

P-999/CI-94-296

ORDER REACTIVATING THE PROCESSING OF EAS PETITIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Don Storm	Commissioner

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

ISSUE DATE: October 24, 1995

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

ORDER REACTIVATING THE
PROCESSING OF EAS PETITIONS

PROCEDURAL HISTORY

In 1994, the Legislature added a subdivision to Minn. Stat. § 237.161 which requires that the Commission no longer accept petitions for extended area telephone service through June 1, 1996, but 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 August 22, 1994, the Commission issued an Order in this matter establishing the parameters of its investigation. In that Order, the Commission allowed any interested party to submit to the Commission by November 30, 1994, a plan for an appropriate local calling scope. The Commission stated that it would issue a Notice by December 15, 1994, summarizing the plans that had been filed and any other plans that the Commission believed merited further consideration. Parties would have until March 1, 1995, to file responsive comments. Also, during the months of September and October, 1994, the Commission held a series of public forums around the State to explain the case and collect the views of the public.

On or before November 30, 1994 and pursuant to the Commission's August 22, 1994 Order, seven parties filed proposals for determining an appropriate local calling scope: AT&T, Frontier Communications of Minnesota (Frontier), GTE, the Minnesota Independent Coalition (MIC), the Minnesota Telephone Association (MTA), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), and US West Communications.

On December 15, 1994, the Commission issued a Notice to the parties requesting comments on the filed plans and two additional potentially meritorious plans: the standard distance calling plan and the school district calling plan.

On or before March 1, 1995, AT&T, the Department of Public Service, Frontier, GTE, the MIC, the OAG, US West, MCI, Sprint/United, and the Minnesota Senior Federation, Iron Range Region and Metro Region filed comments as requested in the Commission's December 15, 1994 Notice.

On May 16, 1995, the Commission met to consider the proposed plans. At that meeting, the Commission determined that it would like additional comments on three issues. First, the Commission requested parties to comment on whether the EAS process, as outlined in Minn. Stat. § 237.161, subdivisions 1 through 5, should be retained instead of adopting a new EAS process; if the existing process is retained, whether there should be any minor adjustments to that process as described under Minn. Stat. § 237.161, subdivisions 1 through 5, to improve that process, including raising the traffic standard in subd. 1(a)(3); and, whether this proceeding should be continued through a contested case proceeding, a Commission proceeding or a rulemaking proceeding. On May 23, 1995, the Commission issued a Notice of Comment Period, informing parties that written comments were due on June 5, 1995.

On June 1, 1995, the Department requested an extension until June 9, 1995 for the filing of comments. The Department indicated that the parties were attempting to reach a consensus recommendation.

On June 2, 1995, the Commission issued a Notice of Extended Comment Period granting the Department's request.

On June 5, 1995, Frontier filed comments with the Commission. On June 6, 1995, the Minnesota Senior Federation, Iron Range Region and the City of Hoyt Lakes filed comments.

On June 9, 1995, the Department filed a letter with the Commission on behalf of itself, AT&T, Frontier, GTE, MBUUC, MCI, the MIC, the MTA, the RUD-OAG, Sprint/United and USWC reporting that these parties had reached a consensus recommendation for the Commission's consideration.

On September 12, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Background

The Commission has a statutory deadline of June 1, 1996, for issuing a final Order establishing "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).

To date, all concerned have contributed a great deal of time and attention to the issues involved in this docket. The Commission has solicited comments on the process for and issues to be addressed in this docket; requested and received proposed plans for determining the size of a local calling area; conducted 14 public forums around the State; and solicited comments on whether the EAS process outlined in Minn. Stat. § 237.161 should be retained.

B. Parties' Positions

1. The Multi-Party Recommendation

On June 9, 1995, the Department filed a statement on behalf of itself and 10 parties: AT&T, Frontier, GTE, MBUUC, MCI, MIC, MTA, RUD-OAG, Sprint/United and USWC.¹ The joint statement indicated that the parties had reached agreement on a recommendation to the Commission concerning the issues raised in the Commission's May 23, 1994 Notice of Comment Period.

These parties' recommendation was that

- the Commission should issue a final Order in this docket adopting on an interim basis (until the rules in the local service competition rulemaking take effect) the EAS process and standards embodied in Minn. Stat. § 161, subd. 1-5 with one modification: the threshold calling requirement under Minn. Stat. § 237.161, subd. 1(a)(3) should be changed to require that at least 50 percent of the customers in the petitioning exchange make *four* or more calls per month to the exchange or local calling area to which extended area service is requested; and
- the Commission should expand the local service competition rulemaking docket (Docket No. P-999/R-95-53) to include all local calling scope issues: 1) the factors to be considered when determining the local calling scope (i.e., community of interest; number of calls made to an exchange, etc.); 2) reciprocal compensation; 3) interconnection; 4) pricing; 5) effects of EAS on competition; 6) administrative and regulatory costs and burdens of implementation; 7) effect of EAS on universal service; 8) technical requirements; 9) optional vs. mandatory pricing plans; 10) one-way vs. two-way calling plans; and 11) dialing parity.

¹ Three parties that have filed comments in this proceeding have not joined in this recommendation: the Minnesota Senior Federation, Metro Region; the Minnesota Senior Federation, Iron Range Region; and the City of Hoyt Lakes.

2. Minnesota Senior Federation--Iron Range Region

The Minnesota Senior Federation--Iron Range Region (MSF-IRR), indicated that they became involved in this proceeding as a result of recent EAS polling in communities on the Iron Range and their members becoming upset with the procedure used and the high EAS rates. MSF-IRR stated that the goal of its recommendations was to adequately protect older subscribers in rural areas. The MSF-IRR recommendations are that

- low toll users should have the option of refusing the EAS so they are not forced to subsidize high users;
- a petition should be required to initiate the process;
- the traffic study should be based on a 12 month period;
- if calling to schools, health care providers, police and county offices is already a local call, an EAS petition should not be considered or the traffic standard should be increased;
- notice of the petition should be included in the local "shoppers" papers which are distributed free of charge;
- a public meeting should be held prior to the balloting; and
- the EAS should have to be approved by a majority of all subscribers in the petitioning exchange (and in the petitioned exchange if two-way).

