting) deadline for the Commission to issue its final order when a contested case hearing is not held. The Commission proposes to extend this deadline by 15 calendar days to a total of 45 days. There is a large volume of information that is typically produced during the EAS process. All of this information is considered by the Commission in reaching a final determination. It has, therefore, been a hardship on the Commission and its staff to review and analyze this information, meet to deliberate on EAS, and issue a final order on the petition within 30 days. The change from 30 days to 45 days is proposed as a reasonable solution to this time problem.

Part 7815.1500 REPETITIONING

Only one amendment is proposed to this rule part. That is the addition of the word "removal". Adding this word recognizes the fact that a petition for EAS can request either the installation or removal of EAS between two exchanges. The 2 year limitation on repetitioning for EAS between the same two exchanges applies equally to petitions for the removal of EAS as well as for the installation of EAS. Therefore, it is reasonable to clarify the rule in this manner.

Part 7815.1600 REQUEST FOR RULE VARIANCE OR TIME EXTENSION

The Commission proposes to add a rule part governing requests for rule variances or time extensions. This rule was needed because of the many instances in which the Commission has received requests for rule variances and/or time extensions. These items are treated separately here because rule variances are essentially substantive matters whereas time extensions are procedural. Therefore, the criteria for granting rule variances under subpart 1 does not apply to requests for time extensions under subpart 2. In addition, replies to rule variance requests are specifically addressed.

Subpart 1. Requests for rule variances.

The Commission considers rule variance requests under its General Rules of Practice and Procedure, Minn. Rules, part 7830.4400. To make it clear which criteria apply in deciding these requests, the instant rule part has been added to the EAS rules and refers to part 7830.4400. Since the criteria for determining whether to grant a variance are set out in part 7830.4400 and are considered by the Commission in any proceeding in which a rule variance is requested, it is reasonable to refer to part 7830.4400.

The proposed rule goes on to state that the reasons for a variance request must be explained. Only in this way can the Commission determine whether a rule variance is warranted in a particular situation. Since replies to variance requests are also allowed in the proposed rule, whomever makes a reply needs to know why the request was made. To make this practical aspect of reviewing a variance request clear to all participants, the Commission proposes to state in the rule that requests must include an explanation of the reason for the request.

The proposed rule also sets timelines for filing variance requests and replying to requests. Seven days before the requested variance deadline is due is a reasonable amount of time for making the request. In most instances, the need for a variance should be known well in advance of the deadline. If not, the rule allows for the filing of variance requests within the 7 day timeline for good cause shown. This timeline is consistent with that applied to time extension requests in subpart 2 below. Furthermore, 7 days ensures that the Commission and other participants receive adequate notice that a problem exists so they can determine the impact a variance would have on them.

An opportunity to reply to a variance request is provided for in the rule. Replies are necessary so that the Commission can consider alternative viewpoints to the problem and reasoning presented in the request. It is also reasonable to allow the participants to respond to the request because of the potential effects granting the request may have upon them.

Ten days was chosen as a reasonable amount of time to submit replies because that is the typical amount of time given for replies in other Commission rules. See Minn. Rules, parts 7830.3900 and 7830.4100. The Commission recognizes that 10 days will put the deadline for filing replies after the deadline that the variance request is targeted at. However, since all the participants receive a copy of the variance request, they will not be unduly burdened by a few days delay beyond the original deadline date. As a practical matter, the request will not be resolved until after the deadline. This timeline is, nonetheless, reasonable because it will greatly reduce the instances in which a request is made the day before or the day of the deadline and the other participants are not aware of the request and have not had an opportunity to respond.

Subpart 2. Requests for time extensions.

The Commission has received many requests for time extensions under the existing rules. See Order Granting Variances From EAS Rules In the Matter of the Petition of Certain Customers of the Miltona Exchange for the Establishment of Extended Area Service Between the Miltona Exchange and the Alexandria Exchange, Docket No. P-448, P-430/CP-86-729 (February 24, 1987).

Occasionally, the Department has received these time extension requests. The Commission proposes to require that requests be filed with the Commission because the Commission decides whether or not to grant a time extension. Since requests for time extensions also affect the other participants, they should all receive a copy of any requests. The requests should be specific as to why a time extension for filing a traffic study is needed so that the Commission can evaluate whether a time extension should be granted.

