

P-999/CI-94-296 ORDER ADOPTING FORMAT AND SCHEDULE FOR INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
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Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Investigation into the  
Appropriate Local Calling Scope, in  
Accordance with Minn. Stat. §237.161 (1994)

ISSUE DATE: August 22, 1994

DOCKET NO. P-999/CI-94-296

ORDER ADOPTING FORMAT AND  
SCHEDULE FOR INVESTIGATION

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

The 1994 Legislature added a subdivision to Minn. Stat. §237.161, the extended area service (EAS) statute, requiring the Commission to accept no new petitions for extended area service through June 1, 1996 and, instead, institute

...a proceeding or series of proceedings to investigate issues related to extended area telephone service and [the commission] shall issue a final order to establish, at a minimum, an orderly and equitable process and standards for determining the configurations of and cost allocations for extended area service in the state. Minn. Stat. § 237.161, subd. 6 (1994).

On April 20, 1994, the Commission sent a Notice of Investigation and Solicitation of Comments regarding appropriate local calling scopes. The notice was replicated in the State Register on May 2, 1994.

By June 17, 1994, the close of the comment period identified in the Notice, twenty one parties filed responses:

*State agencies:* the Minnesota Department of Public Service (Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG).

*Counties and Towns:* Filmore County, Steele County, the Suburban Rate Authority (SRA) and the Town of Embarrass.

*Telephone companies and telecommunications carriers:* AT&T Communications of the Midwest, Inc. (AT&T), U S West Communications, Inc. (USWC), GTE Minnesota (GTE), Sprint/United, and MCI.

*Organizations:* Minnesota Telephone Association (MTA), Minnesota Business Utility Users Council (MBUUC), Southeast Minnesota Telecommunity (SMT), and Lake Milona Property Owners Association.

*Individuals:* Robert W. Bainbridge, Carl Butler, T. More Hynes, Mark Kunkel, Linda Kvasnicka, and Lynn Street.

On July 7, 1994, several parties who had filed comments met with Commission Staff to explore mutual ground regarding the procedure: the Department, RUD-OAG, SRA, AT&T, USWC, GTE, MCI, MTA, Sprint/United, Vista, and T. More Hynes.

On August 2, 1994, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **II. Format for this Proceeding**

The parties who met on July 7, 1994 reached general agreement on the format for the proceeding. The parties proposed the following format:

1. Parties would have 90 days to file their own proposed plan for local calling scopes.

The parties agreed that the proposed plans should include as detailed description of the plan as possible. To the extent possible and resources permit, the plan should also address:

- technical requirements for implementing the plan;
- how the proposed plan satisfies subscriber demand;
- the cost to LECs, IXCs and ratepayers;
- the effects on competition; and
- administrative and regulatory costs and burdens (including any necessary rule or statutory changes and the process to implement).

2. During the initial part of this 90 day period for parties to file proposed plans, Commission Staff would engage in public outreach to educate the public about the proceeding and also to learn about the calling needs of subscribers outside the existing metro calling area. This public outreach would be conducted through staff participation in community forums and also radio programs, senior citizen meetings, Chamber of Commerce meetings and other suitable community group meetings.

Members of the public would be encouraged to develop and submit their own plans for local calling area scopes.

3. Commission Staff would review plans that have been submitted and issue a Notice of Reply Comment Period. If, in its review, Staff identified a type of plan or plans that had not been proposed and believed that such a plan or plans warranted further consideration, Staff would describe the plan(s) in the Notice and request parties to comment on the plan(s) as well as the plans that have been proposed by parties and members of the public. The Notice would be issued approximately two weeks after the due date for the proposed plans or December 15, 1994.
4. Parties would then have 75 days to file their responses to the plans proposed by others and any plan(s) identified by Staff. At their discretion, the parties could meet informally for the purpose of agreeing to a plan or agreeing that a specific plan or plans do not merit further consideration and the reasons why. Parties comments would be due March 1, 1994.
5. The Commission would then meet to consider the proposed plans and any plan(s)

identified by Staff and the comments of parties. The Commission would determine what plans should be addressed in more detail through the evidentiary hearing process. Those plans would be referred to the Office of Administrative Hearings for evidentiary and public hearings. According to the parties' proposed timetable, the Order setting the matter for hearing would be issued no later than May 1, 1995.

