

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Issue Date: March 18, 1988

Docket No. P-999/R-85-599

RE: PROPOSED MODIFICATIONS TO THE COMMISSION'S PROPOSED
AMENDMENTS TO THE RULES GOVERNING TELEPHONE INTER-EXCHANGE
CALLING

INTRODUCTION

Following public notice in the State Register, 12 S.R. 1534, the Minnesota Public Utilities Commission (Commission) held public hearings pursuant to Minn. Stat § 14.14, subd. 1 (1986) on the above-captioned matter on March 3 and 4, 1988 in St. Paul, Minnesota. During these hearings, Administrative Law Judge Allen Klein announced that pursuant to Minn. Stat. § 14.15, subd. 1 (1986), he would hold the record of hearings open until March 24, 1988 to allow written material to be submitted and recorded.

The Commission hereby submits its proposed modifications to the Commission's proposed extended area service (EAS) rule amendments for inclusion in the record. These modifications are based upon oral and written comments submitted by various persons and upon testimony at the public hearings.

The Commission will discuss below the need for and reasonableness of the proposed modifications to the proposed rule amendments section by section. This discussion supplements the Commission's original Statement of Need and Reasonableness. At the end of this document, the Commission will explain why the proposed modifications do not constitute a substantial change.

The Minnesota Public Utilities Commission has authority to adopt its proposed EAS rule amendments pursuant to Minn. Stat. §§ 237.10, 237.06, 237.12, and 237.16 (1986).

The Commission has fulfilled all relevant substantive and procedural requirements governing rulemaking under Minn. Stat., Chapter 14 and Minn. Rules, parts 1400.0200 through 1400.0800, as shown in its hearing exhibits.

NEED FOR AND REASONABLENESS OF THE PROPOSED MODIFICATIONS TO PROPOSED RULE AMENDMENTS

The Commission's permanent rules governing telephone inter-exchange calling, and specifically governing EAS, are currently in effect. See Minn. Rules, parts 7815.0100 to 7815.1500. The Commission has proposed several procedural and substantive amendments to its EAS rules. The procedural amendments would streamline the EAS petition review process. The major substantive change proposed by the Commission would modify the way EAS rates are presently calculated. See Statement of Need and Reasonableness, issued December 29, 1987 in MPUC Docket No. P-999/R-85-599.

The Commission introduced its proposed amendments to the EAS rule at the public hearings held in St. Paul on March 3 and 4, 1988. With the exception of one entity, the Office of the Minnesota

Attorney General (OAG), persons attending those hearings and persons who submitted written and oral comments prior to the hearing recommended modifications to the Commission's proposed amendments to the EAS rule. The OAG recommended that no changes be made to the existing method of calculating EAS rates. The OAG did not address other proposed amendments to the EAS rule.

The Commission has reviewed the comments submitted before and at the public hearings. The proposed modifications can be seen in Attachment A and are listed below, by section and by line number using the official copy of the proposed amendments of the Office of the Revisor of Statutes. The following proposed modifications to the proposed EAS amendments are accompanied by a statement of need and reasonableness:

(A) 7815.0700 PETITION FOR EXTENDED AREA SERVICE

- (1) On page 1, line 32, the Commission proposes that the following language be inserted after the word "department":

"in consultation with the telephone companies".

This modification is needed to allow the telephone companies to participate with the Department of Public Service (Department) in the development of the EAS brochure that will be distributed to the customers in the exchange petitioning for EAS. It is reasonable to make this modification because the telephone companies should be allowed to give advice and suggestions regarding the design and substance of a brochure that will be sent to their customers.

- (2) On page 2, line 20, the Commission proposes that the word "billing" be replaced with "billed".

This modification is needed to avoid confusion with the current rule's phrase "billing number." The term "billing number" could refer to either the billing account or the billed number. Some telephone customer's have more than one telephone line, e.g. businesses and parents who have a line in their own name and their children's name. If "billing number" is taken to mean "billing account", one customer could sign the petition for each telephone line they pay for. However, the number of telephone customer's, not telephone lines is the determining factor in the petitioning process. For a petition to go forward, 15% or more of the customers or 600 customers, whichever is less, must sign the petition. The word "customers" does not mean telephone lines, but the customer who pays the bill for telephone service. The term "billed number" as opposed to the currently used term "billing number" will clarify this intent.

This modification is reasonable because it will give clear direction to the telephone companies and the Department in their evaluation of the validity of the petition signatures.

- (3) On page 2, line 28, the Commission proposes that the following language be inserted after the word "signatures":

"by matching the names on the petition with customer names".

This modification is needed to establish the procedure under which validity of petition signatures is determined. Presently, the rule gives no such direction. It is reasonable because it will provide clarification of the Commission's intent regarding the procedure to use to determine the validity of the petition signatures.

(B) 7815.0800 TRAFFIC STUDY

- (1) On page 3, line 20, the Commission proposes that the following language be inserted after the sentence ending with the word "available.":

"The traffic study shall reflect not less than 30 consecutive days of representative traffic."