The proposed rule amendment also requires that requests for time extensions must be filed at least 7 days before the filing deadline, unless good cause is shown. Last minute requests for time extensions create a burden for the Commission and the other participants. To satisfy the rule, the Commission must meet to discuss the request and if it is approved, issue its Order Granting Time Extension by that deadline date. This has been a hardship for the Commission. See Order Approving Informational Polling in the Nicollet Exchange and Order Granting Variances From Existing EAS Rules In the Matter of the Petition of Certain Customers of the Nicollet Exchange for the Establishment of Extended Area Service Between the Nicollet Exchange and the Mankato Exchange, Docket No. P-421, P-414/CP-86-101 (June 5, 1986).

Last minute requests also result in other participants being unable to respond if they object to the time extension. For these reasons, the Commission proposes to require that, unless good cause is shown, time extension requests must be filed at least 7 calendar days before the rule deadline. Absent an unexpected event or an emergency, a telephone company should know well before the end of the deadline whether it needs an extension. Moreover, the deadline in the rule is clearly spelled out and noticed to the telephone companies at the beginning of the EAS process.

The proposed rule also states what will be considered in determining whether good cause exists to accept a request earlier than seven days before the filing deadline. The ability of the affected participants to effectively proceed is a reasonable standard. Since this is a procedural request, the procedural effect on the other participants is a valid consideration. If a late-filed request for a time extension would hinder others in their ability to proceed in the EAS process, the extension should not be reviewed. This proposed rule language is also reasonable because it was modeled after the Office of Administrative Hearings rule governing continuances. See Minn. Rules, part 1400.7500.

The Commission notes that replies are not provided for under subpart 2 when time extensions are requested. The reason is that variance requests under subpart 2 will most likely address substantive matters that have the potential to profoundly affect other participants. The Commission also anticipates that the other participants will probably not be interested in responding to a procedural request, such as a time extension. However, since all the participants receive a copy of a time extension request, they have the option of commenting on it. If the rule included a deadline for

submitting those comments, the process would be unnecessarily delayed given the small chances of receiving comments. Therefore, a timeline for making replies is not built into the rule.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. Section 14.115, subd. 2 (1986) requires the Commission, when proposing rules which may affect small business, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance for reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. Section 14.115 (1986). The small businesses that may be affected are the small independent, cooperative, and municipal telephone companies. As a result, the Commission has considered the above-listed methods for reducing the impact of the rule on small businesses.

Methods (a), (b) and (c) address compliance and reporting requirements. Part 7815.0900, subpart 2, contains a new compliance and reporting requirement. Under that rule, the local exchange telephone companies must submit cost schedules if an old asset is prematurely retired and a new asset takes its place. In that situation, the local exchange telephone companies must also submit information on the costs assigned to EAS before the prematurely retired asset is fully depreciated.

The Commission is unable to simplify this requirement or make it less stringent on those local exchange telephone companies that fall within the definition of small business. The reporting requirement as it is currently written is the least amount of information on which the Commission can determine whether the companies have complied with the rule. Nor can the Commission make the compliance requirement itself less restrictive. Proof of compliance with the rule is necessary so that the Commission and other EAS participants are assured that the companies do not recover twice for the new asset's costs and/or the old asset's depreciation. Compliance with the rule's reporting requirement is also necessary so the Commission can determine if the EAS rates need adjustment when the prematurely retired asset is fully depreciated.

Method (d) does not apply to the proposed rules because the rules do not contain design or operational standards.

Method (e) addresses the exemption of small businesses from any or all rule requirements. Because petitions for the installation or removal of EAS potentially apply to all telephone companies, the Commission could not exempt some of the smaller companies from the rule. Exempting the small companies from some of the rule requirements would result in the Commission lacking sufficient information to make a well-reasoned decision on an EAS petition. Moreover, exempting the small companies would also result in discrimination against their customers because they would not have the safeguards afforded the customers of large companies. Therefore, the rule applies equally to large and small telephone companies.