6. Parties would file initial testimony in the evidentiary hearing process (no later than August 1, 1995), rebuttal testimony no later than October 1, 1995, and surrebuttal testimony no later than October 21, 1995. Public hearings would be held prior to the evidentiary hearings which would be held in November 1995. Following the evidentiary hearings, parties would file initial and reply briefs, the ALJ would issue a recommended order, and parties would file exceptions and replies to exceptions. The Commission would then be briefed, hold oral argument and deliberations.
7. Pursuant to this timetable, the Commission would be prepared to issue a decision no later than June 1, 1996, per the statutory requirement of Minn. Stat. §237.161, Sec. 1, subd. 6.

The Commission has reviewed the parties' proposal and finds it generally acceptable. The schedule appears to accommodate the need to develop practical plans and provide the Commission with adequate background information to provide a sound basis for evaluating the proposals.

In addition, the parties' proposed format is consistent with the Commission's statutory responsibility to bring this issue to closure with a Order to be issued no later than June 1, 1996. Minn. Stat. § 237.161, subd. 6 (1994).

As set forth in detail in the Ordering Paragraphs, the Commission will direct the implementation of the initial phases<sup>1</sup> of the proposed schedule, with one amendment. The parties proposed that the Commission advise drafters of prospective proposed plans to include information, to the extent possible and if the proposer's resources permit it, on five subjects. The Commission will suggest another type of information that would be helpful in evaluating a plan: how the installing companies' revenue requirement would be recovered under the proposed plan.

The Commission clarifies that no plan will be rejected simply because it fails to provide any of the requested areas of information. The requested information, however, will be helpful in evaluating whether the plan merits closer scrutiny in a contested case hearing. Parties are encouraged to provide as much relevant information on these subjects as their resources permit.

### **III. Clarifying the Scope of the Proceeding**

The new extended area service (EAS) statute gives the Commission a broad mandate. The Commission is to investigate "issues related to extended area telephone service." The Commission may do this in one or a series of proceedings. However, the Commission must also complete its proceeding (or series of proceedings) and issue an Order based on that proceeding by June 1, 1996. Minn., Stat. § 237.161 (1994).

The Commission is directed to produce at least one specific product based on its investigation: in an Order issued no later than June 1, 1996 the Commission is to establish, at a minimum, an orderly and equitable process and standards for determining the configurations of and the cost allocations for EAS in the State.

In addition, in the course of its investigation, the Commission must observe certain procedural requirements imposed by the statute: the Commission must 1) give notice of its proceedings "in the same manner as for rulemaking" and 2) ensure the same opportunities for public participation as are available in rate cases under Minn. Stat. § 237.075 (1994). Beyond the procedural requirements noted in the statute, it is the Commission's experience that given the complexity and controversial nature of the issues raised in such a proceeding it would be prudent to take into account the possibility of having to refer some part of the matter to the Office of Administrative Hearings for a contested case proceeding.

In sum, it is the Commission's obligation under the statute to design a proceeding which goes as deeply into "issues related to extended area telephone service" as possible, consistent with the June 1, 1996 deadline and the product and procedural requirements.

Several parties requested that the Commission specifically state in this Order that this proceeding will not consider the reduction of any existing local calling area. The parties argued that failure to so limit the scope of the proceeding would elicit a great deal of defensive energy from parties feeling called upon to defend their status quo which would distort the contributions of some parties and substantially interfere with progress in this matter.