This modification is needed to prevent the receipt of traffic studies that are conducted over so short a period that their reliability is called into question. Another problem is ensuring that the traffic studies are representative of typical traffic usage and are not conducted during unusual toll usage periods, e.g., December.

To solve these problems, the Commission proposes to specify the minimum duration for the traffic study and also to require that the traffic study be representative of telephone traffic patterns.

Thirty days for a traffic study is reasonable because any shorter period would not provide enough data for reliable evaluation. If necessary, the company has the flexibility under the proposed modification to conduct a traffic study for longer than 30 days. The further qualification that the traffic study be representative of typical traffic patterns is reasonable because it prohibits companies from submitting data that does not allow reliable evaluation of usage patterns.

- (2) On page 3, line 23, the Commission proposes that the last word in that line, which is "a", be deleted and replaced with the following language:

"the number of subscribers making 0 calls per month, 1 call per month, 2 calls per month, 3 calls per month, 4 calls per month, 5 calls per month, and those making over 5 calls per month by concentration of calls such as 6 to 8, 9 to 11, 12 to 16, etc."

This modification is needed because the current rule is silent on the format required for the traffic study. Lack of a specific format results in the Commission receiving traffic studies in different formats, some of which may not be useful for evaluation purposes. By stating in the rule the required format for the traffic study, the Commission standardizes the process, resulting in an efficient evaluation of the traffic studies. The format proposed here is reasonable because it is based on experience with which formats have proved useful in the past.

- (3) On page 3, line 24, the Commission proposes that the word "A" be inserted before "breakdown" and that after the word "calling", the following language be inserted:

"must be provided, if available"

This modification is needed because it recognizes the practical limitations of some companies which, due to technical restrictions, can't provide the information in the form requested. It is reasonable to give affected companies this exemption because it will allow them to avoid the cost and expense of attempting to get information which is not available because of technical impossibilities.

- (4) On page 3, line 31, the Commission proposes that the first "the" be changed to "each" and that the phrase "petitioners' exchange" be changed to "affected exchanges".

As currently written, the language on line 31 requires that a copy of the traffic study be served only on the telephone company serving the petitioners' exchange. However, the traffic study is information that the telephone companies serving each affected exchange will want to review and perhaps comment on to the Commission. It doesn't make sense that the telephone company serving the petitioning exchange would get a copy of the traffic study prepared by the telephone company serving the non-petitioning exchange, but not the other way around. The Commission did not intend this result. Therefore, it is reasonable to clarify in the rules that the telephone companies serving the affected exchanges must receive a copy of each other's traffic study.

(C) 7815.0900 TARIFF FILING

- (1) On page 4, at lines 1 and 14, the Commission proposes that where the word "five" appears, it be replaced by the number "30".

This modification is needed for the practical purpose of allowing adequate time for all companies to perform the required traffic studies. Expanding the timeframe will save the additional time and expense of granting rule variance requests for time extensions, as the Commission has had to do in the past. Thirty days is a reasonable amount of time because this is the time it typically takes each company to prepare and submit the tariff filing and the supporting cost studies.

- (2) On page 5, line 9, the Commission proposes the following:
 - a) After the word "asset", the word "is" is deleted and replaced with the words "would have been"; and
 - b) after the word "depreciated", the words "according to its depreciation schedule" be inserted.

The first proposed modification is a clarification. Changing "is" to "would have been" makes it clear that the date in question for depreciation of the prematurely retired asset is the date that would have applied had the asset not been prematurely retired. Since the asset is being prematurely retired, there will be no actual date on which it is completely depreciated.

The second proposed modification is also a clarification. The phrase "according to its depreciation schedule" makes it clear which depreciation schedule is to be used for the prematurely retired asset.

Both of these clarifications are reasonable because they will facilitate the telephone companies' understanding, application, and compliance with this section of the proposed rule.

(D) 7815.1000 STIPULATION OF FACTS

- (1) On page 6, line 32, the Commission proposes that the following language be inserted after the word "question":

"and the petition sponsor".

This proposed modification recognizes the role of the petition sponsor in the EAS review process. Including the petition sponsor in the preparation of the stipulation of facts will allow the petition sponsor to enter into the negotiation process with the Department and the telephone companies. Moreover, the petition sponsor will most likely know many of the facts called for in the stipulation, e.g., the location of government centers, schools, and medical services within the petitioners' exchange. For this reason, the petition sponsor's participation will be helpful to the Department and

the telephone companies in preparing the stipulation of facts for the Commission. Therefore, the Commission proposes this modification as needed and reasonable.

- (2) On page 6, line 33 and continuing on line 34, the Commission proposes that the words "and the petition sponsor," be deleted.

This modification is proposed because it is consistent with the change proposed in (1) above. If the petition sponsor is a participant in the stipulation of facts process, there is no need to serve a copy of the final stipulation on the petition sponsor since the petition sponsor will already be aware of the stipulation's contents. Therefore, this change is reasonable because it saves time and expense by preventing a duplication of effort.