Furthermore, the Commission notes that it has been authorized by Minn. Stat. ch. 237 (1986) to regulate telephone companies in Minnesota. The basic tenets of regulation include: telephone companies are affected with a deep public interest; they are obligated to provide satisfactory service to the entire public on demand; and they are obligated to charge fair, non-discriminatory rates. In return, the telephone companies receive a general freedom from substantial direct competition and the opportunity to make a fair return on investment. Given this regulatory scheme, it is clear that the legislature views telephone companies differently from other concerns defined as small businesses. That is, the degree of government intervention in the operations of a telephone company is considerably higher than in other types of businesses.

Finally, though some small companies fall within the definition of small businesses as that term is defined in Minn. Stat. section 14.115 (1986), they are excepted from this statute. Minn. Stat. section 14.115, subd. 7 (1986) establishes exceptions to the general obligations created by the statute and applies to rules promulgated by the Commission. In pertinent part, it states:

Subd. 7. Applicability. This section does not apply to: ... (c) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, daycare centers, group homes and residential care facilities.

Telephone companies fall within this broad definition. They are certainly service businesses regulated by government bodies for standards and costs. The words following the phrase "such as" merely provide some examples of government regulated businesses and are not exclusive.

VI. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

In the event that an administrative rulemaking hearing is necessary, this Statement of Need and Reasonableness contains the Commission's verbatim affirmative presentation of the need and reasonableness of the proposed rules.

The following members of the Commission and Office of Attorney General staff will be available at the hearing to answer questions about the proposed rules or to briefly summarize all or a portion of this Statement of Need and Reasonableness if requested by the Administrative Law Judge:

1. Karin Sonneman
Telecommunications Analyst
2. Diane Wells
Telecommunications Analyst
3. Caroline Robinson
Rules Attorney

B. Exhibits

In support of the need and reasonableness of the proposed rules, the Commission's Orders from the following EAS cases will be entered into the hearing record by the Commission. As indicated below, certain other documents will also be entered into the hearing record. The remainder of the documents, which will not be entered into the hearing record by the Commission, are available for inspection by the public and the Administrative Law Judge at the Commission offices.

<u>Exhibit No.</u>	<u>Commission Orders and Other Indicated Documents</u>
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| 1. | Tyler-Russell EAS,
Docket No. P-407, P-575/CP-81-197. |
| 2. | Brookston-Duluth EAS,
Docket No. P-407, P-421/CP-85-718, Stipulation of Facts. |
| 3. | Zimmerman-Metro EAS,
Docket No. P-427, P-421/CP-85-652, Findings of Fact, Conclusions
and Recommended Order of the Administrative Law Judge. |
| 4. | Waconia-Metro EAS,
Docket No. P-430, P-421/CP-86-5, Stipulation of Facts. |
| 5. | Villard-Alexandria-Glenwood EAS,
Docket No. P-430/CP-86-236, Department Recommendation and
Stipulation of Facts. |
| 6. | Belle Plaine-Metro EAS,
Docket No. P-405, P-421/CP-86-55, Stipulation of Facts. |

7. Osakis to Alexandria EAS,
Docket No. P-552, P-430/CP-86-724, Department Recommendation
and Stipulation of Facts.
8. Miltona-Alexandria EAS,
Docket No. P-548, P-430/CP-86-729, Department Recommendation
and Stipulation of Facts.
9. Dakota-LaCrosse EAS,
Docket No. P-401/CP-86-319.
10. New Prague-Metro EAS,
Docket No. P-421, P-520/CP-86-537.
11. Janesville-Mankato & Waseca,
Docket No. P-405, P-414, P-421/CP-86-547.
12. Henning-Deer Creek EAS,
Docket No. P-421, P-408/CP-86-157, Department
letter of June 5, 1986.
13. North Branch-Metro EAS,
Docket No. P-421/CP-86-272, Department memo
of July 1, 1986.
14. Zimmerman, Prescott, Waconia, Belle
Plaine, North Branch, Lindstrom, New
Prague, Cambridge, Hudson, Houlton,
LeSueur, Cannon Falls, Delano,
Northfield, Buffalo, and Watertown-
Metro EAS, Docket No. P-421, P-405,
P-407, P-430, P-426, P-520, P-427/CI-
87-76.
15. Prescott-Metro EAS, Docket No. P-
421/CP-85-878.

VII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules, parts 7815.0100 to 7815.1600, are both needed and reasonable.

Mary Ellen Hennen

Executive Secretary