3. City of Hoyt Lakes

The City of Hoyt Lakes also filed comments in response to the Commission's May 23, 1995 notice. In its comments, the City of Hoyt Lakes indicated that it had been waiting for action on the Aurora EAS petition to be completed before filing its own petition (Aurora received EAS to Biwabik, Palo, and Virginia on December 9, 1994). However, the Commission then stopped accepting petitions for EAS until June 1, 1996. The City of Hoyt Lakes does not want to see an extended period of time elapse during which no change to local calling areas can occur. The city is requesting that the Commission reopen acceptance of EAS petitions under the old system while possible implementation of a new system is studied.

4. Other

In apparent response to a newspaper article in the Mesabi Daily News, there have been about 14 letters sent to the Commission by residents of the Hoyt Lakes exchange requesting they be considered for a larger local calling area.

C. Commission Analysis

1. EAS Process

The basic outline for EAS as set out in Minn. Stat. § 237.161 was approved by the legislature after considerable debate and has proven serviceable. It has been used to process over 75 EAS petitions since its inception in 1990. While there have been some complaints, it is a process that customers, the companies and regulators understand.

After comparing this process with the plans proposed in the local calling scope case, it is clear that the current process is no less perfect than any of the other plans, and does have the advantages of being a known and proven process. While the Commission is cognizant of the concerns expressed by the Senior Federation - Iron Range Region on behalf of fixed income non-Metro subscribers, the Commission is also aware that many subscribers (see, for example, the filed expression of concern by subscribers in the Hoyt Lakes exchange) earnestly seek an opportunity to secure EAS. In these circumstances, the Commission is inclined to recommence processing EAS petitions without making major changes.

Accordingly, the Commission will reactivate the processing of EAS petitions using the tested EAS process established in Minn. Stat. § 237.161 (1994) with only one exception: the number of calls per month that a majority of the customers in an exchange that is petitioning for EAS to the metro calling area will be raised from **one** to **two**. The Commission views the calling requirement as a rough gauge of community of interest. It is one method used by the EAS legislation to weed out petitions that are not likely to have the requisite subscriber support. Since over 50 percent of the access lines in the state are in the MCA, it is reasonable that subscribers petitioning for metro EAS should meet a slightly higher calling requirement in order to exhibit a reasonable level of community of interest with the MCA.

The Commission views the multi-party recommendation (to raise the calling threshold to 4 for all Minnesota exchanges) as creating too great a barrier to EAS petitions. In view of the undoubted benefits of EAS for many Minnesotans, the Commission does not find it appropriate to place that level of obstacle in the way of EAS expansion in Minnesota. By contrast, the Commission's change is moderate and represents a reasonable attempt to recognize regional differences in the expression of community of interest.

While this Order defines the EAS process for now, it is undeniable that the telecommunications industry is in a state of great change. Changes in the provision of and regulatory framework for local service are imminent. It is likely that these changes will also likely require changes in those services closely related to local service, such as EAS. The following examples illustrate the rapidity of these changes

- ▶ At the time the legislature directed the Commission to conduct an investigation into local calling scopes in 1994, it was not known that the legislature would require and the Commission would initiate a rulemaking on local service competition less than a year later.
- ▶ There is also legislation at the federal level that would provide for the

elimination of the interLATA toll restrictions on the Bell Operating Companies.

Given these changes that are certain to affect the provision of local telecommunications service in Minnesota, it is noteworthy that the process adopted by the Commission in this proceeding will be subject to review and change as the telecommunications industry evolves.

2. Scope of Docket No. P-999/R-95-53

The Commission does not find it appropriate to merge all the local calling scope issues not resolved in this Order into the local competition rulemaking docket, Docket No. P-999/R-95-53. This does not mean that no issue relevant to the local calling scope proceeding will be found relevant to the local competition rulemaking docket as that matter proceeds.

The rulemaking docket is still at an early stage. Any party to the local calling scope case can become involved in the rulemaking docket, if they aren't already. The notices in the rulemaking docket have made it clear that *any* relevant issue can be raised for consideration. If parties to the local calling scope docket believe that there are issues that need to be included in the local competition rulemaking docket, they can raise those issues in that docket for consideration. As with any rulemaking proceeding, decisions regarding the scope of the rulemaking docket will be made in the course of that proceeding.

In fact, several issues currently identified with the local calling scope investigation have already been recognized in the local competition rulemaking docket as issues to consider: interconnection, reciprocal compensation, universal service, and dialing parity. Issues not considered in the local competition rulemaking docket can be considered in a subsequent, separate proceeding.

ORDER

1. The recommendations filed June 9, 1995 by the Department, AT&T, Frontier, GTE, MBUUC, MCI, MIC, MTA, RUD-OAG, Sprint/United, and USWC are not accepted.
2. Instead, the Commission adopts on a final basis the process for extended area service (EAS) established in Minn. Stat. § 237.161 (1994) with one exception: the traffic standard for petitions involving the Metro calling area is raised to at least 50 percent of subscribers in the petitioning exchange making 2 or more calls to the metro calling area.
3. Additionally, if parties to the local calling scope docket believe that there are issues that need to be included in the local competition rulemaking docket (Docket No. P-999/R-95-53), they can raise those issues in that docket for consideration. Decisions to include or exclude any issue so raised will be made in the course of that docket.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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