The prospect of dealing with controversial issues does not alarm the Commission. Nor does the Commission believe that the size of current local calling areas is beyond its statutory duty and authority to examine. However, the goal specified by the legislature (establishment of an orderly and equitable process and standards for determining the configurations of and the cost

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<sup>1</sup> Any decision selecting issues and specific plans for scrutiny in a contested case process as envisioned by the parties in their Point 5 above, of course, would be the subject of a subsequent Order. Further, the precise timetable for the contested case proceeding as envisioned in the parties' Point 6 above would be set by the Administrative Law Judge (ALJ) assigned to the case.

allocations for EAS in the State) is, based on the Commission's experience with EAS rulemaking, a major undertaking.

Given the time and procedural constraints established in the legislation, it is reasonable to prune away issues whose importance is substantially outweighed by their potential to interfere with the accomplishment of the identified statutory objective. For this reason, the Commission in its Notice of Investigation and Solicitation of Comments stated:

At this time the Commission does not intend to decrease the size of existing local calling scopes in this proceeding.

This Order will confirm that limitation on the scope of this proceeding. The Commission believes that its investigation into the proper standards for establishing local calling areas will benefit from not having to consider issues and arguments raised by those having vested interests in the status quo size of their particular local calling area. Consistent with that decision, the Commission expects that no party will raise arguments on matters that the Commission has declared beyond the scope of the Commission's investigation in this docket.

At the same time, however, the Commission clarifies that this is a tactical decision made in the unique context described above. This decision binds this docket but does not guarantee existing calling areas perpetual immunity from scrutiny.

Parties made several other requests to limit the scope of this investigation. The Commission will defer consideration of those requests at this time. The Commission will evaluate those requests after the parties have filed plans for accomplishing the primary objective of this proceeding: the establishment of an orderly and equitable process and standards for determining the configurations of and cost allocations for new EAS areas in Minnesota. Facing concrete proposals for the accomplishment of this goal will provide the proper context for determining the merits of these various requests for further limitation of the proceeding.

Finally, stated positively, the goal of this proceeding is to develop standards and a process for the Commission to use in future proceedings to establish *new* local calling areas which are equitable, provide telephone service which is reasonably priced, preserve universal service, and are understandable to customers.

### **ORDER**

1. By November 30, 1994, interested parties are encouraged to file specific plans (i.e. proposed standards and procedures) that the Commission could adopt for use in determining new local calling areas in Minnesota. The parties shall describe their proposed plans in as much detail as possible. To the extent possible and their resources permit, parties should also address:
  - technical requirements for implementing the plan
  - how the proposed plan satisfies subscriber demand
  - how revenue requirement is to be recovered in calling areas which are established pursuant to the plan
  - the cost to LECs, IXC's and ratepayers
  - the effects of such a plan on competition and

- the administrative and regulatory costs and burdens of implementing such a plan
2. Plans proposed by all parties shall explain how the plan satisfies subscriber demand. Plans submitted by parties other than the general public shall address the concerns of subscribers gathered by Commission Staff at the Community Outreach Programs. Plans proposed by members of the general public may but need not address those concerns.<sup>2</sup>
  3. After the close of the filing period authorized in Ordering Paragraph 1 and no later than December 15, 1994, the Commission will issue a Notice of Comment Period regarding the plans that have been received. The Notice will also describe and request comment on other potentially meritorious plans that have been implemented or proposed elsewhere but which have not been proposed to date by any party in this proceeding.
  4. Parties may hold informal meetings for the purpose of agreeing to a plan or agreeing that a specific plan or plans do not merit further consideration and the reasons why.
  5. On or before March 1, 1995, interested parties shall file their responses to the plans proposed by others and any plan(s) described in the Notice.
  6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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<sup>2</sup> During the period prior to the filing of plans pursuant to Ordering Paragraph 2, Commission Staff will conduct public outreach to educate the public about the proceeding and also to learn about the calling needs of subscribers outside the existing metro calling area. This public outreach will be conducted through Staff participation in community forums and also radio programs, senior citizen meetings, Chamber of Commerce meetings and other suitable community group meetings. Commission Staff will summarize its findings and make that summary available to parties requesting it.