- (3) On page 7, line 34 and continuing on line 34, the Commission proposes that a period be inserted after the first "service" and the words "and a recommendation on which service best serves the public interest" be deleted.

The Commission proposes to remove the requirement that the stipulation of facts include a recommendation regarding which EAS alternative best serves the public interest because the remaining items in the stipulation are facts. These facts are part of the stipulation because they are presumed to be basic, knowable facts which are not typically subject to dispute.

However, making a recommendation on which EAS alternative best serves the public interest calls for a subjective evaluation. This would most likely lead to a disagreement among the negotiators to the stipulation which could eventually result in a contested case hearing. It is, therefore, reasonable to prevent such attendant delays and added expense by removing this requirement from the stipulation of facts.

(E) 7815.1100 PUBLIC MEETING

On page 9, line 28, the Commission proposes that after the word "commission" the following language be inserted:

", or no later than 45 days after the receipt of the informational polling results if an informational polling is conducted".

The proposed modification serves to clarify the fact that procedural changes made elsewhere in this and other rules affect this rule. In the event that an informational polling is conducted, this rule provides that the Commission may order a public meeting within 20 days of receipt of the informational polling results. However, this rule also states that the public meeting must be held no later than 45 days after the stipulation of facts is received. Since an informational polling is conducted after the stipulation of facts is completed, the 45 days starts to run either after the stipulation of facts is completed or after the informational polling is conducted. To avoid confusion in the future, the Commission proposes to recognize this fact in the rule.

This modification is similar to the language used in proposed part 7815.1400 governing the final order of the Commission. In that rule, the 45 day time period also begins to run after the most recently completed step in the EAS review process. The same reasoning that was given in the Statement of Need and Reasonableness at page 30 applies to this rule modification.

(F) 7815.1200 HEARING

On page 10, line 17, the Commission proposes that the word "and" be deleted and after the word "companies", the following language be inserted:

", the petition sponsor, and any other interested person".

The Commission proposes to add the above language to this rule part so that an implicit right of the petition sponsor and other interested persons is recognized in the rule. If a contested case hearing is held, a record is established before the administrative law judge as described in the rule. That record may be established not only by the Department and the telephone companies, as stated in the rule, but also by the petition sponsor and any other interested person, including members of the Commission and its staff. Therefore, the proposed modification language is reasonable because it clarifies that the proposed rule is not attempting to limit participation at a contested case hearing.

THE PROPOSED MODIFICATIONS DO NOT RESULT IN A SUBSTANTIAL CHANGE TO THE PROPOSED RULES

Pursuant to the Office of Administrative Hearing's rule on substantial change, Minn. Rules, part 1400.1100, subpart 2, the Commission has reviewed its proposed modifications and submits that they do not constitute a substantial change.

The modifications described above affect the same classes of persons as were affected by the originally proposed rules. Some of the modifications involve certain classes of persons to a greater extent, as they requested at the hearing:

- including the telephone companies in the development of the EAS brochure, (A)(1); and
- including the petition sponsor in the stipulation of facts process, (D)(1) and (D)(2).

Some modifications lessen the requirements on other classes of persons or allow for more flexibility, also as requested at the hearing:

- if the data is available, require the traffic study to include a breakdown between residential and business customers, (B)(3);
- allow 30 days to submit the tariff filing, (C)(1); and
- remove the requirement that the stipulation of facts include a recommendation on which EAS alternative best serves the public interest, (D)(3).

The subject matter of the originally proposed rules -- amendments to the EAS petition review process -- has not been changed by the proposed modifications. Most of the proposed modifications either clarify the language or the intent of the proposed rules, or correct inconsistencies:

- substitute billed number for billing number, (A)(2);
- specify that the validity of the signatures on the EAS petition are determined by matching the petition names with customer names, (A)(3);
- specify over what period of time the traffic study must be conducted, (B)(1);

- specify the format required in the traffic study, (B)(2);
- clarify that each telephone company serving the affected exchanges will receive a copy of the traffic study, (B)(4);
- clarify which depreciation schedule applies in the tariff filing, (C)(2);
- correct an inconsistency in the public meeting rule to recognize that a public meeting may be held 45 days after receipt of the informational polling results, (E); and
- clarify that a contested case hearing record includes comments from the petition sponsor and any other interested person, (F).

None of the above modifications change the proposed rule in a major way.

Nor do the proposed modifications make any major substantive changes to the originally proposed rules that were not raised by the original notice of hearing in such a way as to invite reaction at the hearing. In fact, the proposed modifications were suggested by various hearing participants either in their written or oral comments before and at the hearing.

Finally, the proposed modifications do not result in rules that are fundamentally different in effect from those contained in the notice of hearing. The basic effect of the proposed rules has not changed. The EAS petition review process has been further streamlined in essentially the same manner as originally proposed, and the method for calculating the basis of EAS rates does not differ from the approach originally proposed.

Therefore, for the reasons given above, the Commission contends that the proposed modifications to the proposed amendments to the EAS rules are needed and reasonable and do not result in a substantial change.